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## LawTalk Blog



# Are there time limits on medical negligence claims?

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In general terms, the time limit for bringing a claim for [medical negligence](#) in South Australia is three years from the date that the negligent action occurred.

This rule is set out at section 36 of the *Limitations of Actions Act 1936 (SA)*. A claim for medical negligence is simply a claim for compensation as a result of personal injury and includes any disease suffered or any impairment to a person's physical or mental condition.

However, in the case of an injury that remains latent for some time after its actual cause, the period of three years doesn't start until the injury first comes to the person's knowledge.

In a recent Western Australia case, *AME Hospitals Pty Ltd vs Dixon* [2015] WASCA63, the Court of Appeal confirmed that in relation to medical negligence, there is significant scope for persons to bring a claim outside the basic three year time limit.

To be allowed to bring a claim beyond the three year time limit in South Australia, a new "material fact" must be established. That is, that the person affected was not aware of a fact that once known materially contributes to their decision to bring a claim. As an example, the person was not aware of one or more of the following:

1. The physical cause of the death or injury;
2. That the physical cause of death or injury was attributable to the conduct of the person (for example a doctor) against whom the claim is to be made;
3. Despite reasonable enquiry, the name of the person who was the perpetrator was not known and their identity only came to light subsequently.

In the Dixon decision, all three members of the Court of Appeal confirmed that for “awareness” to come into effect, the person had to have a solid basis or justification for their beliefs. It was not sufficient to merely have a suspicion about the matter.

It was confirmed that where the “awareness” relates to expert knowledge that this will only arise when an expert opinion establishes relevant facts. In practice in relation to medical negligence claim a solicitor will request an expert report which commonly provides a new material fact on which to base any application for an extension of time from the 3 year time limit allowed.

There are several factors however that still need to be considered including::

1. There remains a three year outer limit for an application extending time which runs from when “awareness” of the relevant matter ought to have arisen. In other words, there does need to be some explanation as to the reason for the delay; and
2. The ability to seek an extension of time does not guarantee that the application will be granted.

Importantly, if you have a suspicion that you may be eligible to make a medical negligence compensation claim, you are encouraged to seek legal advice at the first opportunity. Unfortunately a lack of knowledge of the three year limitation period does not provide an adequate reason for bringing an application to extend time.

Regrettably ignorance of the law is no excuse.

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