

What you need to know: medical negligence



Maurice Blackburn are Australia's leading and largest medical malpractice team exclusively dedicated to representing injured patients and their families. They recognise that understanding medical negligence, or medical malpractice, is a fairly technical and complicated area of law and have created a guide to the most commonly asked questions regarding the negligence claims process.

If you think a member or a member's family has been injured due to poor medical treatment follow our guide to the most commonly asked questions regarding medical negligence claims to guide you through this process.

1 What is medical negligence?

Medical negligence occurs when the treatment provided by a health service provider (such as a hospital, doctor, dentist, pharmacist or allied health professional) falls below an acceptable standard. It is much more than a simple reasonable mistake or mishap.

Negligent treatment may involve any or all of the following:

- failure to or delay in diagnosing a condition
- failure to or delay in providing the appropriate treatment or referral for the condition
- failure to perform surgery with reasonable care and skill
- failure to report correctly on test results
- failure to provide post-operative care with reasonable care and skill, or
- making an existing medical condition worse.

2 Can a member make a claim for medical negligence?

Yes. If they, or a member of their family, have suffered physical, psychological or financial harm as a result of medical negligence then they may be entitled to compensation.

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Medical negligence claims can involve:

- obstetrics
- paediatrics
- gynaecology
- emergency medicine
- surgery
- orthopaedics
- misdiagnosis of medical condition
- delayed diagnosis of medical conditions after a diagnostic test
- drugs and drug reactions, and
- cosmetic surgery.

3 What are members entitled to when they make a claim?

In addition to any medical or rehabilitation expenses that the member has already paid, they may be able to claim compensation for:

- loss of income, both past and future
- future medical, rehabilitation costs, and
- nursing or home care costs.

4 How do members make a medical negligence claim?

In the first instance members should contact Maurice Blackburn to get a preliminary assessment of their claim.

If their claim proceeds, Maurice Blackburn will assist your member by obtaining the required medical records and reports to launch an investigation on the member's behalf.

To be successful in the claim, their lawyer will have to prove that the health care provider was negligent and that the negligence caused the injury, loss and damage that the

member has suffered. Both of these elements must be proved in order to bring a claim.

Warning: If a member receives negligent treatment but doesn't suffer any harm as a result, they will not be able to seek compensation.

5 Are there time limits involved?

Claims for medical negligence must be commenced within a certain time period. The time is calculated from when the injury or negligent act was discoverable.

In other words, the time starts at the point it was reasonable to have known an act of medical negligence had occurred.

This is because injuries and their causes can take a while to become known.

- For adults, legal action should commence within three years from when the negligence was discoverable.
- For children, legal action should commence within six years from when the negligence was discoverable.

There are exceptions to these rules. We will advise you if they are relevant to your case.

6 Can members get assistance with Coronial investigations and inquests?

When a death occurs unexpectedly during or after medical treatment, it can be referred for investigation to the State Coroner's office. Often, this involves an autopsy (detailed physical examination of the body) being carried out to establish the cause of death. If the Coroner decides to investigate, information and statements about the death will be obtained. Sometimes a public hearing, called an inquest, is held to establish the cause of death.

It's important that members contact Maurice Blackburn to discuss the coronial process. We may be able to liaise with the State Coroner's office on behalf of members, preparing the case for inquest and arranging for a barrister to represent them at the inquest.

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