

This fact sheet contains general information about medical negligence claims and is not intended to be interpreted as legal advice. For legal advice about negligence claims, consult a suitably qualified professional.

MEDICAL NEGLIGENCE

If you have suffered physical or psychological harm or financial loss as a result of negligent medical treatment, you may be able to claim compensation.

In Victoria, medical negligence compensation is governed by the *Wrongs Act 1958*. Claims for damages arising out of medical negligence take place in the courts but the Health Complaints Commissioner can assist parties to reach resolution, including financial payment, through our complaints resolution and conciliation process.

WHAT IS MEDICAL NEGLIGENCE?

To be successful in a medical negligence claim you must be able to show that:

1. the standard of care fell short of what would be reasonably expected of a medical practitioner in the circumstances; and
2. the failure to provide the expected standard of professional care, caused you to suffer harm or loss.

Causation must be proven on the 'balance of probabilities' - it is more likely than not that the wrong committed by the medical practitioner caused the harm or loss.

WHAT CAN I BE COMPENSATED FOR?

If negligence is proven you may seek compensation for special damages and/or general damages.

Special damages are for quantifiable economic losses from the date of the injury, such as:

- medical and hospital charges
- rehabilitation costs
- special equipment
- travel and accommodation expenses
- loss of income
- legal costs.

General damages are for non-economic losses that can only be estimated, such as:

- pain and suffering
- disfigurement, loss of limbs, organs or senses

- loss of future earning capacity
- loss of enjoyment of life – how your quality of life has been affected by the injury for example through loss of capacity to engage in work, sport, hobbies, relationships or other activities.

WHO DECIDES IF I HAVE A SIGNIFICANT INJURY?

In Victoria, to receive compensation for non-economic loss (general damages) you need to show that you have a 'significant injury'. A significant injury is one that results in a whole person impairment of:

- more than 5% for physical injuries (other than spinal injury);
- 10% or more for psychiatric injuries; or
- 5% or more for spinal injury.

An assessment of the degree of impairment must be made by an approved medical examiner. The examiner will assess your level of impairment and provide a certificate of assessment stating whether or not the degree of impairment satisfies the relevant threshold level.

The health service provider can challenge a certificate of assessment of impairment by requesting a medical panel make a determination on the impairment. The determination by a medical panel is binding on any court as a determination of whether or not the claimant has a significant injury.

HOW LONG DO I HAVE TO CLAIM COMPENSATION?

In Victoria, the *Limitation of Actions Act 1958* prescribes the period of time in which a claim must be lodged before the court.

A legally competent adult must commence proceedings within three years from the date they became aware of the loss or harm they have suffered. In some circumstances a longer period may apply, for example if the person is under 18 years of age or has a disability.

No claim can be brought 12 years or more after the injury occurred regardless of when the injury was discovered.

For general advice on the complaints resolution process speak to the officer handling your case, visit hcc.vic.gov.au or call **1300 582 113** between 9am and 5pm, Monday to Friday.

For legal advice consult a solicitor who specialises in personal injury law. The Law Institute of Victoria offers a legal referral service and can assist you to find an accredited specialist, visit liv.asn.au or call **9607 9311**.