



## Are there time limits for Medical Negligence Claims?

In general terms, the time limit for bringing a [personal injury claim](#) including a claim arising from negligent medical treatment in South Australia is three years from the date that the negligent action occurred. This means that if a claim has not resolved earlier, a Statement of Claim must be filed in Court by the three year deadline.

The rules relating to children are different; the three year time limit does not start running until they turn 18 years of age. This means that they have until they turn 21 to file a Statement of Claim in Court. However, notification of a potential claim to the responsible party is expected to be made within 6 years of the injury.

This time limit is set out in section 36 of the Limitations of Actions Act 1936 (SA) (the

Act ).

## What is Medical Negligence?

A **claim for medical negligence** is a claim for compensation for personal injury, loss and damage arising from the breach of the duty of care owed by a medical or allied health care provider including a hospital. It 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 limitation period of three years does not start until the injury first comes to the person's knowledge.

To be allowed to bring a claim beyond the three year time limit in South Australia, other than a latent injury, 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.

Section 48(3) of the Act states that the facts are material if they form an essential element of the Applicant's cause of action and would have major significance on the assessment of the Applicant's loss.

In practice in relation to a medical negligence claim, a solicitor will request an expert report which may be used, if supportive of a claim, to establish 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 is a 12 month time limit for an application extending time which runs from when the Applicant becomes aware of the new material fact;
2. There does need to be some explanation as to the reason for the delay and the Applicant needs to satisfy the court that in all of the circumstances (including any prejudice to the Respondent), it is just to grant an extension of time;
3. The Applicant needs to show that the new material fact has a major impact on the assessment of the Applicant's claim as compared to the assessment of the claim in the absence of this fact; and
4. The ability to seek an extension of time does not guarantee that the application will be granted and the application is not dealt with by the court until trial.

## How Can Andersons Help with your Medical Negligence Claim?

Importantly, if you feel you may be eligible to make a [medical negligence compensation claim](#), you are encouraged to seek legal advice at the first opportunity. An extension of time can be difficult to obtain and adds an additional complexity to an already difficult area of law. 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.

Andersons has a team of experienced Medical Negligence Lawyers who can work with you on obtaining compensation. We offer a no obligation first free interview where we can discuss your personal circumstances and the likelihood of a claim. As this first meeting is free, you really have nothing to lose. [Contact Us](#) today.