



# Medical negligence claims for misdiagnosis

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Every person who has received medical advice or treatment in Queensland and believes that they have suffered an adverse outcome as a result is entitled to consider whether they should sue the medical service provider. There is a range of scenarios that could give rise to you having a right to bring a [medical negligence claim](#). A common question we are asked is, *“Can I sue a hospital or doctor for wrong diagnosis?”*

Yes, you can sue a health professional or institution for an adverse medical outcome caused by their negligent diagnosis.

Medical misdiagnoses that lead to inappropriate, delayed treatment or, indeed, no treatment at all may result in a patient sustaining injury or condition worse than what might have occurred had the condition been correctly identified or identified sooner. Anyone who suffers a specific injury or a worsening of their original condition due to misdiagnosis should consider their right to sue for such an outcome.

You can read more about determining if the treatment you received was negligence, in our earlier blog, [“Medical negligence claims – was it negligent treatment?”](#).

An example of a medical misdiagnosis scenario might involve progressive diseases, such as cancer.

In such cases, the pre-existence of the illness or condition will need to be considered in light of the likely outcome had the condition been diagnosed earlier. A comparison is then made of the patient’s prognosis for recovery had treatment been administered (been made available) sooner. The expert medical evidence required to determine these matters needs to be in the form of a specialist medical report.

## How do I prove medical negligence?

In order to prove your claim to the requisite standard demanded by the courts, you will need appropriate/necessary expert medical opinion in the form of a medical report. Indeed, you cannot now bring a claim for medical negligence without this type of material.

This is a complex and extremely important aspect of bringing a claim for medical negligence, and only a lawyer experienced in medical negligence matters will be able to ensure this is done properly. If this step is not taken correctly, then in the majority of instances, the claimant will not be able to proceed any further with their medical negligence case.

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## What compensation is payable for a successful medical negligence claim?

Like most cases involving claimants who have suffered injury due to another person/entity's negligence (or other tort), the main 'heads of damage' (compensation available) include:

General damages, which is a sum to compensate for the injured person's pain and suffering and loss of amenities/enjoyment of life;

Loss of earnings, both past and into the future. This compensation can be quite substantial, depending on the claimant's age and income-earning ability;

Out-of-pocket expenses, past and into the future. Again, this can be a very large sum depending on what remedial medical treatment may be needed (to date and into the future);

Care. Depending on the nature and extent of care to be provided to the claimant, this can also represent a very significant component of a claim for damages, as it can sometimes extend to the end of the claimant's life expectancy.

Recurring equipment needs. This is a particular category of 'out of pocket expenses' (noted above), but care needs to be taken in making sure this head of damage is properly considered and fully claimed.

## Are there time limits to make a medical negligence claim in Queensland?

Yes.

To sue at common law due to medical negligence in Queensland, you must initiate your claim:

within 3 years of the date of injury; or

within 3 years of becoming aware of the injury sustained due to alleged medical negligence (for situations where the injury or condition was not immediately evident after the treatment); or

in the case of minors, within 3 years of turning 18 years of age.

Additionally, certain 'pre-court' steps specific to medical negligence claims need to be adhered to/observed, depending on the age of the claimant and other considerations.

There are limited opportunities to sue for medical negligence common law damages outside these time limits, therefore, it is crucial to act as soon as you are aware of your injury. If you are outside the 3-year time limit, you should seek legal advice urgently.

## Get help from a medical negligence lawyer

Medical negligence is a highly complex area of law which requires the attention of a lawyer experienced in medical negligence claims. Assessing your entitlement to common law damages, obtaining the right expert evidence, and ensuring you meet the strict time limits are key to a successful claim.

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*This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*