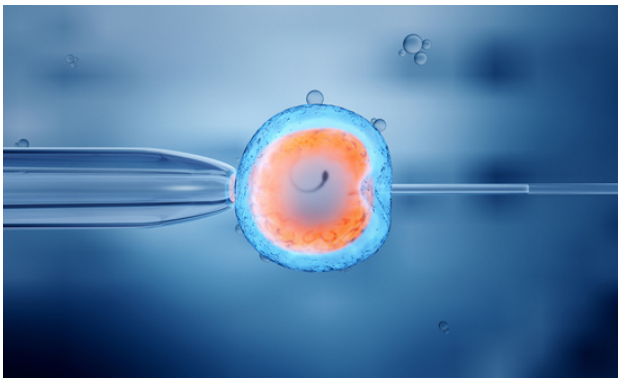
IM LAWYERS



Can I sue a fertility specialist or IVF clinic if they are negligent?

Date: Monday June 8, 2026

Assisted reproductive therapies ("**ART**") such as egg freezing and Invitro Fertilisation ("**IVF**") are a rapidly increasingly accessed area of healthcare in Australia. Unfortunately, like all areas of healthcare, there is the possibility for things to go wrong in the course of provision of treatment, which can result in a potential medical negligence claim.

Cases involving claims against ART providers

There have been some highly publicised incidents and recent examples of where this can occur in this particular industry, including this widely reported example, where a patient of Monash IVF gave birth to a child from an embryo that was not intended for use in her procedure but was meant to be used by another patient of Monash IVF.

Obviously, the impacts of such failure by an ART provider will be devastating. Devastating for the woman with the wrong embryo and her partner. Devastating for the family that has lost the opportunity to use the embryo. Potentially damaging for the child that may be born from the mix-up and the extended families of those involved.

With so much public discussion about the industry, patients may wonder what their options are if something were to go wrong. As with all instances of negligence involving the provision of medical treatment and health care, a medical negligence claim may present as an option to seek appropriate compensation.

What is a medical negligence claim?

A medical negligence claim is a claim for damages to compensate the claimant for loss that they suffered due to a medical professional's negligence. This could include:

negligent provision of treatment;

incorrect or negligent advice; and

failure to warn of any relevant material risks associated with the particular treatment/procedure.

Does my fertility specialist or IVF clinic owe me a duty of care?

Like all medical professionals, fertility specialists or other providers of ART treatment owe their patients a duty of care to take reasonable care in the course of advising and treating their patients.

When considering what would be the reasonable standard of care for medical professionals, consideration is given to what their peers would accept to be an appropriate standard of care expected in the circumstances of the alleged negligent treatment.

Information and documentation needed for an ART medical negligence claim?

Some of the information that you will need to obtain and include in a medical negligence claim relating to ART includes:

any contracts entered into with the specialist or treatment provider;

your medical records, including medical records of your treatment with the specialist or treatment provider;

statements from you about the advice provided by the specialist or treatment provider;

correspondence between you and the treatment provider.

As with all medical negligence claims, a claimant will also be required to provide, in the initial stages of their claim, a written report from a suitably qualified expert detailing how the medical professional failed to meet the required standard of care.

If you're considering a claim or are in the early stages of a claim, to optimise the success of your claim, it is crucial you seek experienced legal advice early.

FREE ADVICE FROM A PERSONAL INJURY LAWYER: 1800 001 339

What types of compensation can I receive through an ART medical negligence claim?

The compensation that a claimant can receive is entirely dependent upon their own personal circumstances and the loss that they suffered as a result of the negligent treatment.

Damages (compensation) for these claims generally fall within the following “heads of damage”:

- general damages (which recognises pain and suffering of the claimant);
- economic loss (lost income);
- special damages (such as medical expenses or costs of medications); and
- care (including, in some cases, gratuitous care, which you can read more about here).

Is my claim against an ART limited to a medical negligence claim only?

As the impacts of a mistake in an IVF process are biblical, your legal adviser needs to think more broadly than a mere medical negligence claim. Given the areas of an aggrieved individual’s life that may be impacted, the relief sought will be complex, with the alternate avenues of recovery for damages including:

- Family Law proceedings;
- Consumer Laws (*Competition and Consumer Act*); and
- *Privacy Act* proceedings.

Help with a medical negligence claim related to assisted reproductive therapies?

IM Lawyers are highly experienced personal injury lawyers, particularly in the area of healthcare and medical negligence claims.

We are in the unique position of having obtained successful outcomes in assisting clients with medical negligence and other aforementioned claims against ART providers, and can use this expertise and experience to help you with your ART medical negligence claim as well.

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.