



## IM Lawyers successful in medical negligence claim time limit application

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An August 2024 Supreme Court of Queensland decision highlights how time limits in [medical negligence claims](#) can sometimes be extended. In [Jones v Central Queensland Hospital and Health Service \[2024\] QSC 165](#), IM Lawyers successfully argued that a “material fact of a decisive character” justified an extension, despite the usual three-year deadline to commence proceedings.

This blog explains how time limits work in medical negligence claims, what counts as a material fact, and why this case is a win for patients seeking justice after delayed discovery of harm.

### Background of the medical negligence claim

The decision concerned a time limit application in a medical negligence claim. Between June 2011 and March 2012, our client (the Plaintiff) received TomoTherapy radiation treatment for a gluteal desmoid tumor.

In a long series of events, the Plaintiff suffered considerable injuries in the sacrum area, including, eventually, an entire breakdown of the sacrum (the connection between the spine and the pelvis). The Plaintiff began a medical negligence claim for those injuries in the Supreme Court of Queensland on 24 February 2021, approximately nine years after the medical treatment the subject of the claim.

### What is the time limit for a medical negligence claim?

Generally, for medical negligence matters, the time limit will expire at the completion of a three-year period after the medical negligence event. Notably, our client in this matter began her medical negligence claim outside of the three-year period, which would generally mean that she was unable to commence or pursue her claim.

However, section 31 of the *Limitation of Actions Act 1974* (Qld) allows the court to extend this time limit under certain circumstances.

Where there is a 'material fact of a decisive character' (see below) that the injured person learns, then the court may be able to exercise its discretion to extend the time limit to expire 12 months after the injured person learned of the material fact of a decisive character.

## What is a 'material fact of a decisive character'?

Unfortunately, there is no singular answer to what a material fact of a decisive character is. What it could amount to will change from matter to matter.

Overall, a material fact of a decisive character is a fact which once it is known to the injured person, would likely make a reasonable person decide to pursue a personal injury claim.

Following receiving this information, the time limit will extend by 12 months from that date. If that 12-month extended date is sooner than the general time limit date (three years from the injury event date), then the general time limit will remain as the applicable expiry (unless a further material fact of a decisive character is learned to extend it beyond that time).

## How does this apply to this specific matter?

In this particular matter, the material fact of a decisive character that we contended extended our client's time to commence her personal injury claim was the knowledge that the TomoTherapy had been administered:

at too high a dosage; and

on too large an area.

('the Fact')

In the application for an extension of time, we submitted that the Facts were not known by our client until 26 February 2020 (approximately eight years after the TomoTherapy treatment) when a report about the treatment and resulting injuries was provided by a medical expert.

A distinction was specifically drawn between:

the knowledge of the Facts and knowledge that the TomoTherapy was the cause of the Plaintiff's injuries. The Plaintiff may have known that the medical treatment caused the injury, but was not aware that negligence was associated with administering the treatment. As the court put it, "*there is a distinction between knowledge that someone has caused an*

*injury, and knowledge that a person has caused it negligently*"; and

knowledge of the Fact and suspicion about the Fact. As the court put it, "*Whilst the plaintiff had a suspicion about inappropriate radiation dosage and targeting of the sacrum, that suspicion was not knowledge of such facts.*"

Relevantly, the court agreed with our client that:

the Fact was not within her knowledge before the 26 February 2020 report, despite taking all reasonable steps to find out the Facts; and

the Facts were a material fact of a decisive character.

Having established that, it was a matter for the court to decide whether it was appropriate to apply judicial discretion to extend the time limitation of the Plaintiff's medical negligence claim. This would essentially give our client a further 12 months (from 26 February 2020) to issue medical negligence proceedings.

In determining whether to do so, the court considered whether the Defendant would be prejudiced if the discretion was exercised, for example, by unavailability of evidence due to the passage of time (a similar question to that considered in applications for [permanent stay of proceedings in historical child abuse matters](#)).

Ultimately, the court decided:

that this was not a case where the Defendant's ability to defend the claim would be prejudiced by the passage of time; and

to exercise the discretion in favour of the Plaintiff.

## Why are we particularly proud of this success?

As is set out in the Supreme Court's judgement, Ms Jones approached several other personal injury law firms, who were not willing to assist her in investigating her medical negligence claim. At IM Lawyers, we pride ourselves on being willing to put in the hard work on matters even where other lawyers might not see any reason to investigate, let alone pursue the claim. This matter is a prime example of this.

Our client was so pleased with the result and was grateful to our firm for standing beside her and taking on her case. A satisfying result for all of us.

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