



PARENTS' RESOURCE

KNOW YOUR RIGHTS

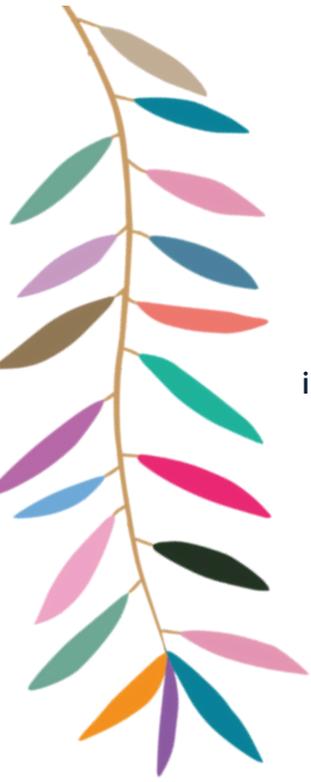
Seeking legal advice

We recognise that you have found us because you may have questions about your birth experience

You might have concerns that your birthing experience was negatively impacted due to, or contributed to by, medical professionals (including doctors, midwives, nurses, allied health practitioners) or something unexpected happened. It is valid that you may want to seek further answers.

You might also be considering whether you need legal advice. You're not alone. We are often contacted about legal options following a traumatic birthing experience. To assist, we have compiled some of the most frequently asked questions to help you understand your legal rights. This includes where to start and how to approach a lawyer.





Knowing and understanding your rights is important, especially when you feel that your birthing experience and/or pre and postnatal treatment was not what you expected it to be.

Contacting a lawyer, although a scary and confronting prospect, may help you get the answers that you need to begin your healing journey. Most personal injury lawyers will offer a free appointment so making an inquiry should not cost you anything.

Where you have experienced negative outcomes following a birthing experience or in pre-natal / post-natal treatment, you can seek advice about support in the form of compensation. The type of lawyer you would be contacting is a personal injury lawyer; and the type of case is called a medical negligence claim. You may be seeking compensation for yourself or you may be seeking compensation for a loved one - birth trauma can affect everyone in a family unit.

A lawyer can also give you advice about how to make a medical complaint to your local State or Territory health complaints commission or health ombudsman or to the Australian Health Practitioner Regulation Agency. These bodies can investigate concerns about the health, conduct or performance of a registered health practitioner.

Who can make a claim?

A claim can be made on behalf of the person who gave birth for either their physical or psychological injuries. A claim can also be made on behalf of a baby who is injured during childbirth or as a result of their mother's antenatal care or their care following birth. Similarly, depending on the circumstances, a claim may also be made for the partner or close family member of the person who gave birth who has also suffered a psychological injury as a result of the traumatic birth.

It is important to note that the laws in relation to the type of injury that can be claimed for are different in each State and Territory.

What is the cost of a lawyer?

Most lawyers who practice in personal injury offer a no win no fee agreement. This type of agreement will differ between firms but ultimately, it means that you may not need to pay the lawyers' fees upfront and may only need to pay if you are successful in a claim. You should always check that the law firm/lawyer that you approach offers no win, no fee agreements. We also recommend asking whether they charge an uplift fee, as this has a significant impact on how much compensation you receive.

How long do I have to contact a lawyer?

There are limitation periods that apply when considering a personal injury claim in most jurisdictions around Australia. In NSW, for example, a person has three years from the date they discover their injury was the fault of somebody else. This differs from State to State, so it is important you obtain advice unique to your circumstances. In order to ensure that you make a claim within the right time frame, we suggest that you contact a law firm and/or lawyer as soon as possible.

How long can a legal case take?

No birthing experience is the same, so naturally the process of making a legal claim varies. Depending on the complexity of the case and the injury, a legal case can take between 18 months and three years or more. Your lawyer will be able to give you a realistic timeframe that you can expect to get a resolution.

Where can I find a lawyer to help me?

Personal injury and medical negligence laws differ from State to State. You should find a lawyer that you are comfortable with and who you are confident will achieve the outcome you seek.

Common questions to ask your lawyer

Claims Process:

- Will you also help me make a complaint to the hospital?
- Will I need to go to court?
- Will my claim result in changes to policies and procedures at the hospital?

Financials:

- Will I be out of pocket?
- Who pays for my compensation? Will the doctor have to pay out of their own pocket?



Tips for choosing a lawyer

Speaking with a lawyer can be a confronting and scary experience. It can also retrigger feelings, memories and recollections of your injuries and can be a daunting prospect.

As such, it is important that you choose a lawyer that you feel comfortable sharing your story with.

Here are three tips to follow when choosing the right lawyer for you:

Write it down

To avoid needing to retell your story to multiple lawyers, consider writing down what happened so you can send this to the lawyer. This way, when you talk with them, they will already have the context of what happened and they can provide you with their initial thoughts and you can focus on making sure that they are a good fit for you

Speak with different lawyers

Although medical negligence law within each State is the same, every lawyer is different and will have a different approach in terms of their strategy and how they charge legal fees. Importantly, this person will be by your side and a voice to your story. It's important to have a good personality fit and feel safe.

Consider bringing a support person

An initial meeting with a lawyer can be overwhelming, so it is beneficial to have someone there to support you through the process. Ultimately, however, it is your decision and having an objective view is also valuable.



Find more resources, support and guidance visit our website

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Information provided to ABTA is maintained and stored according to our privacy policy and data storage policies. For more information please visit our website or email us on support@birthtrauma.org.au. ABTA is a Registered Charity, ABN: 14614751343.

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