

# MEDIA RELEASE

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## “Wrongful life” protection needed

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A peak lawyer’s organisation says governments should consider law reforms to allow severely disabled children to sue over medical negligence that resulted in their birth, following two related High Court decisions today.

The Australian Lawyers Alliance says that these cases are unfortunate because the victims will obtain no compensation, even though there has been negligence on the part of a doctor.

Lawyers Alliance medico-legal expert Bill Madden said the cases highlight the difficulty in what are known as “wrongful life” claims.

“They show how hard it is to assess damages when the only alternative can be that the people would never have been born,” Mr Madden said.

“However, just because it’s a difficult thing doesn’t mean the law shouldn’t make some allowance for damages awards where there has clearly been negligence on the part of the doctors resulting in severe disability.”

“Although courts haven’t been able to decide the issue, governments should consider this issue and legislate accordingly,” Mr Madden said.

Alexia Harriton’s mother contracted rubella whilst pregnant and Alexia requires constant care for her resultant blindness, deafness, mental retardation and spasticity.

She claimed damages for past and future medical and care costs, general damages for pain and suffering and loss of income.

Mrs Harriton’s doctor ruled out rubella but did not prescribe a follow-up blood test and did not advise that a pregnant woman who had had rubella in the first trimester had a very high risk of having a child with congenital abnormalities.

Keeden Waller was found to have a cerebral thrombosis and has permanent brain damage, suffers from cerebral palsy, has uncontrolled seizures and requires constant care.

His parents were not advised of the possible consequences of the father’s blood-clotting condition on their child.

Keeden also sued for wrongful life.

*Waller v James; Waller v Hoolahan & Harriton v Stephens*

**Contact: Kyrn Stevens, Lawyers Alliance Communications Manager: 0408-974127**