



## **The reality of wrongful death**

The recent media coverage surrounding the death and serious injury of two newborn babies at Bankstown Hospital was understandably met with public horror. How could our health system have failed these families in such a tragic way?

Yet these sad circumstances also remind us of a second horror – that our legal system does not provide an avenue for compensation arising out of the wrongful death of a child.

In my experience in acting for families who have lost a child as a result of medical negligence, their first and foremost wish is for acknowledgement of their loss; for someone to accept responsibility. While damages will never change the situation or speed up the grieving process, they do go some way to acknowledge the fault and loss of a child's life.

It must be said, the *Compensation to Relatives Act 1897* makes provision for the payment of funeral expenses. Furthermore, the *Civil Liability Act 2002* permits an award of damages – but only if a parent can prove they have suffered a recognisable psychiatric illness arising out of the death of their child. This will often result in a drawn-out legal process where the parent will be subject to medical appointments and doctors attempting to quantify and name a parent's suffering. A parent's claim may not be able to be settled at all until the parent's illness has reached its peak.

In light of recent events, perhaps it is time to ask if the current measures are adequate or if medical negligence law should be expanded to recognise the distress and grief that inevitably emerges from the death of a child.