

# AUSTRALIAN CAPITAL TERRITORY

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## Limitation Ordinance 1985

No. 66 of 1985

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# AUSTRALIAN CAPITAL TERRITORY

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## Limitation Ordinance 1985

No. 66 of 1985

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 12 December 1985.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

LIONEL BOWEN  
Attorney-General

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An Ordinance to provide for the limitation of actions and for related purposes

### PART I—PRELIMINARY

#### Short title

1. This Ordinance may be cited as the *Limitation Ordinance 1985*<sup>1</sup>.

#### Repeal, amendment, etc.

2. (1) Each of the following Imperial Acts shall cease to be in force in the Territory:

- (a) 3 and 4 William IV, chapter 27, entitled an Act for the Limitation of Actions and Suits relating to Real Property and for simplifying the Remedies for trying the Rights thereto;

- (b) 9 George IV, chapter 14, entitled an Act for rendering a written Memorandum necessary to the Validity of certain Promises and Engagements;
- (c) 7 James I, chapter 12, entitled an Act to avoid the double payment of debts;
- (d) 9 George III, chapter 16, entitled an Act to amend and render more effectual an act made in the twenty first year of the reign of King James the first, intituled, an act for the general quiet of the subjects against all pretences of concealment whatsoever.

(2) Sections 3, 4 and 7 of the Imperial Act 21 James I, chapter 16, entitled an act for limitation of actions and for avoiding of suits in law shall cease to be in force in the Territory.

(3) Sections 5 and 6 of the Imperial Act 31 Elizabeth, chapter 5, entitled an act concerning informers shall cease to be in force in the Territory.

(4) Sections 16 to 19 (inclusive) of the Imperial Act 4 and 5 Anne, chapter 3, entitled an act for the amendment of the law, and the better advancement of justice shall cease to be in force in the Territory.

(5) Each of the following Acts of the State of New South Wales shall cease to be in force in the Territory:

Limitation of Actions for Trespass Act, 1884

Real Property (Limitation of Actions) Act, 1837

Supreme Court Act, 1841

Trust Property Act, 1862

Written Memorandum Act, 1834.

(6) The Ordinances specified in the Schedule are amended as set out in that Schedule.

### **Transitional**

3. Subject to section 21 and to Division 2 of Part III, nothing in this Ordinance—

- (a) affects an action brought or arbitration commenced before the commencement of this Ordinance;

- (b) enables an action or arbitration to be commenced or maintained which is barred at the commencement of this Ordinance by a law in force in the Territory that is repealed or amended by this Ordinance; or
- (c) subject to paragraph (b), prevents the commencement and maintenance of an action or arbitration within the time allowed by a law in force in the Territory that is repealed or amended by this Ordinance on a cause of action which accrued before the commencement of this Ordinance.

#### **Other limitations**

**4.** Nothing in this Ordinance—

- (a) applies to an action or arbitration for which a limitation period is fixed by or under a law in force in the Territory other than this Ordinance (not being a law repealed or omitted by this Ordinance); or
- (b) applies to an action or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be fixed by or under a law in force in the Territory other than this Ordinance (not being a law repealed or omitted by this Ordinance).

#### **Stolen property or interest in land**

**5.** Nothing in this Ordinance applies—

- (a) to a cause of action to recover land or an estate or interest in land or to enforce an equitable estate or interest in land; or
- (b) to an action in relation to goods that are stolen property unless the person against whom the action is instituted is a purchaser of the goods in good faith or a person claiming the goods through such a purchaser.

#### **Acquiescence, etc.**

**6.** Nothing in this Ordinance affects any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

#### **The Crown**

**7. (1)** Subject to sub-sections (3) and (4), this Ordinance binds the Crown and the Crown has the benefit of this Ordinance.

**(2)** For the purposes of this Ordinance an action by an officer of the Crown as such or a person acting on behalf of the Crown is an action by the Crown.

(3) This Ordinance does not apply to an action by the Crown—

- (a) for the recovery of a penalty, tax or duty or of interest on a penalty, tax or duty; or
- (b) in respect of the forfeiture of a ship.

(4) This Ordinance does not affect the prerogative right of the Crown to mineral rights.

### **Interpretation**

8. (1) In this Ordinance, unless the contrary intention appears—

“action” includes any proceeding in a court;

“administrator” has the same meaning as in the *Administration and Probate Ordinance 1929*;

“cause of action” means the fact or combination of facts which give rise to a right to bring a civil proceeding;

“Crown” includes the Crown in all its capacities;

“deed” includes an instrument having the effect of a deed under a law in force in the Territory or, in the case of an instrument executed pursuant to the law of—

- (a) the Commonwealth;
- (b) a State;
- (c) another Territory;
- (d) the United Kingdom; or
- (e) New Zealand,

having the effect of a deed under the law pursuant to which it is executed;

“defendant” means a person against whom a cause of action lies, whether or not proceedings have been instituted;

“income” includes interest on a judgment and other interest, and includes rent annuities and dividends, but does not include arrears of interest secured by a mortgage and lawfully treated as principal;

- “judgment” includes not only a judgment of a court of the Territory but also a judgment of any other place;
- “land” has the same meaning as in the *Real Property Ordinance 1925*;
- “mineral” includes petroleum;
- “mortgage” does not include a possessory lien on goods nor any binding effect on property arising under a writ of execution against the property but otherwise includes a charge or lien on any property for securing money or money’s worth and also includes, in relation to land under the provisions of the *Real Property Ordinance 1925*, a charge within the meaning of that Ordinance;
- “mortgagee” includes a person claiming a mortgage through an original mortgagee;
- “mortgagor” includes a person claiming property subject to a mortgage through an original mortgagor;
- “personal injury” includes any disease and any impairment of the physical or mental condition of a person;
- “personal representative” has the same meaning as in the *Compensation (Fatal Injuries) Ordinance 1968*;
- “plaintiff” means a person who has a cause of action, whether or not proceedings have been instituted;
- “principal money”, in relation to a mortgage, means all money secured by the mortgage, including arrears of interest lawfully treated as principal, but does not include other interest;
- “successor”, in relation to a person liable on a cause of action, means a person on whom the liability of the first-mentioned person devolves, whether as personal representative or otherwise on death, or on bankruptcy, disposition of property, or determination of a limited estate or interest, or otherwise;
- “trust” includes express implied and constructive trusts, whether or not the trustee has a beneficial interest in the trust property, and whether or not the trust arises only by reason of a transaction impeached, and includes the duties incident to the office of personal representative but does not include the duties incident to the estate or interests of a mortgagee in mortgaged property and “trustee” has a corresponding meaning.

(2) For the purposes of this Ordinance—

- (a) a person claims through another person in respect of any property or right if he or she is entitled to the property or a right by, through, under or by the act of that other person, but a person entitled to property or a right by virtue of an appointment under a special power of appointment does not, by reason of the appointment, claim the property or right through the appointor; and
- (b) a thing done to or by or suffered by an agent is done to or by or suffered by his or her principal.

(3) For the purposes of this Ordinance a person is under a disability—

- (a) while he or she is under the age of 18 years; or
- (b) while he or she is, for a continuous period of 28 days or upwards, incapable of, or substantially impeded in, the management of his or her affairs in relation to the cause of action in respect of the limitation period for which the question arises, by reason of—
  - (i) intellectual retardation or disability, mental illness or disorder, brain damage, senility or physical disability;
  - (ii) war or warlike operations; or
  - (iii) circumstances arising out of war or warlike operations.

(4) The provisions of this Ordinance as to the date of accrual of a cause of action have effect for the purposes of this Ordinance but not for any other purpose.

## **PART II—PERIODS OF LIMITATION AND RELATED MATTERS**

### *Division 1—Preliminary*

#### **Relationship to Part III**

9. The provisions of this Part have effect subject to the provisions of Part III.

#### **More than one bar**

10. Where, under each of 2 or more provisions of this Part, an action is not maintainable if brought after a specified time, the action is not maintainable if brought after the earlier or earliest of those times.

### *Division 2—General*

## **General**

**11. (1)** Subject to sub-section (2), an action on any cause of action is not maintainable if brought after the expiration of a limitation period of 6 years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he or she claims.

**(2)** Sub-section (1) does not apply to a cause of action in respect of which another limitation period is provided by this Ordinance.

## **Accounts**

**12.** An action on a cause of action for an account is not maintainable after the expiration of any time limit under this Ordinance which is applicable to the claim which is the basis of the duty to account.

## **Deed**

**13.** An action on a cause of action founded on a deed is not maintainable if brought after the expiration of a limitation period of 12 years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he or she claims.

## **Judgment**

**14. (1)** An action on a cause of action on a judgment is not maintainable if brought after the expiration of a limitation period of 12 years running from the date on which the judgment first becomes enforceable by the plaintiff or by a person through whom he or she claims.

**(2)** A judgment of a court of a place outside the Territory becomes enforceable for the purposes of this section on the date on which the judgment becomes enforceable in the place where the judgment is given.

## **Penalty and forfeiture**

**15. (1)** An action on a cause of action to recover a penalty or forfeiture, recoverable by virtue of a law in force in the Territory, is not maintainable if brought after the expiration of a limitation period of 2 years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he or she claims.

**(2)** In this section “penalty” does not include a fine to which a person is liable on conviction for a criminal offence.

**Compensation to relatives**

**16.** An action on a cause of action arising under the *Compensation (Fatal Injuries) Ordinance 1968* in respect of an act, neglect or default resulting in death is not maintainable after the expiry of—

- (a) the period of 6 years immediately following the relevant wrongful act, neglect or default; or
- (b) the period of 3 years immediately following the day of death of the person injured by that act, neglect or default,

whichever later expires.

**Arbitral award**

**17. (1)** An action on a cause of action to enforce an award of an arbitrator is not maintainable if brought after the expiration of the limitation period fixed by sub-section (2) running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he or she claims.

**(2)** The limitation period for the purposes of sub-section (1) is—

- (a) where the award is made under an arbitration agreement and the arbitration agreement is made by deed—12 years; and
- (b) in any other case—6 years.

**(3)** For the purposes of this section a cause of action to enforce an award of an arbitrator accrues on the date on which default first happens in observance of the award, being the default in respect of which the action is brought.

**(4)** In this section, “arbitration agreement” means an agreement to submit present or future differences to arbitration, whether an arbitrator is named in the agreement or not.

**(5)** This section applies to an award of an arbitrator under any law, order or scheme in force in the Territory, but applies to such an award subject to the provisions of the relevant law, order or scheme.

**Successive wrongs to goods**

**18.** Where—

- (a) a cause of action for the conversion or detention of goods accrues to a person; and
- (b) afterwards, possession of the goods not having been recovered by him or her or by a person claiming through him or her, a further cause of

action for the conversion or detention of the goods or a cause of action to recover the proceeds of sale of the goods accrues to him or her or to a person claiming through him or her,

an action on the further cause of action for conversion or detention or on the cause of action to recover the proceeds of sale is not maintainable if brought after the expiration of the limitation period applicable to the first-mentioned cause of action.

### **Shipping**

**19. (1)** An action on a cause of action to enforce a claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, is not maintainable if brought after the expiration of a limitation period of 2 years running from the date when the damage loss or injury is caused.

**(2)** An action on a cause of action to enforce a claim or lien in respect of any salvage services is not maintainable if brought after the expiration of a limitation period of 2 years running from the date when the salvage services are rendered.

**(3)** For the purposes of an action in a court, the court—

- (a) may extend the limitation period mentioned in sub-section (1) or (2) to such an extent and on such terms as it thinks fit; and
- (b) shall, if satisfied that there has not during the limitation period been a reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his or her principal place of business, extend the limitation period to an extent sufficient to give a reasonable opportunity of so arresting the defendant vessel.

**(4)** For the purposes of this section—

- (a) "freight" includes passage money and hire;
- (b) "vessel" means a vessel used in navigation, other than air navigation, and includes a barge lighter or like vessel; and

- (c) reference to damage or loss caused by the fault of a vessel extends to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

### **Arrears of interest**

**20. (1)** An action on a cause of action to recover arrears of interest on principal money is not maintainable if brought after the expiration of the limitation period fixed by or under this Ordinance for an action between the same parties to recover the principal money.

**(2)** Sub-section (1) does not apply to a cause of action to which section 25 applies.

### **Contribution between tort-feasors**

**21. (1)** An action on a cause of action for a contribution under sub-section 11 (4) of the *Law Reform (Miscellaneous Provisions) Ordinance 1955* is not maintainable if brought after the first to expire of—

- (a) a limitation period of 2 years running from the date on which the cause of action for contribution first accrues to the plaintiff or to a person through whom he or she claims; and
- (b) a limitation period of 4 years running from the date of the expiration of the limitation period for the principal cause of action.

**(2)** For the purposes of paragraph (1) (a), the date on which a cause of action for contribution first accrues is—

- (a) if the plaintiff in the action for contribution or a person through whom he or she claims is liable in respect of the damage for which contribution is claimed by judgment in a civil action or by arbitral award—the date on which the judgment is given or the award is made, whether or not, in the case of a judgment, the judgment is afterwards varied as to quantum of damages; or
- (b) if, in a case to which paragraph (a) does not apply, the plaintiff in the action for contribution or a person through whom he or she claims makes an agreement with a person having a cause of action for the damage for which the cause of action for contribution arises, which agreement fixes, as between the parties to the agreement, the amount of the liability in respect of that damage of the plaintiff in the action for contribution or a person through whom he or she claims—the date on which the agreement is made.

(3) In paragraph (1) (b), “the limitation period for the principal cause of action” means the limitation period fixed by or under this Ordinance or by or under any other law in force in the Territory (including a law repealed or omitted by this Ordinance) for the cause of action for the liability in respect of which contribution is sought.

### ***Division 3—Mortgages***

#### **Mortgage under *Real Property Ordinance 1925***

22. This Ordinance applies to an action on a cause of action founded on a mortgage registered under the *Real Property Ordinance 1925* to recover from any person any debt damages or other money payable under the mortgage, but otherwise this Ordinance does not affect the right title or remedies under a mortgage so registered of a registered proprietor under that Ordinance of the mortgage or of the mortgaged land.

#### **Redemption**

23. An action on a cause of action to redeem mortgaged property in the possession of a mortgagee is not maintainable against that mortgagee if brought after the expiration of a limitation period of 12 years running from the only or later of such of the following dates as is or are applicable:

- (a) the date on which that mortgagee or a person through whom he or she claims last goes into possession of the property in respect of which the action is brought;
- (b) the date on which that mortgagee or a person through whom he or she claims last receives a payment of principal money or interest secured by the mortgage from the plaintiff or from a person through whom he or she claims.

#### **Action for principal, possession or foreclosure**

24. (1) An action on a cause of action—

- (a) to recover principal money secured by mortgage;
- (b) to recover possession of mortgaged property from a mortgagor; or
- (c) to foreclose the equity of redemption of mortgaged property,

is not maintainable by a mortgagee under the mortgage if brought after the expiration of a limitation period of 12 years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he or she claims.

(2) Paragraph (1) (a) applies to proceedings in a court on a cause of action—

- (a) to recover principal money from any person, whether as principal, surety or otherwise; or
- (b) to recover principal money by way of—
  - (i) the appointment of a receiver of mortgaged property or of the income or profits of mortgaged property;
  - (ii) the sale lease or other disposition or realisation of mortgaged property; or
  - (iii) other remedy affecting mortgaged property.

#### **Action for interest**

25. (1) An action on a cause of action to recover interest secured by a mortgage is not maintainable by a mortgagee under the mortgage if brought after the expiration of—

- (a) a limitation period of 6 years running from the only or later of such of the following dates as is or are applicable:
  - (i) the date on which the cause of action first accrues to the plaintiff or to a person through whom he or she claims;
  - (ii) where a mortgagee under a prior mortgage is, on the date mentioned in sub-paragraph (i), in possession of all or any of the property comprised in the mortgage securing the interest, and after that date discontinues his or her possession—the date of discontinuance; or
- (b) the limitation period fixed by or under this Ordinance for an action between the same parties on a cause of action to recover the principal money bearing the interest,

whichever limitation period first expires.

(2) For the purposes of sub-section (1), a cause of action to recover interest secured by a mortgage includes—

- (a) a cause of action to recover the interest from any person, whether as principal, surety or otherwise; and
- (b) a cause of action to recover the interest by way of—

- (i) the appointment of a receiver of mortgaged property or of income or profits of mortgaged property;
- (ii) sale, lease or other disposition or realisation of the mortgaged property; or
- (iii) other remedy affecting mortgaged property.

### **Adjustment of interest**

**26. (1)** In an action for redemption or otherwise in respect of a mortgage of property including an action in respect of the proceeds of sale or other realisation of property subject to a mortgage—

- (a) a mortgagor is not, as against a mortgagee, to be required to pay or bear interest which could not, by reason of a period of limitation fixed by or under this Ordinance, be recovered in an action by that mortgagee against that mortgagor brought on the date on which the first-mentioned action is brought; and
- (b) in adjusting the rights of a mortgagor and a mortgagee the mortgagee is not to be entitled to the interest mentioned in paragraph (a).

**(2)** Where—

- (a) interest becomes due under a mortgage; and
- (b) a mortgagee—
  - (i) holds money on the date on which the interest becomes due; or
  - (ii) after that date but before the expiration of the limitation period fixed by or under this Ordinance for an action on a cause of action to recover that interest by that mortgagee against a mortgagor, receives money; and
- (c) before or after the bringing of an action to which sub-section (1) applies, that mortgagee or a person claiming through him properly applies that money in or towards satisfaction of that interest,

sub-section (1) does not, as against the person so applying that money or a person claiming through him or her, apply to that interest to the extent to which it is so satisfied.

### ***Division 4—Trusts***

#### **Fraud and conversion—trust property**

**27. (1)** An action on a cause of action—

- (a) in respect of fraud or a fraudulent breach of trust, against a person who is, while a trustee, a party or privy to the fraud or the breach of trust or against his or her successor;
- (b) for a remedy for the conversion to a person's own use of trust property received by him or her while a trustee, against that person or against his or her successor;
- (c) to recover trust property, or property into which trust property can be traced, against a trustee or against any other person; or
- (d) to recover money on account of a wrongful distribution of trust property, against the person to whom the property is distributed or against his or her successor,

is not maintainable by a trustee of the trust or by a beneficiary under the trust or by a person claiming through a beneficiary under the trust if brought after the expiration of the only or later to expire of such of the following limitation periods as is or are applicable:

- (e) a limitation period of 12 years running from the date on which the plaintiff, or a person through whom he or she claims, first discovers or may with reasonable diligence discover the facts giving rise to the cause of action and that the cause of action has accrued;
- (f) the limitation period for the cause of action fixed by or under any provision of this Ordinance other than this section.

(2) Except in the case of fraud or a fraudulent breach of trust, and except so far as concerns income converted by a trustee to his or her own use or income retained and still held by the trustee or his or her successor at the time the action is brought, this section does not apply to an action on a cause of action to recover arrears of income.

#### **Accrual—future interest**

**28.** For the purposes of this Part, a cause of action of a beneficiary in respect of a future estate or interest accrues on the date on which the estate or interest becomes a present estate or interest or on the date on which the cause of action would, but for this section, accrue, whichever date is the later.

#### **Beneficiaries other than the plaintiff**

**29.** Where a beneficiary under a trust brings an action in respect of the trust, another beneficiary under the trust is not entitled to derive from the action any benefit for which, by reason of this Ordinance, an action by him or her is

not maintainable if brought on the date on which the first-mentioned action is brought.

### **PART III—POSTPONEMENT OF THE BAR**

#### *Division 1—General*

#### **Disability**

**30. (1)** Subject to sub-sections (2) and (3) and subject to section 32, where—

- (a) a person has a cause of action;
- (b) the limitation period fixed by this Ordinance for the cause of action has commenced to run; and
- (c) the person is under a disability,

then—

- (d) the running of the limitation period is suspended for the duration of the disability;
- (e) if the cause of action is a cause of action to which section 15 or 19 applies and, but for this paragraph, the limitation period would expire before the lapse of 2 years after—
  - (i) the date on which he or she last (before the expiration of the limitation period) ceases to be under a disability; or
  - (ii) the date of his or her death,

(whichever is the earlier)—the limitation period is extended so as to expire 2 years after the earlier of those dates; and

- (f) in any other case, if, but for this paragraph, the limitation period would expire before the lapse of 3 years after—
  - (i) the date on which he or she last (before the expiration of the limitation period) ceases to be under a disability; or
  - (ii) the date of his or her death,

(whichever date is the earlier)—the limitation period is extended so as to expire 3 years after the earlier of those dates.

(2) This section applies whenever a person is under a disability, whether or not he or she is under the same or another disability at any time during the limitation period.

(3) This section does not apply to a cause of action to recover a penalty or forfeiture or sum by way of penalty or forfeiture, except where the person having the cause of action is an aggrieved party.

### **Notice to proceed**

**31. (1)** Where—

- (a) a person has a cause of action in relation to which he or she is under a disability other than a disability arising from his or her minority; and
- (b) a guardian has been appointed in respect of that person or the property of that person,

a person against whom the cause of action lies may give to the guardian a notice to proceed in accordance with this section.

(2) A notice to proceed under sub-section (1) shall—

- (a) be in writing;
- (b) be addressed to the guardian concerned;
- (c) show the name of the person under a disability;
- (d) state the circumstances out of which the cause of action may arise or may be claimed to arise with such particularity as is necessary to enable the guardian to investigate the question whether the person under a disability has the cause of action;
- (e) give warning that a cause of action arising out of the circumstances stated in the notice is liable to be barred by this Ordinance; and
- (f) be signed by the person giving the notice.

(3) Minor deviations from the requirements of sub-section (2), not affecting the substance nor likely to mislead, do not invalidate a notice to proceed.

(4) Where a notice to proceed is served pursuant to sub-section (1), the person under the disability referred to in that sub-section shall be taken, for the purposes of this Ordinance, to cease to be under a disability on the day on which the notice is so served.

(5) A notice to proceed under this section is not a confirmation for the purposes of section 32 and is not an admission for any purpose by the person giving the notice.

(6) A notice to proceed to be given to a guardian may be given by—

- (a) delivering the notice to proceed to the guardian personally;
- (b) leaving the notice to proceed at the usual or last-known place of business or residence of the guardian; or
- (c) posting the notice to proceed by certified mail to the guardian at the usual or last-known place of business or residence of the guardian.

(7) In this section, “guardian”, in relation to a person, means—

- (a) a committee of the person, or a committee of the estate of the person, appointed under section 102 or 112 of the Lunacy Act, 1898 of the State of New South Wales in its application to the Territory;
- (b) a person appointed, under section 103 of that Act in its application to the Territory, to undertake the care and management of the property of the person; or
- (c) a guardian or a receiver, as the case may be, appointed under section 148 of that Act in its application to the Territory for the protection, care and management of the person or the estate of the person, or both.

### **Confirmation**

**32. (1)** Where, after a limitation period fixed by or under this Ordinance for a cause of action commences to run but before the expiration of the limitation period, a person against whom (either solely or with other persons) the cause of action lies confirms the cause of action, the time during which the limitation period runs before the date of the confirmation does not count in the reckoning of the limitation period for an action on the cause of action by a person having the benefit of the confirmation against a person bound by the confirmation.

(2) For the purposes of this section—

- (a) a person confirms a cause of action if, but only if, he or she—
  - (i) acknowledges, to a person having (either solely or with other persons) the cause of action, the right or title of the person to whom the acknowledgment is made; or

- (ii) makes, to a person having (either solely or with other persons) the cause of action, a payment in respect of the right or title of the person to whom the payment is made;
  - (b) a confirmation of a cause of action to recover interest on principal money operates also as a confirmation of a cause of action to recover the principal money; and
  - (c) a confirmation of a cause of action to recover income falling due at any time operates also as a confirmation of a cause of action to recover income falling due at a later time on the same account.
- (3) Where a person has (either solely or with other persons) a cause of action to foreclose the equity of redemption of mortgaged property or to recover possession of mortgaged property, a payment to him or her of principal or interest secured by the mortgage or a payment to him or her otherwise in respect of his or her right or title to the mortgage is a confirmation by the payer of the cause of action.
- (4) An acknowledgment for the purposes of this section shall be in writing and signed by the maker.
- (5) For the purposes of this section a person has the benefit of a confirmation if, but only if, the confirmation is made to him or her or to a person through whom he or she claims.
- (6) For the purposes of this section a person is bound by a confirmation if, but only if—
- (a) he or she is a maker of the confirmation;
  - (b) he or she is, in relation to the cause of action, a successor of a maker under a devolution from the maker occurring after the making of the confirmation;
  - (c) where the maker is, at the time when he or she makes the confirmation, (either solely or with other persons) a trustee of the will or of the estate of a deceased person—the first-mentioned person is at the date of the confirmation or afterwards becomes a trustee of the will or of the estate;
  - (d) where the maker is, at the time when he or she makes the confirmation, (either solely or with other persons) a trustee (other than a trustee of the will or of the estate of a deceased person)—the first-mentioned person is at the date of the confirmation or afterwards becomes a trustee of the trust of which the maker is a trustee; or

(e) he or she is bound under sub-section (7).

(7) Where a maker of a confirmation of a cause of action in relation to property is, on the date of the confirmation, in possession of the property, the confirmation binds a person subsequently in possession of the property who claims through the maker of the confirmation.

### **Fraud and concealment**

**33. (1)** Subject to this section, where—

- (a) there is a cause of action based on fraud or deceit; or
- (b) a fact relevant to a cause of action or the identity of a person against whom a cause of action lies is deliberately concealed,

the time which elapses after a limitation period fixed by or under this Ordinance for the cause of action commences to run and before the date on which a person having (either solely or with other persons) the cause of action first discovers, or may with reasonable diligence discover, the fraud, deceit or concealment, as the case may be, does not count in the reckoning of the limitation period for an action on the cause of action by him or her or by a person claiming through him or her against a person answerable for the fraud, deceit or concealment.

(2) Sub-section (1) has effect whether the limitation period for the cause of action would, but for this section, expire before or after the date mentioned in that sub-section.

(3) Without derogating from the generality of sub-section (1), deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.

(4) For the purposes of sub-section (1), a person is answerable for fraud, deceit or concealment if, but only if—

- (a) he or she is a party to the fraud, deceit or concealment; or
- (b) he or she is, in relation to the cause of action, a successor of a party to the fraud, deceit or concealment under a devolution from the party occurring after the date on which the fraud, deceit or concealment first occurs.

(5) Where property is, after the first occurrence of fraud, deceit or concealment, purchased for valuable consideration by a person who is not a party to the fraud, deceit or concealment and does not, at the time of the

purchase, know or have reason to believe that the fraud, deceit or concealment has occurred, sub-section (1) does not, in relation to that fraud, deceit or concealment, apply to a limitation period for a cause of action against the purchaser or a person claiming through him.

### **Mistake**

**34. (1)** Subject to sub-section (3), where there is a cause of action for relief from the consequences of a mistake, the time which elapses after a limitation period fixed by or under this Ordinance for the cause of action commences to run and before the date on which a person having (either solely or with other persons) the cause of action first discovers, or may with reasonable diligence discover, the mistake does not count in the reckoning of the limitation period for an action on the cause of action by him or her or by a person claiming through him or her.

**(2)** Sub-section (1) has effect whether the limitation period for the cause of action would, but for this section, expire before or after the date mentioned in that sub-section.

**(3)** Where property is, after a transaction in which a mistake is made, purchased for valuable consideration by a person who does not, at the time of the purchase, know or have reason to believe that the mistake has been made, sub-section (1) does not apply to a limitation period for a cause of action for relief from the consequences of the mistake against the purchaser or a person claiming through him or her.

### ***Division 2—Personal injuries, latent damage to property and economic loss***

#### **Application**

**35.** This Division applies in relation to a cause of action referred to in section 16, sub-section 36 (1) or section 38—

- (a) that accrued before or after the commencement of this Ordinance; and
- (b) in the case of a cause of action that accrued before the commencement of this Ordinance—whether or not proceedings have been instituted before the commencement of this Ordinance.

#### **Personal injuries**

**36. (1)** This section applies to any action for damages where the damages claimed consist of or include damages in respect of personal injuries to any person.

(2) Where an application is made to a court by a person claiming to have a cause of action to which this section applies, the court, subject to sub-section (3) and after hearing such of the persons likely to be affected by that application as it sees fit, may, if it decides that it is just and reasonable so to do, order that the period within which an action on the cause of action may be brought be extended for such period as it determines.

(3) In exercising the powers conferred on it by sub-section (2), a court shall have regard to all the circumstances of the case including (without derogating from the generality of the foregoing) the following:

- (a) the length of and reasons for the delay on the part of the plaintiff;
- (b) the extent to which, having regard to the delay, there is or is likely to be prejudice to the defendant;
- (c) the conduct of the defendant after the cause of action accrued to the plaintiff, including the extent, if any, to which the defendant took steps to make available to the plaintiff means of ascertaining facts which were or might be relevant to the cause of action of the plaintiff against the defendant;
- (d) the duration of any disability of the plaintiff arising on or after the date of the accrual of the cause of action;
- (e) the extent to which the plaintiff acted promptly and reasonably once he or she knew that the act or omission of the defendant, to which the injury of the plaintiff was attributable, might be capable at that time of giving rise to an action for damages;
- (f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

(4) The powers conferred on a court by sub-section (2) may be exercised at any time notwithstanding—

- (a) that the limitation period in respect of the relevant cause of action has expired since the cause of action accrued; or
- (b) that an action in respect of such personal injuries has been commenced.

(5) This section does not apply in respect of a cause of action to which the *Compensation (Fatal Injuries) Ordinance 1968* applies.

**Action against estate of deceased person**

**37. (1)** This section applies to a cause of action against the estate of a deceased person.

**(2)** Notwithstanding this Part, where an executor or administrator—

- (a) has given notice in accordance with section 64 of the *Administration and Probate Ordinance 1929*; and
- (b) has, under that section, distributed the assets of the relevant estate without notice of a claim on which a cause of action to which this section applies is based,

the court shall not extend under this Division the limitation period applicable to the cause of action unless the estate is entitled to be indemnified, in respect of the cause of action, by another person or estate.

**Action by estate of deceased person**

**38. (1)** Where the executor or administrator of the estate of a deceased person institutes proceedings in relation to a cause of action for damages for personal injury that accrued before that person's death, the court may, subject to sub-section (2)—

- (a) if the court considers it just and reasonable to do so;
- (b) whether or not the limitation period applicable to that cause of action has expired; and
- (c) whether or not an action in respect of such personal injury has been commenced,

extend the limitation period for such further period, not exceeding 6 years, commencing on the day of the person's death as the court thinks fit.

**(2)** In exercising the powers conferred on it by sub-section (1), the court shall have regard to all the circumstances of the case including (without derogating from the generality of the foregoing) the following:

- (a) the reasons for the failure of the deceased to institute proceedings before his or her death or for the failure of the executor or administrator to do so before the end of the limitation period;
- (b) whether, after the cause of action accrued, a significant period of time elapsed before the injured person knew or ought reasonably to have known that he or she had suffered the injury giving rise to the cause of action;

- (c) if the deceased person knew before his or her death that the relevant injury might give rise to an action for damages—whether he or she acted upon that knowledge promptly and reasonably;
- (d) whether the executor or administrator of the estate, when he or she became aware that the relevant injury might give rise to a cause of action for damages, acted promptly and reasonably;
- (e) the extent to which an extension of the limitation period would, or would be likely to, result in prejudice to the defendant;
- (f) the conduct of the defendant after the cause of action accrued to the injured person or to the executor or administrator of the estate of the person, including the extent to which the defendant took steps to make available to the injured person, executor or administrator means of ascertaining facts in relation to the cause of action; and
- (g) the steps, if any, taken by the injured person or the executor or administrator to obtain medical, legal or other expert advice and the nature of any such advice.

#### **Action for compensation to relatives**

**39. (1)** Subject to sub-section (3), where, but for the expiry, as against a deceased person, of a limitation period in relation to a cause of action, the personal representative of the deceased person would be entitled to institute proceedings in relation to a cause of action referred to in section 16, the court may, if it decides it is just and reasonable so to do, on application made by the personal representative, order that, for the purposes of such proceedings, the limitation period is extended for such further period as the court determines.

**(2)** The court shall, in a declaration made pursuant to sub-section (1), specify a period, being a period not exceeding 6 years commencing on the day of death of the person injured, within which proceedings in relation to the cause of action may be instituted.

**(3)** In exercising the powers conferred on it by sub-section (1), the court shall have regard to all the circumstances of the case including (without derogating from the generality of the foregoing) the following:

- (a) the reasons for the failure of the person to commence an action before the expiry of the relevant limitation period;
- (b) whether a significant period of time elapsed after the cause of action accrued during which the person did not know, and could not

reasonably have known, that he or she had suffered an injury giving rise to a cause of action;

- (c) whether the person knew, or ought reasonably to have known, before his or her death that he or she had suffered such an injury;
- (d) if the person knew before his or her death that he or she had suffered such an injury, the extent to which he or she acted promptly and reasonably;
- (e) the extent to which a declaration specifying a limitation period would, or would be likely to, result in prejudice to the defendant;
- (f) the conduct of the defendant after the relevant cause of action accrued, including the extent to which the defendant took steps to make available to the person means of ascertaining facts in relation the cause of action;
- (g) the steps, if any, taken by the person to avail himself, for the purposes of the cause of action, of medical, legal or other expert advice, and the nature of any such advice.

**(4)** Subject to sub-section (5), where, at the time of his or her death, a person had a cause of action, the court, on application by his or her personal representative, may—

- (a) if the court thinks it just and reasonable to do so;
- (b) whether or not the limitation period applicable under section 16 has expired since the death of the person; and
- (c) whether or not an action on such a cause of action has been commenced,

extend that limitation period for such further period, not exceeding 6 years from the date of death of the deceased person, as the court thinks fit.

**(5)** In exercising the powers conferred on it by sub-section (4), the court shall have regard to all the circumstances of the case including (without derogating from the generality of the foregoing) the following:

- (a) the reasons for, and length of, the delay on the part of the personal representative in instituting proceedings;
- (b) whether, after the death of the deceased person, a significant period of time elapsed before a relative of the deceased person or the personal representative knew or ought reasonably to have known that the act,

neglect or default which resulted in the death was capable of giving rise to a cause of action;

- (c) the extent to which, when the personal representative became aware that the act, neglect or default which caused the death was capable of giving rise to a cause of action, the personal representative acted promptly and reasonably;
- (d) the extent to which an extension of the limitation period would, or would be likely to, result in prejudice to the defendant;
- (e) the conduct of the defendant after the relevant cause of action accrued to the personal representative, including the extent to which the defendant took steps to make available to the personal representative means of ascertaining facts in relation to the cause of action;
- (f) the steps, if any, taken by the personal representative to obtain, for the purposes of the cause of action, medical, legal or other expert advice and the nature of any such advice.

#### **Latent damage to property and economic loss**

**40. (1)** Subject to sub-section (2), where a person has a cause of action for latent damage to property or for economic loss in respect of such damage to property the court may—

- (a) if the court considers it just and reasonable to do so;
- (b) whether or not the limitation period applicable to that cause of action has expired; and
- (c) whether or not an action for such damage or loss has been commenced,

extend the limitation period in respect of which an action on that cause of action may be brought for such further period not exceeding 15 years commencing on the day on which the act or omission that gave rise to the cause of action occurred as the court thinks fit.

**(2)** In exercising the powers conferred on it by sub-section (1), the court shall have regard to all the circumstances of the case including (without derogating from the generality of the foregoing) the following:

- (a) the length of time between the occurrence of the damage or loss and the time at which the damage or loss might reasonably have been discovered by the plaintiff;

- (b) the extent to which the plaintiff, after he or she became aware of the damage or loss, acted promptly and reasonably;
- (c) the extent to which an extension of the limitation period would, or would be likely to, result in prejudice to the defendant;
- (d) the conduct of the defendant after the relevant cause of action accrued to the plaintiff, including the extent to which the defendant took steps to make available to the plaintiff means of ascertaining facts in relation to the cause of action;
- (e) the steps, if any, taken by the plaintiff to obtain, for the purposes of the cause of action, legal or other expert advice and the nature of any such advice.

### **Prior bar ineffective**

41. Where, after the expiration of a limitation period to which this Division applies, the limitation period is extended by order under this Division, the prior expiration of the limitation period has no effect for the purposes of this Ordinance.

### **Evidence**

42. Where, under this Division, a question arises as to the knowledge, or acts of, a deceased person, or the deceased person's reasons for any action, the court may have regard to the conduct and statements, oral or in writing, of the deceased person.

## **PART 5—MISCELLANEOUS**

### *Division 1—Extinction of right and title*

#### **Extinction of title**

43. (1) Subject to this Division, where a limitation period under this Ordinance expires, being a limitation period in relation to a cause of action to recover or obtain goods, the right or title to the goods of any person having that cause of action is extinguished.

(2) Where, before the expiration of a limitation period referred to in subsection (1), an action is brought on a cause of action to which that limitation period relates, the expiration of the limitation period does not affect the right or title of the plaintiff to the goods in respect of which the action is brought—

- (a) for the purposes of the action; or

- (b) so far as the right or title is established in the action.

### **Possessory lien**

**44.** Notwithstanding section 43, where—

- (a) a person is in possession of goods; and
- (b) he or she has a lien on the goods for a debt or other money claim payable by a second person,

the right and title of the first person to the debt or other money claim is, as against the second person and his or her successors, saved from extinction under this Division for so long as a cause of action of the second person or of a person claiming through the second person for the conversion or detention of the goods or to recover the proceeds of sale of the goods has not accrued or is not barred by this Ordinance, but only so far as is necessary to support and give effect to the lien.

### **Extinction of right or title must be alleged in proceedings**

**45. (1)** Where in proceedings before a judicial tribunal a question arises as to extinction under this Division of a right or title, a party to the proceedings shall not have the benefit in those proceedings of any such extinction of that right or title unless, as part of the proceedings, he or she has pleaded or otherwise appropriately claimed in accordance with the procedures of the tribunal that the right or title has been so extinguished.

**(2)** In sub-section (1), a reference to proceedings before a judicial tribunal is a reference to proceedings before a court or person authorised by law or by agreement to bind the parties to the proceedings by a decision on a question arising in the proceedings as to whether or not a right or title has been extinguished under this Division.

## ***Division 2—Arbitration***

### **Interpretation**

**46. (1)** In this Division, “provisions for arbitration” means—

- (a) the provisions of an agreement to submit present or future differences to arbitration, whether an arbitrator is named in the agreement or not; and
- (b) the provisions of any law, order or scheme in force in the Territory requiring or permitting the determination of any matter by arbitration or relating to such an arbitration.

(2) Where the provisions for arbitration are or include the provisions of any law, order or scheme in force in the Territory this Division has effect subject to the latter provisions.

### **Application of this Ordinance to arbitration**

47. (1) This Ordinance applies to an arbitration in like manner as it applies to an action.

(2) An arbitration for any difference or matter under any provisions for arbitration is not maintainable if commenced after the date of expiration of the period of limitation fixed by or under this Ordinance for a cause of action in respect of the same difference or matter.

### **Accrual**

48. Where, by a term of any provisions for arbitration, a cause of action with respect to any difference or matter referable to arbitration under the provisions does not accrue until the making of an award or the happening of some other event in or relating to the arbitration or does not accrue at all, the cause of action nevertheless accrues, for the purposes of the application of this Division to an arbitration under the provisions, on the date on which it would accrue but for that term.

### **Commencement of arbitration**

49. (1) For the purposes of this Division—

- (a) where the provisions for arbitration require or permit a party to the arbitration to give notice in writing to another party—
  - (i) requiring the other party to appoint or concur in appointing an arbitrator; or
  - (ii) requiring the other party to submit or concur in submitting a difference or matter to a person named or designated in the provisions for arbitration as arbitrator; or
- (b) where, in a case to which paragraph (a) does not apply, a party to the arbitration takes a step required or permitted by the provisions for arbitration for the purposes of bringing a difference or matter before an arbitrator and gives to another party notice in writing of the taking of the step,

the arbitration is commenced, as between the party giving the notice and the party to whom the notice is given, on the date on which the notice is given.

(2) For the purpose of sub-section (1), the date on which a notice is given is the date, or the earlier or earliest of the dates, when the party giving the notice—

- (a) delivers it to the party to whom it is to be given;
- (b) leaves it at the usual or last-known place of business or of abode of the party to whom it is to be given;
- (c) posts it by the certified mail service to the party to whom it is to be given at his or her usual or last-known place of business or of abode; or
- (d) gives the notice in a manner required or permitted by the provisions for arbitration.

#### **Extension of limitation period**

**50. (1)** Where a court—

- (a) gives leave to revoke a submission under section 4 of the Arbitration Act, 1902 of the State of New South Wales in its application to the Territory;
- (b) removes an arbitrator or umpire under sub-section 13 (1), of that Act; or
- (c) sets aside an award under sub-section 13 (2) of that Act,

the court may at the same time or within 6 months afterwards, whether or not the limitation period fixed by or under this Ordinance for the bringing of an action or for the commencement of an arbitration with respect to the difference or matter under arbitration has expired, order that the whole or any part of the time between the date of the commencement of the arbitration and the date of the order under this section do not count in the reckoning of the limitation period.

(2) Where, after the expiration of a limitation period fixed by or under this Ordinance, a court makes an order under this section, the prior expiration of the limitation period has no effect for the purposes of this Ordinance.

#### ***Division 3—General***

#### **Set off, etc.**

**51.** Where, in an action (in this section called the principal action), a claim is made by way of set off, counterclaim or cross action, the claim, for the purposes of this Ordinance—

- (a) is a separate action; and
- (b) is, as against a person against whom the claim is made, brought on the only or earlier of such of the following dates as are applicable—
  - (i) the date on which he or she becomes a party to the principal action; and
  - (ii) the date on which he or she becomes a party to the claim.

**Joint right**

**52.** Where, were it not for this Ordinance, 2 or more persons would have a cause of action jointly and, by this Ordinance, an action on the cause of action is not maintainable by one or more of them, an action on the cause of action is nonetheless maintainable by the other or others of them and judgment may be given accordingly.

**Joint liability**

**53.** Where, were it not for this Ordinance, 2 or more persons would be liable on a cause of action jointly and, by this Ordinance, an action on the cause of action is not maintainable against one or more of them, an action on the cause of action is nonetheless maintainable against the other or others of them and judgment may be given accordingly.

**Amendment of the *Seat of Government (Administration) Ordinance 1930***

**54.** The Second Schedule to the *Seat of Government (Administration) Ordinance 1930* is amended by inserting in Part I—

“*Limitation Ordinance 1985*”

after—

“*Legal Practitioners Ordinance 1970*”.

**SCHEDULE**

Section 2

**AMENDMENTS OF ORDINANCES*****Child Welfare Ordinance 1957***

**Section 126—**

Repeal the section.

*Compensation (Fatal Injuries) Ordinance 1968*

**Section 9—**

Repeal the section.

*Consumer Affairs Ordinance 1973*

**Sub-section 15FF (2)—**

Omit the sub-section.

*Court of Petty Sessions Ordinance 1930*

**Sections 237 and 238—**

Repeal the sections.

*Law Reform (Miscellaneous Provisions) Ordinance 1955*

**Section 6—**

Repeal the section.

*Motor Omnibus Services Ordinance 1955*

**Section 6—**

Repeal the section.

***Real Property Ordinance 1925*****Sub-section 156 (1)—**

Omit the sub-section.

**Sub-section 156 (2)—**

Omit “such action”, substitute “action for recovery of damages brought against the Commonwealth as provided in sections 143 and 155”.

**Section 157—**

Repeal the section.

***Trustee Ordinance 1957*****Second Schedule—**

Insert after item 38 the following item:

“38A. Section 69 .....Omit.”.

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 19 December 1985.