



Australian Capital Territory

# **Limitation Act 1985**

**A1985-66**

**Republication No 10**

**Effective: 5 April 2004 – 24 August 2004**

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Last amendment made by A2003-49

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Limitation Act 1985* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 5 April 2004. It also includes any amendment, repeal or expiry affecting the republished law to 5 April 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Limitation Act 1985

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
4	Other limitations 2
5	Stolen property or interest in land 2
6	Acquiescence etc 2
7	Application of Act to governments 3
8	Interpretation for Act 3
<b>Part 2</b>	<b>Periods of limitation and related matters</b>
<b>Division 2.1</b>	<b>Preliminary</b>
9	Relationship to pt 3 7
10	More than 1 bar 7
<b>Division 2.2</b>	<b>General</b>
11	General 7

---

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Limitation Act 1985  
Effective: 05/04/04-24/08/04

contents 1

## Contents

---

	Page	
12	Accounts	7
13	Deed	8
14	Judgment	8
15	Penalty and forfeiture	8
16	Compensation to relatives	8
16A	Claims for common law compensation for workers compensation	9
16B	Other claims for damages for personal injury	9
17	Arbitral award	10
18	Successive wrongs to goods	11
19	Shipping	11
20	Arrears of interest	12
21	Contribution between tortfeasors	13
21A	Tax, licence fee or duty or penalty tax	14
21B	Defamation	14
<b>Division 2.3            Mortgages</b>		
22	Mortgage under Land Titles Act 1925	15
23	Redemption	15
24	Action for principal, possession or foreclosure	15
25	Action for interest	16
26	Adjustment of interest	17
<b>Division 2.4            Trusts</b>		
27	Fraud and conversion—trust property	18
28	Accrual—future interest	19
29	Beneficiaries other than plaintiff	19
<b>Part 3                    Postponement of bar</b>		
<b>Division 3.1            General</b>		
30	Disability	20
30A	Special provision for injuries to children	21
30B	Special provision in relation to children—claims relating to health services	24
31	Notice to proceed	25
32	Confirmation	27
33	Fraud and concealment	29

	Page
34 Mistake	30
<b>Division 3.2 Personal injuries, latent damage to property and economic loss</b>	
35 Application of div 3.2	30
36 Personal injuries	31
37 Action against estate of deceased person	32
38 Action by estate of deceased person	33
39 Action for compensation to relatives	34
40 Latent damage to property and economic loss	37
41 Prior bar ineffective	38
42 Evidence	38
<b>Part 4 Miscellaneous</b>	
<b>Division 4.1 Extinction of right and title</b>	
43 Extinction of title	39
44 Possessory lien	39
45 Extinction of right or title must be alleged in proceedings	40
<b>Division 4.2 Arbitration</b>	
46 Interpretation for div 4.2	40
47 Application of Act to arbitration	41
48 Accrual	41
49 Commencement of arbitration	41
<b>Division 4.3 General</b>	
51 Set-off etc	42
52 Joint right	43
53 Joint liability	43
54 Recovery of State or Territory revenue amounts	43
<b>Division 4.4 Choice of law</b>	
55 Definitions for div 4.4	44
56 Characterisation of limitation laws	44
57 Exercise of discretion under limitation law	44
<b>Division 4.5 Other provisions</b>	
58 Approved forms	45

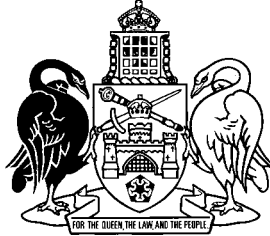
## Contents

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59	Regulation-making power	Page 45
----	-------------------------	------------

### **Endnotes**

1	About the endnotes	46
2	Abbreviation key	46
3	Legislation history	46
4	Amendment history	49
5	Earlier republications	53



Australian Capital Territory

# Limitation Act 1985

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An Act to provide for the limitation of actions, and for related purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Limitation Act 1985*.

### 4 Other limitations

Nothing in this Act—

- (a) applies to an action or arbitration for which a limitation period is fixed by or under a law in force in the ACT other than this Act (other than a law repealed or omitted by this Act); or
- (b) applies to an action or arbitration to which a government 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 ACT other than this Act (other than a law repealed or omitted by this Act).

### 5 Stolen property or interest in land

Nothing in this Act 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.

### 6 Acquiescence etc

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



## 7 Application of Act to governments

- (1) For this Act, an action by a government entity is an action by the government.
- (2) This Act does not apply to an action by the Territory—
  - (a) for the recovery of a penalty, tax or duty or of interest on a penalty, tax or duty; or
  - (b) in relation to the forfeiture of a ship.
- (3) This Act does not affect the prerogative right of the Territory to mineral rights.
- (4) This section has effect despite the *Legislation Act 2001*, section 121 (Binding effect of Acts).
- (5) In this section:  
*government entity*—see the *Legislation Act 2001*, section 121 (6).

## 8 Interpretation for Act

- (1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

*action* includes any proceeding in a court.

*administrator*—see the *Administration and Probate Act 1929*.

*cause of action* means the fact or combination of facts that gives rise to a right to bring a civil proceeding.

*deed* includes an instrument having the effect of a deed under a law in force in the ACT or, for an instrument executed under the law of—

- (a) the Commonwealth; or
- (b) a State; or
- (c) another Territory; or

(d) the United Kingdom; or

(e) New Zealand;

having the effect of a deed under the law under which it is executed.

**defendant** means a person against whom a cause of action lies, whether or not proceedings have been instituted.

**government**—see the *Legislation Act 2001*, section 121 (Binding effect of Acts).

**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 ACT but also a judgment of any other place.

**land**—see the *Land Titles Act 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 *Land Titles Act 1925*, a charge within the meaning of that Act.

**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**—see the *Civil Law (Wrongs) Act 2002*, dictionary.

*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 firstmentioned 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 because 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 this Act—
- (a) a person claims through another person in relation to 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 because of an appointment under a special power of appointment does not, because 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 this Act a person is under a disability—
- (a) while he or she is under 18 years old; 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 relation to the limitation period for which the question arises, because of—

- (i) intellectual retardation or disability, mental illness or disorder, brain damage, senility or physical disability; or
  - (ii) war or warlike operations; or
  - (iii) circumstances arising out of war or warlike operations.
- (4) The provisions of this Act as to the date of accrual of a cause of action have effect for this Act but not for any other purpose.

## **Part 2**                      **Periods of limitation and related matters**

### **Division 2.1**              **Preliminary**

#### **9**                      **Relationship to pt 3**

The provisions of this part have effect subject to the provisions of part 3.

#### **10**                    **More than 1 bar**

If, 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 2.2**              **General**

#### **11**                    **General**

- (1) Subject to subsection (2), an action on any cause of action is not maintainable if brought after the end of a limitation period of 6 years running from the date when the cause of action first accrues to the plaintiff or to a person through whom he or she claims.
- (2) Subsection (1) does not apply to a cause of action in relation to which another limitation period is provided by this Act.

#### **12**                    **Accounts**

An action on a cause of action for an account is not maintainable after the end of any time limit under this Act applies to the claim that is the basis of the duty to account.

**13            Deed**

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

**14            Judgment**

- (1) An action on a cause of action on a judgment is not maintainable if brought after the end of a limitation period of 12 years running from the date when 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 ACT becomes enforceable for this section on the date when the judgment becomes enforceable in the place where the judgment is given.

**15            Penalty and forfeiture**

- (1) An action on a cause of action to recover a penalty or forfeiture, recoverable because of a law in force in the ACT, is not maintainable if brought after the end of a limitation period of 2 years running from the date when 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.

**16            Compensation to relatives**

An action on a cause of action arising under the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death) in relation to an act, neglect or default resulting in death is not maintainable after the end 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 ends later.

**16A Claims for common law compensation for workers compensation**

- (1) This section applies to a cause of action, other than a cause of action that is a claim for compensation under the *Workers Compensation Act 1951*, if—
- (a) the cause of action relates to a personal injury that is a compensable injury under the *Workers Compensation Act 1951*; and
- (b) a claim could be, or could have been, made in relation to the cause of action under the *Workers Compensation Act 1951* if notice of the injury had been given as required under that Act.
- (2) The action is not maintainable if brought 3 or more years after the day the injury happened.

**16B Other claims for damages for personal injury**

- (1) This section applies to a cause of action for damages for personal injury other than a cause of action to which section 16 (Compensation to relatives) or section 16A applies.
- (2) The cause of action is not maintainable if brought—
- (a) if the injury is or includes a disease or disorder—3 years or more after the day the person injured first knows—
- (i) that the person has suffered an injury that is or includes a disease or disorder; and
- (ii) that the injury is related to someone else's act or omission; or
- (b) in any other case—3 years or more after the day the injury happened.

- (3) Subsection (2) applies to a cause of action that arises on or after 1 July 2003.
- (4) If the cause of action arose before 1 July 2003, the cause of action is not maintainable if brought after the end of whichever of the following periods ends first:
  - (a) the 3-year period mentioned in subsection (2) that would apply to the action if the cause of action arose on 1 July 2003;
  - (b) the period that would have applied to the cause of action apart from this section.
- (5) Subsections (3) to (6) expire 5 years after the day this section commences.
- (6) Subsections (3) and (4) are declared to be laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**17                      Arbitral award**

- (1) An action on a cause of action to enforce an award of an arbitrator is not maintainable if brought after the end of the limitation period fixed by subsection (2) running from the date when the cause of action first accrues to the plaintiff or to a person through whom he or she claims.
- (2) The limitation period for subsection (1) is—
  - (a) if 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 this section, a cause of action to enforce an award of an arbitrator accrues on the date when default first happens in observance of the award, being the default in relation to 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 ACT, but applies to such an award subject to the provisions of the relevant law, order or scheme.

## **18 Successive wrongs to goods**

If—

- (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 end of the limitation period applicable to the firstmentioned cause of action.

## **19 Shipping**

- (1) An action on a cause of action to enforce a claim or lien against a vessel or her owners in relation to 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 the former vessel be wholly or partly in fault, is not maintainable if brought after the end 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 relation to any salvage services is not maintainable if brought after the end

of a limitation period of 2 years running from the date when the salvage services are rendered.

- (3) For an action in a court, the court—
- (a) may extend the limitation period mentioned in subsection (1) or (2) to such an extent and on the terms that it considers appropriate; 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 this section—
- (a) *freight* includes passage money and hire; and
  - (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 on that fault, recoverable at law by way of damages.

## 20                      **Arrears of interest**

- (1) An action on a cause of action to recover arrears of interest on principal money is not maintainable if brought after the end of the limitation period fixed by or under this Act for an action between the same parties to recover the principal money.
- (2) Subsection (1) does not apply to a cause of action to which section 25 applies.

## 21 Contribution between tortfeasors

- (1) An action on a cause of action for a contribution under the *Civil Law (Wrongs) Act 2002*, section 21 (Right of contribution) is not maintainable if brought after the first to end of—
  - (a) a limitation period of 2 years running from the date when 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 end of the limitation period for the principal cause of action.
- (2) For subsection (1) (a), the date when 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 relation to the damage for which contribution is claimed by judgment in a civil action or by arbitral award—the date when the judgment is given or the award is made, whether or not, for 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 relation to that damage of the plaintiff in the action for contribution or a person through whom he or she claims—the date when the agreement is made.
- (3) In subsection (1) (b):  
*the limitation period for the principal cause of action* means the limitation period fixed by or under this Act or by or under any other law in force in the ACT (including a law repealed or omitted by this Act) for the cause of action for the liability in relation to which contribution is sought.

**21A            Tax, licence fee or duty or penalty tax**

- (1) An action for recovery of a revenue amount is not maintainable unless proceedings in relation to the amount are instituted before the end of the period of 6 months after the date the amount was paid.
- (2) Subsection (1) does not apply to an action for recovery of an amount that would have been recoverable as an overpayment if the purported tax, licence fee or duty had been valid.
- (3) Subsection (1) is part of the substantive law of the Territory.
- (4) In subsection (1):

*revenue amount* means an amount of money paid voluntarily or under compulsion as—

- (a) a tax, licence fee or duty imposed, or purportedly imposed, under an Act; or
- (b) penalty tax in relation to such a tax, licence fee or duty;

being an amount that would have been legally due if the provision under which it was paid had been valid.

**21B            Defamation**

- (1) An action on a cause of action for defamation is not maintainable if brought after the end of a limitation period of 1 year running from the date of the first publication of the matter complained of.
- (2) For an action in a court, the court shall, if satisfied that it was not reasonable for the plaintiff to have known about the publication of the matter complained of within 1 year from the date of the first publication, extend the limitation period mentioned in subsection (1) to 2 years.

## **Division 2.3                      Mortgages**

### **22                      Mortgage under Land Titles Act 1925**

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

### **23                      Redemption**

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 end 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 when that mortgagee or a person through whom he or she claims last goes into possession of the property in relation to which the action is brought;
- (b) the date when 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.

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

- (1) An action on a cause of action—
  - (a) to recover principal money secured by mortgage; or
  - (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 end of a limitation period of 12 years running from the date

when the cause of action first accrues to the plaintiff or to a person through whom he or she claims.

- (2) Subsection (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; or
    - (ii) the sale, lease or other disposition of realisation of mortgaged property; or
    - (iii) other remedy affecting mortgaged property.

## **25                      Action for interest**

- (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 end 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 when the cause of action first accrues to the plaintiff or to a person through whom he or she claims;
    - (ii) if a mortgagee under a prior mortgage is, on the date mentioned in subparagraph (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 Act for an action between the same parties on a cause of action to recover the principal money bearing the interest;

whichever limitation period first ends.

- (2) For subsection (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; or
    - (ii) sale, lease or other disposition or realisation of the mortgaged property; or
    - (iii) other remedy affecting mortgaged property.

## **26 Adjustment of interest**

- (1) In an action for redemption or otherwise in relation to a mortgage of property including an action in relation to 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 that could not, because of a period of limitation fixed by or under this Act, be recovered in an action by that mortgagee against that mortgagor brought on the date when the firstmentioned 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) If—
- (a) interest becomes due under a mortgage; and
  - (b) a mortgagee—
    - (i) holds money on the date when the interest becomes due; or

- (ii) after that date but before the end of the limitation period fixed by or under this Act 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 subsection (1) applies, that mortgagee or a person claiming through him or her properly applies that money in or towards satisfaction of that interest;

subsection (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 2.4                      Trusts**

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

- (1) An action on a cause of action—
  - (a) in relation to 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; or
  - (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; or
  - (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 end of the only or later to end of such of the following limitation periods as is or are applicable:



- (e) a limitation period of 12 years running from the date when 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 Act other than this section.
- (2) Except for 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.

**28      Accrual—future interest**

For this part, a cause of action of a beneficiary in relation to a future estate or interest accrues on the date when the estate or interest becomes a present estate or interest or on the date when the cause of action would, apart from this section, accrue, whichever date is the later.

**29      Beneficiaries other than plaintiff**

If a beneficiary under a trust brings an action in relation to the trust, another beneficiary under the trust is not entitled to derive from the action any benefit for which, because of this Act, an action by him or her is not maintainable if brought on the date when the firstmentioned action is brought.

## Part 3 Postponement of bar

### Division 3.1 General

#### 30 Disability

- (1) Subject to subsections (2) and (3) and subject to section 32, if—
- (a) a person has a cause of action; and
  - (b) the limitation period fixed by this Act for the cause of action has begun 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; and
  - (e) if the cause of action is a cause of action to which section 15 or 19 applies and, apart from this paragraph, the limitation period would end before the lapse of 2 years after—
    - (i) the date when he or she last (before the end 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 end 2 years after the earlier of those dates; and
  - (f) in any other case, if, apart from this paragraph, the limitation period would end before the lapse of 3 years after—
    - (i) the date when he or she last (before the end 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 end 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) a cause of action to recover a penalty or forfeiture or sum by way of penalty or forfeiture unless the person having the cause of action is an aggrieved party; or
  - (b) a cause of action to which section 30B (Special provision in relation to children—claims relating to health services) applies.

### **30A Special provision for injuries to children**

- (1) This section applies if—
  - (a) a child (the *plaintiff*) suffers personal injury that gives rise to a claim for damages; and
  - (b) a notice of claim has not been given under the *Civil Law (Wrongs) Act 2002*, chapter 5 (Personal injuries claims—pre-court procedures), or a proceeding has not been begun in a court, in relation to the claim; and
  - (c) the limitation period applying to the claim under this Act does not end within the relevant period.
- (2) The plaintiff (or the plaintiff's parent or guardian) must, within the relevant period, give notice of an intended claim to anyone (the *defendant*) claimed to be liable for damages in relation to the claim.

*Note* If a form is approved under s 58 (Approved forms) for a notice, the form must be used.
- (3) If the injury is claimed to have arisen out of a motor accident, the notice must be given to the third-party insurer.

- (4) The notice must contain the information required under the regulations.
- (5) The plaintiff (or the plaintiff's parent or guardian) must comply with a reasonable request by the defendant—
  - (a) to provide copies of medical and other records and reports in the possession of the plaintiff (or the plaintiff's parent or guardian) that are relevant to the nature and extent of the plaintiff's injury and any consequent disability; or
  - (b) to undergo examination, at the defendant's expense, by a medical expert for the purpose of finding out the nature and extent of the plaintiff's injury and any consequent disability.
- (6) The defendant may, by written notice given to the plaintiff, require the plaintiff, within 6 months after the day the notice is given, to bring a proceeding in a court so that the claim may be decided by the court.

*Note* A court may make a finding of liability on the claim independently of making an award of damages on the claim (see *Civil Law (Wrongs) Act 2002*, s 107).

- (7) Noncompliance with a requirement of this section by the plaintiff does not prevent the plaintiff from bringing a proceeding in a court for damages but, unless the court is satisfied there is compelling reason to excuse the noncompliance, damages must not be awarded in the proceeding to allow or compensate for medical, legal or gratuitous services provided to the plaintiff before the day the proceeding began.
- (8) In this section:

***accident*** means an incident out of which personal injury arises, and includes a motor accident.

***claim*** means a claim (however described) for damages based on a liability for personal injury, whether the liability is based in tort or contract or on another form of action (including breach of statutory

duty) but does not include a claim under the *Workers Compensation Act 1951*.

**motor accident** means an accident caused by, or arising out of the use of, a motor vehicle.

**motor vehicle** means—

- (a) a motor vehicle under the *Road Transport (General) Act 1999*;  
or
- (b) a vehicle operated on a railway or other fixed track.

**relevant period**, in relation to a claim, means—

- (a) if the injury is or includes a disease or disorder—6 years after the day the plaintiff (or the plaintiff's parent or guardian) first knows—
    - (i) that the plaintiff has suffered an injury that is or includes a disease or disorder; and
    - (ii) that the injury is related to someone else's act or omission; or
  - (b) in any other case—6 years after the day the accident giving rise to the injury happened.
- (9) This section applies to an injury whenever it happened.
- (10) However, the regulations may make provision in relation to the application of this section to injuries that happened before 1 July 2003.
- (11) Regulations made for this section within 6 months after the day this section commences may provide for the regulations to commence on or after 1 July 2003.
- (12) Subsections (9) to (13) expire 5 years after the day this section commences.

- (13) Subsections (9) to (11) are declared to be laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**30B Special provision in relation to children—claims relating to health services**

- (1) This section applies if—
- (a) a child (*the plaintiff*) suffers personal injury that gives rise to a claim for damages; and
  - (b) the claim relates to the provision of a health service.
- (2) A cause of action for damages in relation to the claim is not maintainable if brought 6 years or more after the day the accident giving rise to the injury happened.
- (3) However, if the injury is or includes a disease or disorder, the cause of action is not maintainable if brought after whichever of the following periods ends first:
- (a) 6 years after the day the plaintiff (or the plaintiff’s parent or guardian) first knows or ought reasonably to have first known—
    - (i) that the plaintiff has suffered an injury that is or includes a disease or disorder; or
    - (ii) that the injury is related to someone else’s act or omission;
  - (b) 12 years after the day the accident giving rise to the injury happened.
- Note* The period mentioned in s (3) can be extended under s 36 but the period mentioned in s (2) cannot be extended under that section (see s 36 (6)).
- (4) In considering whether or not the period mentioned in subsection (3) should be extended under section 36, the court must have regard to the opinion of a medical expert (or experts) on the question of

when the plaintiff (or the plaintiff's parent or guardian) first knew, or ought reasonably to have first known—

- (a) that the plaintiff had suffered the injury; or
- (b) that the injury is related to someone else's act or omission.

(5) In this section:

*health service*—see the *Community and Health Services Complaints Act 1993*, section 4.

(6) This section applies to a cause of action that arises on or after 1 July 2003.

(7) If the cause of action arose before 1 July 2003, the cause of action is not maintainable if brought after whichever of the following periods ends first:

- (a) the period that would apply to the cause of action under this section if this section applied to the action;
- (b) the limitation period that applied to the cause of action before 1 July 2003.

### **31 Notice to proceed**

(1) If—

- (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 relation to 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 subsection (1) shall—

- (a) be in writing; and

- (b) be addressed to the guardian concerned; and
  - (c) show the name of the person under a disability; and
  - (d) state the circumstances out of which the cause of action may arise or may be claimed to arise with the particularity that is necessary to enable the guardian to investigate the question whether the person under a disability has the cause of action; and
  - (e) give warning that a cause of action arising out of the circumstances stated in the notice is liable to be barred by this Act; and
  - (f) be signed by the person giving the notice.
- (3) Minor deviations from the requirements of subsection (2), not affecting the substance nor likely to mislead, do not invalidate a notice to proceed.
- (4) If a notice to proceed is served under subsection (1), the person under the disability referred to in that subsection shall be taken, for this Act, to cease to be under a disability on the day when the notice is so served.
- (5) A notice to proceed under this section is not a confirmation for 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; or
  - (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* means a guardian or manager under the *Guardianship and Management of Property Act 1991*.

## **32 Confirmation**

- (1) If, after a limitation period fixed by or under this Act for a cause of action begins to run but before the end 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 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 relation to the right or title of the person to whom the payment is made; and
  - (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) If 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 relation to his or her right or title to the mortgage is a confirmation by the payer of the cause of action.

- (4) An acknowledgment for this section shall be in writing and signed by the maker.
- (5) For 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 this section, a person is bound by a confirmation if, but only if—
  - (a) he or she is a maker of the confirmation; or
  - (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; or
  - (c) if 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 firstmentioned person is at the date of the confirmation or afterwards becomes a trustee of the will or of the estate; or
  - (d) if 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 firstmentioned 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 subsection (7).
- (7) If 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.

**33 Fraud and concealment**

- (1) Subject to this section, if—
- (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 that elapses after a limitation period fixed by or under this Act for the cause of action begins to run and before the date when 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) Subsection (1) has effect whether the limitation period for the cause of action would, apart from this section, end before or after the date mentioned in that subsection.
- (3) Without limiting subsection (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 subsection (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 when the fraud, deceit or concealment first occurs.
- (5) If 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, subsection (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 or her.

### **34 Mistake**

- (1) Subject to subsection (3), if there is a cause of action for relief from the consequences of a mistake, the time that elapses after a limitation period fixed by or under this Act for the cause of action begins to run and before the date when 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) Subsection (1) has effect whether the limitation period for the cause of action would, apart from this section, end before or after the date mentioned in that subsection.
- (3) If 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, subsection (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 3.2 Personal injuries, latent damage to property and economic loss**

### **35 Application of div 3.2**

This division applies in relation to a cause of action referred to in section 16, 16A, 36 (1) or 38—

- (a) that accrued before or after the commencement of this Act; and

- (b) for a cause of action that accrued before the commencement of this Act—whether or not proceedings have been instituted before the commencement of this Act.

### **36 Personal injuries**

- (1) This section applies to any action for damages if the damages claimed consist of or include damages in relation to personal injuries to any person.
- (2) If 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 subsection (3) and after hearing such of the persons likely to be affected by that application as it considers appropriate, 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 the period that it determines.
- (3) In exercising the powers given to it by subsection (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 that 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 or she may have received.
- (4) The powers given to a court by subsection (2) may be exercised at any time notwithstanding—
- (a) that the limitation period in relation to the relevant cause of action has ended since the cause of action accrued; or
  - (b) that an action in relation to such personal injuries has been begun.
- (5) This section does not apply in relation to a cause of action to which either of the following applies:
- (a) section 16B (Other than claims for damages for personal injury);
  - (b) the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death).
- (6) Also, this section does not apply in relation to the period mentioned in section 30B (2) (Special provision in relation to children—claims relating to health services).

### **37 Action against estate of deceased person**

- (1) This section applies to a cause of action against the estate of a deceased person.
- (2) Notwithstanding this part, if an executor or administrator—
- (a) has given notice in accordance with the *Administration and Probate Act 1929*, section 64; 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 relation to the cause of action, by another person or estate.

**38 Action by estate of deceased person**

- (1) If 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 subsection (2)—
- (a) if the court considers it just and reasonable to do so; and
  - (b) whether or not the limitation period applicable to that cause of action has ended; and
  - (c) whether or not an action in relation to the personal injury has been begun;

extend the limitation period for the further period, not exceeding 6 years, beginning on the day of the person's death as the court considers appropriate.

- (2) In exercising the powers given to it by subsection (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 on 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;
- (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.

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

- (1) Subject to subsection (3), if, apart from the end, 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 the further period that the court determines.
- (2) The court shall, in a declaration made under subsection (1), specify a period, being a period not exceeding 6 years beginning 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 given to it by subsection (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 begin an action before the end 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 to the cause of action;
  - (g) the steps (if any) taken by the person to avail himself or herself, 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 subsection (5), if, 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 considers it just and reasonable to do so; and
  - (b) whether or not the limitation period applicable under section 16 has ended since the death of the person; and

- (c) whether or not an action on such a cause of action has been begun;

extend that limitation period for the further period, not exceeding 6 years from the date of death of the deceased person, that the court considers appropriate.

- (5) In exercising the powers given to it by subsection (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 that 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 that 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.

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

- (1) Subject to subsection (2), if a person has a cause of action for latent damage to property or for economic loss in relation to such damage to property the court may—
- (a) if the court considers it just and reasonable to do so; and
  - (b) whether or not the limitation period applicable to that cause of action has ended; and
  - (c) whether or not an action for such damage or loss has been begun;

extend the limitation period in relation to which an action on that cause of action may be brought for the further period not exceeding 15 years beginning on the day when the act or omission that gave rise to the cause of action occurred that the court considers appropriate.

- (2) In exercising the powers given to it by subsection (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 when 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.

**41 Prior bar ineffective**

If, after the end of a limitation period to which this division applies, the limitation period is extended by order under this division, the prior ending of the limitation period has no effect for this Act.

**42 Evidence**

If, under this division, a question arises about 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 4**                      **Miscellaneous**

### **Division 4.1**              **Extinction of right and title**

#### **43**              **Extinction of title**

- (1) Subject to this division, if a limitation period under this Act ends, 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) If, before the end 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 ending of the limitation period does not affect the right or title of the plaintiff to the goods in relation to 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.

#### **44**              **Possessory lien**

Notwithstanding section 43, if—

- (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 Act, but only so far as is necessary to support and give effect to the lien.

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

- (1) If in proceedings before a judicial tribunal a question arises about 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 subsection (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 about whether or not a right or title has been extinguished under this division.

**Division 4.2                      Arbitration**

**46                      Interpretation for div 4.2**

- (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 ACT requiring or permitting the determination of any matter by arbitration or relating to such an arbitration.
- (2) If the provisions for arbitration are or include the provisions of any law, order or scheme in force in the ACT this division has effect subject to the latter provisions.

**47 Application of Act to arbitration**

- (1) This Act applies to an arbitration in like way as it applies to an action.
- (2) An arbitration for any difference or matter under any provisions for arbitration is not maintainable if begun after the date of end of the period of limitation fixed by or under this Act for a cause of action in relation to the same difference or matter.

**48 Accrual**

If, by a term of any provisions for arbitration, a cause of action in relation 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 when it would accrue apart from that term.

**49 Commencement of arbitration**

- (1) For this division—
  - (a) if the provisions for arbitration require or permit a party to the arbitration to give written notice 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) if, 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 written notice of the taking of the step;

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

- (2) For subsection (1), the date when 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; or
  - (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; or
  - (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 way required or permitted by the provisions for arbitration.

## Division 4.3            General

### 51            Set-off etc

If, in an action (the *principal action*), a claim is made by way of set-off, counterclaim or cross-action, the claim, for this Act—

- (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 when he or she becomes a party to the principal action;
  - (ii) the date when he or she becomes a party to the claim.



**52 Joint right**

If, were it not for this Act, 2 or more persons would have a cause of action jointly and, by this Act, an action on the cause of action is not maintainable by 1 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.

**53 Joint liability**

If, were it not for this Act, 2 or more persons would be liable on a cause of action jointly and, by this Act, an action on the cause of action is not maintainable against 1 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.

**54 Recovery of State or Territory revenue amounts**

- (1) An action against a State or another Territory for recovery of a revenue amount imposed, or purportedly imposed, under a law of the State or Territory is not maintainable if the relevant limitation period of the State or Territory has ended.

- (2) In subsection (1):

*relevant limitation period*, in relation to a State or another Territory, means the limitation period that would apply to an action for recovery of a revenue amount if the action were brought in the State or Territory.

*revenue amount* means an amount of money paid voluntarily or under compulsion as—

- (a) a tax, licence fee or duty imposed, or purportedly imposed, under a law; or

- (b) penalty tax in relation to such a tax, licence fee or duty;

being an amount that would have been legally due if the provision under which it was paid had been valid.

- (3) In subsection (1), a reference to *an action against a State or another Territory* includes a reference to an action against an officer, a Minister or an authority of the State or Territory.

## Division 4.4            Choice of law

### 55            Definitions for div 4.4

In this division:

*court* includes arbitrator.

*limitation law* means a law that provides for the limitation or exclusion of any liability or the barring of a right of action in relation to a claim by reference to the time when a proceeding on, or the arbitration of, the claim is begun.

### 56            Characterisation of limitation laws

If the substantive law of another place being a State, another Territory or New Zealand, is to govern a claim before a court of the Territory, a limitation law of that place is to be regarded as part of that substantive law and applied accordingly by the court.

### 57            Exercise of discretion under limitation law

If a court of the Territory exercises a discretion given under a limitation law of a place being a State, another Territory or New Zealand that discretion, as far as practicable, is to be exercised in the way in which it is exercised in comparable cases by the courts of that place.

## **Division 4.5            Other provisions**

### **58            Approved forms**

- (1) The Minister may, in writing, approve forms for this Act
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*        For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note*        A notifiable instrument must be notified under the Legislation Act.

### **59            Regulation-making power**

The Executive may make regulations for this Act.

*Note*        Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Limitation Ordinance 1985 No 66 (Cwlth)*.

The *ACT Self-Government (Consequential Provisions) Act 1988 No 109* (Cwlth), s 12) converted some former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 1 July 1990.

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989 No 21*, s 5 on its conversion to an ACT enactment on 1 July 1990.

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 25).

### Commonwealth legislation

#### **Limitation Act 1985 No 66**

notified 19 December 1985

commenced 19 December 1985

as amended by

### Legislation after becoming Territory enactment

#### **Self-Government (Consequential Amendments) Ordinance 1990 No 5 sch 1**

notified 27 June 1990 (Gaz 1990 No 25)

s 1, s 2 commenced 27 June 1990 (s 2 (1))

sch 1 commenced 1 July 1990 (s 2 (2))

#### **Commercial Arbitration (Amendment) Act 1990 No 32 s 6**

notified 2 October 1990 (Gaz 1990 No S69)

s 1, s 2, s 6 commenced 2 October 1990 (s 2 (1))

#### **Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23 sch 1**

notified 4 June 1992 (Gaz 1992 No S71)

commenced 4 June 1992

#### **Statute Law Revision (Miscellaneous Provisions) Act 1993 No 1 sch 1**

notified 1 March 1993 (Gaz 1993 No S23)

commenced 1 March 1993

## Endnotes

3 Legislation history

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**Acts Revision (Position of Crown) Act 1993 No 44 sch 1**

notified 27 August 1993 (Gaz 1993 No S165)  
commenced 27 August 1993 (s 2)

**Limitation (Amendment) Act 1993 No 82 (as am by 1994 No 91)**

notified 30 November 1993 (Gaz 1993 No S242)  
commenced 30 November 1993 (s 2)

**Mental Health (Consequential Provisions) Act 1994 No 45 sch**

notified 7 September 1994 (Gaz 1994 No S177)  
s 1, s 2 commenced 7 September 1994 (s 2 (1))  
sch commenced 6 February 1995 (s 2 (2) and Gaz 1995 No S33)

**Limitation (Amendment) Act 1994 No 91**

notified 15 December 1994 (Gaz 1994 No S280)  
commenced 15 December 1994 (s 2)

*Note* This Act only amends the Limitation (Amendment) Act 1993 No 82.

**Land Titles (Consequential Amendments) Act 1995 No 54 sch**

notified 20 December 1995 (Gaz 1995 No S313)  
s 1, s 2 commenced 20 December 1995 (s 2 (1))  
sch commenced 20 June 1996 (s 2 (3))

**Limitation (Amendment) Act 1998 No 58**

notified 27 November 1998 (Gaz 1998 No S207)  
commenced 27 November 1998 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 223**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 223 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Workers Compensation Amendment Act 2001 No 81 s 35**

notified LR 28 September 2001  
s 1, s 2 commenced 28 September 2001 (LA s 75)  
s 35 commenced 1 July 2002 (s 2 (1))

**Legislation Amendment Act 2002 No 11 pt 2.33**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.33 commenced 28 May 2002 (s 2 (1))

**Civil Law (Wrongs) Act 2002 No 40 div 3.2.9**

notified LR 10 October 2002

s 1, s 2 commenced 10 October 2002 (LA s 75 (1))

div 3.2.9 commenced 1 November 2002 (s 2 (2) and CN2002-13)

**Civil Law (Wrongs) Amendment Act 2003 (No 2) A2003-35 pt 4**

notified LR 8 September 2003

s 1, s 2 commenced 8 September 2003 (LA s 75 (1))

pt 4 commenced 9 September 2003 (s 2 (1))

**Workers Compensation Amendment Act 2003 (No 2) A2003-49 s 33**

notified LR 3 December 2003

s 1, s 2 commenced 3 December 2003 (LA s 75 (1))

s 33 commenced 5 April 2004 (s 2 and CN2004-7)

**4 Amendment history****Repeal, amendment etc**

s 2 om 2001 No 44 amdt 1.2649

**Transitional**

s 3 om 2001 No 44 amdt 1.2649

**Other limitations**

s 4 am 2002 No 11 amdt 2.67

**Application of Act to governments**

s 7 am 1993 No 44 sch 1; ss renum R5 LA; 2002 No 11 amdt 2.68

**Interpretation for Act**

s 8 am ord 1990 No 5 s 6  
 def **cause of action** am 1992 No 23 sch 1  
 def **Crown** om 2002 No 11 amdt 2.69  
 def **government** ins 2002 No 11 amdt 2.70  
 def **land** am ord 1990 No 5 sch 1; 1995 No 54 sch  
 def **mortgage** am ord 1990 No 5 sch 1; 1995 No 54 sch  
 def **personal representative** am ord 1990 No 5 sch 1  
 sub 2002 No 40 amdt 3.30

**Preliminary**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R5 LA

**General**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R5 LA

**General**

s 11 am ord 1990 No 5 s 6

## Endnotes

### 4 Amendment history

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#### **Deed**

s 13 am ord 1990 No 5 s 6

#### **Judgment**

s 14 am ord 1990 No 5 s 6

#### **Penalty and forfeiture**

s 15 am ord 1990 No 5 s 6

#### **Compensation to relatives**

s 16 am ord 1990 No 5 sch 1; 2002 No 40 amdt 3.31

#### **Claims for common law compensation for workers compensation**

s 16A ins 2001 No 81 s 35

#### **Other claims for damages for personal injury**

s 16B ins A2003-35 s 58  
(3)-(6) exp 9 September 2008 (s 16B (5))

#### **Arbitral award**

s 17 am ord 1990 No 5 s 6

#### **Successive wrongs to goods**

s 18 am ord 1990 No 5 s 6

#### **Shipping**

s 19 am ord 1990 No 5 s 6

#### **Contribution between tortfeasors**

s 21 am ord 1990 No 5 s 6, sch 1; 2002 No 40 amdt 3.32

#### **Tax, licence fee or duty or penalty tax**

s 21A ins 1993 No 82 s 4

#### **Defamation**

s 21B ins 1998 No 58 s 4

#### **Mortgages**

div 2.3 hdg (prev pt 2 div 3 hdg) renum R5 LA

#### **Mortgage under Land Titles Act 1925**

s 22 am ord 1990 No 5 sch 1; 1995 No 54 sch

#### **Redemption**

s 23 am ord 1990 No 5 s 6

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

s 24 am ord 1990 No 5 s 6

#### **Action for interest**

s 25 am ord 1990 No 5 s 6

#### **Adjustment of interest**

s 26 am ord 1990 No 5 s 6



**Fraud and conversion—trust property**

s 27 am ord 1990 No 5 s 6

**Trusts**

div 2.4 hdg (prev pt 2 div 4 hdg) renum R5 LA

**Beneficiaries other than plaintiff**

s 29 am ord 1990 No 5 s 6

**General**

div 3.1 hdg (prev pt 3 div 1 hdg) renum R5 LA

**Disability**

s 30 am ord 1990 No 5 s 6; A2003-35 s 59

**Special provision for injuries to children**s 30A ins A2003-35 s 60  
(9)-(13) exp 9 September 2008 (s 30A (12))**Special provision in relation to children—claims relating to health services**

s 30B ins A2003-35 s 61

**Notice to proceed**

s 31 am ord 1990 No 5 s 6; 1994 No 45 sch

**Confirmation**

s 32 am ord 1990 No 5 s 6

**Fraud and concealment**

s 33 am ord 1990 No 5 s 6, sch 1

**Mistake**

s 34 am ord 1990 No 5 s 6

**Personal injuries, latent damage to property and economic loss**

div 3.2 hdg (prev pt 3 div 2 hdg) renum R5 LA

**Application of div 3.2**

s 35 am A2003-49 s 33

**Personal injuries**

s 36 am ord 1990 No 5 s 6, sch 1; 2002 No 40 amdt 3.33; A2003-35 s 62

**Action against estate of deceased person**

s 37 am ord 1990 No 5 sch 1

**Action by estate of deceased person**

s 38 am ord 1990 No 5 s 6

**Action for compensation to relatives**

s 39 am ord 1990 No 5 s 6

**Latent damage to property and economic loss**

s 40 am ord 1990 No 5 s 6

## Endnotes

### 4 Amendment history

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#### **Miscellaneous**

pt 4 hdg (prev pt 5 hdg) renum 1993 No 82 s 5

#### **Extinction of right and title**

div 4.1 hdg (prev pt 4 div 1 hdg) renum R5 LA

#### **Possessory lien**

s 44 am ord 1990 No 5 s 6

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

s 45 am ord 1990 No 5 s 6

#### **Arbitration**

div 4.2 hdg (prev pt 4 div 2 hdg) renum R5 LA

#### **Application of Act to arbitration**

s 47 hdg am ord 1990 No 5 notes

#### **Commencement of arbitration**

s 49 am ord 1990 No 5 s 6

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

s 50 om 1990 No 32 s 6

#### **Set-off etc**

s 51 am ord 1990 No 5 s 6

#### **General**

div 4.3 hdg (prev pt 4 div 3 hdg) renum R5 LA

#### **Recovery of State or Territory revenue amounts**

s 54 orig s 54 om 1993 No 1 sch 1  
ins 1993 No 82 s 6

#### **Choice of law**

div 4.4 hdg (prev pt 4 div 4 hdg) ins 1993 No 82 s 6  
renum R5 LA

#### **Definitions for div 4.4**

s 55 ins 1993 No 82 s 6

#### **Characterisation of limitation laws**

s 56 ins 1993 No 82 s 6

#### **Exercise of discretion under limitation law**

s 57 ins 1993 No 82 s 6

#### **Other provisions**

div 4.5 hdg ins A2003-35 s 63

#### **Approved forms**

s 58 ins A2003-35 s 63

#### **Regulation-making power**

s 59 ins A2003-35 s 63

**Amendments of Acts**

sch om 2001 No 44 amdt 1.2649

**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Act 1990 No 32	31 May 1991
2	Act 1993 No 44	31 August 1993
3	Act 1994 No 45	6 February 1995
4	Act 1998 No 58	31 March 1999
5	<u>Act 2001 No 81</u>	11 January 2002
6	Act 2002 No 11	31 May 2002
7	Act 2002 No 11	1 July 2002
8	A2002-40	1 November 2002
9	A2003-35	9 September 2003
9 (RI)	A2003-35 †	18 September 2003

† Reissue includes additional editorial amendments under Legislation Act and textual correction

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