

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

LIMITATION ORDINANCE 1985

No. 66, 1985

Introduction

The purpose of this Ordinance is to provide a limitation law suited to current conditions in the Australian Capital Territory. A limitation law prescribes the periods within which civil proceedings may be brought.

Formerly, the statutory provisions which fixed limitation periods for proceedings in the ACT were included in several New South Wales and Imperial Acts dating back to 1588, and some ACT Ordinances. The periods applicable to most actions were fixed by the (Imperial) Limitation Act of 1623.

The Ordinance contains many provisions which are based on the New South Wales Limitation Act 1969. It differs, however, from the NSW Act in some respects.

The main areas in which the Ordinance adopts a different approach from the NSW Act are actions for recovery of an interest in land (because of the different land tenure system in the ACT) and the extension of time for bringing actions involving personal injuries (where the Ordinance is largely based on recent United Kingdom and Victorian reforms) or latent damage to property. There are also several other changes where problems have been identified with the NSW Act.

Notes on sections

Section 1 provides that the Ordinance may be cited as the Limitation Ordinance 1985.

Section 2 repeals, Imperial and New South Wales Acts, or parts of Acts, which contained limitation provisions that had effect in the A.C.T. and amends A.C.T. Ordinances to remove limitation provisions that are no longer required.

Section 3 provides that (except where other specific provision is made in the Ordinance) the Ordinance does not affect actions or arbitrations commenced before the Ordinance came into operation. Also, the Ordinance does not prevent the bringing of actions or arbitrations within the time allowed by laws repealed or amended by the Ordinance, where the cause of action accrued before the commencement of the Ordinance.

Section 4 preserves special limitation periods fixed by other laws in force in the Territory, except where repealed or omitted by the Ordinance.

Section 5 provides that the Ordinance does not apply to an action to recover land or an interest in land or to enforce an interest in land.

This section also provides that the Ordinance does not apply to an action relating to stolen goods unless the person against whom the action is brought has bought the goods in good faith or is claiming the goods through a purchaser in good faith.

Section 6 preserves rules of equity dealing with refusal of equitable relief.

Section 7 provides that the Ordinance binds the Crown, and that the Crown has the benefit of the Ordinance.

Section 8 defines various words and terms used in the Ordinance. It also sets out the circumstances in which a person is under a disability for the purpose of the Ordinance.

Section 9 provides that Part II (which specifies limitation periods) is to operate subject to Part III, (which provides for postponement of time bars and for extension of some limitation periods).

Section 10 provides that where different provisions of Part II prescribe different limitation periods in respect of the same action, the shorter period is to apply. Specific provision is made within particular sections of this Part where the longer of alternative limitation periods is to apply.

Section 11 provides the general rule that an action must be brought within 6 years from the date when the cause of action first accrues to the plaintiff or a person through whom the plaintiff claims. This rule does not apply to causes of action for which a different period is provided by the Ordinance.

Section 12 provides that the limitation period for an action for an account is the same as that for the claim that is the basis of the duty to account.

Section 13 provides a 12 year limitation period for a cause of action founded on a deed.

Section 14 provides a limitation period of 12 years for an action on a judgment running from the date on which the judgment first becomes enforceable.

Section 15 provides a limitation period of 2 years for an action to recover a penalty or forfeiture recoverable under a law in force in the Territory. The section provides that "penalty" does not include a fine upon conviction for a criminal offence.

Section 16 provides that an action brought under the Compensation (Fatal Injuries) Ordinance 1968 is not maintainable after 6 years from the date of the act, neglect or default which resulted in the death, or 3 years from the day of death, whichever is the later.

Section 17 specifies the limitation period for actions to enforce an award of an arbitrator. If the agreement under which the award was made was made by deed the limitation period is 12 years; in all other cases it is 6 years. The section provides that the cause of action accrues on the date of the first default in observance of the award.

Section 18 bars a right of action for successive conversion or detention of goods, or to recover the proceeds of sale of goods, after the expiration of the limitation period in respect of the first cause of action for conversion or detention. This section applies where, for example, goods are sold a number of times after being misappropriated. A thief or receiver of stolen property is not able to take advantage of this section (see section 5).

Section 19 prescribes a 2 year limitation period for an action against a ship or its owners for damage caused to another ship, its cargo or freight or any property on board it, or damage for loss of life or personal injuries suffered by any person on board. It also prescribes a 2 year limitation period for an action to enforce a claim or lien in respect of salvage services.

The court is given power to extend the limitation period and is required to do so if the plaintiff did not have a reasonable opportunity of arresting the defendant vessel during that period.

Section 20 provides that an action to recover arrears of interest on principal money must be brought within the same period as an action to recover the principal money. This provision does not apply to an action to recover interest secured by a mortgage.

Section 21 provides that an action by a tortfeasor for contribution from another tortfeasor must be brought within 2 years from when the cause of action for contribution first accrues or within 4 years from when the limitation period for the original cause of action against the first tortfeasor expires, whichever is the earlier.

Section 22 provides that the Ordinance applies to an action to recover money payable under a mortgage registered under the Real Property Ordinance 1925 but does not otherwise affect the right, title or remedies under the mortgage of a registered proprietor of the mortgage or of the mortgaged land.

Section 23 sets a limitation period of 12 years for bringing an action for redemption of mortgaged property in the possession of a mortgagee. The period runs from whichever is later of the date when the mortgagee last goes into possession of the property or the date of the last payment of principal or interest under the mortgage.

Section 24 provides a limitation period of 12 years for an action to recover the principal secured by a mortgage, or to recover possession of mortgaged property, or to foreclose the equity of redemption of mortgaged property.

Section 25 provides that an action to recover interest secured by a mortgage may only be brought within whichever is the earlier of the limitation period applicable to an action to recover the relevant principal money, and 6 years from the later of the date on which the cause of action first accrues and the date of discontinuance of any possession by a prior mortgagee.

Section 26 provides that in an action in respect of a mortgage of property or the proceeds of sale of such property the mortgagor is not to be required to pay interest which the mortgagee could not recover in an action because of a limitation period fixed by the Ordinance.

Section 27 provides a limitation period of 12 years for actions -

- (a) in respect of fraud or fraudulent breach of trust to which the trustee was a party or privy;
- (b) for conversion where a trustee has converted trust property to his own use;
- (c) to recover trust property, or property into which trust property can be traced;
- (d) to recover money on account of a wrongful distribution of trust property.

The limitation period runs from the date when the facts giving rise to the cause of action were discovered or might, with reasonable diligence, have been discovered.

If a limitation period is also fixed for the cause of action by any other provision of the Ordinance the longer period applies.

This section does not apply to an action to recover arrears of income except in the case of fraud or a fraudulent breach of trust, or income converted or retained by the trustee.

Section 28 provides that the limitation period for a cause of action of a beneficiary in respect of a future estate or interest runs from whichever is the later of the date on which it becomes a present estate or interest, and the date on which, but for this provision, the cause of action would accrue.

Section 29 provides that a beneficiary under a trust cannot derive a benefit from an action brought by another beneficiary which he could not have derived from a separate action brought by him on the same day as the action by the other beneficiary.

Section 30 provides for the postponement of the bar where a person is under a disability.

Section 31 applies where a guardian has been appointed in respect of a person who has a cause of action, or of his property, and enables a person against whom a cause of action lies to give a notice to proceed to the guardian. The person under the disability ceases to be under a disability from the date of service of the notice on the guardian.

Section 32 provides that when a person against whom a cause of action lies confirms the cause of action, either by acknowledging the right or title of the person having the cause of action or by making a payment to that person, the period before the confirmation is not counted in reckoning the limitation period.

An acknowledgment for the purposes of this section must be in writing and signed by the maker.

A person only has the benefit of a confirmation if the confirmation is made to him or to a person through whom he claims.

Section 33 provides special rules for reckoning limitation periods where the cause of action is based on fraud or deceit, or a fact relevant to the cause of action or the identity of a person against whom the cause of action lies has been fraudulently concealed. In such cases time which elapses before the plaintiff discovers, or might with reasonable diligence discover, the fraud, deceit or concealment is not counted in determining the limitation period. These provisions do not apply to a cause of action against a person who has bought property in good faith.

Section 34 provides that, in a cause of action for relief from the consequences of a mistake, time that elapses before the plaintiff discovers or might with reasonable diligence discover the mistake is not counted in determining the limitation period. This provision does not apply to a cause of action against a person who has bought property in good faith.

Section 35 applies the provisions of the Ordinance which provide for extension of a limitation period to causes of action which accrued before the commencement of the Ordinance (including where proceedings have been begun before that commencement) in the case of actions for damages for personal injuries or for compensation to relatives.

Section 36 enables a court to extend the limitation period in actions for damages for personal injuries. The court may extend the limitation period for such period as it thinks fit where it considers it just and reasonable to do so, having regard to the circumstances of the case, including factors specified in the section. This power may be exercised whether or not the original limitation period has expired.

Section 37 limits the power of the court to extend limitation periods in actions against estates of deceased persons. It provides that where an executor or administrator has given notice under section 64 of the Administration and Probate Ordinance 1929 inviting persons with a claim against an estate to lodge a claim, and later distributes the assets of the estate without having received notice of a claim, the court may not extend the limitation period against the estate except where the estate is entitled to be indemnified against the claim.

Section 38 enables a court to extend the limitation period in an action by a deceased person's estate arising out of personal injury to the deceased person. The court may extend the limitation period (but not beyond 6 years from the date of death) if it considers it just and reasonable to do so, having regard to the circumstances of the case including factors specified in the section. This power may be exercised whether or not the original limitation period has expired.

Section 39 provides for extension of the limitation period in claims under the Compensation (Fatal Injuries) Ordinance 1968. That Ordinance confers a right of action for the benefit of the family of a deceased person where that person had, before his death, a cause of action in respect of the act which caused his death. This section enables a court to extend the limitation period applicable to the deceased person's cause of action, so as to give rise to a cause of action under the Compensation (Fatal Injuries) Ordinance. Secondly, the section enables the court to extend the time provided by section 16 for the bringing of such an action, but not beyond 6 years from the date of death.

The court is to exercise these powers where it considers it just and reasonable so to do having regard to the circumstances of the case including factors specified in the

section. The court may exercise these powers whether or not the original limitation period has expired.

Section 40 provides that the court may extend the limitation period applicable to a cause of action for latent damage to property or for economic loss in respect of such damage where it considers it just and reasonable to do so, having regard to the circumstances of the case including the factors specified in the section. The court may exercise this power whether or not the original limitation period has expired.

The limitation period may not be extended beyond 15 years from the date of the act or omission which gave rise to the cause of action.

Section 41 provides that where a limitation period has been extended after the original limitation period has expired, the expiration of the original limitation period has no effect for the purposes of the Ordinance.

Section 42 provides that where a question arises about the knowledge or acts of a deceased person, or his reasons for an action, the court may have regard to his conduct and statements, both oral and in writing.

Section 43 provides that where a limitation period under the Ordinance in relation to a cause of action to recover or obtain goods has expired and no action has been brought on the cause of action, the right or title to the goods of any person having the cause of action is extinguished. This is an exception to the general rule that lapse of time bars the remedy but not the right.

Section 44 provides that where a person is in possession of goods on which he has a lien for money payable by another person, the right of the first person to the money is not

extinguished while the second person has a cause of action against the first person for conversion or detention of the goods or to recover the proceeds of sale of the goods.

Section 45 provides that where a question arises as to the extinction of a right or title, a party may not have the benefit of the extinction unless he has claimed it in the proceedings.

Section 46 provides that sections 46 to 50, which deal with limitation periods in arbitrations, have effect subject to any other law, order or scheme in force in the Territory.

Section 47 provides that the Ordinance applies to an arbitration in the same manner as it applies to an action, and that an arbitration may not be maintained where the limitation period fixed by the Ordinance has expired.

Section 48 provides that where a term of an agreement for arbitration specifies that a cause of action does not accrue until the making of an award, or until some other event occurs, or does not accrue at all, for the purposes of the Ordinance the cause of action accrues when it would have accrued but for that term.

Section 49 contains provisions to determine when, in a particular case, an arbitration is commenced.

Section 50 provides that where a court gives leave to revoke a submission under the Arbitration Act 1902 (NSW), or removes an arbitrator or umpire or sets aside an award under that Act, it may order that all or part of the period after the date of commencement of the arbitration does not count in reckoning the limitation period. When such an order is made the prior expiration of the limitation period has no effect for the purposes of the Ordinance.

Section 51 provides that a claim by way of set off, counterclaim or cross action is, for the purposes of the Ordinance, a separate action, brought on the date on which the person against whom the claim is made becomes a party to the principal action, or the date on which he becomes a party to the claim, whichever is the earlier.

Section 52 provides that where, but for the Ordinance, 2 or more persons would have a joint cause of action, and by the Ordinance the action is not maintainable by one or more of them, an action is nevertheless maintainable by the other or others.

Section 53 provides that where, but for the Ordinance, 2 or more persons would be jointly liable, and by the Ordinance an action is not maintainable against one or more of them, an action is nevertheless maintainable against the other or others.

Section 54 amends the Seat of Government (Administration) Ordinance 1930 to provide that the Attorney-General is responsible for the administration of the Limitation Ordinance 1985.

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Authorized by the  
Attorney-General