

## TASMANIA

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## LIMITATION AMENDMENT BILL 2013

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### CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 2 amended (Interpretation)
5. Section 5 repealed
6. Section 5A amended (Actions in respect of personal injuries)
7. Section 26 amended (Extension of limitation period in case of disability or when certain injuries occur to minors)
8. Section 38A substituted
  - 38A. Application of amendments made by *Limitation Amendment Act 2013*
9. Repeal of Act



## LIMITATION AMENDMENT BILL 2013

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*  
17 September 2013

*(Brought in by the Minister for Justice, the Honourable Brian Neal Wightman)*

### A BILL FOR

#### An Act to amend the *Limitation Act 1974*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### 1. Short title

This Act may be cited as the *Limitation Amendment Act 2013*.

#### 2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

#### 3. Principal Act

In this Act, the *Limitation Act 1974*\* is referred to as the Principal Act.

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\*No. 98 of 1974

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THIS BILL IS COGNATE WITH THE *CIVIL LIABILITY AMENDMENT BILL 2013*

*Limitation Amendment Act 2013*  
*Act No. of*

s. 4

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**4. Section 2 amended (Interpretation)**

Section 2(1) of the Principal Act is amended by omitting the definition of *commencement day*.

**5. Section 5 repealed**

Section 5 of the Principal Act is repealed.

**6. Section 5A amended (Actions in respect of personal injuries)**

Section 5A of the Principal Act is amended as follows:

- (a) by omitting subsections (1) and (2);
- (b) by omitting subsection (3) and substituting the following subsection:

(3) An action for damages for negligence, nuisance or breach of duty (whether that duty exists by virtue of a contract or a provision made by or under an enactment or independently of any contract or any such provision), where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of, or include, damages in respect of personal injuries to any person, must not be brought after the expiration of 3 years commencing on the date of discoverability.

*Limitation Amendment Act 2013*  
*Act No. of*

s. 7

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- (c) by omitting from subsection (5) “subsection (3)(b) to the expiry of 3 years” and substituting “subsection (3) to the expiry of 6 years”;
- (d) by omitting from subsection (6) “The periods of limitation specified in subsection (3)(a) and (b) apply to the personal representative of a deceased person commencing at” and substituting “For the purposes of this section, the date of discoverability is taken to be, in relation to a plaintiff who is the personal representative of a deceased person,”.

**7. Section 26 amended (Extension of limitation period in case of disability or when certain injuries occur to minors)**

Section 26 of the Principal Act is amended as follows:

- (a) by omitting subsection (1A) and substituting the following subsection:

(1A) If a cause of action to which section 5A applies has accrued and the person to whom it has accrued is a person under a disability at any time during the relevant period –

- (a) a reference in section 5A(3) or (5) to the date of discoverability is, in relation to the cause of

*Limitation Amendment Act 2013*  
*Act No. of*

s. 7

---

action, to be taken to be a reference to the date on which that person ceases to be under a disability or dies, whichever event first occurs; and

(b) section 5A(6) does not apply in relation to the cause of action.

(b) by omitting subsections (6) and (7) and substituting the following subsections:

(6) Subsection (1A) does not apply in relation to a cause of action to which section 5A applies unless the person bringing the action proves that the person to whom the action accrued –

(a) was not in the custody of a parent for a significant proportion of the relevant period; or

(b) was, for a significant proportion of the relevant period, in the custody of a parent who was a person under a disability.

(7) If a person is a relationship-influenced person in relation to a cause of action –

*Limitation Amendment Act 2013*  
*Act No. of*

s. 7

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- (a) subsection (1A) and section 5A(6) do not apply in relation to the cause of action; and
  - (b) a reference in section 5A(3) or (5) to the date of discoverability is, in relation to the cause of action, to be taken to be a reference to the date on which the person attains the age of 25 years.
- (7A) For the purposes of subsection (7), a person is a relationship-influenced person in relation to a cause of action if –
- (a) the action is a cause of action, to which section 5A applies, that has accrued to the person while the person is a minor; and
  - (b) the parent of the person –
    - (i) is the intended defendant; or
    - (ii) is in a close relationship with the intended defendant for a significant proportion of the

*Limitation Amendment Act 2013*  
*Act No. of*

s. 7

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relevant period;  
and

(c) the date of discoverability in relation to the cause of action occurs before the person attains the age of 25 years; and

(d) the person is not, at any time in the period between the day on which the cause of action accrues and the day on which the person ceases to be a minor, a person under a disability other than by virtue of being a minor.

(c) by omitting from subsection (8) “subsection (7)” and substituting “this section”;

(d) by omitting subsection (9) and substituting the following subsection:

(9) In this section –

***relevant period***, in relation to a person to whom a cause of action, to which section 5A applies, has accrued, means the period between –



*Limitation Amendment Act 2013*  
*Act No. of*

s. 8

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- (a) the date of discoverability in relation to the cause of action; and
- (b) the day on which proceedings in relation to the cause of action commence, or the day that is 3 years after the date of discoverability, whichever occurs first.

**8. Section 38A substituted**

Section 38A of the Principal Act is repealed and the following section is substituted:

**38A. Application of amendments made by *Limitation Amendment Act 2013***

(1) In this section –

*amending Act* means the *Limitation Amendment Act 2013*;

*amendment day* means the day on which the amendments to this Act effected by the amending Act commence.

*Limitation Amendment Act 2013*  
*Act No. of*

s. 8

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- (2) Section 5A and section 26 apply in relation to an action in respect of a personal injury –
- (a) whether the cause of action accrued before the amendment day or on or after that day; and
  - (b) whether or not a period of limitation under the Act as in force before the amendment day –
    - (i) has, before the amendment day, expired in respect of the injury; or
    - (ii) has, before the amendment day, expired in respect of the injury before an application that relates to the injury is made for an extension of the period under section 5A(5), as in force before the amendment day or after that day, or section 26(9), as in force before the amendment day.
- (3) A person may apply to a judge for an extension, of the period of limitation specified in section 5A(3) as inserted by the amending Act, to 3 years commencing on the amendment day.

*Limitation Amendment Act 2013*  
*Act No. of*

s. 9

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- (4) A judge may, on the application of a person under subsection (3), extend the period of limitation specified in section 5A(3), as inserted by the amending Act, to 3 years commencing on the amendment day, having regard to –
- (a) the justice of the case; and
  - (b) whether the passage of time has prejudiced a fair trial of the action; and
  - (c) the nature and extent of the plaintiff's loss; and
  - (d) the nature of the defendant's conduct.
- (5) Subsections (3) and (4) apply in relation to a cause of action whether or not a period of limitation under section 5A, as in force before the amendment day, had expired before the amendment day.

**9. Repeal of Act**

This Act is repealed on the three hundredth and sixty fifth day from the day on which it commences.