

SECOND READING SPEECH

Limitation Amendment Bill 2013

Mr Speaker, this Bill amends the *Limitation Act 1974* to make it easier for a person suffering a latent disease to take action.

The time limit within which a personal injury claim must be made is governed by the *Limitation Act 1974*.

In 2004 that Act was amended to provide for the limitation period for personal injury to commence on the “date of discoverability”.

The “date of discoverability” is defined as the date on which the plaintiff knew or ought to have known that the personal injury had occurred and that the injury was attributable to the conduct of the defendant and significant enough to warrant taking action.

The 2004 amendments adopted recommendations made by the Review of the Law of Negligence chaired by Justice Ipp and provide that the limitation period for personal injury expires either three years from the date of discoverability or 12 years after the events on which the claim is based (the “long-stop period”), whichever is the earlier.

To provide for injuries and diseases that take longer than 12 years to become symptomatic and therefore discoverable, the 2004 amendments gave courts discretion, having regard to the justice of the case, to extend time after the long-stop period to the expiry of a period of 3 years from the date of discoverability

At the time of the 2004 amendments many of the other States and Territories had already moved to “date of discoverability”

based limitation periods but only New South Wales had abolished limitation periods entirely for dust diseases.

However, since that time most jurisdictions have now either abolished limitation periods for asbestos related diseases (or more broadly dust diseases) (Queensland, Northern Territory and New South Wales) or have dispensed with a “long-stop” period (South Australia, Western Australia and Victoria) so that the limitation period is simply 3 years from the date of discoverability.

This Bill brings Tasmania into line with other jurisdictions by abolishing the 12 year long-stop period, leaving the limitation period as 3 years from the date of discoverability.

This change removes the need for a plaintiff, who may have been recently diagnosed with a serious or even fatal illness, from having to overcome the additional hurdle of seeking leave from the court to bring an action.

As the limitation period is just one of many factors that will impact on the success or otherwise of a common law claim it is not envisaged that there will be a flood of new cases as a result of removing the need to apply to the court if more than 12 years have passed from when the injury was suffered.

When the 2004 amendments were made, a conscious decision was made not to limit special arrangements to just asbestos related diseases.

Not only are there other dust related diseases which have long latency periods, but there are also other conditions, like post-traumatic stress, which can manifest some considerable time after the event giving rise to them.

There is no convincing policy reason for treating asbestos-related diseases differently to any other latent disease, which is

why I have chosen to abolish the long-stop period rather than make special limitation provisions for asbestos-related or dust diseases.

In addition, this Bill introduces a provision which will allow an application to a Court to extend time for a further three years past the initial three years after the date of discoverability period.

The Law Council of Australia and the Law Society of Tasmania have requested this amendment on the basis there will always be a small proportion of potential plaintiffs in personal injury actions who through simple ignorance rather than deliberate delay fail to take action in the first three years after they discover that they have suffered an injury.

Most often it will be those more disadvantaged members of society who fail to take appropriate action.

There will now be an opportunity in such cases to extend the time by a further three years if a court considers that such an extension is warranted in the circumstances.

This amendment will apply generally to all actions for personal injuries, not just those which have latent onset.

The Bill also contains amendments to section 26 in relation to providing for the limitation period for personal injury actions to begin later where the person with a right of action is under a disability.

The amendments to section 26 clarify the intent of the section and ensure that a person entitled to have a limitation period begin later has an equivalent limitation period to other plaintiffs including the same right to apply for an extension of time.

The amendments to section 26 also recognise that in fairness, a limitation period should begin later if a person is under a disability for a significant portion of the period between the date of discoverability and the time they commence action, rather than focussing on disability at a specific point in time, such as when the cause of action accrued or the actual date of discoverability.

Transitional provisions were also inserted in the Act in 2004 to allow persons with a latent disease who were out of time to make a claim under the old, restrictive provisions the opportunity to make use of the new provisions.

This Bill replaces those obsolete provisions with new ones to take account of the fact that the date of discoverability is now the only relevant date, no matter when the cause of action may have accrued.

The transitional provisions inserted by the Bill allow a person for whom time may have expired under the previous limitations provisions to apply to a court for an extension of time for three years from the date these amendments in this Bill come into effect.

The new transitional arrangements also include a policy change in relation to the special provisions in section 26 (7) for dealing with an intended defendant who is a parent or person in a close relationship with a parent, which were inserted in 2004.

When those provisions were inserted they only applied to causes of action arising after 1 January 2005.

The type of case where a plaintiff may wish to use the special provision to have more time within which to bring an action is likely to be a case of child abuse or neglect.

Generally speaking these matters are dealt with in the criminal jurisdiction. The only occasions when civil action may be advised would be where the intended defendant has the means to pay substantial damages and legal costs, which would usually be where the intended defendant is an institution rather than an individual.

For this reason, there is unlikely to be a flood of actions if ability to bring an action later provided in section 26(7) were to apply to actions which accrued before the commencement date.

In addition, in the current circumstances where a Royal Commission is considering institutional response to child sexual abuse, it seems to me appropriate to provide that the special provisions in 26(7) apply more generally, although because the time commences to run when the plaintiff turns 25 there is a natural limit to the application of the section.

I commend the Bill to the House.