

CLAUSE NOTES

Limitation Amendment Bill 2017

- Clause 1: Short Title
- Clause 2: Commencement on a day to be proclaimed
- Clause 3: The Principal Act is the *Limitations Act 1974*
- Clause 4: Amends section 2 of the Principal Act to delete the definition of “commencement day” and insert a definition of “personal injury”
- Clause 5: Repeals section 5 of the Principal Act
- Clause 6: Omits subsections 5A (1), (2) and (3) of the Principal Act.
- The omission of subsection (1) means that section 5A will apply to an action no matter when the cause of action accrued.
- Subsection (2) has been omitted because the definition of “personal injury” has now been included in section 2 of the Principal Act.
- The omission of subsection (3) allows for the insertion of a new subsection (3) which provides that the limitation period for an action for damages relating to personal injuries is to be 3 years commencing on the date of discoverability. This substitution means that there will no longer be a 12 year period, commencing on the date of the act or omission which it is alleged resulted in the personal injury, within which an action must be brought if the three years from the date of discoverability has not expired at that time.
- Omits subsection (5) which provided for an application to extend time to 3 years from the date of discoverability if the 12 year period from the time of the alleged injury had expired and substitutes a new subsection (5) that provides a discretion for the Court to extend time to 6 years from the date of discoverability.
- Clarifies that subsection (6) sets out what the date of discoverability is taken to be in relation to a plaintiff who is the personal representative of a deceased person.
- Clause 7: Inserts new section 5B which provides that there is no limitation period applicable to an action for damages for personal injury that arises from or is related to the sexual abuse or serious physical abuse of a person when that person was a child.

The new section clarifies that a reference to sexual abuse or serious physical abuse includes any psychological abuse that arises from the sexual abuse or serious physical abuse.

The section also states that nothing in the section limits any of the listed jurisdictions or powers of the court. For example, the section does not limit a court's power to summarily dismiss or permanently stay proceedings where the lapse of time has a burdensome effect on the defendant that is so serious that a fair trial is not possible.

Clause 8: Omits subsection 26 (1A) and substitutes a new subsection (1A) providing that section 26 does not apply to a cause of action to which section 5A or 5B applies.

Omits subsections 26 (6), (7), (8) and (9).

Clause 9: Inserts a new section 26A which provides for the suspension of the limitation period in a personal injury action if the plaintiff, or prospective plaintiff, is under a disability during the period. The section also sets out when the suspension of time will not occur.

Clause 10: Repeals section 38A, which sets out savings and transitional provisions relating to the *Limitation Amendment Act 2004* and inserts a new section 28A which provides for the application of the amendments made by this Bill.

Clause 11: Provides for the repeal of this amending Act one year after the amendments it contains are incorporated into the Principal Act and commence.