

TASMANIA

LIMITATION AMENDMENT BILL 2004

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 2 amended (Interpretation)
5. Section 5 amended (Actions in respect of personal injuries incurred before commencement day)
6. Section 5A inserted
 - 5A. Actions in respect of personal injuries incurred on or after commencement day
7. Section 26 amended (Extension of limitation period in case of disability)
8. Section 38A inserted
 - 38A. Savings and transitional provisions

LIMITATION AMENDMENT BILL 2004

(Brought in by the Minister for Justice and Industrial Relations, the Honourable Judith Louise Jackson)

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:

Short title

1. This Act may be cited as the *Limitation Amendment Act 2004*.

Commencement

2. This Act commences on a day to be proclaimed.

Principal Act

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

*No. 98 of 1974

Section 2 amended (Interpretation)

4. Section 2(1) of the Principal Act is amended by inserting after the definition of “action” the following definitions:

“**commencement day**” means the day on which the *Limitation Amendment Act 2004* commences;

“**date of discoverability**”, in the case of an action for damages for personal injuries, means the date when the plaintiff knew or ought to have known, but for the incapacity caused by the relevant personal injury, that personal injury or death –

- (a) had occurred; and
- (b) was attributable to the conduct of the defendant; and
- (c) in the case of personal injury, was sufficiently significant to warrant bringing proceedings;

Section 5 amended (Actions in respect of personal injuries incurred before commencement day)

5. Section 5 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) This section applies only to an action where the cause of action accrued before the commencement day.

Section 5A inserted

6. After section 5 of the Principal Act, the following section is inserted in Division 2:

Actions in respect of personal injuries incurred on or after commencement day

5A. (1) This section applies only to an action where the cause of action accrues on or after the commencement day.

(2) For the purpose of this section, “**personal injury**” includes any disease and any impairment of a person’s physical or mental condition.

(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 whichever of the following periods of limitation is the earlier:

- (a) 3 years commencing on the date of discoverability;
- (b) 12 years commencing on the date of the act or omission which it is alleged resulted in the personal injury or death that is the subject of the action.

(4) An action for damages under the *Fatal Accidents Act 1934* in respect of the death of a person is taken to be an action referred to in subsection (3).

(5) A judge may extend the period of limitation referred to in subsection (3)(b) to the expiry of 3 years commencing on the date of discoverability having regard to the justice of the case and, in particular to –

- (a) whether the passage of time has prejudiced a fair trial of the action; and
- (b) the nature and extent of the plaintiff's loss; and
- (c) the nature of the defendant's conduct.

(6) The periods of limitation specified in subsection (3)(a) and (b) apply to the personal representative of a deceased person commencing at the earliest of the following times:

- (a) the date when the deceased person knew that personal injury –
 - (i) had occurred; and
 - (ii) was attributable to the conduct of the defendant; and
 - (iii) was sufficiently significant to warrant bringing proceedings;
- (b) the date when the personal representative was appointed, if he or she knew or ought to have known the date of discoverability at that time;
- (c) the date when the personal representative first knew or ought to have known the date of discoverability, if he or she acquired that knowledge or ought to have acquired that knowledge after being appointed to that position.

Section 26 amended (Extension of limitation period in case of disability)

7. Section 26 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) If a person proposing to bring an action to which section 5A applies is a person under a disability when the cause of action accrues or as a result of the cause of action accruing becomes a person under a disability, the period of limitation determined under that section applies when that person ceases to be under a disability or dies, whichever event first occurs.

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

(6) This section does not apply to an aggrieved party proposing to bring an action under section 5 or 5A unless that aggrieved party proves that he or she or, as the case requires, the person under a disability was not in the custody of a parent or was in the custody of a parent who was a person under a disability at the time when the cause of action accrued.

(7) This section does not apply to an action where a cause of action accrued on or after the commencement day if the parent of a minor under a disability in respect of which the action may be brought is the intended defendant or is in a close relationship with the intended defendant, in which case the period of limitation is 3 years commencing on the date when the plaintiff attains 25 years of age.

(8) For the purpose of subsection (7), a close relationship is a relationship where –

- (a) either parent may be directly or indirectly influenced by the intended defendant not to bring an action on behalf of the minor against the intended defendant; or
- (b) the minor may be unwilling to disclose to the parent the conduct or events on which the action may be based.

(9) A judge may, if he or she considers it in the interests of justice to do so, extend the period of limitation referred to in subsection (7) to 3 years commencing on the date of discoverability.

Section 38A inserted

8. After section 38 of the Principal Act, the following section is inserted in Part IV:

Savings and transitional provisions

38A. (1) A person who has a cause of action which accrued before the commencement day may apply to a judge for an extension of the period of limitation specified in section 5(1) to 3 years commencing on the date of discoverability.

(2) A judge may extend the period of limitation specified in subsection (1) having regard to –

- (a) the justice of the case; and

- (b) the consequences to the defendant of the defendant's reliance on the period of limitation specified in section 5(1); and
- (c) the matters mentioned in section 5A(5)(a), (b) and (c).

(3) A person may apply to a judge for an extension of the period of limitation specified in section 5(1) to 12 months commencing on the commencement day if that person –

- (a) suffers from an injury or disease the date of discoverability of which occurred 6 or more years after the cause of action accrued; and
- (b) has a cause of action which accrued before the commencement day; and
- (c) proposes to rely on a date of discoverability which occurred more than 2 years before the commencement day.

(4) The judge may extend the period of limitation referred to in subsection (3) having regard to the matters set out in subsection (2).