

TASMANIA

LIMITATION AMENDMENT BILL 2017

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LIMITATION AMENDMENT BILL 2017

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Limitation Act 1974*

Be it enacted by Her 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 2017*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

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

4. Section 2 amended (Interpretation)

Section 2(1) of the Principal Act is amended as follows:

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- (a) by omitting the definition of *commencement day*;
- (b) by inserting the following definition after the definition of *parent*:

personal injury includes any disease and any impairment of a person's physical or mental condition;

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 Section 5 repealed

Section 5 of the Principal Act is repealed.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), (2) and (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,

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must not be brought after the expiration of 3 years commencing on the date of discoverability.

(b) by omitting subsection (5) and substituting the following subsection:

(5) A judge may extend the period of limitation referred to in subsection (3) to the expiration of 6 years commencing on the date of discoverability if he or she considers that, in the circumstances of the case, it is just and reasonable to do so.

(c) 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 5B inserted

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

5B. No limitation period where sexual or physical abuse of minor

(1) Despite section 5A and section 26A –

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- (a) an action for damages for personal injury to a person arising from or related to the sexual abuse, or serious physical abuse, of the person when the person was a minor; or
- (b) an action for damages under the *Fatal Accidents Act 1934* in respect of the death of a person arising from or related to the sexual abuse, or serious physical abuse, of the person when the person was a minor –

may be brought at any time.

- (2) A reference in this section to the sexual abuse, or serious physical abuse, of a person when the person was a minor includes any psychological abuse that arises from the sexual abuse or the serious physical abuse.
- (3) Nothing in this section limits –
 - (a) any inherent jurisdiction, implied jurisdiction, or statutory jurisdiction, of a court; or
 - (b) any other powers of a court arising or derived from the common law or under any other Act, including an Act of the Commonwealth, rule of court, practice note or practice direction.

8. Section 26 amended (Extension of limitation period in case of disability, other than in case of personal injury)

Section 26 of the Principal Act is amended as follows:

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

(1A) This section does not apply to a cause of action to which section 5A or 5B applies.

(b) by omitting subsections (6), (7), (8) and (9).

9. Section 26A inserted

After section 26 of the Principal Act, the following section is inserted in Division 1:

26A. Extension of limitation period in relation to personal injury or death of person who is or was under disability

(1) In this section –

capable parent, in relation to a minor, means a person –

(a) who is a parent of the minor; and

(b) who is not under a disability; and

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- (c) who is not the intended defendant or a parent who is in a close relationship with the intended defendant;

legal representative, in relation to a person to whom section 2(2)(b) applies, means a person –

- (a) who has legal authority to commence and conduct legal actions on behalf of the person to whom section 2(2)(b) applies; and
- (b) who is not the intended defendant;

limitation period in relation to an action, means –

- (a) the period of 3 years from the date of discoverability in relation to the action; or
- (b) if an extension to the period of limitation is granted under section 5A(5), the period of 6 years from the date of discoverability in relation to the action.

(2) For the purposes of this section –

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- (a) a parent of a minor is in a close relationship with an intended defendant if the parent, or another parent, may be directly or indirectly influenced by the intended defendant not to bring an action against the intended defendant on behalf of the minor or person to whom section 2(2)(b) applies; and
 - (b) a legal representative of a person to whom section 2(2)(b) applies is in a close relationship with an intended defendant if the legal representative may be directly or indirectly influenced by the intended defendant not to bring an action against the intended defendant on behalf of the person to whom section 2(2)(b) applies.
- (3) The running of the limitation period in relation to a cause of action, to which section 5A(3) applies, that has accrued in relation to a person is suspended for each period in which the person is a relevant person.
- (4) A person is a relevant person –
- (a) while the person is a minor and is not in the custody of a capable parent; or

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- (b) while the person is a person to whom section 2(2)(b) applies for a continuous period of 28 days or more and either –
 - (i) there is no legal representative in relation to the person; or
 - (ii) the legal representative in relation to the person is in a close relationship with the intended defendant.
- (5) In determining the date of discoverability in relation to a person who is a minor, facts that are known, or ought to be known, by a capable parent of the minor are taken to be facts that are known, or ought to be known, by the minor.
- (6) In determining the date of discoverability in relation to a person to whom section 2(2)(b) applies, facts that are known, or ought to be known, by the legal representative in relation to the person are taken to be facts that are known, or ought to be known, by the person.
- (7) Nothing in subsection (5) or (6) is to be taken to limit the operation of either of those subsections in relation to a person who is both a minor and a person to whom section 2(2)(b) applies.

10. 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 2017*

(1) In this section –

amending Act means the *Limitation Amendment Act 2017*;

amendment day means the day on which the amending Act commences.

(2) Subject to this section, this Act, as amended by the amending Act, applies in relation to an action in respect of a personal injury –

(a) whether the cause of action accrued before, on or after the amendment day; and

(b) whether or not a period of limitation under the Act, as in force before the amendment day –

(i) has, before that day, expired in respect of the injury; or

(ii) has, before that day, expired in respect of the injury before an

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application, in relation to the injury, is made for an extension of the period under section 5A(5), as in force before or after that day, or section 26, as in force before that day.

- (3) Despite subsection (2), an extension of a period of limitation may not be granted under section 5A(5) as in force after the amendment day, in relation to a cause of action that accrued before that day, if the date of discoverability occurred more than 3 years before that day.
- (4) Despite subsection (2), the amendments to section 26 made by the amendment Act, and section 26A, do not apply in relation to an action that commenced before the amendment day.

11. Repeal of Act

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