

CLAUSE NOTES

Limitation Amendment Bill 2013

Clause 1: Short Title

Clause 2: Commencement date

Clause 3: Principal Act

Clause 4: Omits the definition of “commencement day” from section 2 as it is no longer required.

Clause 5: Repeals section 5 of the Principal Act. This completes the process commenced in 2004 of changing to a limitation period commencing on the date of discoverability in respect of personal injury actions.

As from 1 January 2005, section 5 only applied to causes of action accrued before that date and under that section the limitation period commenced on the date of accrual that is, the date the injury was caused, whether or not the plaintiff knew that it had been caused. Notwithstanding the possibility of an extension of time pursuant to 5(3) no action could now be commenced seeking to rely on section 5.

Clause 6: Amends section 5A to

- omit subsections (1) and (2) as these are no longer required; and
- replace subsection (3) so as to remove the requirement to seek leave of the court to take action if 12 or more years have passed from the date of the act or omission which gave rise to the personal injury the subject of the claim; and
- amend subsection (5) to allow for a court to extend time for a further 3 years (i.e. to 6 years from the date of discoverability) having regard to the justice of the case, including specified factors; and
- clarify subsection (6)

Clause 7: Amends section 26 to:

- replace subsection 26(1A), to ensure that a longer period of time in which to bring an action applies if the person is under a disability for a significant portion of the time between when their injury arose and the time they bring an action, rather than limiting the application of the subsection to only those persons who were under a disability at the time of the injury.
- replace sub 26(6), to ensure that a longer period of time in which to bring an action applies if the person is, for a significant portion of the time between when their injury arose and the time they bring an action, in the custody of a parent, or a person in a close relationship with a parent, who is the intended defendant, rather than

limiting the application of the subsection to being in that custody at the time of the injury.

- Amends subsection 26(7), and inserts a new subsection (7A), to clarify that if the person with a disability was only such a person because they were a minor, the date of discoverability occurs before they become 25 years old, and the parent, or a person in a close relationship with a parent, is the intended defendant, subsections (1A) and (6) do not apply so as to have the period of time in which to bring an action run from when the person ceases to be under a disability because they have become 18 years old. Instead, the period of time (which will be the same as for a person not under a disability) will run from the time the person becomes 25 years old.

Clause 8: Amends section 38A to delete transitional provisions relevant to the amendments that commenced on 1 January 2005 and replace them with transitional provisions in relation to the amendments made by this Bill.

Provides that a person who might be out of time under a previously applicable provision may now apply to a court to extend the limitation period to three years from the amendment day, defined as the day on which the amendments in this Bill commence.

The extension of time applicable under subsection 26(7) will now apply to any cause of action, no matter when accrued.

