

Commencing Proceedings

Is the claim still within the limitation period?

Limitation Periods

The limitation period runs from when a cause of action accrues.

Section 5(1) of the *Limitation of Actions Act 1974* (Qld) (Limitations Act): defines action as any proceeding in a court of law. Knowledge of the legal consequences is not necessary.

Thomsom v Lord Clanmorris: all the necessary facts giving rise to the cause of action have occurred and there is a competent plaintiff to sue, and a competent defendant who may be sued.

[1.0] When does a limitation period run?

The limitation period runs from when a cause of action accrues.

The limitation period stops when a originating process is filed and sealed in the court registry.

Turagadamudamu v PMP Ltd:

However, note the extensions of time available when a plaintiff complies with statutory pre-claim procedures: **s 59 PIPA and ss 37 and 57 Motor Accident Insurance Act 1994.**

Service is not required within the limitation period. However, if the time for service expires (12 months) and the originating process is not renewed by the registrar, the plaintiff will be out of time, as per *Seabridge v H Cox & Sons (Plant Hire) Ltd*.

Note, in Queensland, there is no inherent jurisdiction of the court to extend a limitation period.

[2.0] What is the limitation period?

[2.1] Statutory and General Law Claims

The limitation periods for the most common causes of action are, under **ss 10, 10AA, 11, 13 and 25:**

- (i) tort and contract claims without personal injury (property damage etc) – 6 years from when the cause of action accrued – **s10(1)(a);**
- (ii) actions founded on a deed or other specialty – 12 years from when the cause of action accrued;
- (iii) actions to enforce an arbitral award – 6 years from when the cause of action accrued;
- (iv) actions for personal injury or wrongful death – 3 years from when the cause of action accrued (possibility of extension)– **s 11(1);**

- (v) defamation – 1 year from the date of publication of defamatory material (possibility of extension)– **s10AA**;
- (vi) actions to recover rent – 6 years from the date the arrears became due; and
- (vii) actions to recover land – 12 years from the date the cause of action accrued.

Rule 682 provides that the court can make a costs order at any stage of the proceedings, or after the proceeding has come to an end. That is, usually at every interlocutory step, costs must be considered.

[2.2] Equitable Claims

There is only a very limited range of equitable claims that the Limitations Act applies to. For example;

- (i) **s10(2)**: applying for accounts;
- (ii) **s16(1)**: recovery for an equitable interest in land – 12 years from when the right to receive the interest accrued;
- (iii) **s27(1)**: innocent breach of trust – 6 years from breach; and
- (iv) **s28(1)**: personal administration of a deceased estate – 12 years from when the right to receive the interest accrued.

If there is some fraud there are no limitations for the aforementioned (iii) and (iv).

There would not be a limitation period on actions based where there is undue influence, unconscionability or other circumstances in which equitable compensation is sought.

There is also no limitation period for actions seeking an injunction for a contract.

However, courts are given discretion to apply a limitation period by analogy to an equitable claim where the facts giving rise to the claim are sufficient to found an action at law (common law or statute) and an action in equity and where substantially identical relief is available in each, as per *Knox v Gye* and confirmed in *Cohen v Cohen*.

White Constructions Pty Ltd v White

A company Director has a statutory and equitable duty to act in the best interest of the company. A limitation period of 6 years applies to both by analogy.

P&O Nedlloyd BV v Arab Meats Co (UK)

A claim for specific performance of a contract is sufficiently different from a claim for damages for breach at common law. Thus, the common law limitation period will not be applied by analogy. This is because specific performance is not a monetary remedy. Further, specific performance does not require there to have been a breach of contract.

A statutory limitation period will not be applied by analogy if it would be unjust to do so, as per *Barker v Duke Group Ltd (in liq)*.

[3.0] Specific Claims

[3.1] Personal Injury Claims

The limitation period for personal injury and wrongful death is 3 years, as per **s 11(1) Limitations Act**. However, this may be extended by 1 year if the court is satisfied that a material fact of decisive character relating to the cause of action was not within the means of knowledge of the plaintiff until a date within a year before the limitation period expired and there is evidence to establish the cause of action: Limitation Act, s **31(2)**.

The material facts relating to a cause of action, include the facts of the occurrence of negligence or otherwise, the identity of the person, the fact that there has been personal injury suffered and relatedly causation and extent. *See s 30*.

Minoque v Bestobel Industries Pty Limited:

The court held that the plaintiff need not prove on the balance of probabilities that the cause of action exists, nor tender evidence to the court on which it intends to rely at trial. The plaintiff needs to establish that evidence exists from which the court could form an opinion that a right of action exists.

[4.0] Expiry of Limitation Periods

On expiry of a limitation period, the cause of action remains, but there will be a bar to proceedings continuing if raised by the defendant.

Which registry should proceedings be brought in?

Registry

A proceeding may be commenced in the central registry, as per **r 33**.

Rule **35(1) UCPR** provides that where a proceeding is not brought to the central registry, a plaintiff must commence a proceeding, it must be commenced in one of the following;

- (i) the district where the defendant/respondent lives or carries on business;
- (ii) the district in which one or more defendant/respondent lives or carries on business;
- (iii) a district to which the defendant/respondent have agreed to in writing;
- (iv) a district in which the defendant/respondent has undertaken in writing to pay a debt;
- (v) the district in which all or part of the claim or cause of action arose;
- (vi) the district in which the land is located, where the proceeding is for the recovery of land.