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Limitation Period

Special Cases

Limitation periods is removed for child abuse e.g. s27P Limitation Act (Vic); s6A Limitation Act (NSW)
Limitation periods removed for child sexual abuse e.g. s11A Limitation Act (QLD); s21C LA (ACT);
Asbestos Cases e.g. Dust diseases tribunal Act (NSW) s12A

What is the limitation period?

General Rule – LA (ACT) s11 – 6 years since the cause of action first accrues.

Cause of action founded on a deed? LA s13 – 12 years

Common Law action for personal injury at work? LA s16A – 3 years

Personal injury that includes disease or disorder? LA s16B(2)(a) – 3 years
- *Stingel v Clark* – disease of disorder should move with medical knowledge.

All other personal injuries – LA s16B(2)(b) 3 years

Defamation – LA s21B – 1 year

Equity – LA s11 – 6 years

When does the limitation period start?

LA s11 – when all elements of the cause of action have been satisfied

Contract = when the breach occurred

Negligence = time the damage was suffered

Cornwell – Breach of contract expired, but not negligence because it's calculated from when damage calculatable and not breach of the contract.

Cause of action founded on a deed – LA s13 – the date the cause of action accrues

Common Law Action for personal injury at work – LA s16A – the day the injury happened

Personal injury that includes disease or disorder – LA s16B(2)(a) – the day the injure person first knows that the injury is or includes a disease/disorder and that the injury is related to someone else's act or omission.

All other personal injuries – LA s16B(2)(b) – the day the injury happened

Defamation - LA s21B – the day of publication

Equitable relief – LA s11 – the day the cause of action accrues

Postponed?

Confirmation – LA s32 – occurs when the defendant acknowledges the claim and makes a payment.
Settlement negotiations can postpone the limitation period starting.

Fraud and concealment – LA s33 – occurs when a relevant fact of the identity of the defendant or potential defendant is deliberately concealed. The limitation period is postpone until the date of the discovery of the fraud or the date that the fraud or concealment may have been discovered with reasonable diligence.

Mistake – LA s34 – If you're bringing in an action based on a mistake then the limitation period is postponed until the mistake has been discovered or could have been discovered with reasonable diligence

Suspended?

Disabilities – LA s30 – if a person is under a disability, the limitation is suspended for the duration of the disability. Disabilities included in LA's dictionary: children under 18 ; those who cannot manage their affairs for 28 days or more due to intellectual retardation, physical disabilities, mental illness, brain damage, senility, war or war-like operations or circumstances arising out of war or war-like operations.

Children – LA s30A and S30LA: special provisions relating to personal injuries sustained by children.

Kirby v Leather – person of unsound mind = disability ; prime consideration is if K could instruct a solicitor, did he have the capacity to, did he have the requisite level to consider settlement of legal advice?

Brown v Haureliuk – had depressions; was determined to have 'lacked the capacity and the willpower to make rational decisions to see a solicitor and starting proceedings. He was during that period unable to reason normally about the matter relevant to his potential cause of action, to understand and consider advice and to give instructions about such action'.

Queensland v RAF: Plaintiff suffered a sexual assault and got PTSD. PTSD is considered a disability here

Extended?

This only applies once the limitation period has expired.

Defamation – LA s21B(2) , if not reasonable to bring within one year, court must extend to 3 years after date of publication for defamation.

Personal injuries- s36(2): Court may extend the limitation period if it thinks it is just and reasonable to do so. Also look at Length of and reason for delay s36(3)(a) and prejudice to defendant s36(3)(b). However, this is very limited according to s36(5); injury at work applies under s16A so can be extended or you are a relative seeking compensation for a wrongful death.

DJ v RHS – most personal injury matters cannot be extended. Parliaments' intention to get adults to commence actions at an early stage or lose their right to commence actions.

But according to s36(6) LA the extension applies to personal injuries suffered by children, except for those relating to the provision of a health service.

Latent Damage to a property/economic loss as a result of latent damage.

Discretion – S40(1) LA -Court may extend limitation period for up to 15 years, if it considers it just and reasonable to do so.

Has to consider the following when using discretion s40(2)

- a) length of time between occurrence of damage or loss and the time when it might have been reasonably discovered by plaintiff.
- b) after P knew about the damage or loss, did they act promptly and reasonably?
- c) how likely the extension would prejudice the defendant?

d) the conduct of the defendant after the cause of action was accrued, includes if they made information available to the P.

e) steps taken by P to obtain legal or other expert advice for this cause of action and the nature of that advice.

Brisbane South Regional Health Authority v Taylor- This is not a balancing test, just because factors are fulfilled does not mean u can get extension – P has burden of proof to argue why they should get an extension. It's a question of can they get a fair trial? In this case the doctor is no longer in the employment of the employer and he now lives in HK and the treatment was 24 years ago, unlikely for him to remember what happened. Not a fair trial.

Commonwealth v Smith – a fair trial does not have to be perfect, in this case it was against the CW so u could get a fair trial because P had retained his medical records and while the CW destroyed their records, it was their fault because they chose to destroy them. Further 2 royal commissions had investigated the accident, so although many witnesses may have passed away there was plenty of evidence left.

Paramsivam v Flynn – can consider the strengths and weaknesses of the case before deciding extension.

Disability – s30(1)(f) – automatic extension of limitation period if you suffer a disability that results in a suspension during the limitation period. Extends for 3 years after you recover from disability or die if it is more than the remaining limitation period you have left since entering your disability.

Parties

Plaintiff – r20(1)(a) CPR

Multiple Plaintiffs – r200(1) CPR if separate proceedings by or against each of them may give rise to a common issue of law or fact and any of the rights to relief claimed in the proceeding (whether join, several or alternative) are in relation to or arise out of the same transaction or event or series of transactions or events or if the court orders that they be included.

Defendant – r20(1)(b)

Multiple defendants – r211(1) CRP if separate proceedings by or against each of them may give rise to a common issue of law or fact and any of the right to relief claimed in the proceeding (whether join, several or alternative) are in relation to, or arise out of, the same transaction or event or series of transactions or events or if the court orders they be included

If a defendant is liable jointly and severally, the other person does not need to be made a defendant r214(1) however if they are liable jointly but not severally and the P seeks proceedings against some of them and not all of them, the court may stay the proceeding until the others are included r214(2) CPR.

If unsure about which party should be the defendant, both can be included r215(a) CPR

Counterclaims can be made without starting a separate proceeding r461 CPR