

LIMITATION (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTES

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Limitation Act 1969:

- (a) to encourage the early determination of personal injury claims by shortening the primary limitation period for personal injury actions from 6 to 3 years; and
- (b) to ensure that worthwhile cases are not excluded because of the shortened primary limitation period by:
 - (i) allowing a secondary limitation period of up to 5 years if a plaintiff can show that it is just and reasonable to do so in the circumstances of the case; and
 - (ii) allowing a further discretionary, but unlimited, extension if delay has been caused because the plaintiff was unaware of the fact, nature, extent or cause of the injury, disease or impairment concerned ("injury"); and
- (c) to equate the position of applicants under the Compensation to Relatives Act 1897 with that of other personal injury plaintiffs; and
- (d) to remove the ultimate bar (which presently prevents extensions of the limitation period for periods beyond 30 years) in its application to a latent injury.

The amendments are to operate from 1 September 1990.

Section 7 of the Limitation Act 1969 provides that nothing in that Act applies to an action for which a limitation period is fixed by or under other enactment. Accordingly, since the Motor Accidents Act 1988 and the Workers Compensation Act 1987 contain special provisions for limitation periods, the Bill will not affect rights and procedures under those Acts.

Limitation (Amendment) 1990

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on 1 September 1990.

Clause 3 is a formal provision giving effect to the Schedule of amendments.

SCHEDULE 1 - AMENDMENTS

Definitions

Schedule 1 (2). The definition of “Beneficiary” is new, and is used in proposed Subdivisions 2, 3 and 4 of Division 3 of Part 3. The definitions of “Breach of duty” and “Personal injury” are transferred from the existing section 57.

Length of primary limitation period

Schedule 1 (3). Proposed section 18A fixes the primary limitation period for a personal injury action as 3 years from the date of accrual of the action. The limitation period for existing causes of action remains at 6 years.

Schedule 1 (4). Proposed section 19 fixes the primary limitation period for causes of action arising under the Compensation to Relatives Act 1897 as 3 years from the date of the death giving rise to the action. The limitation period for existing causes of action remains at 6 years.

Ultimate bar

Schedule 1 (5). Proposed section 51 (2) provides that the ultimate bar of 30 years is not to apply in relation to personal injury actions involving latent injury.

The removal of the bar is to be effective in relation to actions barred before the removal.

Extension of limitation period

Schedule 1 (6) - (8). At present, the primary limitation period for personal injury claims can be extended by the application of the discovery rule extension. This enables a court to extend the limitation period in cases of latent injury by one year from the date that knowledge of the injury is first obtained. The provisions achieving this are retained for existing causes of action and are, by the proposed Act, placed in Subdivision 1 of Division 3 of Part 3.

Schedule 1 (9). This item inserts new Subdivisions 2, 3 and 4 into Division 3 of Part 3.

Proposed Subdivision 2 confers a new general discretion to extend the limitation period by up to 5 years. This applies to new causes of action. In exercising the discretion to extend for 5 years, a court is to have regard to all the circumstances of the case, including certain specified considerations (for example, the length and reasons for delay in bringing an action and the time when a plaintiff became aware of the injury concerned).

Limitation (Amendment) 1990

Proposed Subdivision 3 confers a new discretion to extend the limitation period indefinitely in cases of latent injury etc., but application for the extension must be made within 3 years of obtaining relevant knowledge of the injury. This applies to new causes of action. By the operation of proposed clause 4 of Schedule 5, it also applies to existing causes of action, including cases where the relevant limitation period has already expired; however the previously barred action must be brought within 3 years of the commencement of the proposed Act or of the defendant obtaining the relevant information.

Proposed Subdivision 4 contains machinery provisions relating to orders under the Division, including the provisions dealing with costs, as mentioned below.

Compensation to relatives actions

Schedule 1 (9). Proposed sections 60D and 60H will equate actions available under the Compensation to Relatives Act 1897 with the proposed limitations system for personal actions.

At present, the discretion to extend limitation periods is available in respect only of the deceased's cause of action (*Bergfels v Port Stephen Shire Council* [1983] 2 NSWLR 578). The proposed sections will ensure that the discretion also extends to the applicant's cause of action arising after the deceased's death.

Costs

Schedule 1 (9). Proposed section 60L enables a court hearing an action brought as a result of an order under proposed Subdivision 2 or 3 to reduce the costs otherwise payable to the successful plaintiff, on account of the expense to which the defendant has been put because of the delay in commencing the action.

Other transitional arrangements

Schedule 1 (11). Proposed Schedule 5 contains transitional matters, consequent on the enactment of the proposed Act. Clause 4 of the proposed Schedule has been discussed above. Clause 5 empowers a court to set aside a judgment based on the fact that an action was statute barred, if leave is given to proceed outside the limitation period.

Machinery amendments

Schedule 1 (1) and (10). These items contain machinery or consequential amendments.