

# Limitation Act 1969 No 31

[1969-31]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**

[Limitation Amendment \(Child Abuse\) Bill 2015](#) [Non-government Bill: Mr David Shoebridge, MLC]

[Limitation Amendment \(Child Abuse\) Bill 2016](#)

### Authorisation

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# Limitation Act 1969 No 31



New South Wales

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# Limitation Act 1969 No 31



New South Wales

An Act to amend and consolidate the law relating to the limitation of actions; to repeal section 5 of the Imperial Act known as the *Common Informers Act 1588* and certain other Imperial enactments; to repeal the unrepealed portion of the Act passed in the fourth year of the reign of William the Fourth number seventeen and certain other enactments; to amend the *Compensation to Relatives Act of 1897*, as amended by subsequent Acts, and certain other enactments; to make further provision concerning estates tail; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the *Limitation Act 1969*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

### 2 Construction

This Act is to be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances is not to be affected.

### 3, 4 (Repealed)

### 5 Saving

- (1) Section 8 of the *Interpretation Act of 1897* applies to the repeal by this Act in whole or in part of an Imperial Act in the manner in which that section applies to the repeal in whole or in part of an Act.
- (2) The repeal or amendment of an enactment or Imperial enactment by this Act does not revive anything not in force or existing at the commencement of this Act.



## 6 Transitional provisions

- (1) Subject to section 26, to Division 3 of Part 3 and to Schedule 5, nothing in this Act:
  - (a) affects an action brought or arbitration commenced before the commencement of this Act,
  - (b) enables an action or arbitration to be commenced or maintained which is barred at the commencement of this Act by an enactment or an Imperial enactment repealed or amended by this Act,
  - (c) affects the extinction of the title of a person to land under section 34 of the Imperial Act shortly entitled the *Real Property Limitation Act 1833*, as adopted and applied by the Act passed in the eighth year of the reign of King William the Fourth, number three, where the period limited by that Imperial Act, as so adopted and applied, to that person for making an entry or distress or bringing any action or suit to recover the land has commenced to run before the commencement of this Act, or
  - (d) prevents the commencement and maintenance of an action or arbitration within the time allowed by an enactment or an Imperial enactment repealed or amended by this Act on a cause of action which accrued before the commencement of this Act, but this paragraph has effect subject to paragraphs (b) and (c).
- (2) Schedule 5 has effect.

## 7 Other limitations

Nothing in this Act:

- (a) applies to an action or arbitration for which a limitation period is fixed by or under an enactment other than this Act or by or under an Imperial enactment (not being an enactment or an Imperial enactment repealed or omitted by this Act), or
- (b) applies to an action or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be fixed by or under an enactment other than this Act or by or under an Imperial enactment (not being an enactment or an Imperial enactment repealed or omitted by this Act).

## 8 Saving of specified enactments

- (1) Nothing in this Act affects the operation of:
  - (a) section 45C of the *Real Property Act 1900*,
  - (b) section 235B of the *Crown Lands Consolidation Act 1913*, or
  - (c) subsection (2) of section 50 of the *Conveyancing Act 1919*.

- (2) This Act has effect subject to section 12A of the *Dust Diseases Tribunal Act 1989* and clause 7 of Schedule 3 to that Act.

## 9 Acquiescence etc

Nothing in this Act affects the rules of equity concerning the refusal of relief on the ground of laches acquiescence or otherwise.

## 10 The Crown

- (1) Subject to subsections (3) and (4), this Act binds the Crown and the Crown has the benefit of this Act.
- (2) For the purposes of this Act an action by an officer of the Crown as such or a person acting on behalf of the Crown is an action by the Crown.
- (3) This Act does not apply to an action by the Crown:
- (a) for the recovery of a tax or duty or of interest on a tax or duty, or
  - (b) in respect of the forfeiture of a ship.
- (4) This Act does not affect the prerogative right of the Crown to gold and silver.

## 11 Definitions

- (1) In this Act, unless the context or subject matter otherwise indicates or requires:

**Action** includes any proceeding in a court.

**Beneficiary**, when used in relation to an order under section 60D or 60H or an application for such an order, means a person for whose benefit an action might be, or might have been, brought under the *Compensation to Relatives Act 1897*.

**Breach of duty**, when used in relation to a cause of action for damages for personal injury, extends to the breach of any duty (whether arising by statute, contract or otherwise) and includes trespass to the person.

**Crown** includes not only the Crown in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**Deed** includes an instrument having the effect of a deed under the law of New South Wales or, in the case of an instrument executed pursuant to the law of:

- (a) the United Kingdom of Great Britain and Northern Ireland,
- (b) another State of the Commonwealth,
- (c) the Commonwealth,
- (d) a Territory of the Commonwealth, or

(e) New Zealand,

having the effect of a deed under the law pursuant to which it is executed.

**Income** includes interest on a judgment and other interest, and includes rent annuities and dividends, but does not include arrears of interest secured by a mortgage and lawfully treated as principal.

**Judgment** includes not only a judgment of a court of New South Wales but also a judgment of a court of the United Kingdom of Great Britain and Northern Ireland, a court of another State of the Commonwealth, a court of the Commonwealth, a court of a Territory of the Commonwealth, or a court of any other place.

**Land** includes:

- (a) corporeal hereditaments and rentcharges and any estate or interest therein whether freehold or leasehold and whether at law or in equity, and
- (b) the interest pending sale of land (including incorporeal hereditaments) held on trust for sale of a person having an interest in the proceeds of sale,

but does not include easements or profits à prendre nor, subject to paragraphs (a) and (b) of this definition, other incorporeal hereditaments.

**Landlord** means a person entitled to land subject to a lease.

**Mortgage** does not include a possessory lien on goods nor any binding effect on property arising under a writ of execution against the property but otherwise includes a charge or lien on any property for securing money or money's worth and also includes, in relation to land under the provisions of the [Real Property Act 1900](#), a charge within the meaning of that Act.

**Mortgagee** includes a person claiming a mortgage through an original mortgagee.

**Mortgagor** includes a person claiming property subject to a mortgage through an original mortgagor.

**Personal injury** includes any disease and any impairment of the physical or mental condition of a person.

**Personal representative** means an executor to whom probate has been granted, including an executor by right of representation, or an administrator within the meaning of the [Probate and Administration Act 1898](#), and includes the NSW Trustee and Guardian acting under section 25 of the [NSW Trustee and Guardian Act 2009](#).

**Plaintiff** means a person bringing an action.

**Principal money**, in relation to a mortgage, means all money secured by the

mortgage, including arrears of interest lawfully treated as principal, but does not include other interest.

**Rent** includes a rent payable under a lease and any other rent service and a rentcharge.

**Rentcharge** means an annuity or other periodical sum of money, being an annuity or sum charged on or payable out of land, but does not include a rent payable under a lease nor any other rent service nor interest under a mortgage.

**Successor**, in relation to a person liable on a cause of action, means a person on whom the liability of the firstmentioned person devolves, whether as personal representative or otherwise on death, or on bankruptcy, disposition of property, or determination of a limited estate or interest, or otherwise.

**Trust** includes express implied and constructive trusts, whether or not the trustee has a beneficial interest in the trust property, and whether or not the trust arises only by reason of a transaction impeached, and includes the duties incident to the office of personal representative but does not include the duties incident to the estate or interests of a mortgagee in mortgaged property.

**Trustee** has a meaning corresponding to the meaning of "trust".

- (2) For the purposes of this Act:
- (a) a person claims through another person in respect of any property or right if the person is entitled to the property or right by through under or by the act of that other person, but a person entitled to property or a right by virtue of an appointment under a special power of appointment does not, by reason of the appointment, claim the property or right through the appointor,
  - (b) a reference to a cause of action to recover land includes a reference to a right to enter into possession of the land,
  - (c) a thing done to or by or suffered by an agent is done to or by or suffered by his or her principal, and
  - (d) a cause of action to which any of the provisions of Division 4 of Part 2 applies is not a cause of action to recover land or a cause of action to enforce an equitable estate or interest in land.
- (3) For the purposes of this Act a person is under a disability:
- (a) while the person is under the age of eighteen years, or
  - (b) while the person is, for a continuous period of twenty-eight days or upwards, incapable of, or substantially impeded in, the management of his or her affairs in relation to the cause of action in respect of the limitation period for which the

question arises, by reason of:

- (i) any disease or any impairment of his or her physical or mental condition,
- (ii) restraint of his or her person, lawful or unlawful, including detention or custody under the *Mental Health Act 1958*,
- (iii) war or warlike operations, or
- (iv) circumstances arising out of war or warlike operations.

(4) In this Act, in respect of land which is a rentcharge:

- (a) a reference to the possession of land is a reference to the receipt of the rent, and
- (b) a reference to the date of dispossession or discontinuance of possession of land is a reference to the date when rent first becomes overdue.

(5) The provisions of this Act as to the date of accrual of a cause of action have effect for the purposes of this Act but not for any other purpose.

(6) In this Act, a reference to an Act includes amendments of that Act by subsequent Acts.

#### **11A Notes**

Notes included in this Act do not form part of this Act.

## **Part 2 Periods of limitation and related matters**

### **Division 1 Preliminary**

#### **12 Relationship to Part 3**

The provisions of this Part have effect subject to the provisions of Part 3.

#### **13 More than one bar**

Where, under each of two or more provisions of this Part, an action is not maintainable if brought after a specified time, the action is not maintainable if brought after the earlier or earliest of those times.

### **Division 2 General**

#### **14 General**

(1) An action on any of the following causes of action is not maintainable if brought after the expiration of a limitation period of six years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims:

- (a) a cause of action founded on contract (including quasi contract) not being a cause of action founded on a deed,
  - (b) a cause of action founded on tort, including a cause of action for damages for breach of statutory duty,
  - (c) a cause of action to enforce a recognizance,
  - (d) a cause of action to recover money recoverable by virtue of an enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.
- (2) This section does not apply to:
- (a) a cause of action to which section 19 applies, or
  - (b) a cause of action for contribution to which section 26 applies.
- (3) For the purposes of paragraph (d) of subsection (1), **enactment** includes not only an enactment of New South Wales but also an enactment of the Imperial Parliament, an enactment of another State of the Commonwealth, an enactment of the Commonwealth, an enactment of a Territory of the Commonwealth and an enactment of any other country.

#### **14A Frustrated contract**

An action on a cause of action arising under Part 3 of the *Frustrated Contracts Act 1978*, by virtue of the frustration of a contract or avoidance of an agreement under section 12 of the *Sale of Goods Act 1923*, is not maintainable if brought after the expiration of a limitation period of 6 years running from the date of the frustration or avoidance.

#### **14B Defamation**

An action on a cause of action for defamation is not maintainable if brought after the end of a limitation period of 1 year running from the date of the publication of the matter complained of.

#### **15 Accounts**

An action on a cause of action for an account founded on a liability at law to account is not maintainable in respect of any matter if brought after the expiration of a limitation period of six years running from the date on which the matter arises.

#### **16 Deed**

An action on a cause of action founded on a deed is not maintainable if brought after the expiration of a limitation period of twelve years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims.

## 17 Judgment

- (1) An action on a cause of action on a judgment is not maintainable if brought after the expiration of a limitation period of twelve years running from the date on which the judgment first becomes enforceable by the plaintiff or by a person through whom the plaintiff claims.
- (2) A judgment of a court of a place outside New South Wales becomes enforceable for the purposes of this section on the date on which the judgment becomes enforceable in the place where the judgment is given.
- (3) Subsection (2) does not apply to a judgment of a court of the Commonwealth, not being a court of a Territory of the Commonwealth.

## 18 Penalty and forfeiture

- (1) An action on a cause of action to recover a penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of an enactment, is not maintainable if brought after the expiration of a limitation period of two years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims.
- (2) In this section **penalty** does not include a fine to which a person is liable on conviction for a criminal offence.

## 18A Personal injury

- (1) This section applies to a cause of action, founded on negligence, nuisance or breach of duty, for damages for personal injury, but does not apply to:
  - (a) a cause of action arising under the [Compensation to Relatives Act 1897](#), or
  - (b) a cause of action that accrued before 1 September 1990, or
  - (c) a cause of action to which Division 6 applies.

### Note—

Division 6 provides for the limitation period for non-motor accident actions for death or personal injury resulting from an incident that occurs on or after the commencement of that Division.

- (2) An action on a cause of action to which this section applies is not maintainable if brought after the expiration of a limitation period of 3 years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims.

## 19 Compensation to relatives

- (1) An action on a cause of action arising under the [Compensation to Relatives Act 1897](#), by virtue of a death, is not maintainable if brought after the expiration of a limitation

period of:

- (a) 6 years running from the date of the death, where the cause of action accrued before 1 September 1990, or
- (b) 3 years running from the date of the death, where the cause of action accrues on or after 1 September 1990.

(2) This section does not apply in respect of a cause of action to which Division 6 applies.

**Note—**

Division 6 provides for the limitation period for causes of action for non-motor accident actions for death or personal injury resulting from an incident that occurs on or after the commencement of that Division.

## **20 Arbitral award**

- (1) An action on a cause of action to enforce an award of an arbitrator is not maintainable if brought after the expiration of the limitation period fixed by subsection (2) running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims.
- (2) The limitation period for the purposes of subsection (1) is:
  - (a) where the award is made under an arbitration agreement and the arbitration agreement is made by deed—twelve years, and
  - (b) in any other case—six years.
- (3) For the purposes of this section a cause of action to enforce an award of an arbitrator accrues on the date on which default first happens in observance of the award, being the default in respect of which the action is brought.
- (4) In this section, **arbitration agreement** means an agreement to refer present or future differences to arbitration, whether an arbitrator is named in the agreement or not.
- (5) This section applies to an award of an arbitrator under any Act regulations rules by-laws order or scheme, but applies to such an award subject to the provisions of the Act regulations rules by-laws order or scheme.

## **21 Successive wrongs to goods**

Where:

- (a) a cause of action for the conversion or detention of goods accrues to a person, and
- (b) afterwards, possession of the goods not having been recovered by the person or by a person claiming through the person, a further cause of action for the conversion or detention of the goods or a cause of action to recover the proceeds of sale of the goods accrues to the person or to a person claiming through the person,



an action on the further cause of action for conversion or detention or on the cause of action to recover the proceeds of sale is not maintainable if brought after the expiration of a limitation period of six years running from the date when the first cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims.

## 22 Shipping

- (1) Paragraph (a) of subsection (1) of section 14 applies to a cause of action to recover a seaman's wages, but otherwise sections 14 to 21 inclusive do not apply to a cause of action in rem in Admiralty.
- (2) An action on a cause of action to enforce a claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, is not maintainable if brought after the expiration of a limitation period of two years running from the date when the damage loss or injury is caused.
- (3) An action on a cause of action to enforce a claim or lien in respect of any salvage services is not maintainable if brought after the expiration of a limitation period of two years running from the date when the salvage services are rendered.
- (4) For the purposes of an action in a court, the court:
  - (a) may extend the limitation period mentioned in subsection (2) or subsection (3) to such an extent and on such terms as it thinks fit, and
  - (b) shall, if satisfied that there has not during the limitation period been a reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his or her principal place of business, extend the limitation period to an extent sufficient to give a reasonable opportunity of so arresting the defendant vessel.
- (5) For the purposes of this section:
  - (a) **freight** includes passage money and hire,
  - (b) **vessel** means a vessel used in navigation, other than air navigation, and includes a barge lighter or like vessel, and
  - (c) reference to damage or loss caused by the fault of a vessel extends to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.
- (6) Part 3 does not apply to a cause of action to which subsection (2) or subsection (3) applies.

### **23 Equitable relief**

Sections 14, 16, 17, 18, 20 and 21 do not apply, except so far as they may be applied by analogy, to a cause of action for specific performance of a contract or for an injunction or for other equitable relief.

### **24 Arrears of income**

- (1) Subject to subsection (2) an action on a cause of action to recover arrears of income is not maintainable if brought after the expiration of a limitation period of six years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims.
- (2) An action on a cause of action to recover arrears of interest on principal money is not maintainable if brought after the expiration of the limitation period fixed by or under this Act for an action between the same parties to recover the principal money.
- (3) Subsections (1) and (2) do not apply to a cause of action to which section 43 applies.
- (4) For the purposes of this section a cause of action to recover arrears of income includes a cause of action to recover the arrears from any person, whether as principal surety or otherwise.

### **25 Relief against forfeiture of lease**

In an action in which any party to the action seeks relief against forfeiture of a lease, the party seeking the relief is not to be required, as a term of relief against forfeiture, to pay rent for the recovery of which, by reason of the expiration of a limitation period fixed by or under this Act, an action would not be maintainable if brought on the date on which the firstmentioned action is brought.

### **26 Contribution between tort-feasors**

- (1) An action on a cause of action for contribution under subsection (1) of section 5 of the [Law Reform \(Miscellaneous Provisions\) Act 1946](#) is not maintainable if brought after the first to expire of:
  - (a) a limitation period of two years running from the date on which the cause of action for contribution first accrues to the plaintiff or to a person through whom the plaintiff claims, and
  - (b) a limitation period of four years running from the date of the expiration of the limitation period for the principal cause of action.
- (2) For the purposes of paragraph (a) of subsection (1), the date on which a cause of action for contribution first accrues is:
  - (a) if the plaintiff in the action for contribution or a person through whom the plaintiff claims is liable in respect of the damage for which contribution is claimed by

judgment in a civil action or by arbitral award—the date on which the judgment is given or the award is made, whether or not, in the case of a judgment, the judgment is afterwards varied as to quantum of damages, or

(b) if, in a case to which paragraph (a) does not apply, the plaintiff in the action for contribution or a person through whom the plaintiff claims makes an agreement with a person having a cause of action for the damage for which the cause of action for contribution arises, which agreement fixes, as between the parties to the agreement, the amount of the liability in respect of that damage of the plaintiff in the action for contribution or a person through whom the plaintiff claims—the date on which the agreement is made.

(3) In paragraph (b) of subsection (1), the expression ***the limitation period for the principal cause of action*** means the limitation period fixed by or under this Act or by or under any other enactment (including an enactment repealed or omitted by this Act) for the cause of action for the liability in respect of which contribution is sought.

(4) Nothing in this section affects the construction of section 5 of the [Law Reform \(Miscellaneous Provisions\) Act 1946](#).

## Division 3 Land

### 27 General

(1) An action on a cause of action to recover land is not maintainable by the Crown if brought after the expiration of a limitation period of thirty years running from the date on which the cause of action first accrues to the Crown or to a person through whom the Crown claims.

(2) Subject to subsection (3) an action on a cause of action to recover land is not maintainable by a person other than the Crown if brought after the expiration of a limitation period of twelve years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims.

(3) Subsection (2) does not apply to an action brought by a person claiming through the Crown and brought on a cause of action which accrues to the Crown.

(4) Where a cause of action to recover land accrues to the Crown, an action on that cause of action is not maintainable by a person claiming through the Crown if brought after the expiration of the first to expire of:

(a) the limitation period fixed by or under this Act for an action on that cause of action by the Crown, and

(b) a limitation period of twelve years running from the date on which the cause of action first accrues (on or after the date of accrual to the Crown) to a person claiming through the Crown.

## **28 Accrual—dispossession or discontinuance**

Where the plaintiff in an action on a cause of action to recover land or a person through whom the plaintiff claims:

- (a) has been in possession of the land, and
  - (b) while entitled to the land, is dispossessed or discontinues his or her possession,
- the cause of action accrues on the date of dispossession or discontinuance.

## **29 Accrual—deceased in possession**

Where:

- (a) the estate or interest claimed in an action on a cause of action to recover land is an estate or interest:
  - (i) assured as an estate or interest in possession by the will of a deceased person, or
  - (ii) passing on intestacy,to the plaintiff or to a person through whom the plaintiff claims,
- (b) the deceased is, at the date of his or her death, in possession by virtue of the estate or interest claimed or by virtue of an estate or interest out of which the assurance is made, and
- (c) no person is, after the date of the death of the deceased and before the date on which the action is brought, in possession:
  - (i) by virtue of the estate or interest claimed and under the assurance or intestacy, or
  - (ii) as personal representative of the deceased,

the cause of action accrues on the date of the death of the deceased.

## **30 Accrual—grantor in possession**

Where:

- (a) the estate or interest claimed in an action on a cause of action to recover land is an estate or interest assured as an estate or interest in possession (otherwise than by will) to the plaintiff or to a person through whom the plaintiff claims,
- (b) the person making the assurance is, on the date when the assurance takes effect, in possession by virtue of the estate or interest claimed or by virtue of an estate or interest out of which the assurance is made, and
- (c) no person is, after the date on which the assurance takes effect and before the date on which the action is brought, in possession by virtue of the estate or interest

claimed and by virtue of the assurance,

the cause of action accrues on the date on which the assurance takes effect.

### **31 Accrual—future interests**

Subject to section 67, where:

- (a) the estate or interest claimed in an action on a cause of action to recover land is at any time an estate or interest in reversion or remainder or any other future estate or interest, and
- (b) no person is, at any time after the date on which the estate or interest claimed becomes a present estate or interest and before the date on which the action is brought, in possession by virtue of the estate or interest claimed,

the cause of action accrues on the date on which the estate or interest claimed becomes a present estate or interest.

### **32 Forfeiture and breach of condition**

- (1) Subject to subsection (2), a cause of action to recover land by virtue of a forfeiture or breach of condition accrues on the date on which the plaintiff or a person through whom the plaintiff claims first discovers or may with reasonable diligence discover the facts giving the right of forfeiture or showing that the condition is broken.
- (2) Subject to section 33, if a cause of action to recover land by virtue of a forfeiture or breach of condition accrues to a person entitled to an estate or interest in reversion or remainder or any other future estate or interest and neither the person nor a person claiming under the person recovers the land by virtue of the forfeiture or breach of condition, a fresh cause of action to recover the land accrues, on the date on which that estate or interest becomes a present estate or interest, to the person entitled on that date to that estate or interest.

### **33 Rent wrongly paid**

Where:

- (a) a tenant is in possession of land under a lease for a term reserving a rent amounting to a yearly sum of not less than two dollars,
- (b) the rent is received by a person wrongfully claiming to be entitled to the land subject to the lease, and
- (c) no rent is afterward received by the landlord and in consequence the term becomes liable to determination by virtue of a forfeiture or breach of condition,

the cause of action of the landlord to recover the land from the tenant or from the person receiving the rent and wrongfully claiming to be entitled to the land subject to the lease or

from a person claiming under either of them accrues on the date on which the term first becomes liable to determination as mentioned in paragraph (c).

### **34 Tenancies**

(1) This section applies to:

- (a) a tenancy from year to year or other periodical tenancy,
- (b) a tenancy at will, and
- (c) a tenancy to which section 127 of the *Conveyancing Act 1919* applies.

(2) The cause of action of a person entitled to land subject to a tenancy to which this section applies to recover the land from the tenant or from a person claiming under the tenant accrues on the only or later or latest of such of the following dates as are applicable:

- (a) in the case of a tenancy from year to year or other periodical tenancy—the date of the expiration of the first year or other period of the tenancy,
- (b) in the case of a tenancy at will or a tenancy to which section 127 of the *Conveyancing Act 1919* applies—the date of the expiration of one year after the commencement of the tenancy, and
- (c) in any case where the tenancy is at a rent—the date on which rent payable to the person having the cause of action or a person through whom the person claims first becomes overdue,

unless the cause of action accrues on an earlier date by virtue of a demand of possession, forfeiture or breach of condition, or otherwise.

### **35 Landlord and Tenant (Amendment) Act 1948**

Where a landlord is forbidden by the *Landlord and Tenant (Amendment) Act 1948* to take proceedings to recover possession of land from any person, the cause of action of the landlord to recover the land from that person accrues on the date on which the landlord ceases to be so forbidden or on the date on which, but for this section, the cause of action would accrue, whichever date is the later.

### **36 Equitable interest**

- (1) Subject to section 23, this Act applies to an action on a cause of action to enforce an equitable estate or interest in land in like manner as it applies to an action on a cause of action to recover land by virtue of a legal estate or interest in land.
- (2) For the purposes of this Act, but without limiting the generality of subsection (1), a cause of action to enforce an equitable estate or interest in land accrues in the like manner and circumstances and on the same date as a cause of action to recover the

land would accrue if the estate or interest were a legal estate or interest.

### 37 Settled land

- (1) Where land is held on trust under a settlement:
  - (a) while there is in existence or there may come into existence a beneficiary whose cause of action to enforce his or her estate or interest in the land under the settlement has not accrued or has not been barred by this Act, nothing in this Act bars a cause of action of the trustee to recover the land or to enforce an equitable estate or interest in the land, so far as the cause of action is necessary to support or give effect to the estate or interest of the beneficiary in the land under the settlement; but
  - (b) when the cause of action of every possible beneficiary to enforce his or her estate or interest in the land under the settlement is barred by this Act, and the cause of action of the trustee to recover the land or to enforce an equitable estate or interest in the land would, but for paragraph (a), be barred by this Act, an action on a cause of action to recover the land or to enforce an equitable estate or interest in the land is not maintainable by the trustee.
- (2) Subject to subsection (3), where land is held on trust under a settlement and a person entitled to a present estate or interest in the land under the settlement is in possession of the land, a cause of action to recover the land or to enforce an equitable estate or interest in the land does not, for the purposes of this Act, accrue to the trustee or to any person entitled to an estate or interest in the land under the settlement against the person in possession of the land while the latter person is entitled to the firstmentioned estate or interest and is in possession of the land.
- (3) Subsection (2) does not apply to a cause of action against:
  - (a) a person in possession who is solely and absolutely entitled under the settlement to the land, or
  - (b) two or more persons in possession who are absolutely entitled under the settlement to the land as joint tenants or as tenants in common.
- (4) In this section, **settlement** means a disposition, inter vivos or by will, of property upon trust, where no person is, immediately after the disposition takes effect, beneficially entitled to the trust property absolutely.

### 38 Adverse possession

- (1) Where, on the date on which, under this Act, a cause of action would, but for this section, accrue, the land is not in adverse possession, the accrual is postponed so that the cause of action does not accrue until the date on which the land is first in adverse possession.

- (2) Subject to subsection (3), where a cause of action accrues to recover land from a person in adverse possession of the land, and the land is afterwards in the adverse possession of a second person, whether the second person claims through the first person or not, the cause of action to recover the land from the second person accrues on the date on which the cause of action to recover the land from the first person first accrues to the plaintiff or to a person through whom the plaintiff claims.
- (3) Where a cause of action to recover land accrues and afterwards, but before the cause of action is barred by this Act, the land ceases to be in adverse possession, for the purposes of this Act:
  - (a) the former adverse possession has no effect, and
  - (b) a fresh cause of action accrues on, but not before, the date when the land is first again in adverse possession.
- (4) For the purposes of this section:
  - (a) **adverse possession** is possession by a person in whose favour the limitation period can run,
  - (b) possession of land subject to a rentcharge by a person who does not pay the rent is possession by the person of the rentcharge, and
  - (c) in a case to which section 33 applies, receipt of the rent by a person wrongfully claiming to be entitled to the land subject to the lease is, as against the landlord, adverse possession of the land.
- (5) Where land is held by joint tenants or tenants in common, possession by a tenant of more than his or her share, not for the benefit of the other tenant, is, as against the other tenant, adverse possession.

### 39 Formal entry and claim

For the purposes of this Act:

- (a) a formal entry on land is not of itself possession or evidence of possession of the land, and
- (b) a claim upon or near land does not preserve a cause of action to recover the land.

## Division 4 Mortgages

### 40 Mortgage under [Real Property Act 1900](#)

This Act applies to an action on a cause of action founded on a mortgage registered under the [Real Property Act 1900](#) to recover from any person any debt damages or other money payable under the mortgage, but otherwise, except to the extent that this Act is taken into consideration for the purposes of a possessory application under Part 6A of that Act,



this Act does not affect the right title or remedies under a mortgage so registered of a registered proprietor under that Act of the mortgage or of the mortgaged land.

#### **41 Redemption**

An action on a cause of action to redeem mortgaged property in the possession of a mortgagee is not maintainable against that mortgagee if brought after the expiration of a limitation period of twelve years running from the only or later of such of the following dates as are applicable:

- (a) the date on which that mortgagee or a person through whom the mortgagee claims last goes into possession of the property in respect of which the action is brought, and
- (b) the date on which that mortgagee or a person through whom the mortgagee claims last receives a payment of principal money or interest secured by the mortgage from the plaintiff or from a person through whom the plaintiff claims.

#### **42 Action for principal, possession or foreclosure**

(1) An action on a cause of action:

- (a) to recover principal money secured by mortgage,
- (b) to recover possession of mortgaged property from a mortgagor, or
- (c) to foreclose the equity of redemption of mortgaged property,

is not maintainable by a mortgagee under the mortgage if brought after the expiration of a limitation period of twelve years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims.

(2) Paragraph (a) of subsection (1) applies to a cause of action:

- (a) to recover principal money from any person, whether as principal, surety or otherwise, or
- (b) to recover principal money by way of:
  - (i) the appointment of a receiver of mortgaged property or of the income or profits of mortgaged property,
  - (ii) the sale lease or other disposition or realization of mortgaged property, or
  - (iii) other remedy affecting mortgaged property.

#### **43 Action for interest**

(1) An action on a cause of action to recover interest secured by a mortgage is not maintainable by a mortgagee under the mortgage if brought after the expiration of:

- (a) a limitation period of six years running from the only or later of such of the following dates as are applicable:
    - (i) the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims, and
    - (ii) where a mortgagee under a prior mortgage is, on the date mentioned in subparagraph (i), in possession of all or any of the property comprised in the mortgage securing the interest, and after that date discontinues his or her possession—the date of discontinuance, or
  - (b) the limitation period fixed by or under this Act for an action between the same parties on a cause of action to recover the principal money bearing the interest, whichever limitation period first expires.
- (2) For the purposes of subsection (1), a cause of action to recover interest secured by a mortgage includes:
- (a) a cause of action to recover the interest from any person, whether as principal surety or otherwise, and
  - (b) a cause of action to recover the interest by way of:
    - (i) the appointment of a receiver of mortgaged property or of income or profits of mortgaged property,
    - (ii) sale, lease or other disposition or realization of the mortgaged property, or
    - (iii) other remedy affecting mortgaged property.

#### **44 Adjustment of interest**

- (1) In an action for redemption or otherwise in respect of a mortgage of property including an action in respect of the proceeds of sale or other realization of property subject to a mortgage:
- (a) a mortgagor is not, as against a mortgagee, to be required to pay or bear interest which could not, by reason of a period of limitation fixed by or under this Act, be recovered in an action by that mortgagee against that mortgagor brought on the date on which the firstmentioned action is brought, and
  - (b) in adjusting the rights of a mortgagor and a mortgagee the mortgagee is not to be entitled to the interest mentioned in paragraph (a).
- (2) Where:
- (a) interest becomes due under a mortgage, and
  - (b) a mortgagee:

- (i) holds money on the date on which the interest becomes due, or
- (ii) after that date but before the expiration of the limitation period fixed by or under this Act for an action on a cause of action to recover that interest by that mortgagee against a mortgagor, receives money, and
- (c) before or after the bringing of an action to which subsection (1) applies, that mortgagee or a person claiming through the mortgagee properly applies that money in or towards satisfaction of that interest,

subsection (1) does not, as against the person so applying that money or a person claiming through the person, apply to that interest to the extent to which it is so satisfied.

#### **45 Power of sale etc**

A mortgagee shall not, after the date on which an action on a cause of action to recover principal money secured by the mortgage within the meaning of section 42 by the mortgagee against any person is barred by this Act, exercise, as against that person or a person claiming through the person, a power:

- (a) of sale lease or other disposition or realization of the mortgaged property,
- (b) to appoint a receiver, or
- (c) otherwise affecting the mortgaged property.

#### **46 Mortgage of ship**

This Division does not apply to a mortgage registered under the Imperial Act known as the *Merchant Shipping Act 1894*, as amended from time to time, being a mortgage of a registered ship or a share therein within the meaning of that Imperial Act as so amended.

### **Division 5 Trusts**

#### **47 Fraud and conversion; trust property**

- (1) An action on a cause of action:
  - (a) in respect of fraud or a fraudulent breach of trust, against a person who is, while a trustee, a party or privy to the fraud or the breach of trust or against the person's successor,
  - (b) for a remedy of the conversion to a person's own use of trust property received by the person while a trustee, against that person or against the person's successor,
  - (c) to recover trust property, or property into which trust property can be traced, against a trustee or against any other person, or

(d) to recover money on account of a wrongful distribution of trust property, against the person to whom the property is distributed or against the person's successor,

is not maintainable by a trustee of the trust or by a beneficiary under the trust or by a person claiming through a beneficiary under the trust if brought after the expiration of the only or later to expire of such of the following limitation periods as are applicable:

(e) a limitation period of twelve years running from the date on which the plaintiff or a person through whom the plaintiff claims first discovers or may with reasonable diligence discover the facts giving rise to the cause of action and that the cause of action has accrued, and

(f) the limitation period for the cause of action fixed by or under any provision of this Act other than this section.

(2) Except in the case of fraud or a fraudulent breach of trust, and except so far as concerns income converted by a trustee to his or her own use or income retained and still held by the trustee or his or her successor at the time when the action is brought, this section does not apply to an action on a cause of action to recover arrears of income.

#### **48 Breach of trust**

An action on a cause of action in respect of a breach of trust is not maintainable if brought after the expiration of the only or later to expire of such of the following periods of limitation as are applicable:

(a) a limitation period of six years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims, and

(b) the limitation period for the cause of action fixed by or under any provision of this Act other than this section.

#### **49 Accrual—future interest**

For the purposes of this Division, a cause of action of a beneficiary in respect of a future estate or interest accrues on the date on which the estate or interest becomes a present estate or interest or on the date on which the cause of action would, but for this section, accrue, whichever date is the later.

#### **50 Beneficiaries other than the plaintiff**

Where a beneficiary under a trust brings an action in respect of the trust, another beneficiary under the trust is not entitled to derive from the action any benefit for which, by reason of this Act, an action by that other beneficiary is not maintainable if brought on the date on which the firstmentioned action is brought.

### **Division 6 Personal injury actions**

### 50A Application of Division—kinds of causes of action

- (1) This Division applies to a cause of action for damages that relate to the death of or personal injury to a person, regardless of whether the claim for the damages is brought in tort, in contract, under statute or otherwise.
- (2) This Division applies only to causes of action where the act or omission alleged to have resulted in the injury or death with which the claim is concerned occurs on or after the commencement of this Division (as inserted by the [Civil Liability Amendment \(Personal Responsibility\) Act 2002](#)).
- (3) This Division does not apply to a cause of action on a claim under the [Motor Accidents Compensation Act 1999](#).
- (4) This section extends to a cause of action that:
  - (a) is a survivor action, or
  - (b) is a compensation to relatives action.

### 50B Definitions

In this Division:

**compensation to relatives action** means a cause of action that arises under the [Compensation to Relatives Act 1897](#).

**survivor action** means a cause of action that survives on the death of a person for the benefit of the person's estate under section 2 of the [Law Reform \(Miscellaneous Provisions\) Act 1944](#).

### 50C Limitation period for personal injury actions

- (1) An action on a cause of action to which this Division applies is not maintainable if brought after the expiration of a limitation period of whichever of the following periods is the first to expire:
  - (a) the **3 year post discoverability limitation period**, which is the period of 3 years running from and including the date on which the cause of action is discoverable by the plaintiff,
  - (b) the **12 year long-stop limitation period**, which is the period of 12 years running from the time of the act or omission alleged to have resulted in the injury or death with which the claim is concerned.

#### Note—

The 12 year long-stop limitation period can be extended by a court under Division 4 of Part 3.

- (2) For the purposes of the application of the 3 year post discoverability limitation period

to a survivor action, the cause of action is taken to be discoverable by the plaintiff at whichever is the earliest of the following times:

- (a) the date on which the cause of action is discoverable by the deceased if the cause of action is discoverable by the deceased more than 3 years before the death of the deceased,
- (b) the appointment of the plaintiff as the deceased's personal representative if the cause of action is discoverable by the plaintiff at or before the time of that appointment,
- (c) the date on which the cause of action is discoverable by the plaintiff if the cause of action is discoverable by the plaintiff after the appointment of the plaintiff as the deceased's personal representative.

(3) For the purposes of a compensation to relatives action, the 12 year long-stop limitation period runs from the death of the deceased.

#### **50D Date cause of action is discoverable**

- (1) For the purposes of this Division, a cause of action is **discoverable** by a person on the first date that the person knows or ought to know of each of the following facts:
  - (a) the fact that the injury or death concerned has occurred,
  - (b) the fact that the injury or death was caused by the fault of the defendant,
  - (c) in the case of injury, the fact that the injury was sufficiently serious to justify the bringing of an action on the cause of action.
- (2) A person **ought to know** of a fact at a particular time if the fact would have been ascertained by the person had the person taken all reasonable steps before that time to ascertain the fact.
- (3) In determining what a person knows or ought to have known, a court may have regard to the conduct and statements, oral or in writing, of the person.
- (4) To remove doubt, a compensation to relatives action is not discoverable before the date of death of the deceased.

#### **50E Special limitation period for minors injured by close relatives**

- (1) If a cause of action is founded on the death of or injury to a person (**the victim**) who was a minor at the time of the act or omission alleged to have resulted in that death or injury and the cause of action is against a person who at that time was a parent or guardian of the victim or a close associate of a parent or guardian of the victim:
  - (a) the cause of action is for the purposes of this Division discoverable by the victim when the victim turns 25 years of age or when the cause of action is actually

discoverable by the victim, whichever is the later, and

(b) the 12 year long-stop limitation period for the cause of action is a period of 12 years running from when the victim turns 25 years of age.

(2) A person is a **close associate** of a parent or guardian of the victim if the person is a person whose relationship with the parent or guardian is such that:

(a) the parent or guardian might be influenced by the person not to bring a claim on behalf of the victim against the person, or

(b) the victim might be unwilling to disclose to the parent or guardian the conduct or events in respect of which the cause of action is founded.

(3) If the victim dies before turning 25 years of age, the limitation period applicable to a survivor action that survives on the death of the victim is to be determined as if references in this section to when the victim turns 25 years of age were references to the death of the victim.

#### **50F Effect of disability on limitation period**

(1) If a person has a cause of action for which a limitation period has commenced to run and the person is under a disability, the running of the limitation period is suspended for the duration of the disability.

(2) A person is **under a disability** while the person:

(a) is a minor, but not while the minor has a capable parent or guardian, or

(b) is an incapacitated person for a continuous period of 28 days or more, but not while the person is a protected person.

(3) In determining when a cause of action is discoverable by a person who is a minor, or an incapacitated person, who is not under a disability, facts that are known or ought to be known by a capable parent or guardian of the minor or the guardian of the incapacitated person are taken to be facts that are known or ought to be known by the minor or incapacitated person.

(4) In this section:

**capable parent or guardian** of a minor means a person who is a parent or guardian of the minor and who is not under a disability (as referred to in subsection (2)).

**guardian** of a minor includes a person who under a written law of the State is exercising the parental responsibilities of the Minister under the [Children and Young Persons \(Care and Protection\) Act 1998](#) for the minor.

**incapacitated person** means a person who is incapable of, or substantially impeded in, the management of his or her affairs in relation to the cause of action in respect of

the limitation period for which the question arises, by reason of:

- (a) any disease or any impairment of his or her physical or mental condition, or
- (b) restraint of his or her person, lawful or unlawful, including detention or custody under the *Mental Health Act 1990*, or
- (c) war or warlike operations or circumstances arising out of war or warlike operations.

**protected person** means:

- (a) a person in respect of whose person another person is guardian, whether under the *Guardianship Act 1987* or any other Act or law, or
- (b) a person in respect of whom an order is in force under the *NSW Trustee and Guardian Act 2009* or the *Guardianship Act 1987* that the estate (or any part of the estate) of the person be subject to management under the *NSW Trustee and Guardian Act 2009*.

- (5) Sections 52 (Disability) and 53 (Notice to proceed) do not apply to a cause of action to which this Division applies.

## **Part 3 Postponement of the bar**

### **Division 1 General**

#### **51 Ultimate bar**

- (1) Notwithstanding the provisions of this Part, an action on a cause of action for which a limitation period is fixed by or under Part 2 is not maintainable if brought after the expiration of a limitation period of thirty years running from the date from which the limitation period for that cause of action fixed by or under Part 2 runs.
- (2) This section does not apply to a cause of action in relation to which an order has been made under Subdivision 3 of Division 3 (Discretionary extension for latent injury etc).

### **Division 2 Disability, confirmation, fraud and mistake**

#### **52 Disability**

- (1) Subject to subsections (2) and (3) and subject to section 53, where:
  - (a) a person has a cause of action,
  - (b) the limitation period fixed by this Act for the cause of action has commenced to run, and
  - (c) the person is under a disability,



in that case:

(d) the running of the limitation period is suspended for the duration of the disability, and

(e) if, but for this paragraph, the limitation period would expire before the lapse of three years after:

(i) the date on which the person last (before the expiration of the limitation period) ceases to be under a disability, or

(ii) the date of the person's death,

(whichever date is the earlier), the limitation period is extended so as to expire three years after the earlier of those dates.

(2) This section applies whenever a person is under a disability, whether or not the person is under the same or another disability at any time during the limitation period.

(3) This section does not apply to a cause of action to recover a penalty or forfeiture or sum by way of penalty or forfeiture, except where the person having the cause of action is an aggrieved party.

### 53 Notice to proceed

(1) In this section, **curator** means:

(a) in respect of a person:

(i) who is a patient within the meaning of the [Mental Health Act 1958](#), including a person detained in a mental hospital under Part 7 of that Act,

(ii) who is a voluntary patient within the meaning of that Act whose property has been taken in charge under section 22 of that Act by the master assigned to the Protective Division of the Supreme Court, or

(iii) to whose property section 101 of that Act applies:

the master assigned to the Protective Division of the Supreme Court,

(b) in respect of a protected person within the meaning of that Act, where a committee of the person's estate is appointed under section 38 of that Act—the committee,

(c) in respect of an incapable person within the meaning of that Act, where a manager of the person's property is appointed under section 39 of that Act—the manager, and

(d) in respect of a person of whose estate a committee is appointed under section 48

of the Act—the committee.

- (1A) In this section ***the master assigned to the Protective Division of the Supreme Court*** means, where two or more masters are so assigned, the senior master so assigned.
- (2) Where a person having a cause of action is under a disability but has a curator, a person against whom the cause of action lies may give to the curator a notice to proceed in accordance with this section.
- (3) Where, after a notice to proceed is given under this section, an action is brought:
- (a) by the person under a disability or by the person's curator or by a person claiming under the person under a disability,
  - (b) on a cause of action to which the notice to proceed relates, and
  - (c) against the person giving the notice to proceed or against the person's successor under a devolution happening after the notice to proceed is given,
- subsection (1) of section 52 has effect as if:
- (d) the person under a disability ceases, on the date of the giving of the notice, to be under any disability under which the person is immediately before the giving of the notice, and
  - (e) the person does not, after the giving of the notice, come under that disability.
- (4) A notice to proceed under subsection (2) must:
- (a) be in writing,
  - (b) be addressed to the curator,
  - (c) show the name of the person under a disability,
  - (d) state the circumstances out of which the cause of action may arise or may be claimed to arise with such particularity as is necessary to enable the curator to investigate the question whether the person under a disability has the cause of action,
  - (e) give warning that a cause of action arising out of the circumstances stated in the notice is liable to be barred by this Act, and
  - (f) be signed by the person giving the notice.
- (5) Minor deviations from the requirements of subsection (4), not affecting the substance nor likely to mislead, do not invalidate a notice to proceed.
- (6) A notice to proceed to be given to the master assigned to the Protective Division of

the Supreme Court shall be given by leaving it at the office of the master.

- (7) A notice to proceed to be given to a curator, other than the master assigned to the Protective Division of the Supreme Court, may be given by:
  - (a) delivering the notice to proceed to the curator,
  - (b) leaving the notice to proceed at the usual or last-known place of business or of abode of the curator, or
  - (c) posting the notice to proceed by the certified mail service to the curator at his or her usual or last-known place of business or of abode.
- (8) A notice to proceed given in accordance with subsection (6) or subsection (7) is, for the purposes of this section, given on the date of leaving delivering or posting as the case may be.
- (9) Subsections (7) and (8) do not prevent the giving of a notice to proceed to a curator, other than the master assigned to the Protective Division of the Supreme Court, by any other means.
- (10) A notice to proceed under this section is not a confirmation for the purposes of section 54 and is not an admission for any purpose by the person giving the notice.

#### **54 Confirmation**

- (1) Where, after a limitation period fixed by or under this Act for a cause of action commences to run but before the expiration of the limitation period, a person against whom (either solely or with other persons) the cause of action lies confirms the cause of action, the time during which the limitation period runs before the date of the confirmation does not count in the reckoning of the limitation period for an action on the cause of action by a person having the benefit of the confirmation against a person bound by the confirmation.
- (2) For the purposes of this section:
  - (a) a person confirms a cause of action if, but only if, the person:
    - (i) acknowledges, to a person having (either solely or with other persons) the cause of action, the right or title of the person to whom the acknowledgment is made, or
    - (ii) makes, to a person having (either solely or with other persons) the cause of action, a payment in respect of the right or title of the person to whom the payment is made,
  - (b) a confirmation of a cause of action to recover interest on principal money operates also as a confirmation of a cause of action to recover the principal

money, and

(c) a confirmation of a cause of action to recover income falling due at any time operates also as a confirmation of a cause of action to recover income falling due at a later time on the same account.

(3) Where a person has (either solely or with other persons) a cause of action to foreclose the equity of redemption of mortgaged property or to recover possession of mortgaged property, a payment to the person of principal or interest secured by the mortgage or a payment to the person otherwise in respect of the person's right or title to the mortgage is a confirmation by the payer of the cause of action.

(4) An acknowledgment for the purposes of this section must be in writing and signed by the maker.

(5) For the purposes of this section a person has the benefit of a confirmation if, but only if, the confirmation is made to the person or to a person through whom the person claims.

(6) For the purposes of this section a person is bound by a confirmation if, but only if:

(a) the person is a maker of the confirmation,

(b) the person is, in relation to the cause of action, a successor of a maker under a devolution from the maker occurring after the making of the confirmation,

(c) where the maker is, at the time when the person makes the confirmation, (either solely or with other persons) a trustee of the will or of the estate of a deceased person—the firstmentioned person is at the date of the confirmation or afterwards becomes a trustee of the will or of the estate,

(d) where the maker is, at the time when the person makes the confirmation (either solely or with other persons) a trustee (other than a trustee of the will or of the estate of a deceased person)—the firstmentioned person is at the date of the confirmation or afterwards becomes a trustee of the trust of which the maker is a trustee, or

(e) the person is bound under subsection (7).

(7)

(a) Paragraph (b) applies to a confirmation of a cause of action:

(i) to recover property, being goods,

(ii) to recover property, being land,

(iii) to enforce in respect of property an equitable estate or interest in land,

- (iv) to foreclose the equity of redemption of mortgaged property,
  - (v) to redeem mortgaged property,
  - (vi) to recover principal money or interest secured by mortgage of property, by way of the appointment of a receiver of mortgaged property or of the income or profits of mortgaged property or by way of sale, lease or other disposition of mortgaged property or by way of other remedy affecting mortgaged property, or
  - (vii) to recover trust property or property into which trust property can be traced.
- (b) Where a maker of a confirmation to which this paragraph applies is, on the date of the confirmation, in possession of the property, the confirmation binds a person in possession during the ensuing period of limitation, not being, or claiming through, a person other than the maker who is, on the date of the confirmation, in possession of the property.

## **55 Fraud and deceit**

(1) Subject to subsection (3) where:

- (a) there is a cause of action based on fraud or deceit, or
- (b) a cause of action or the identity of a person against whom a cause of action lies is fraudulently concealed,

the time which elapses after a limitation period fixed by or under this Act for the cause of action commences to run and before the date on which a person having (either solely or with other persons) the cause of action first discovers, or may with reasonable diligence discover, the fraud deceit or concealment, as the case may be, does not count in the reckoning of the limitation period for an action on the cause of action by the person or by a person claiming through the person against a person answerable for the fraud deceit or concealment.

- (2) Subsection (1) has effect whether the limitation period for the cause of action would, but for this section, expire before or after the date mentioned in that subsection.
- (3) For the purposes of subsection (1), a person is answerable for fraud deceit or concealment if, but only if:
  - (a) the person is a party to the fraud deceit or concealment, or
  - (b) the person is, in relation to the cause of action, a successor of a party to the fraud deceit or concealment under a devolution from the party occurring after the date on which the fraud deceit or concealment first occurs.
- (4) Where property is, after the first occurrence of fraud deceit or concealment,

purchased for valuable consideration by a person who is not a party to the fraud deceit or concealment and does not, at the time of the purchase, know or have reason to believe that the fraud deceit or concealment has occurred, subsection (1) does not, in relation to that fraud deceit or concealment, apply to a limitation period for a cause of action against the purchaser or a person claiming through the purchaser.

## **56 Mistake**

- (1) Subject to subsection (3), where there is a cause of action for relief from the consequences of a mistake, the time which elapses after a limitation period fixed by or under this Act for the cause of action commences to run and before the date on which a person having (either solely or with other persons) the cause of action first discovers, or may with reasonable diligence discover, the mistake does not count in the reckoning of the limitation period for an action on the cause of action by the person or by a person claiming through the person.
- (2) Subsection (1) has effect whether the limitation period for the cause of action would, but for this section, expire before or after the date mentioned in that subsection.
- (3) Where property is, after a transaction in which a mistake is made, purchased for valuable consideration by a person who does not, at the time of the purchase, know or have reason to believe that the mistake has been made, subsection (1) does not apply to a limitation period for a cause of action for relief from the consequences of the mistake against the purchaser or a person claiming through the purchaser.

## **Division 2A Defamation**

### **56A Extension of limitation period by court**

- (1) A person claiming to have a cause of action for defamation may apply to the court for an order extending the limitation period for the cause of action.
- (2) A court must, if satisfied that it was not reasonable in the circumstances for the plaintiff to have commenced an action in relation to the matter complained of within 1 year from the date of the publication, extend the limitation period mentioned in section 14B to a period of up to 3 years running from the date of the publication.
- (3) A court may not order the extension of the limitation period for a cause of action for defamation other than in the circumstances specified in subsection (2).

### **56B Effect of order**

If a court orders the extension of a limitation period for a cause of action under section 56A, the limitation period is accordingly extended for the purposes of:

- (a) an action brought by the applicant in that court on the cause of action that the applicant claims to have, and

- (b) section 26 (1) (b) in relation to any associated contribution action brought by the person against whom the cause of action lies.

### **56C Costs**

Without affecting any discretion that a court has in relation to costs, a court hearing an action brought as a result of an order under section 56A may reduce the costs otherwise payable to a successful plaintiff, on account of the expense to which the defendant has been put because the action was commenced outside the original limitation period.

### **56D Prior expiry of limitation period**

An order for the extension of a limitation period, and an application for such an order, may be made under this Division even though the limitation period has already expired.

## **Division 3 Personal injury cases arising before 2002 amendments**

### **Subdivision 1 Discovery**

#### **57 Purpose of this Subdivision**

The purpose of this Subdivision is to provide a procedure for the extension of limitation periods, based on the belated discovery of material facts. This procedure was established by this Division as originally enacted, but is retained only for causes of action that accrued before 1 September 1990.

#### **57A This Subdivision applies only to old causes of action**

This Subdivision applies only to causes of action that accrued before 1 September 1990.

#### **57B Interpretation**

(1) For the purposes of this Subdivision:

(a) (Repealed)

(b) the material facts relating to a cause of action include the following:

- (i) the fact of the occurrence of negligence nuisance or breach of duty on which the cause of action is founded,
- (ii) the identity of the person against whom the cause of action lies,
- (iii) the fact that the negligence nuisance or breach of duty causes personal injury,
- (iv) the nature and extent of the personal injury so caused, and
- (v) the extent to which the personal injury is caused by the negligence nuisance or breach of duty,

- (c) material facts relating to a cause of action are of a decisive character if, but only if, a reasonable person, knowing those facts and having taken the appropriate advice on those facts, would regard those facts as showing:
  - (i) that an action on the cause of action would (apart from the effect of the expiration of a limitation period) have a reasonable prospect of success and of resulting in an award of damages sufficient to justify the bringing of an action on the cause of action, and
  - (ii) that the person whose means of knowledge is in question ought, in the person's own interests, and taking the person's circumstances into account, to bring an action on the cause of action,
- (d) **appropriate advice**, in relation to facts, means the advice of competent persons, qualified in their respective fields to advise on the medical legal and other aspects of the facts, as the case may require,
- (e) a fact is not within the means of knowledge of a person at a particular time if, but only if:
  - (i) the person does not, at that time, know the fact, and
  - (ii) in so far as the fact is capable of being ascertained by the person, the person has, before that time, taken all reasonable steps to ascertain the fact, and
- (f) **limitation period** means a limitation period fixed by an enactment repealed or omitted by this Act or fixed by or under this Act.

(2) (Repealed)

## 58 Ordinary action

- (1) This section applies to a cause of action founded on negligence nuisance or breach of duty, for damages for personal injury, not being a cause of action which has survived on the death of a person for the benefit of the person's estate under section 2 of the [Law Reform \(Miscellaneous Provisions\) Act 1944](#), and not being a cause of action which arises under section 3 of the [Compensation to Relatives Act of 1897](#).
- (2) Where, on application to a court by a person claiming to have a cause of action to which this section applies, it appears to the court that:
  - (a) any of the material facts of a decisive character relating to the cause of action was not within the means of knowledge of the applicant until a date after the commencement of the year preceding the expiration of the limitation period for the cause of action, and
  - (b) there is evidence to establish the cause of action, apart from any defence founded on the expiration of a limitation period,



the court may order that the limitation period for the cause of action be extended so that it expires at the end of one year after that date and thereupon, for the purposes of an action on that cause of action brought by the applicant in that court, and for the purposes of paragraph (b) of subsection (1) of section 26, the limitation period is extended accordingly.

- (3) This section applies to a cause of action whether or not a limitation period for the cause of action has expired:
- (a) before the commencement of this Act, or
  - (b) before an application is made under this section in respect of the cause of action.

### **59 Surviving action**

- (1) This section applies to a cause of action founded on negligence nuisance or breach of duty, for damages for personal injury, which has survived on the death of a person for the benefit of the person's estate under section 2 of the *Law Reform (Miscellaneous Provisions) Act 1944*.
- (2) Where, on application to a court by a person claiming to have a cause of action to which this section applies, it appears to the court that:
- (a) any of the material facts of a decisive character relating to the cause of action was not within the means of knowledge of either the deceased or the applicant until a date after the commencement of the year next preceding the expiration of the limitation period for the cause of action, and
  - (b) there is evidence to establish the cause of action, apart from any defence founded on the expiration of a limitation period,

the court may order that the limitation period for the cause of action be extended so that it expires at the end of one year after that date and thereupon, for the purposes of an action on that cause of action brought by the applicant in that court, and for the purposes of paragraph (b) of subsection (1) of section 26, the limitation period is extended accordingly.

- (3) For the purposes of this section, the material facts of a decisive character do not include facts relating only to:
- (a) damages not recoverable by the applicant, or
  - (b) funeral expenses of the deceased.
- (4) This section applies to a cause of action whether or not a limitation period for the cause of action has expired:
- (a) before the commencement of this Act, or

(b) before an application is made under this section in respect of the cause of action.

## **60 Compensation to relatives**

- (1) This section applies to a cause of action for damages which arises (or which would arise, but for the expiration as against the deceased of a limitation period before or after the commencement of this Act) under section 3 of the *Compensation to Relatives Act of 1897* by virtue of the death of a person caused by a wrongful act neglect or default.
- (2) Where, on application to a court by a person claiming to have a cause of action to which this section applies, it appears to the court that:
  - (a) any of the material facts of a decisive character relating to the cause of action of the deceased in respect of the wrongful act neglect or default was not within the means of knowledge of the deceased at any time before the year next preceding the death of the deceased, and
  - (b) there is evidence to establish the cause of action which the applicant claims to have, apart from the expiration as against the deceased of a limitation period,the court may order that the expiration as against the deceased of a limitation period for a cause of action by the deceased in respect of the wrongful act neglect or default have no effect in relation to the cause of action which the applicant claims to have and thereupon, for the purposes of an action brought by the applicant in that court on the cause of action which the applicant claims to have, that expiration has no effect.
- (3) Where, by virtue of this section, the expiration as against the deceased of a limitation period for a cause of action by the deceased in respect of a wrongful act neglect or default has no effect in relation to a cause of action to which this section applies, and the person against whom the lastmentioned cause of action lies brings an action for contribution under subsection (1) of section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946*, the expiration as against the deceased of a limitation period for a cause of action by the deceased in respect of a wrongful act neglect or default has no effect in relation to the action for contribution.

## **Subdivision 2 Secondary limitation period**

### **60A Purpose of this Subdivision**

The purpose of this Subdivision is to provide a procedure for a 5 year (maximum) extension of the 3 year limitation period for personal injury cases. It applies to causes of action that accrue on or after 1 September 1990.

This Subdivision does not apply to a cause of action to which Division 6 of Part 2 applies.

**60B Subdivision applies only to new causes of action**

This Subdivision applies only to causes of action that accrue on or after 1 September 1990.

This Subdivision does not apply to a cause of action to which Division 6 of Part 2 applies.

**60C Ordinary action (including surviving action)**

- (1) This section applies to a cause of action, founded on negligence, nuisance or breach of duty, for damages for personal injury, but does not apply to a cause of action arising under the *Compensation to Relatives Act 1897*.
- (2) If an application is made to a court by a person claiming to have a cause of action to which this section applies, the court, after hearing such of the persons likely to be affected by the application as it sees fit, may, if it decides that it is just and reasonable to do so, order that the limitation period for the cause of action be extended for such period, not exceeding 5 years, as it determines.

**60D Compensation to relatives**

- (1) This section applies to:
  - (a) a cause of action for damages arising under the *Compensation to Relatives Act 1897* by virtue of the death of a person caused by a wrongful act, neglect or default, and
  - (b) such a cause of action that would arise under the *Compensation to Relatives Act 1897* but for the expiration as against the deceased of a limitation period.
- (2) If an application is made to a court by a person claiming to have a cause of action to which this section applies, the court, after hearing such of the persons likely to be affected by the application as it sees fit, may, if it decides that it is just and reasonable to do so, order:
  - (a) that a limitation period for the cause of action of the deceased for the wrongful act, neglect or default in relation to the cause of action that the applicant claims to have be extended for such period, not exceeding 5 years, as it determines, or
  - (b) that a limitation period for the cause of action that the applicant claims to have be extended for such period, not exceeding 5 years, as it determines,or both.
- (3) The court may, in an order under this section, exclude any beneficiary or class of beneficiaries from the operation of the order, if it decides that it is just and reasonable to do so.

**60E Matters to be considered by court**

- (1) In exercising the powers conferred on it by section 60C or 60D, a court is to have regard to all the circumstances of the case, and (without affecting the generality of the foregoing), the court is, to the extent that they are relevant to the circumstances of the case, to have regard to the following:
  - (a) the length of and reasons for the delay,
  - (b) the extent to which, having regard to the delay, there is or may be prejudice to the defendant by reason that evidence that would have been available if the proceedings had been commenced within the limitation period is no longer available,
  - (c) the time at which the injury became known to the plaintiff,
  - (d) the time at which the nature and extent of the injury became known to the plaintiff,
  - (e) the time at which the plaintiff became aware of a connection between the injury and the defendant's act or omission,
  - (f) any conduct of the defendant which induced the plaintiff to delay bringing the action,
  - (g) the steps (if any) taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice the plaintiff may have received,
  - (h) the extent of the plaintiff's injury or loss.
- (2) In the application of this section to an application for an order under section 60C in respect of a cause of action that has survived on the death of a person for the benefit of the person's estate under section 2 of the [Law Reform \(Miscellaneous Provisions\) Act 1944](#), references in subsection (1) to the plaintiff include references to the deceased and the applicant, or any of them, as appropriate in the circumstances.
- (3) In the application of this section to an application for an order under section 60D (2)
  - (a):
    - (a) references in subsection (1) to the plaintiff include references to the deceased, the personal representative of the deceased, and the beneficiaries, or any of them, as appropriate in the circumstances, and
    - (b) regard may also be had to delay occurring after the death of the deceased, whether or not a limitation period has expired in relation to the cause of action that the applicant claims to have, and whether or not the applicant is also making an application under section 60D (2) (b).

- (4) In the application of this section to an application for an order under section 60D (2) (b), references in subsection (1) to the plaintiff include references to the personal representative of the deceased, and the beneficiaries, or any of them, as appropriate in the circumstances.

### **Subdivision 3 Discretionary extension for latent injury etc**

#### **60F Purpose of this Subdivision**

The purpose of this Subdivision is to provide a procedure for a further discretionary extension of limitation periods where the plaintiff was unaware of the fact, nature, extent or cause of the injury, disease or impairment at the relevant time. This procedure is available for causes of action accruing on or after 1 September 1990, and also (by the operation of Schedule 5) for causes of action that accrued before that date.

#### **60G Ordinary action (including surviving action)**

- (1) This section applies to a cause of action that accrues on or after 1 September 1990, founded on negligence, nuisance or breach of duty, for damages for personal injury, but does not apply to a cause of action arising under the [Compensation to Relatives Act 1897](#).
- (2) If an application for an order under this section is made to a court by a person claiming to have a cause of action to which this section applies, the court, after hearing such of the persons likely to be affected by the application as it sees fit, may, if it decides that it is just and reasonable to do so, order that the limitation period for the cause of action be extended for such period as it determines.

#### **60H Compensation to relatives**

- (1) This section applies to:
  - (a) a cause of action for damages arising under the [Compensation to Relatives Act 1897](#) by virtue of the death of a person caused by a wrongful act, neglect or default, and
  - (b) such a cause of action that would arise under the [Compensation to Relatives Act 1897](#) but for the expiration as against the deceased of a limitation period, being a cause of action that accrues on or after 1 September 1990.
- (2) If an application for an order under this section is made to a court by a person claiming to have a cause of action to which this section applies, the court, after hearing such of the persons likely to be affected by the application as it sees fit, may, if it decides that it is just and reasonable to do so, order:
  - (a) that a limitation period for the cause of action of the deceased for the wrongful act, neglect or default in relation to the cause of action that the applicant claims to

have be extended for such period as it determines, or

(b) that a limitation period for the cause of action that the applicant claims to have be extended for such period as it determines,

or both.

(3) The court may, in an order under this section, exclude any beneficiary or class of beneficiaries from the operation of the order, if it decides that it is just and reasonable to do so.

#### **60I Matters to be considered by court**

(1) A court may not make an order under section 60G or 60H unless it is satisfied that:

(a) the plaintiff:

(i) did not know that personal injury had been suffered, or

(ii) was unaware of the nature or extent of personal injury suffered, or

(iii) was unaware of the connection between the personal injury and the defendant's act or omission,

at the expiration of the relevant limitation period or at a time before that expiration when proceedings might reasonably have been instituted, and

(b) the application is made within 3 years after the plaintiff became aware (or ought to have become aware) of all 3 matters listed in paragraph (a) (i)-(iii).

(2) Subsections (2), (3) and (4) of section 60E apply, with any necessary adaptations, in relation to applications for orders under this Subdivision.

#### **60J Operation of this Subdivision**

An order may not be made under this Subdivision in relation to a limitation period unless the time has expired for the making of an order under Subdivision 2, but nothing in this Act prevents the making of orders under section 60D (2) (a) and section 60H (2) (b) in relation to the one matter.

### **Subdivision 4 General**

#### **60K Effect of order**

(1) If a court orders the extension of a limitation period for a cause of action under Subdivision 2 or 3, the limitation period is accordingly extended for the purposes of:

(a) an action brought by the applicant in that court on the cause of action that the applicant claims to have, and

(b) section 26 (1) (b) in relation to any associated contribution action brought by the person against whom that cause of action lies.

(2) If a court excludes a beneficiary or class of beneficiaries from the operation of an order under section 60D or 60H, the beneficiary or beneficiaries are to be treated as not being entitled to damages in any compensation action brought as a consequence of the making of the order.

(3) In this section:

**compensation action** means an action on a cause of action arising under the [Compensation to Relatives Act 1897](#).

**contribution action** means an action for contribution under section 5 (1) of the [Law Reform \(Miscellaneous Provisions\) Act 1946](#).

#### **60L Costs**

Without affecting any discretion that a court has in relation to costs, a court hearing an action brought as a result of an order under Subdivision 2 or 3 may reduce the costs otherwise payable to a successful plaintiff, on account of the expense to which the defendant has been put because the action was commenced outside the original limitation period.

#### **60M Prior expiry of limitation period or extinction of right**

- (1) Applications and orders may be made under Subdivision 2 or 3 as if Division 1 of Part 4 had never been in force.
- (2) An order for the extension of a limitation period, and an application for such an order, may be made under Subdivision 2 or 3 even though the limitation period has already expired.

#### **61 Prior bar ineffective**

Where, after the expiration of a limitation period to which this Division applies, the limitation period is extended by order under this Division, the prior expiration of the limitation period has no effect for the purposes of this Act.

#### **62 Evidence**

Where, under this Division, a question arises as to the means of knowledge of a deceased person, the court may have regard to the conduct and statements, oral or in writing, of the deceased person.

### **Division 4 Personal injury cases arising after 2002 amendments**

### **62A Extension of 12 year long-stop limitation period**

- (1) A person claiming to have a cause of action to which Division 6 of Part 2 applies may apply to a court for the extension of the 12 year long-stop limitation period applicable to the cause of action under that Division.
- (2) The court is to hear such of the persons likely to be affected by the application as it sees fit and may, if it decides that it is just and reasonable to do so, order the extension of the 12 year long-stop limitation period applicable to the cause of action for such period as the court determines, but not so as to extend that period beyond the period of 3 years after the date on which the cause of action is discoverable (within the meaning of Division 6 of Part 2) by the plaintiff.
- (3) If a court orders the extension of the 12 year long-stop limitation period for a cause of action under this section, that limitation period is accordingly extended for the purposes of:
  - (a) an action brought by the applicant in that court on the cause of action that the applicant claims to have, and
  - (b) section 26 (1) (b) in relation to any associated action for contribution under section 5 (1) of the *Law Reform (Miscellaneous Provisions) Act 1946* brought by the person against whom that cause of action lies.
- (4) The court may, in an order under this section in relation to a cause of action arising under the *Compensation to Relatives Act 1897*, exclude any beneficiary or class of beneficiaries from the operation of the order, if it decides that it is just and reasonable to do so.
- (5) If a court excludes a beneficiary or class of beneficiaries from the operation of an order under this section, the beneficiary or beneficiaries are to be treated as not being entitled to damages in any action on a cause of action arising under the *Compensation to Relatives Act 1897* brought as a consequence of the making of the order.

### **62B Matters to be considered in determining application for extension of 12 year long-stop limitation period**

- (1) In exercising the powers conferred on it by section 62A, a court is to have regard to all the circumstances of the case, and (without affecting the generality of the foregoing), the court is, to the extent that they are relevant to the circumstances of the case, to have regard to the following:
  - (a) the length of and reasons for the delay,
  - (b) the extent to which, having regard to the delay, there is or may be prejudice to the defendant by reason that evidence that would have been available if the



proceedings had been commenced within the limitation period is no longer available,

- (c) the nature and extent of the plaintiff's injury or loss,
- (d) any conduct of the defendant that induced the plaintiff to delay bringing the action,
- (e) the steps (if any) taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice the plaintiff may have received,
- (f) the time when the cause of action was discoverable (within the meaning of Division 6 of Part 2) by the plaintiff.

- (2) In the application of this section in respect of a cause of action that has survived on the death of a person for the benefit of the person's estate under section 2 of the *Law Reform (Miscellaneous Provisions) Act 1944*, references in subsection (1) to the plaintiff include references to the deceased and the applicant, or any of them, as appropriate in the circumstances.
- (3) In the application of this section in respect of a cause of action arising under the *Compensation to Relatives Act 1897*, references in subsection (1) to the plaintiff include references to the deceased, the personal representative of the deceased, and the beneficiaries, or any of them, as appropriate in the circumstances.

### **62C Special provisions for compensation to relatives action**

- (1) If a cause of action arises under the *Compensation to Relatives Act 1897* (or would arise under that Act but for the expiration as against the deceased of a limitation period) and the cause of action of the deceased was not discoverable (within the meaning of Division 6 of Part 2) by the deceased before the death of the deceased, the court may (in addition to an order under section 62A) order that the expiration as against the deceased of a limitation period for the cause of action by the deceased has no effect in relation to an action brought by the applicant in that court on the cause of action claimed by the applicant.
- (2) If such an order is made and the person against whom the claimed cause of action lies brings an action for contribution under section 5 (1) of the *Law Reform (Miscellaneous Provisions) Act 1946*, the expiration as against the deceased of a limitation period for the deceased's action has no effect in relation to the action for contribution.

### **62D Extension of limitation period where irrational failure to bring action for minor**

- (1) A person claiming to have a cause of action to which Division 6 of Part 2 applies who was a minor at the time of the act or omission alleged to have resulted in the injury or death with which the cause of action is concerned may apply to a court for the

extension of a limitation period applicable to the cause of action on the basis that the failure to bring an action founded on the cause of action within that limitation period is attributable to an irrational decision by a parent or guardian of the person made after the cause of action is discoverable (within the meaning of Division 6 of Part 2) by the parent or guardian.

(2) If it appears to the court that:

- (a) the limitation period applicable to the cause of action expired before or within 1 year after the applicant reached 18 years of age, and
- (b) the failure to bring an action on the cause of action within that limitation period is attributable to an irrational decision by a parent or guardian of the applicant made while the applicant was a minor, and
- (c) there is evidence to establish the cause of action, apart from any defence founded on the expiration of a limitation period,

the court may order that the limitation period for the cause of action be extended so that it expires at the end of one year after the making of the court's order.

(3) If a court orders the extension of a limitation period for a cause of action under this section, that limitation period is accordingly extended for the purposes of:

- (a) an action brought by the applicant in that court on the cause of action that the applicant claims to have, and
- (b) section 26 (1) (b) in relation to any associated action for contribution under section 5 (1) of the *Law Reform (Miscellaneous Provisions) Act 1946* brought by the person against whom that cause of action lies.

#### **62E Costs**

Without affecting any discretion that a court has in relation to costs, a court hearing an action brought as a result of an order under this Division may reduce the costs otherwise payable to a successful plaintiff, on account of the expense to which the defendant has been put because the action was commenced outside the original limitation period.

#### **62F Effect of expiry of limitation period prior to extension**

- (1) Applications and orders may be made under this Division as if Division 1 of Part 4 had never been in force.
- (2) An order under this Division in respect of a limitation period, and an application for such an order, may be made under this Division even though the limitation period has already expired.
- (3) If a limitation period that has expired is extended by order under this Division, that

expiration of the limitation period has no effect for the purposes of this Act.

## **Part 4 Miscellaneous**

### **Division 1 Extinction of right and title**

#### **63 Debt, damages etc**

- (1) Subject to subsection (2), on the expiration of a limitation period fixed by or under this Act for a cause of action to recover any debt damages or other money, the right and title of the person formerly having the cause of action to the debt damages or other money is, as against the person against whom the cause of action formerly lay and as against the person's successors, extinguished.
- (2) Where, before the expiration of a limitation period fixed by or under this Act for a cause of action to recover any debt damages or other money, an action is brought on the cause of action, the expiration of the limitation period does not affect the right or title of the plaintiff to the debt damages or other money:
  - (a) for the purposes of the action, or
  - (b) so far as the right or title is established in the action.
- (3) This section does not apply to a cause of action to which section 64 or section 65 applies.

#### **64 Account**

- (1) Subject to subsection (2), on the expiration of a limitation period fixed by or under this Act for a cause of action for an account founded on a liability at law to account in respect of any matter, the right and title of the person formerly having the cause of action and of a person claiming through the person in respect of that matter is, as against the person against whom the cause of action formerly lay and as against the person's successors, extinguished.
- (2) Where, before the expiration of a limitation period fixed by or under this Act for a cause of action for an account founded on a liability at law to account in respect of any matter, an action is brought on the cause of action, the expiration of the limitation period does not affect the right or title of the plaintiff in respect of that matter:
  - (a) for the purposes of the action, or
  - (b) so far as the right or title is established in the action.
- (3) This section does not apply to a cause of action to which section 65 applies.

#### **65 Property**

- (1) Subject to subsection (2), on the expiration of a limitation period fixed by or under this

Act for a cause of action specified in column 1 of Schedule 4, the title of a person formerly having the cause of action to the property specified opposite the cause of action in column 2 of that Schedule is, as against the person against whom the cause of action formerly lay and as against the person's successors, extinguished.

- (2) Where, before the expiration of a limitation period fixed by or under this Act for a cause of action specified in column 1 of that Schedule, an action is brought on the cause of action, the expiration of the limitation period does not affect the right or title of the plaintiff to property specified in column 2 of that Schedule in respect of which the action is brought:
  - (a) for the purposes of the action, or
  - (b) so far as the right or title is established in the action.
- (3) This section does not apply where the cause of action is for conversion or detention of goods and, before the expiration of the limitation period fixed by or under this Act for the cause of action, the person having the cause of action recovers possession of the goods.

#### **66 Instrument under Real Property Act**

- (1) Where:
  - (a) an instrument is executed which, if registered, would take effect as a deed,
  - (b) a cause of action founded on the instrument accrues, and
  - (c) before the material date, the instrument is registered,a right or title which would, apart from this section, be extinguished by this Act on the expiration of the limitation period fixed by or under this Act for the cause of action is extinguished on the material date and not before.
- (2) For the purposes of this section:
  - (a) the **material date** is the date of the expiration of the limitation period which would be fixed by or under this Act for the cause of action if the instrument were a deed, and
  - (b) **registered** means registered under the [Real Property Act 1900](#).

#### **67 Future interest in land**

- (1) Where:
  - (a) the title of a person to land for an estate or interest in possession is extinguished by this Act,
  - (b) at any time while the person has that title the person is also entitled to the same

land for an estate or interest in remainder or reversion or any other future estate or interest, and

- (c) the land is not, before the estate or interest mentioned in paragraph (b) becomes a present estate or interest, recovered by virtue of an intermediate estate or interest,

the estate or interest mentioned in paragraph (b) is, on the date on which it becomes a present estate or interest, extinguished.

- (2) For the purposes of this section, a person contingently entitled to an estate or interest in reversion or remainder or any other future estate or interest, or having such an estate or interest vested in him or her subject to divesting in any event, is entitled to the estate or interest.

## **68 Possessory lien**

Notwithstanding this Division, where:

- (a) a person is in possession of goods, and  
(b) the person has a lien on the goods for a debt or other money claim payable by a second person,

the right and title of the first person to the debt or other money claim is, as against the second person and the second person's successors, saved from extinction under this Division for so long as a cause of action of the second person or of a person claiming through the second person for the conversion or detention of the goods or to recover the proceeds of sale of the goods has not accrued or is not barred by this Act, but only so far as is necessary to support and give effect to the lien.

## **68A Extinction of right or title must be alleged in proceedings**

- (1) Where in proceedings before a judicial tribunal a question arises as to extinction under this Division of a right or title, a party to the proceedings shall not have the benefit in those proceedings of any such extinction of that right or title unless, as part of the proceedings, the party has pleaded or otherwise appropriately claimed in accordance with the procedures of the tribunal that the right or title has been so extinguished.
- (2) In subsection (1), a reference to proceedings before a judicial tribunal is a reference to proceedings before a court or person authorised by law or by agreement to bind the parties to the proceedings by a decision on a question arising in the proceedings as to whether or not a right or title has been extinguished under this Division.

## **Division 2 Arbitration**

### **69 Interpretation**

- (1) In this Division, the expression ***provisions for arbitration*** means:
  - (a) the provisions of an agreement to refer present or future differences to arbitration, whether an arbitrator is named in the agreement or not, and
  - (b) the provisions of any Act regulations rules by-laws order or scheme requiring or permitting the determination of any matter by arbitration or relating to such an arbitration.
- (2) Where the provisions for arbitration are or include the provisions of any Act regulations by-laws order or scheme, this Division has effect subject to the latter provisions.

### **70 Application of this Act**

- (1) This Act applies to an arbitration in like manner as it applies to an action.
- (2) An arbitration for any difference or matter under any provisions for arbitration is not maintainable if commenced after the date of the expiration of the period of limitation fixed by or under this Act for a cause of action in respect of the same difference or matter.

### **71 Accrual**

Where, by a term of any provisions for arbitration, a cause of action with respect to any difference or matter referable to arbitration under the provisions does not accrue until the making of an award or the happening of some other event in or relating to the arbitration or does not accrue at all, the cause of action nevertheless accrues, for the purposes of the application of this Division to an arbitration under the provisions, on the date on which it would accrue but for that term.

### **72 Commencement**

- (1) For the purposes of this Division:
  - (a) where the provisions for arbitration require or permit a party to the arbitration to give notice in writing to another party:
    - (i) requiring the other party to appoint or concur in appointing an arbitrator, or
    - (ii) requiring the other party to submit or concur in submitting a difference or matter to a person named or designated in the provisions for arbitration as arbitrator, or
  - (b) where, in a case to which paragraph (a) does not apply, a party to the arbitration

takes a step required or permitted by the provisions for arbitration for the purpose of bringing a difference or matter before an arbitrator and gives to another party notice in writing of the taking of the step,

the arbitration is commenced, as between the party giving the notice and the party to whom the notice is given, on the date on which the notice is given.

- (2) For the purpose of subsection (1), the date on which a notice is given is the date, or the earlier or earliest of the dates, when the party giving the notice:
- (a) delivers it to the party to whom it is to be given,
  - (b) leaves it at the usual or last-known place of business or of abode of the party to whom it is to be given,
  - (c) posts it by the certified mail service to the party to whom it is to be given at the party's usual or last-known place of business or of abode, or
  - (d) gives the notice in a manner required or permitted by the provisions for arbitration.

### **73 Extension of limitation period**

- (1) Where a court:
- (a) removes an arbitrator or umpire,
  - (b) restrains a party or an arbitrator or umpire from proceeding with an arbitration, or
  - (c) sets aside an award in an arbitration,

the court may at the same time or within six months afterwards, whether or not the limitation period fixed by or under this Act for the bringing of an action or for the commencement of an arbitration with respect to the difference or matter under arbitration has expired, order that the whole or any part of the time between the date of the commencement of the arbitration and the date of the order under this section do not count in the reckoning of the limitation period.

- (2) Where, after the expiration of a limitation period fixed by or under this Act, a court makes an order under this section, the prior expiration of the limitation period has no effect for the purposes of this Act.

## **Division 3 General**

### **74 Set off etc**

- (1) Where, in an action (in this section called ***the principal action***), a claim is made by way of set off, counterclaim or cross action, the claim, for the purposes of this Act:

(a) is a separate action, and

(b) is, as against a person against whom the claim is made, brought on the only or earlier of such of the following dates as are applicable:

(i) the date on which the person becomes a party to the principal action, and

(ii) the date on which the person becomes a party to the claim.

(2) This section extends to a claim by way of set off made by a defendant under the *Civil Procedure Act 2005*, even if one or more of the debts giving rise to the set off became due and payable after the date on which the defendant became a party to the principal action, so long as at least one of those debts became due and payable on or before that date.

## 75 Joint right

Where, were it not for this Act, two or more persons would have a cause of action jointly and, by this Act, an action on the cause of action is not maintainable by one or more of them, an action on the cause of action is nonetheless maintainable by the other or others of them and judgment may be given accordingly.

## 76 Joint liability

Where, were it not for this Act, two or more persons would be liable on a cause of action jointly and, by this Act, an action on the cause of action is not maintainable against one or more of them, an action on the cause of action is nonetheless maintainable against the other or others of them and judgment may be given accordingly.

## 77 Rules of Court

(1) Rules of court may be made under the *Supreme Court Act 1970* in relation to the practice and procedure of the Supreme Court in proceedings under this Act.

(2) Rules of court may be made under the *District Court Act 1973* in relation to the practice and procedure of the District Court in proceedings under this Act.

(3) Rules of court may be made under the *Local Court Act 2007* in relation to the practice and procedure of the Local Court (in its exercise of jurisdiction under Part 3 of the *Local Court Act 2007*) in proceedings under this Act.

## 78 Characterisation of limitation laws

(1) In this section:

**limitation law** means a law (including but not limited to this Act) that provides for the limitation or exclusion of any liability or the barring of a right of action in respect of a claim by reference to the time when a proceeding on, or the arbitration of, the claim is commenced.



- (2) A limitation law of the State is to be regarded as part of the substantive law of the State.
- (3) This section extends to a cause of action that arose before the commencement of this section, but does not apply to proceedings instituted before the commencement of this section.

## **Schedule 1 Transferred provisions—[Notice of Action and Other Privileges Abolition Act 1977](#)**

### **1 Savings**

The amendments made by the [Notice of Action and Other Privileges Abolition Act 1977](#) do not affect any proceedings on a cause of action accrued before the commencement of that Act.

### **2 Amendment of other Acts**

(1) In this clause, a reference to an action is a reference to an action of a kind for the bringing of which a limitation period is fixed by or under this Act, whether or not a different limitation period for a particular action of that kind is fixed by or under an Act other than this Act.

(2) This clause applies to an Act other than:

- (a) this Act, and
- (b) an Act specified in Schedule 1 to the [Notice of Action and Other Privileges Abolition Act 1977](#) (as in force on its commencement),

and applies to an Imperial Act in force in New South Wales which Parliament has power to amend in relation to its operation in New South Wales.

(3) Subject to subclause (4), in so far as an Act or Imperial Act to which this section applies provides in any form:

- (a) that notice is to be given before an action may be commenced,
- (b) that the notice shall be in a specified form or state specified matters,
- (c) that an action may not be commenced until the expiration of a specified period after the giving of the notice,
- (d) that an authorised person shall:
  - (i) be permitted to inspect damage or injury specified in the notice, or
  - (ii) be given all facilities and information necessary to ascertain the nature and extent of damage or injury so specified and any expenditure or loss relating

thereto,

- (e) that, where the notice has been given, the plaintiff is not permitted to go into evidence of any cause of action not specified in the notice,
  - (f) that, where the notice has not been given, the plaintiff is not entitled to maintain the action,
  - (g) that a court may amend any defect in the notice,
  - (h) that a court may direct that any non-compliance, or insufficient compliance, with a provision referred to in paragraph (a), (b), (c) or (d) is not a bar to the maintenance of an action,
  - (i) that an action shall be commenced within any period,
  - (j) that a court may extend a period referred to in paragraph (i), or
  - (k) for a tender of amends before action to be a defence,
- the Act is hereby amended so that it ceases so to provide.

(4) Subclause (3) does not amend an Act so as to affect the operation of:

- (a) section 63 of the *Workers' Compensation Act 1926*,
- (b) Division 1 of Part 3 of the *Defamation Act 2005*, or
- (c) the general law relating to tender before action of a debt or liquidated sum.

## **Schedules 2, 3 (Repealed)**

## **Schedule 4 Extinction of right and title**

(Section 65)

<b>Column 1</b>	<b>Column 2</b>
<b>Cause of action</b>	<b>Property</b>
For conversion or detention of goods.	The goods.
To recover land.	The land.
To enforce an equitable estate or interest in land.	The equitable estate or interest.
To redeem mortgaged property.	The mortgaged property.
To recover principal money secured by mortgage or to recover possession of mortgaged property from a mortgagor or to foreclose the equity of redemption of mortgaged property, within the meaning of section 42.	The mortgaged property.

To recover trust property or property into which trust property can be traced.

The trust property or the property into which the trust property can be traced, as the case may be.

## Schedule 5 Further transitional provisions

(Section 6 (2))

### Part 1 Provisions consequent on enactment of [Limitation \(Amendment\) Act 1990](#)

#### 1 Definitions

(1) In this Part:

**legal professional negligence** extends to the breach of any duty of professional care owed by an Australian legal practitioner, whether arising in tort, contract or otherwise.

**limitation period** means a limitation period fixed by an enactment repealed or omitted by this Act or fixed by or under a provision of this Act (including a repealed or omitted provision of this Act).

(2) In this Part, a reference to a judgment given extends to a judgment entered, and also to an agreement entered into before and in connection with any such judgment.

#### 2 Ultimate bar

Section 51 (2) applies even if a relevant limitation period had expired before 1 September 1990.

#### 3 Secondary limitation period

(1) This clause applies in relation to a cause of action for damages arising under the [Compensation to Relatives Act 1897](#) by virtue of the death of a person caused by a wrongful act, neglect or default, where:

- (a) the deceased's cause of action accrued before 1 September 1990, and
- (b) the cause of action arising under that Act accrues on or after 1 September 1990.

(2) Subdivision 1 of Division 3 of Part 3 applies to the deceased's cause of action.

(3) Subdivision 2 of Division 3 of Part 3 applies to the cause of action arising under that Act.

#### 4 Existing causes of action for personal injuries may be extended where latent injury etc

(1) Section 60G also applies to a cause of action, founded on negligence, nuisance or breach of duty, being a cause of action that accrued or would have accrued before 1 September 1990, but does not apply to a cause of action arising under the

*Compensation to Relatives Act 1897.*

- (2) Section 60H also applies to:
- (a) a cause of action for damages arising under the *Compensation to Relatives Act 1897* by virtue of the death of a person caused by a wrongful act, neglect or default, or
  - (b) a cause of action that would arise under the *Compensation to Relatives Act 1897* but for the expiration as against the deceased of a limitation period,
- being a cause of action that accrued or would have accrued before 1 September 1990.
- (3) Sections 60G and 60H so apply:
- (a) whether or not a relevant limitation period has expired:
    - (i) before 1 September 1990, or
    - (ii) before an application is made under either of those sections in respect of the cause of action, and
  - (b) whether or not an action has been commenced on the cause of action before 1 September 1990, and
  - (c) whether or not a judgment on the cause of action has, on the ground that a limitation period applying to the cause of action had expired before 1 September 1990, been given (whether before, on or after that date), and
  - (d) whether or not a judgment in respect of legal professional negligence has, on the ground that a limitation period applying to the cause of action had expired before 1 September 1990, been given (whether before, on or after that date).
- (4) The court may make an order under section 60G or 60H, in relation to a cause of action referred to in this clause, if an application for such an order is made within:
- (a) the period of 3 years referred to in section 60I, or
  - (b) the period of 3 years commencing on 1 September 1990.
- (5) For the purposes of this clause, a reference in Part 3 to a limitation period is to be read as including a reference to a limitation period as defined by this Part.

## **5 Pre-existing judgments and settlements**

- (1) In this clause:

***previously barred cause of action*** means a cause of action that was not maintainable immediately before 1 September 1990, but to which clause 4 applies.

- (2) Without affecting the generality of Division 3 of Part 3, an action on a previously barred cause of action may be brought as a result of an order made under Subdivision 3 of that Division, even though:
- (a) a judgment on the cause of action has, on the ground that a limitation period applying to the cause of action had expired before 1 September 1990, been given (whether before, on or after that date), or
  - (b) a judgment in respect of legal professional negligence has, on the ground that a limitation period applying to the cause of action had expired before 1 September 1990, been given (whether before, on or after that date),
- or both.
- (3) Such an action may be brought as if the action in which such a judgment was given had not itself been commenced.
- (4) If such an action is brought after 1 September 1990 on such a previously barred cause of action, the court hearing the action may, if it decides that it is just and reasonable to do so, do any or all of the following:
- (a) set aside any such judgment already given on or in relation to the cause of action,
  - (b) take into account any amounts paid or payable by way of damages under any such judgment,
  - (c) take into account any amounts paid or payable by way of costs in connection with any action in which any such judgment was given.
- (5) The Supreme Court may, on application, exercise the power to set aside a judgment under subclause (4) (a) even though it is not hearing the action.
- (6) A court (other than the Supreme Court) may not, under this clause, set aside a judgment of any other court.

## **Part 2 Provisions consequent on enactment of [Defamation Act 2005](#)**

### **6 Definition**

In this Part:

***new defamation provisions*** means:

- (a) section 14B (as substituted by the [Defamation Act 2005](#)), and
- (b) Division 2A of Part 3 (as substituted by the [Defamation Act 2005](#)).

### **7 Application of amendments made by [Defamation Act 2005](#)**

- (1) The new defamation provisions apply to the publication of defamatory matter after

the commencement of those provisions, unless subclause (2) provides otherwise.

- (2) The new defamation provisions do not apply to a cause of action for the publication of defamatory matter that accrues after the commencement of those provisions (the **post-commencement action**) if:
- (a) the post-commencement action is one of 2 or more causes of action in proceedings commenced by a plaintiff, and
  - (b) each cause of action in the proceedings accrues because of the publication of the same, or substantially the same, matter on separate occasions (whether by the same defendant or another defendant), and
  - (c) one or more of the other causes of action in the proceedings accrued before the commencement of the new defamation provisions (a **pre-commencement action**), and
  - (d) the post-commencement action accrued no later than 12 months after the date on which the earliest pre-commencement action in the proceedings accrued.
- (3) The existing limitation law continues to apply to the following causes of action in the same way as it would have applied to those causes of action had the new defamation provisions not been enacted:
- (a) any cause of action that accrued before the new defamation provisions,
  - (b) any post-commencement action to which the new defamation provisions do not apply because of subclause (2).
- (4) In this clause, the **existing limitation law** means the provisions of this Act that applied in relation to the limitation period for defamation actions immediately before the commencement of the new defamation provisions.