Western Australia

Limitation Act 2005

Compare between:

[01 Jul 2018, 00-c0-01] and [24 Oct 2023, 00-d0-02]

Western Australia

Limitation Act 2005

An Act to provide for time limits for commencing civil legal proceedings and arbitrations, and for related purposes.

Part 1 — Preliminary

1. Short title

This is the *Limitation Act 2005*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Interpretation

(1) In this Act —

action means —

(a) any civil proceeding in a court, whether the claim that is the subject of the proceeding or relief sought is under a written law, at common law, in equity or otherwise; or

(b) an arbitration under an arbitration provision,

but does not include proceedings for certiorari, mandamus, prohibition, habeas corpus or quo warranto except in sections 28, 86 and 87, in which it includes proceedings for certiorari, mandamus, prohibition or quo warranto;

arbitral award means the resolution or determination by an arbitrator of a difference or matter referred to arbitration under an arbitration provision;

arbitration provision means —

(a) a provision of an agreement to refer present or future differences to arbitration, whether an arbitrator is named in the agreement or not; and

(b) a provision of any written law requiring or permitting the determination of any matter by arbitration or relating to such an arbitration;

commencement day means the day on which this Act comes into operation;

defendant means a person against whom an action is brought or proposed to be brought;

extension application means an application under section 38, 39, 40, 41 or 42;

future interest means an estate in reversion or remainder or other vested or contingent interest in property which is yet to entitle immediate possession of the property;

guardian, in relation to a person who is under 18 years of age when a cause of action accrues to the person (***person A***), means a person —

(a) who at law has responsibility for the long-term care, welfare and development of person A before person A reaches 18 years of age; and

(b) for whom it is practicable, having regard to the person's relationship with person A, to commence an action on behalf of person A;

guardian, in relation to a person with a mental disability (***person A***), means a person who —

(a) is either a guardian of person A or the administrator of person A's estate, or both; and

(b) has, under the guardianship order, the administration order, or the provisions of the *Guardianship and Administration Act 1990*, as is relevant to the case, the function of considering the appropriateness of commencing an action on behalf of person A,

and in this definition the terms "administrator", "administration order", "guardian" and "guardianship order" have the respective meanings that they have in the *Guardianship and Administration Act 1990* section 3(1);

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;

land includes —

(a) corporeal hereditaments and rentcharges and any estate or interest in those things 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 otherwise does not include incorporeal hereditaments;

mental disability, in relation to a person, means a disability suffered by the person (including an intellectual disability, a psychiatric condition, an acquired brain injury or dementia) an effect of which is that the person is unable to make reasonable judgments in respect of matters relating to the person or the person's property;

mortgage includes a charge or lien on real or personal property for securing money or money's worth but does not include a possessory lien on goods nor a binding effect on the property arising under court order to seize and sell or seize and deliver the property;

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 a disease, impairment of a person's physical condition, and mental disability;

personal representative means a person who, for the time being, is an executor or an administrator of a deceased person's estate;

plaintiff means —

(a) a person bringing, or proposing to bring, an action; or

(b) a person acting on behalf of a person mentioned in paragraph (a);

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 service and a rentcharge;

rentcharge means an annuity or other periodical sum of money charged on or payable out of land, but does not include a rent service or interest on a mortgage of land;

tax includes a fee, charge or other impost;

trust has the meaning given to that term in the *Trustees Act 1962* section 6(1);

trustee has the meaning given to that term in the *Trustees Act 1962* section 6(1) and includes a personal representative.

(2) In this Act a reference to the accrual of a cause of action is a reference —

(a) to the accrual of the cause of action to a person (***person A***) to whom the cause of action accrues; and

(b) where relevant, to the accrual of the cause of action to a person through whom person A claims.

(3) For the purposes of this Act, a person (***person A***) claims through another person (***person B***) in respect of property or a right if person A is entitled to the property or right by, through or under person B or by the act of person B, but a person entitled to property or a right under a special power of appointment is not to be taken to claim through the appointor.

(4) In this Act a reference to a cause of action to recover land includes a reference to a right to enter into possession of the land.

(5) 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 time of dispossession or discontinuance of possession of land is a reference to when rent first becomes overdue.

(6) For the purposes of this Act —

(a) adverse possession of land occurs when possession of the land is taken by a person in whose favour the limitation period can run;

(b) possession of a rentcharge occurs when possession of the land the subject of the rentcharge is taken by a person, other than the person entitled to the rentcharge, who does not pay the rent;

(c) adverse possession of land as against a landlord occurs, in the case to which section 71 applies, when a person wrongfully claiming to be entitled to the land subject to the lease receives the rent;

(d) adverse possession of land held by joint tenants or tenants in common, as against a tenant (***tenant A***), occurs when another tenant (***tenant B***) takes possession of more than tenant B's share, not for the benefit of tenant A.

(7) If an arbitration provision is, or includes, a provision of any written law, this Act has effect subject to the provision of the written law.

4. Application of limitation periods under this Act

(1) The limitation periods provided for under this Act apply only to causes of action that accrue on or after commencement day.

(2) This section is subject to sections 7 and 8.

5. Actions other than personal injury actions do not revive

(1) An action cannot be commenced on or after commencement day if the action could not have been commenced immediately before commencement day because of an enactment that is

repealed or amended by the *Limitation Legislation Amendment and Repeal Act 2005*.

(2) This section is subject to sections 6 and 6A.

[Section 5 amended: No. 3 of 2018 s. 9.]

6. Personal injury actions — accrual, limitation periods

(1) Section 55 or 56, as is relevant to the case, applies to ascertain when a cause of action relating to a personal injury to a person accrues.

(2) If, under the relevant section, the cause of action accrues before commencement day, the applicable limitation period in that case is that which would have applied before commencement day, whether or not that period has expired.

6A. Special provisions for child sexual abuse actions: no limitation period

(1) In this section —

child means a person under 18 years of age;

child sexual abuse, of a person, means an act or omission in relation to the person, when the person is a child, that is sexual abuse;

child sexual abuse action means an action on a child sexual abuse cause of action;

child sexual abuse cause of action means a cause of action that relates, directly or indirectly, to a personal injury of the person to whom the cause of action accrues, where the injury results from child sexual abuse of the person.

(2) Despite anything in this or any other Act, no limitation period applies in respect of a child sexual abuse action.

(3) The following provisions do not apply in respect of a child sexual abuse action —

(a) the *Crown Suits Act 1947* section 6 (as applying under the *Limitation Legislation Amendment and Repeal Act 2005* section 8);

(b) the *Limitation Act 1935* section 47A (as applying under the *Limitation Legislation Amendment and Repeal Act 2005* section 4);

(c) section 5 of this Act.

(4) This section applies regardless of whether the action is brought in tort (including trespass), in contract, under statute or otherwise.

(5) This section does not limit —

(a) any inherent, implied or statutory jurisdiction of a court; or

(b) any other powers of a court arising or derived from the common law or under any other Act (including any Commonwealth Act), rule of court, practice note or practice direction.

Note for this subsection:

For example, this section is not intended to limit a court's power to summarily dismiss or permanently stay proceedings where the lapse of time has a burdensome effect on the defendant that is so serious that a fair trial is not possible.

(6) A cause of action referred to in the definition of ***child sexual abuse cause of action*** does not include a cause of action, action on which could not be maintained but for the *Fatal Accidents Act 1959* or the *Law Reform (Miscellaneous Provisions) Act 1941*.

(7) The Minister must carry out a review of the operation and effectiveness of this section and Part 7 as soon as is practicable after the 3rd anniversary of the day on which the *Civil Liability*

Legislation Amendment (Child Sexual Abuse Actions) Act 2018 section 10 comes into operation.

(8) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

[Section 6A inserted: No. 3 of 2018 s. 10.]

7. Special provisions for certain personal injury actions relating to childbirth

(1) In this section —

cause of action (childbirth) means a cause of action for damages relating to a personal injury to a person that was incurred —

(a) in the course of the person's mother giving birth to the person; or

(b) immediately after, and arising from, the person's mother giving birth to the person,

whether the birth was by way of natural childbirth or a medical procedure.

(2) An action on a cause of action (childbirth) cannot be commenced if the cause of action accrued before commencement day and —

(a) 6 years have elapsed since commencement day; or

(b) the limitation period that would have applied but for this section has expired.

(3) This section has effect subject to Part 3 but —

(a) sections 30 and 31 do not apply; and

(b) sections 32 and 41 do not apply if the person has reached 15 years of age at commencement day.

(4) For the purposes of the provisions of Part 3 that apply under subsection (3), a cause of action (childbirth) is to be taken as having accrued on commencement day.

8. Special provisions for certain defamation actions

(1) Section 15 applies to the publication of defamatory matter on or after commencement day unless subsection (2) provides otherwise.

(2) Section 15 does not apply to a cause of action relating to the publication of defamatory matter that accrues on or after commencement day (the **"post-commencement action"**) if —

(a) the post-commencement action is one of 2 or more causes of action in proceedings commenced by the plaintiff;

(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);

(c) one or more of the other causes of action in the proceedings accrued before commencement day (a **"pre-commencement action"**); and

(d) the post-commencement action accrued no later than 12 months after the day on which the earliest pre-commencement action in the proceedings accrued.

9. Limitation periods under other written laws

(1) This Act (except sections 6A and 28(3) and (5)) does not affect the operation of a limitation provision in another written law, or anything done under such a provision.

(2) In subsection (1) —

limitation provision includes —

(a) a provision that establishes, modifies, or extinguishes a cause of action or a defence to a cause of action;

(b) a provision prescribing the time within which an action can be commenced (including a law providing for the extension or shortening of that time);

(c) a provision in respect of the limitation or exclusion of liability or the barring of a right of action if an action is not commenced within a particular time limit.

[Section 9 amended: No. 3 of 2018 s. 11.]

10. Application to Crown

(1) Subject to subsection (2) and to sections 19(2) and 76, this Act binds the Crown.

(2) This Act does not apply to an action by the Crown —

(a) for the recovery of a tax or interest on a tax; or

(b) in respect of the forfeiture of a ship.

Part 2 — Limitation periods

Division 1 — Preliminary

11. Limitation periods under this Part are extendable etc. under Part 3

(1) Divisions 2 and 3 have effect subject to Part 3.

(2) Subsection (1) is subject to section 28(5).

12. When actions commence

(1) In this Part a reference to the commencement of an action is a reference to the issue in the appropriate court of a writ or other originating application in relation to the action.

(2) Nothing in subsection (1) affects the operation of section 88.

Division 2 — General limitation period

13. General limitation period — 6 years

(1) An action on any cause of action cannot be commenced if 6 years have elapsed since the cause of action accrued.

(2) Subsection (1) does not apply to an action if Division 3 provides for a different limitation period for that action.

Division 3 — Limitation periods for particular causes of action

14. Personal injury, *Fatal Accidents Act 1959* actions — 3 years

(1) An action for damages relating to a personal injury to a person cannot be commenced if 3 years have elapsed since the cause of action accrued.

(2) An action under the *Fatal Accidents Act 1959* for damages relating to the death of a person cannot be commenced if 3 years have elapsed since the death.

15. Defamation — one year from publication

An action relating to the publication of defamatory matter cannot be commenced if one year has elapsed since the publication.

16. Trespass to the person etc. — 3 years

An action for —

(a) trespass to the person;

(b) assault;

(c) battery; or

(d) imprisonment,

cannot be commenced if 3 years have elapsed since the cause of action accrued.

17. Contribution between tortfeasors — 2 years

An action for contribution under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* section 7 cannot be commenced if 2 years have elapsed since the cause of action accrued.

18. Deeds — 12 years

An action on a cause of action founded on a deed cannot be commenced if 12 years have elapsed since the cause of action accrued.

19. Recovery of land — 12 years

(1) An action to recover land cannot be commenced if 12 years have elapsed since the cause of action accrued.

(2) Despite subsection (1), an action to recover land may be commenced at any time if it is brought —

(a) by the Crown or a person claiming through the Crown; and

(b) on a cause of action which accrues to the Crown.

20. Money secured on real property or on real and personal property — 12 years

An action to recover principal money secured by a mortgage of real property or real and personal property whether —

(a) from any person, whether as principal, surety or otherwise;

(b) by way of the appointment of a receiver of the mortgaged property or of the income or profits of the mortgaged property;

(c) by way of the sale, lease or other disposition or realisation of the mortgaged property; or

(d) by way of any other remedy affecting the mortgaged property,

cannot be commenced if 12 years have elapsed since the cause of action accrued.

21. Interest secured on real property or on real and personal property

(1) In this section —

action means an action to recover interest secured by a mortgage of real property or real and personal property whether —

(a) from any person, whether as principal, surety or otherwise;

(b) by way of the appointment of a receiver of the mortgaged property or of income or profits of the mortgaged property;

(c) by way of the sale, lease or other disposition or realisation of the mortgaged property; or

(d) by way of any other remedy affecting the mortgaged property.

(2) An action cannot be commenced —

(a) after the occurrence of the only or later of such of the following events as are applicable —

(i) the elapse of 6 years since the cause of action accrued;

(ii) in the case where a mortgagee under a prior mortgage is in possession of all or any of the property comprised in the mortgage securing the interest when the cause of action accrued, and after that time discontinues possession, the elapse of one year since the discontinuance;

or

(b) if the limitation period provided for under section 20 for an action between the same parties on a cause of action to recover the principal money bearing the interest has expired.

22. Interest secured on personal property

(1) In this section —

action means an action to recover interest secured by a mortgage of personal property whether —

(a) from any person, whether as principal, surety or otherwise;

(b) by way of the appointment of a receiver of the mortgaged property or of income or profits of the mortgaged property;

(c) by way of the sale, lease or other disposition or realisation of the mortgaged property; or

(d) by way of any other remedy affecting the mortgaged property.

(2) An action cannot be commenced —

(a) after the occurrence of the only or later of such of the following events as are applicable —

(i) the elapse of 6 years since the cause of action accrued;

(ii) in the case where a mortgagee under a prior mortgage is in possession of all or any of the property comprised in the mortgage securing the interest when the cause of action accrued, and after that time discontinues possession, the elapse of one year since the discontinuance;

or

(b) if the limitation period for an action between the same parties on a cause of action to recover the principal money bearing the interest has expired.

23. Possession — 12 years

An action to recover from a mortgagor possession of real property or real and personal property secured by a mortgage cannot be commenced if 12 years have elapsed since the cause of action accrued.

24. Foreclosure — 12 years

An action to foreclose the equity of redemption of real property or real and personal property secured by a mortgage cannot be commenced if 12 years have elapsed since the cause of action accrued.

25. Redemption — 12 years

An action to redeem mortgaged property (whether real or personal) in the possession of a mortgagee cannot be commenced if 12 years have elapsed since the occurrence of the only or later of such of the following events as are applicable —

(a) the most recent possession by the mortgagee of the property in respect of which the action is brought;

(b) the receipt by the mortgagee of the most recent payment of principal money or interest secured by the mortgage from the person wishing to redeem the property.

26. Accounts — limitation period for the basis of the duty to account applies

An action for an account cannot be commenced if the limitation period for the cause of action that is the basis of the duty to account has expired.

27. Equitable actions (not analogous to other actions)

(1) An equitable action cannot be commenced after the only or later of such of the following events as are applicable —

(a) the elapse of 6 years since the cause of action accrued; or

(b) the elapse of 3 years since time started running, on equitable principles, for the commencement of the action.

(2) In this section —

equitable action means an action —

(a) in which the relief sought is in equity; and

(b) for which (had a limitation period not been provided for under subsection (1) or section 13) the limitation period would not be determined in equity by analogy to the limitation period for any other kind of action.

28. Tax mistakenly paid — 12 months or as provided under other Act

(1) An action to recover, or in relation to the recovery of, money paid by way of tax or purported tax under a mistake (either of law or fact) cannot be commenced if 12 months have elapsed since the payment.

(2) Subsection (1) does not apply if another Act provides for a longer limitation period for commencing the action.

(3) Despite subsections (1) and (2) and anything to the contrary in another Act, if money paid by way of tax or purported tax is recoverable because of the invalidity of an Act or provision of an Act, an action to recover, or in relation to the recovery of, that money cannot be commenced if 12 months have elapsed since the payment.

(4) Subsection (3) does not apply to an action for the recovery of money that, assuming that the Act or provision of an Act imposing or purporting to impose the tax had been valid, would nevertheless have represented an overpayment of tax, if the Act provides for the refund or recovery of the money within a period longer than 12 months from the payment.

(5) An order cannot be made under this or any other Act enabling or permitting an action to which subsection (3) applies to be commenced after the expiry of the period mentioned in that subsection.

29. Arbitration — limitation period for corresponding civil proceeding applies

An arbitration for a difference or matter under an arbitration provision cannot be commenced if the limitation period that would apply under this Act to the bringing of a civil proceeding in a court for the resolution or determination of the difference or matter has expired.

Part 3 — Extension or shortening of limitation periods

Division 1 — Extension for persons under 18 years when cause of action accrues

30. Limitation periods applicable to persons under 15 when cause of action accrues

(1) If a person is under 15 years of age when a cause of action accrues to the person, an action on that cause of action cannot be commenced if 6 years have elapsed since the cause of action accrued.

(2) Subsection (1) does not apply if Part 2 Division 3 provides for a longer limitation period for commencing the action.

31. Limitation periods applicable to persons between 15 and 18 when cause of action accrues

(1) If a person is 15, 16 or 17 years of age when a cause of action accrues to the person, an action on that cause of action cannot be commenced if the person has reached 21 years of age.

(2) Subsection (1) does not apply if Part 2 Division 2 or 3 provides for a longer limitation period for commencing the action.

32. Suspension of time while person under 18 is without guardian

(1) If —

(a) a person is under 18 years of age when a cause of action accrues to the person; and

(b) during any time after the accrual but before the person reaches 18 years of age the person is without a guardian,

the time during which the person is without a guardian does not count in the reckoning of the limitation period for commencing an action on the cause of action.

(2) Despite subsection (1), an action on the cause of action cannot be commenced —

(a) if the person has reached 21 years of age; or

(b) in the case where Part 2 Division 2 or 3 provides for a longer limitation period for commencing the action, if that limitation period has expired.

(3) This section is subject to section 33.

33. Defendant in close relationship with person under 18 when cause of action accrues

(1) If —

(a) a person is under 18 years of age when a cause of action accrues to the person (***person A***); and

(b) during any time after the accrual but before person A reaches 18 years of age a defendant is a person in a close relationship with person A,

an action on that cause of action cannot be commenced if person A has reached 25 years of age.

(2) Subsection (1) does not apply if Part 2 Division 3 provides for a longer limitation period for commencing the action.

(3) In subsection (1) —

defendant includes a person for whom a defendant is vicariously liable;

person in a close relationship, in relation to person A, means —

(a) a person (***person B***) who at law has responsibility for —

(i) the long-term care, welfare and development of person A before person A reaches 18 years of age; or

(ii) the day to day care, welfare and development of person A before person A reaches 18 years of age;

or

(b) a person (***person C***) whose relationship with person A or person B is such that it is in the circumstances reasonable —

(i) for person A or person B not to commence an action against person C; or

(ii) for person A not to wish to divulge the conduct or events in respect of which an action against person C would be founded.

34. Defamation

Sections 30, 31, 32 and 33 do not apply to an action relating to the publication of defamatory matter.

Division 2 — Extension for persons with mental disability

35. Suspension of time while person with mental disability is without guardian

(1) If —

(a) a person is suffering a mental disability at any time after a cause of action accrues to the person; and

(b) during the time in which the person is suffering the mental disability the person is without a guardian,

the time during which the person is without a guardian does not count in the reckoning of a limitation period for commencing an action on the cause of action.

(2) Despite subsection (1), an action on the cause of action cannot be commenced if 12 years have elapsed since the cause of action accrued.

(3) This section is subject to section 36.

36. Defendant in close relationship with person with mental disability

(1) If —

(a) a person (***person A***) is suffering a mental disability at any time after a cause of action accrues to person A; and

(b) during the time in which person A is suffering the mental disability a defendant is a person in a close relationship with person A,

an action on that cause of action cannot be commenced if 3 years have elapsed since the relationship ceased.

(2) Subsection (1) does not apply if Part 2 Division 2 or 3 provides for a longer limitation period for commencing the action.

(3) Despite subsection (1), an action on the cause of action cannot be commenced if 30 years have elapsed since the cause of action accrued.

(4) In subsection (1) —

defendant includes a person for whom a defendant is vicariously liable;

person in a close relationship, in relation to person A, means —

(a) a guardian of person A; or

(b) a person (***person B***) whose relationship with person A or a guardian of person A is such that it is in the circumstances reasonable —

(i) for person A or the guardian not to commence an action against person B; or

(ii) for person A not to wish to divulge the conduct or events in respect of which an action against person B would be founded.

37. Defamation

Sections 35 and 36 do not apply to an action relating to the publication of defamatory matter.

Division 3 — Extension by courts

38. Court may extend time to commence actions in cases of fraud or improper conduct

(1) A plaintiff may apply to a court for leave to commence an action on a cause of action even though the limitation period provided for under this Act has expired.

(2) On an application a court may extend the time in which the action can be commenced up to 3 years from when the action ought reasonably to have been commenced if the court is satisfied that the failure to commence the action was attributable to fraudulent or other improper conduct of the defendant or a person for whom the defendant is vicariously liable.

(3) Nothing in section 39, 41 or 42 prevents a court from extending, under this section, the time in which a plaintiff can commence an action.

(4) This section does not apply to an action relating to the publication of defamatory matter.

39. Court may extend time to commence actions for personal injury or under *Fatal Accidents Act 1959*

(1) A plaintiff may apply to a court for leave to commence an action for damages relating to a personal injury to a person even though the limitation period provided for under this Act has expired.

(2) A plaintiff may apply to a court for leave to commence an action under the *Fatal Accidents Act 1959* for damages relating to the death of a person even though the limitation period provided for under this Act has expired.

(3) On an application a court may extend the time in which the action can be commenced if the court is satisfied that, when the limitation period expired, a person to whom the cause of action accrues —

(a) was not aware of the physical cause of the death or injury;

(b) was aware of the physical cause of the death or injury but was not aware that the death or injury was attributable to the conduct of a person; or

(c) was aware of the physical cause of the death or injury and that the death or injury was attributable to the conduct of a person but after reasonable enquiry, had been unable to establish that person's identity.

(4) On an application a court may extend the time in which the action can be commenced up to 3 years from when a person to whom the cause of action accrues became aware, or ought reasonably to have become aware —

(a) of the physical cause of the death or injury;

(b) that the death or injury was attributable to the conduct of a person (whether a defendant or not); and

(c) of the identity of the person mentioned in paragraph (b).

(5) In this section —

person to whom the cause of action accrues —

(a) in the case of a person who is under 18 years of age when the cause of action accrues, means either that person or a guardian of that person;

(b) in the case of a person with a mental disability, means either that person or a guardian of that person;

(c) in the case of an action under the *Fatal Accidents Act 1959* to be brought by a personal representative of a deceased person, means the personal representative;

(d) in the case of an action under the *Fatal Accidents Act 1959* to be brought by a person under section 9(1) of that Act, means that person;

(e) in the case of an action of a kind to which the *Law Reform (Miscellaneous Provisions) Act 1941* section 4 applies, means either the deceased person or a personal representative of that person.

40. Court may extend time to commence defamation actions

(1) A plaintiff may apply to a court for leave to commence an action relating to the publication of defamatory matter even though one year has elapsed since the publication.

(2) Subject to subsection (3), on an application a court, 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 one year from the publication, must extend the time in which the action can be commenced.

(3) An action relating to the publication of defamatory matter cannot be commenced if 3 years have elapsed since the publication.

41. Court may extend time to commence action by person under 18 when cause of action accrues, with guardian

(1) A plaintiff who was under 18 years of age when a cause of action accrued to that person may apply to a court for leave to commence an action even though the limitation period provided for under this Act has expired.

(2) Subject to subsection (3), on an application a court may extend the time in which the action can be commenced up to when the plaintiff reaches 21 years of age.

(3) A court is not to extend time on an application unless the court is satisfied that in the circumstances it was unreasonable for a

guardian of the plaintiff not to commence the action within the limitation period for the action.

(4) This section does not apply to an action relating to the publication of defamatory matter.

42. Court may extend time to commence action by person with a mental disability, with guardian

(1) A plaintiff who suffers a mental disability at any time after a cause of action accrues to that person may apply to a court for leave to commence an action even though the limitation period provided for under this Act has expired.

(2) Subject to subsection (3), on an application a court may extend the time in which the action can be commenced up to 12 years from when the cause of action accrued.

(3) A court is not to extend time on an application unless the court is satisfied that in the circumstances it was unreasonable for a guardian of the plaintiff not to commence the action within the limitation period for the action.

(4) This section does not apply to an action relating to the publication of defamatory matter.

43. Jurisdiction and procedure

(1) Subject to subsection (2), an extension application is to be made by summons in the jurisdiction in which —

(a) the existing action, if any, has been brought; or

(b) the proposed action would be brought if the application were successful,

as is relevant to the case.

(2) An extension application in respect of an arbitration for a difference or matter under an arbitration provision is to be made by summons to the Supreme Court.

(3) The plaintiff is to serve a copy of the summons on each person against whom the action that is the subject of the extension application is brought or proposed to be brought.

(4) Despite subsection (1), the Supreme Court may give leave to bring an action in any court which seems to it to be the appropriate court.

(5) An extension application can be sought or determined at any time before or after the issue, or close of, pleadings.

44. Further matters for court's consideration on extension applications

When deciding, on an extension application, whether to extend the time for the commencement of an action, a court is to have regard to —

(a) whether the delay in commencing the proposed action, whatever the merit of the reasons for that delay, would unacceptably diminish the prospects of a fair trial of the action; and

(b) whether extending the time would significantly prejudice the defendant (other than by reason only of the commencement of the proposed action).

Division 4 — Extension or shortening by agreement

45. Agreement to extend or shorten limitation period

(1) Nothing in this Act prevents a person from agreeing to extend or shorten a limitation period provided for under this Act.

(2) Despite subsection (1), a provision in, or condition of, an agreement is of no effect if it purports to —

(a) exclude the operation of section 33, 36 or 38; or

(b) extinguish (rather than bar) a right or title in relation to an action in a manner that would be inconsistent with a provision of Part 5.

Division 5 — Extension by confirmation

46. Meaning of confirmation

(1) For the purposes of this Act, a person confirms a cause of action if the person —

(a) acknowledges, to a person having the cause of action (***person A***), person A's right or title, even though the acknowledgment does not disclose a promise to pay;

(b) makes, to a person having the cause of action (***person B***), a payment in relation to person B's right or title and makes the payment in circumstances not inconsistent with an acknowledgment of that right or title; or

(c) makes, to a person having a cause of action to foreclose the equity of redemption of mortgaged property or to recover possession of mortgaged property (***person C***), a payment of principal or interest secured by the mortgage or a payment to person C otherwise in relation to person C's right or title to the mortgage.

(2) In subsection (1) a reference to a person having a cause of action is a reference to the person having the cause of action either solely or with other persons.

47. Limitation period extended by confirmation

If a cause of action lies against a person (either solely or with other persons) and the person confirms the cause of action —

(a) after the limitation period provided for under this Act for the cause of action begins to run; and

(b) before that limitation period expires,

the time during which the limitation period runs before the confirmation is made 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.

48. Formal requirements for acknowledgments

For the purposes of section 46(1)(a), an acknowledgment is of no effect unless it is in writing and signed by the maker.

49. Who has benefit of confirmation

For the purposes of this Act, a person (***person A***) has the benefit of a confirmation if the confirmation is made to person A or to a person through whom person A claims.

50. Who is bound by confirmation

(1) For the purposes of this Act, a person (***person A***) is bound by a confirmation if —

(a) person A is a maker of the confirmation;

(b) person A 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) in the case where the maker is, at the time when the maker makes the confirmation, a personal representative of a deceased person (either solely or with other persons) — person A is, at or after that time, a personal representative of the deceased person;

(d) in the case where the maker is, at the time when the maker makes the confirmation, a trustee other than a personal representative of a deceased person (either solely or with other persons) — person A is, at or after that time, a trustee of the trust of which the maker is a trustee; or

(e) person A is bound under subsection (2).

(2) If a maker of a confirmation of a cause of action in relation to property is in possession of the property when the confirmation

is made, the confirmation binds a person subsequently in possession of the property who claims through the maker of the confirmation.

51. Effects of certain kinds of confirmation

(1) 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.

(2) A confirmation of a cause of action to recover income becoming 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.

Division 6 — Extension of limitation periods — other matters

52. Persons with mental disability under 18 when cause of action accrues — most beneficial limitation period applies

If —

(a) a person is under 18 years of age when a cause of action accrues to the person;

(b) during any time after that time the person is suffering a mental disability; and

(c) different limitation periods for commencing an action on the cause of action are provided for under section 7 or Division 1 or 2,

the limitation period for commencing the action is the longer of those limitation periods.

53. Limitation period in case of death of certain persons if cause of action accrues to certain other persons

(1) In this section —

person A means —

(a) a person who is under 18 years of age when a cause of action accrues to the person and who dies without having reached 18 years of age; or

(b) a person who, at any time after a cause of action accrues to the person, is suffering a mental disability and who dies at a time when the person is suffering the mental disability.

(2) If, on person A's death, person A's cause of action accrues to a person (***person B***) who is either under 18 years of age or suffering a mental disability when person A dies, a further extension of time is not allowed by reason of person B's being under 18 years of age or suffering a mental disability.

54. Arbitration — extension of limitation period

(1) If 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 arbitral award,

the court may at the same time or within 6 months afterwards, whether or not the limitation period provided for under this Act for commencing an action with respect to the difference or matter under arbitration has expired, order that the whole or any part of the time between the commencement of the arbitration and the making of the order under this section does not count in the reckoning of the limitation period.

(2) If, after the expiration of a limitation period provided for under this Act, a court makes an order under this section, the expiration of the first limitation period has no effect for the purposes of this Act.

Part 4 — Accrual of particular causes of action

Division 1 — Accrual of certain causes of action other than to recover land

55. Personal injury — general

(1) A cause of action for damages relating to a personal injury to a person accrues when the only or earlier of such of the following events as are applicable occurs —

(a) the person becomes aware that he or she has sustained a not insignificant personal injury;

(b) the first symptom, clinical sign or other manifestation of personal injury consistent with the person having sustained a not insignificant personal injury.

(2) This section does not apply to a personal injury that is attributable to the inhalation of asbestos.

56. Personal injury — asbestos related diseases

(1) A cause of action for damages relating to a personal injury —

(a) that is attributable to the inhalation of asbestos; and

(b) to a person who did not have knowledge of the relevant facts before 1 January 1984,

accrues when the person has knowledge of the relevant facts.

(2) For the purposes of this section a person has knowledge of the relevant facts in relation to a cause of action when the person has knowledge —

(a) that the injury in question was significant;

(b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute the cause of action;

(c) of the identity of the defendant; and

(d) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant,

and knowledge that any acts or omissions did or did not, as a matter of law, give rise to a cause of action is irrelevant.

(3) For the purposes of this section an injury is significant if the person whose knowledge is in question would reasonably have considered it sufficiently serious to justify the person's commencing an action for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(4) For the purposes of this section, an injury that —

(a) before 14 November 2005, is a disability as defined in the *Workers' Compensation and Injury Management Act 1981*; or

(b) on or after 14 November 2005, is an injury as defined in that Act,

is not to be treated as being significant unless either the parties to the proposed action have agreed, or a medical panel constituted as described in section 36(1) of that Act —

(c) has determined that the degree of the disability assessed in accordance with section 93D(2) of that Act, is 30% or more; or

(d) has assessed that the worker's degree of whole of person impairment evaluated as described in sections 146A and 146C of that Act (on or after 14 November 2005), is 25% or more,

as is relevant in the worker's case.

(5) For the purposes of this section a person's knowledge includes knowledge which the person might reasonably have been expected to acquire —

(a) from facts observable or ascertainable by the person; or

(b) from facts ascertainable by the person with the help of medical or other appropriate expert advice which it is reasonable for the person to seek,

but a person is not to be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as the person has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

57. Survival of certain actions

(1) If a person dies as a result of a personal injury other than an injury that is attributable to the inhalation of asbestos but, immediately before the death, a cause of action relating to the personal injury had not accrued under section 55, the cause of action relating to the personal injury is to be taken as having accrued when the person died.

(2) If a person dies as a result of a personal injury that is attributable to the inhalation of asbestos but, immediately before the death, a cause of action relating to the personal injury had not accrued under section 56, the cause of action relating to the personal injury is to be taken as having accrued when the person died.

58. Contributions between tortfeasors

A cause of action for contribution under the *Law Reform (Contributory Negligence and Tortfeasors' Contribution) Act 1947* section 7 accrues to a person (***person A***) —

(a) in the case where person A is liable in respect of the damage for which contribution is claimed by judgment of a court or by arbitral award — when 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) in any other case, if person A 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 the damage of person A or a person through whom person A claims — when the agreement is made.

59. Debts repayable on demand

A cause of action for the repayment of a debt repayable on demand accrues when there is a failure to comply with a demand for repayment.

60. Successive wrongs to goods

If —

(a) a cause of action for the conversion or detention of goods accrues to a person;

(b) possession of the goods is not recovered by the person or by a person claiming through the person; and

(c) 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,

the cause of action for the further conversion or detention or to recover the proceeds of sale accrues when the cause of action mentioned in paragraph (a) accrues.

61. Equitable interests

A cause of action to enforce an equitable estate or interest in land accrues, for the purposes of this Act, in the same manner and circumstances as, and when, a cause of action to recover the land would accrue if the estate or interest were a legal estate or interest.

62. Future interests of beneficiaries under trusts

A cause of action of a beneficiary relating to a future interest in trust property accrues when the beneficiary becomes entitled to immediate possession of the property.

63. Matters referable to arbitration

If, under an arbitration provision, a cause of action with respect to any difference or matter referable to arbitration under the arbitration provision —

(a) does not accrue until the making of an arbitral award or the happening of some other event in or relating to the arbitration; or

(b) does not accrue at all,

the cause of action nevertheless accrues, for the purposes of the application of this Act to an arbitration under the arbitration provision, when it would have accrued but for that arbitration provision.

64. Arbitral awards

A cause of action to enforce an arbitral award accrues when default in observance of the award first occurs, being the default in respect of which the action is brought.

Division 2 — Accrual of certain causes of action to recover land

65. Adverse possession

(1) A cause of action to recover land does not accrue unless the land is in adverse possession and if, under this Act, such a cause of action would have accrued at a certain time but the land is not in adverse possession at that time, the cause of action does not accrue unless and until adverse possession of the land is taken.

(2) Subject to subsection (3), if —

(a) a cause of action accrues to recover land from a person in adverse possession of the land; and

(b) afterwards, the land is 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 when the cause of action mentioned in paragraph (a) accrues.

(3) If a cause of action to recover land accrues and afterwards, but before the limitation period for the action expires, the land ceases to be in adverse possession, the cause of action does not accrue unless and until adverse possession of the land is taken again.

66. Dispossession or discontinuance

A cause of action to recover land by a person who has been in possession of the land and, while entitled to the land, is dispossessed or discontinues possession, accrues when the person is dispossessed, or discontinues the possession.

67. Deceased in possession

A cause of action to recover the land of a deceased person (whether under a will or on intestacy) accrues when the deceased died if, at that time, the deceased was —

(a) in possession of the land, or in the case of a rentcharge created by will or taking effect upon the deceased's death, in possession of the land charged; and

(b) the last person entitled to the land to be in possession of the land.

68. Grantor in possession

A cause of action to recover a person's land being an estate or interest assured as an estate or interest in possession (otherwise than by will) to the person, accrues when the assurance takes effect if —

(a) when the assurance takes effect, the person making the assurance is in possession under the estate or interest claimed or under an estate or interest out of which the assurance is made; and

(b) after the time the assurance takes effect and before the action is commenced, no person is in possession under the estate or interest claimed and under the assurance.

69. Future interests in land

(1) A cause of action to recover land in which a person has a future interest accrues when the person becomes entitled to immediate possession of the land if, after the person becomes so entitled and before the action is commenced, no person is in possession under the interest claimed.

(2) Subsection (1) is subject to section 77.

70. Forfeiture

Subject to section 71, if —

(a) a cause of action, arising from a forfeiture, to recover land accrues to a person who has a future interest in the land; and

(b) neither the person nor a person claiming under the person recovers the land,

a fresh cause of action to recover the land accrues to a person who becomes entitled to immediate possession of the land when that person becomes so entitled.

71. Rent wrongly paid

If —

(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 $2.00;

(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 afterwards received by the landlord and in consequence the lease can be determined,

the cause of action of the landlord to recover the land from a person mentioned in paragraph (a) or (b) or from a person claiming under such a person accrues at the earliest time when the lease can be determined.

72. Tenancies

(1) A cause of action of a person entitled to land subject to a periodic tenancy to recover the land from the tenant or from a person claiming under the tenant accrues when the only or later of such of the following events as are applicable occurs —

(a) the first year or other period of the tenancy expires;

(b) if the tenancy is at a rent — the rent payable to the person having the cause of action or a person through whom the person claims first becomes overdue.

(2) A cause of action of a person entitled to land subject to a tenancy at will to recover the land from the tenant or from a person claiming under the tenant accrues when the only or later of such of the following events as are applicable occurs —

(a) the first year of the tenancy expires;

(b) if the tenancy is at a rent—the rent payable to the person having the cause of action or a person through whom the person claims first becomes overdue.

(3) Subsection (1) or (2), as is applicable in the case, does not apply if the cause of action accrues earlier because the tenancy is determined.

73. Beneficial co-owners of land

(1) In this section —

land means land held on trust under a settlement;

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.

(2) A cause of action to recover land that is in the possession of a person entitled under the settlement to immediate possession of the land does not, for the purposes of this Act, accrue during such possession to the trustee or any other person entitled to an estate or interest in the land under the settlement.

(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) 2 or more persons in possession who are absolutely entitled under the settlement to the land as joint tenants or as tenants in common.

Part 5 — Effect of expiration of limitation period

74. Time to commence actions may be extended despite extinguishment of rights

Nothing in this Part prevents —

(a) a person from making an application under section 38, 41 or 42 for leave to commence an action to recover land; or

(b) a court, on such an application, from extending the time in which an action to recover land can be commenced,

even though the limitation period provided for under this Act has expired.

75. Extinguishment of right and title to land

A person's right and title to land is extinguished —

(a) if the person does not commence an action to recover the land before the expiry of the limitation period provided for under this Act; or

(b) if —

(i) a court extends the time in which the person can commence an action to recover the land; and

(ii) the person does not commence an action to recover the land before the expiry of the extended period.

76. No title by adverse possession against Crown

Despite any law that is, or has been, in effect the right, title or interest of the Crown to, or in, any land is not affected in any way by any possession of such land adverse to the Crown, and is to be taken as never having been so affected.

77. Future interests in land

(1) If —

(a) a person's right to the immediate possession of land is extinguished by this Act;

(b) at any time while the person has that right the person also has a future interest in the land; and

(c) the land is not, before the person becomes entitled to immediate possession of the land, recovered under an intervening interest,

the future interest is extinguished when the person becomes entitled to immediate possession of the land.

(2) For the purposes of this section, a person has a future interest if —

(a) the person is contingently entitled to a future interest; or

(b) a future interest is vested in the person subject to divesting in any event.

78. Provisions in case of land held on trust

(1) If land is held upon trust including a trust for sale and —

(a) the limitation period for an action by the trustee to recover the land has expired; or

(b) a court extends the time in which the trustee can commence an action to recover the land and the trustee does not commence an action to recover the land before the expiry of the extended period,

the estate of the trustee is not extinguished so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Act; but if every such right of action has been so barred the estate of the trustee is extinguished.

(2) If land is held upon trust including a trust for sale, an action to recover the land may be brought by the trustee on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act even though the right of action of the trustee would apart from this provision have been barred by this Act.

Part 6 — Miscellaneous

79. Burden of proof

(1) Subject to subsection (2), a defendant in an action has the burden of proving that the action cannot be commenced because the applicable limitation period has expired.

(2) The plaintiff has the burden of proving that the time mentioned in section 32(1) or 35(1) does not count in the reckoning of the limitation period.

(3) The plaintiff in an extension application has the burden of proving that a court should extend the relevant limitation period.

80. Grounds in equity upon which to refuse relief preserved

Nothing in this Act affects any equitable jurisdiction to refuse relief on the ground of laches, acquiescence or otherwise.

81. Counterclaims — commencement

(1) A counterclaim in an action (except a counterclaim solely by way of defence) is, for the purposes of this Act, a separate action.

(2) If a defendant in an action makes a counterclaim against a plaintiff in the action the counterclaim is to be taken to have commenced as against the plaintiff when the defendant became a party to the action.

(3) If a defendant in an action makes a counterclaim against a plaintiff in the action and then joins another person as a party against whom the counterclaim is made the counterclaim is to be taken to have commenced as against the other person when the other person is joined as a party to the counterclaim.

82. Joint causes of action

If, were it not for this Act, 2 or more persons would have a cause of action jointly but, because of this Act, an action on the

cause of action cannot be commenced by one or more of them, an action on the cause of action may nonetheless be commenced by the other or others of them and judgment may be given accordingly.

83. Joint liability

If, were it not for this Act, 2 or more persons would be liable on a cause of action jointly but, because of this Act, an action on the cause of action cannot be commenced against one or more of them, an action on the cause of action may nonetheless be commenced against the other or others of them and judgment may be given accordingly.

84. 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 in respect of land does not preserve a cause of action to recover the land.

85. Other beneficiaries

If a beneficiary under a trust brings an action in relation to the trust (***beneficiary 1's action***), any other beneficiary under the trust (***beneficiary 2***) is not entitled to derive from beneficiary 1's action any benefit for which, because of this Act, beneficiary 2 could not have commenced an action when beneficiary 1's action was commenced.

86. Limited right to recover tax

(1) This section applies in respect of an action by a person (a ***claimant***) to recover, or in relation to the recovery of, any money paid by way of tax or purported tax.

(2) Any judgment by a court in favour of a claimant is to be for only that part of the amount claimed which the court is satisfied —

(a) has not been charged directly to or recovered directly from another person or, if it has been so charged or recovered, has been refunded to the other person;

(b) will not be charged directly to or recovered directly from another person; and

(c) has not been incorporated into the price of or charge for any property or services.

(3) The claimant has the burden of satisfying the court as to the matters mentioned in subsection (2).

87. Limited operation of certain court orders as to refund of tax

(1) This section applies when the effect of an order of a court (other than a judgment mentioned in section 86(2)) is to oblige a taxing authority to refund any money paid by way of tax or purported tax.

(2) A taxing authority is to refund only that part of a tax or purported tax which the taxing authority is satisfied —

(a) has not been charged directly to or recovered directly from another person or, if it has been so charged or recovered, has been refunded to the other person;

(b) will not be charged directly to or recovered directly from another person; and

(c) has not been incorporated into the price of or charge for any property or services.

(3) The person to whom the refund is to be made has the burden of satisfying a taxing authority as to the matters mentioned in subsection (2).

(4) In this section —

taxing authority means a person who or which under an Act is responsible for the assessment or collection of any tax.

88. Arbitrations — commencement

(1) For the purposes of this Act —

(a) if an arbitration provision requires or permits 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) if, in a case to which paragraph (a) does not apply, a party to the arbitration takes a step required or permitted by an arbitration provision 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 to be taken to have commenced, as between the party giving the notice and the party to whom the notice is given, when the notice is given.

(2) For the purpose of subsection (1), a notice is given when the notice is given —

(a) in accordance with the *Interpretation Act 1984* section 76; or

(b) in a manner required or permitted by the provisions for arbitration,

whichever occurs first.

Part 7 — Transitional provisions

[Heading inserted: No. 3 of 2018 s. 12.]

Division 1 — Provisions for Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018

[Heading inserted: No. 3 of 2018 s. 12.]

89. Terms used

In this Division —

child sexual abuse has the meaning given in section 6A(1);

child sexual abuse action has the meaning given in section 6A(1);

child sexual abuse cause of action has the meaning given in section 6A(1);

commencement day means the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* section 12 comes into operation;

previously barred cause of action means a child sexual abuse cause of action that was statute barred immediately before commencement day;

previously settled cause of action means a child sexual abuse cause of action that was settled after it was statute barred but before commencement day;

statute barred, in relation to a child sexual abuse cause of action, means that action on the cause of action cannot be maintained —

(a) under one of the provisions referred to in section 6A(3); or

(b) because a limitation period applicable to the action under this or any other Act has expired.

[Section 89 inserted: No. 3 of 2018 s. 12.]

90. Application of section 6A

Section 6A applies in relation to a child sexual abuse action regardless of when the act or omission constituting child sexual abuse occurred.

[Section 90 inserted: No. 3 of 2018 s. 12.]

91. Previously barred causes of action

(1) An action on a previously barred cause of action may be commenced even though one or more of the following apply —

(a) the action was statute barred before commencement day;

(b) an action on the cause of action had commenced but was discontinued or not finalised before commencement day;

(c) a judgment was given before commencement day in relation to the cause of action on the ground that the action was statute barred;

(d) an action on the cause of action was dismissed before commencement day on the ground that the action was statute barred.

(2) Application may be made to a court with jurisdiction to deal with the action to set aside a judgment referred to in subsection (1)(c) or (d) (the ***previous judgment***). An application may be made prior to the commencement of the action.

(3) The court may, if satisfied that it is just and reasonable to do so, set aside the previous judgment to the extent to which it relates to the action.

(4) If the previous judgment is wholly or partly set aside, a person who paid an amount under the judgment cannot seek to recover that amount on the basis of the judgment having been set aside to that extent.

(5) If an action on a previously barred cause of action is commenced, the court dealing with the action may, if satisfied that it is just and reasonable to do so, take into account any

amount paid under a previous judgment relating to the cause of action.

(6) A court, other than the Supreme Court, may not set aside a previous judgment of another court.

[Section 91 inserted: No. 3 of 2018 s. 12.]

92. Previously settled causes of action

(1) This section applies in relation to a proposed action on a previously settled cause of action and to the agreement effecting the settlement (the ***settlement agreement***).

(2) Application may be made to a court that would have jurisdiction to deal with the action, but for the settlement agreement, for leave to commence the action.

(3) The court may, if satisfied that it is just and reasonable to do so —

(a) grant leave to commence the action, subject to conditions; and

(b) to the extent necessary for that, set aside the settlement agreement and any judgment giving effect to the settlement.

(4) If an action on the previously settled cause of action is commenced, the settlement agreement and each agreement relating to the settlement, other than a contract of insurance, is, despite any written or other law, void to the extent to which it relates to the child sexual abuse the subject of the cause of action.

(5) A party to an agreement that is wholly or partly void under subsection (4) cannot seek to recover an amount paid by or for the party under the agreement on the basis that the agreement is void to that extent.

(6) The court dealing with the action may, if satisfied that it is just and reasonable to do so, take into account any amount paid

under an agreement that is wholly or partly void under this section, to the extent to which the amount relates to the child sexual abuse the subject of the cause of action.

(7) For the purposes of subsection (6), amounts paid under an agreement are taken to relate to the child sexual abuse the subject of the cause of action to the extent of 50% if the agreement —

(a) does not relate solely to that child sexual abuse; and

(b) does not expressly deal with the extent to which the agreement and amounts paid under it relate to that child sexual abuse.

[Section 92 inserted: No. 3 of 2018 s. 12.]

Notes

[1] This is a compilation of the *Limitation Act 2005* and includes the amendments made by the other written laws referred to in the following. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Limitation Act 2005	19 of 2005	15 Nov 2005	15 Nov 2005 (see s. 2)
Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018 Pt. 4	3 of 2018	19 Apr 2018	1 Jul 2018 (see s. 2(b) and *Gazette* 29 Jun 2018 p. 2434)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Workers Compensation and Injury Management Act 2023 Pt. 15 Div. 3 Subdiv. 9	21 of 2023	24 Oct 2023	1 Jul 2024 (see s. 2(d) and SL 2024/34 cl. 2)

© State of Western Australia 2023.
This work is licensed under a Creative Commons Attribution 4.0 International Licence (CC BY 4.0).
To view relevant information and for a link to a copy of the licence, visit www.legislation.wa.gov.au.
Attribute work as: © State of Western Australia 2023.
By Authority: GEOFF O. LAWN, Government Printer