

LIMITATION.

3° Elizabeth II., No. LXXIII.

No. 73 of 1954.

AN ACT to amend the Limitation Act, 1935.*[Assented to 14th January, 1955.]*

BE it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Limitation Act Amendment Act, 1954*.

(2) In this Act the Limitation Act, 1935, Act No. 35 of 1935, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Limitation Act, 1935-1954.

2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

3. Section two of the principal Act is amended by adding before the word "Schedule" in line one the word "First". S. 2 amended.

4. The principal Act is amended by adding after section forty-seven the following heading and section:— S. 47A added.

Actions Against Public Authorities.

47A. (1) Notwithstanding the foregoing provisions of this Act but subject to the provisions of subsections (2) and (3) of this section, no action shall be brought against any person (excluding the Crown) for any act done in pursuance or execution or intended execution of any Act, or of any public duty or authority, or in respect of any neglect or default in the execution of the Act, duty or authority, unless—

Protection of persons acting in execution of statutory or other public duty.
Cf. U.K. Acts 56 and 57
Vict. c. 61;
2 and 3
Geo. 6 c. 21,
s. 21; N.Z.
No. 65 of 1950,
s. 23.

- (a) the prospective plaintiff gives to the prospective defendant, as soon as practicable after the cause of action accrues, notice in writing giving reasonable information of the circumstances upon which the proposed action will be based and his name and address and that of his solicitor or agent, if any; and
- (b) the action is commenced before the expiration of one year from the date on which the cause of action accrued.

and for the purposes of this section, where the act, neglect, or default is a continuing one, no cause of action in respect of the act, neglect, or default accrues until the act, neglect or default ceases but the notice required by paragraph (a) of this subsection may be given and an action may thereafter be brought while the act, neglect or default continues.

(2) A person may consent in writing to the bringing of an action against him at any time before the expiration of six years from the date on which the cause of action accrued whether or not the notice as required by subsection (1) of this section has been given.

(3) (a) Notwithstanding the foregoing provisions of this section application may be made to the Court which would but for the provisions of this section have jurisdiction to hear the action, for leave to bring an action at any time before the expiration of six years from the date on which the cause of action accrued, whether or not notice as required by subsection (1) of this section has been given to the prospective defendant.

(b) Where the Court considers that the failure to give the required notice or the delay in bringing the action as the case may be, was occasioned by mistake or by any other reasonable cause or that the prospective defendant is not materially prejudiced in his defence or otherwise by the failure or delay, the Court may if it thinks it is just to do so, grant leave to bring the action, subject to such conditions as it thinks it is just to impose.

(c) Before an application is made under the provisions of paragraph (a) of this subsection, the party intending to make the application shall give notice in writing of the proposed application and the grounds on which it is to be made to the prospective defendant, at least fourteen days before the application is made.

Interpre-
tation.

(4) (a) In this section "person" includes a body corporate, Crown agency or instrumentality of the Crown created by an Act or an official or person nominated under an Act as a defendant on behalf of the Crown.

(b) This section is to be construed so as not to affect the provisions of the Crown Suits Act, 1947.

5. The principal Act is amended by adding after section forty-eight the following section:—

S. 48A added.

48A. (1) The enactments specified in the Second Schedule to this Act are amended in the manner indicated in the Schedule and an enactment as so amended may be cited showing the figure representing the year of its passing and the figures, “-1954”.

Second
Schedule
repeal.

(2) The provisions of any Act which enact that in an action to which section forty-seven A of this Act applies,

(a) the action is to be commenced within a particular time; or

(b) notice of action is to be given within a particular time or otherwise,

are repealed.

6. Section forty-nine of the principal Act is amended by substituting for the word, “Nothing” in line one the words, “Except as provided in section forty-seven A of this Act, nothing”.

S. 49
amended.

7. The Schedule to the principal Act is amended by adding before the word, “Schedule” the word, “First”.

Schedule
amended.

8. The principal Act is amended by adding a Schedule as follows:—

Second
Schedule
added.

SECOND SCHEDULE.

S. 48A.

Title of Act.	Number of Section or Schedule affected.	Nature of Amendment.
Abattoirs Act, 1909-1952.	Section 26.	By repealing the section.
Agriculture Protection Board Act 1950-1953.	Section 24.	By repealing subsections (1) and (2) of the subsection.
Albany Harbour Board Act, 1926.	Section 37.	By repealing the section.
Bunbury Harbour Board Act, 1909.	Section 37.	By repealing the section.
Child Welfare Act, 1947-1952.	Section 147.	By repealing the section.

SECOND SCHEDULE—*continued.*

Title of Act.	Number of Section or Schedule affected.	Nature of Amendment.
Country Areas Water Supply Act, 1947-1951.	Section 117.	By repealing the section.
Country Towns Sewerage Act, 1948-1951.	Section 115.	By repealing the section.
Dairy Cattle Improvement Act, 1922-1932.	Section 14.	By repealing subsection (2) of the section.
Eastern Goldfields Transport Board Act, 1946-1951.	Section 46.	By repealing the section
Fauna Protection Act, 1950.	Section 24.	By repealing subsection (2) of the section.
Fremantle Harbour Trust Act, 1902-1952.	Section 40.	By repealing the section.
Government Railways Act, 1904-1954.	Section 37.	By repealing subsections (1) and (2) of the section.
Health Act, 1911-1952.	Section 364.	By repealing the section.
Interpretation Act, 1918-1948. (Reprinted Vol. 6 Reprinted Acts of the Parliament of Western Australia.)	The Second Schedule.	By substituting for the words "notice in writing of any action about to be commenced for anything done under this Act shall be given to the defendant one month at least before the commencement of the action, and" in lines two to five inclusive of Section G the words "where an action is commenced against any one of such persons for anything done under this Act,". By deleting the words " and unless such action is commenced within three months after the cause of action or of complaint shall have arisen" in lines eleven to thirteen inclusive of Section H.
Justices Act, 1902-1948.	Sections 227, 228, 229 and 231.	By repealing the sections.
Land Drainage Act, 1925-1941.	Section 163.	By repealing the section.
Licensing Act, 1911-1953.	Section 247.	By repealing the section.
Local Court Act, 1904-1953.	Section 27.	By repealing the section.
Lunacy Act, 1903-1950.	Section 179.	By repealing subsections (2), (3) and (4) of the section.
Main Roads Act 1930-1952.	Section 30.	By repealing the section.
McNess Housing Trust Act, 1930-1948.	Section 26.	By repealing subsections (2), (3), (4), (5) and (6) of the section.
Metropolitan Water Supply, Sewerage and Drainage Act, 1909-1951.	Section 162.	By repealing the section.
Municipal Corporations Act, 1906-1953.	Sections 518 and 519.	By repealing the sections.
Noxious Weeds Act, 1950-1953.	Section 42.	By repealing the section.
Potato Growing Industry Trust Fund Act, 1947-1951.	Section 28.	By repealing subsection (2) of the section.
Prisons Act, 1903-1918.	Section 76.	By repealing the section.
Rights in Water and Irrigation Act, 1914-1951.	Section 76.	By repealing the section.
Road Districts Act, 1919-1951.	Section 349.	By repealing the section.
Rural and Industries Bank Act, 1944-1953.	Section 107.	By repealing subsection (2) of the section.
State Electricity Commission Act, 1945-1952.	Section 61.	By repealing the section.
State Housing Act, 1946-1954.	Section 77.	By deleting all words after the word "thereof" in line nine to the end of the section.

SECOND SCHEDULE—*continued.*

Title of Act.	Number of Section or Schedule affected.	Nature of Amendment.
Supreme Court Act, 1935-1950.	Section 161.	By repealing subsection (2) of the section.
The Criminal Code.	Section 739.	By substituting for the words "An Action or" in line one the word "A". By repealing all words after the word "otherwise" in line five.
Town Planning and Development Act, 1928-1953.	Section 5A.	By repealing subsection (2) of the section.
Transfer of Land Act, 1893-1950.	Section 211.	By deleting the words "against the Registrar or" in lines three and four of the section.
Water Boards Act, 1904-1953.	Section 157.	By repealing the section.
Western Australian Government Tramways and Ferries Act, 1948-1953.	Section 27.	By repealing the section.
Western Australian Marine Act 1948-1953.	Section 210.	By repealing subsections (2) and (3) of the section.