

**Version No. 062**  
**Limitation of Actions Act 1958**

**Act No. 6295/1958**

Version incorporating amendments as at 31 March 1998

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**Version No. 062**  
**Limitation of Actions Act 1958**

**Act No. 6295/1958**

Version incorporating amendments as at 31 March 1998

An Act to consolidate the Law relating to the Limitation of Time  
for commencing Actions and Arbitrations.

**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 Victoria in this present  
Parliament assembled and by the authority of the same as  
follows (that is to say):**

**1. *Short title and commencement***

This Act may be cited as the **Limitation of  
Actions Act 1958**, and shall come into operation  
on a day to be fixed by proclamation of the  
Governor in Council published in the Government  
Gazette.

**S. 1  
amended by  
No. 57/1989  
s. 3(Sch. item  
118.1).**

**2. *Repeals and savings***

- (1) The Acts mentioned in the Schedule to the extent  
thereby expressed to be repealed are hereby  
repealed accordingly.
- (2) Except as in this Act expressly or by necessary  
implication provided—
  - (a) all persons things and circumstances  
appointed or created by or under the repealed  
Acts or existing or continuing under either of  
such Acts immediately before the  
commencement of this Act shall under and  
subject to this Act continue to have the same  
status operation and effect as they

respectively would have had if such Acts had not been so repealed;

- (b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuing of status operation or effect of any proceeding order award disability interest claim postponement arbitration notice determination acknowledgement submission consent liability or right made effected issued granted given presented fixed accrued incurred or acquired or existing or continuing by or under either of such Acts before the commencement of this Act.

No. 5914 s. 3.

### 3. *Definitions*

- (1) In this Act unless inconsistent with the context or subject-matter—

**"action"** includes any proceeding in a court of law;

**"arbitration agreement"** has the same meaning as in the **Commercial Arbitration Act 1984**;

**"land"** includes corporeal hereditaments and rentcharges and any legal or equitable estate or interest therein including an interest in the proceeds of the sale of land held upon trust for sale, but save as aforesaid does not include any incorporeal hereditament;

**"personal estate"** and **"personal property"** do not include chattels real;

**"personal injuries"** includes any disease and any impairment of a person's physical or mental condition;

**"rent"** includes a rentcharge and a rents service;

S. 3(1) def. of "arbitration agreement" inserted by No. 10167 s. 3(1).

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s. 3

**"rentcharge"** means any annuity or periodical sum of money charged upon or payable out of land, except a rentservice or interest on a mortgage on land;

**"settled land" "statutory owner" "tenant for life" and "terms of years absolute"** have the same meanings respectively as in the **Settled Land Act 1958**;

\* \* \* \* \*

S. 3(1) def. of "submission" repealed by No. 10167 s. 3(1).

**"trust" "trustee" and "trust for sale"** have the same meaning respectively as in the **Trustee Act 1958**.

(2) For the purposes of this Act a person shall be deemed to be under a disability while he is a minor or of unsound mind.

S. 3(2) amended by Nos 9075 s. 5(1), 9427 s. 5.

(3) Without limiting the meaning of **"unsound mind"** a person is conclusively presumed to be of unsound mind if the person is a protected person within the meaning of section 85 of the **Guardianship and Administration Board Act 1986** or a represented person within the meaning of the **Guardianship and Administration Board Act 1986**.

S. 3(3) amended by No. 9884 s. 2, substituted by No. 59/1986 s. 143(2).

(4) A person shall be deemed to claim through another person if he became entitled by, through, under, or by the act of that other person to the right claimed:

Provided that a person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be deemed to claim through the appointor.

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- (5) References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land; and references to the bringing of such an action shall include references to the making of such an entry.
- (6) References in this Act to the possession of land shall, in the case of rentcharges, be construed as references to the receipt of the rent; and references to the date of dispossession or discontinuance of possession of land shall, in the case of rentcharges, be construed as references to the date of the last receipt of rent.
- (7) In Part II of this Act references to a right of action shall include references to a cause of action and to a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land, and to a right to receive a share or interest in the personal estate of a deceased person; and references to the date of the accrual of a right of action shall—
- (a) in the case of an action for an account be construed as references to the date on which an account is claimed;
  - (b) in the case of an action upon a judgment be construed as references to the date on which the judgment became enforceable;
  - (c) in the case of an action to recover arrears of rent or interest or damages in respect thereof be construed as references to the date on which the rent or interest became due.
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**PART I—PERIODS OF LIMITATION**

**4. *Application of Act***

No. 5914 s. 4.  
S. 4  
substituted by  
No. 8300 s. 2.

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

*Actions of Contract, Tort etc.*

**5. *Contracts and torts***

No. 5914 s. 5.

(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued:

- (a) Actions founded on simple contract (including contract implied in law) or (subject to sub-section (1A)), actions founded on tort including actions for damages for breach of a statutory duty;
- (b) Actions to enforce a recognizance;
- (c) Actions to enforce an award, where the submission is not by an instrument under seal;
- (d) Actions to recover any sum recoverable by virtue of enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.

S. 5(1)(a)  
amended by  
No. 9884  
s. 3(a)(i)(ii).

(1A) An action for damages for negligence nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff consist of or include damages in respect of personal injuries consisting of a disease or disorder contracted by any person may be brought not more than six years from, and the cause of

S. 5(1A)  
inserted by  
No. 9884  
s. 3(b),  
amended by  
No. 21/1989  
s. 3(a).



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action shall be taken to have accrued on, the date on which the person first knows—

- (a) that he has suffered those personal injuries; and
- (b) that those personal injuries were caused by the act or omission of some person.

S. 5(1B)  
inserted by  
No. 21/1989  
s. 3(b).

(1B) Sub-section (1A) as amended by the **Limitation of Actions (Amendment) Act 1989** applies to each case where the date on which a person first knew the matters specified in paragraph (a) and (b) of that sub-section is within six years before the commencement of that Act.

S. 5(1C)  
inserted by  
No. 21/1989  
s. 3(b).

(1C) Sub-sections (1A) and (1B) apply despite anything to the contrary in this or any other Act.

- (2) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action.
- (3) An action upon a bond or other specialty shall not be brought after the expiration of fifteen years from the date on which the cause of action accrued:

Provided that this sub-section shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.

- (4) An action shall not be brought upon any judgment after the expiration of fifteen years from the date on which the judgment became enforceable.
- (5) (a) An action to recover any penalty or forfeiture or sum by way of penalty or forfeiture recoverable by virtue of any enactment shall not be brought after the expiration of two years from the date on which the cause of action accrued.

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s. 6

(b) In this sub-section "**penalty**" does not include a fine to which any person is liable on conviction of a criminal offence.

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S. 5(6)  
repealed by  
No. 9884  
s. 3(c).

(7) Save as otherwise expressly provided an action shall not be brought to recover any arrears of interest in respect of any sum of money whether payable in respect of a specialty, judgment, legacy, mortgage or otherwise, or any damages in respect of such arrears, after the expiration of six years after they became due.

(8) This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any provision thereof may be applied by the Court by analogy in like manner as the enactment corresponding to that provision was applied before the repeal of that enactment by the **Limitation of Actions Act 1955**.

**6. Successive conversions of goods**

No. 5914 s. 6.

(1) Where—

(a) any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person; and

(b) before he recovers possession of the chattel, a further conversion or wrongful detention takes place—

no action shall be brought in respect of the further conversion or detention after the expiration of six years from the accrual of the cause of action in respect of the original conversion or detention.

(2) Where—

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- (a) any such cause of action has accrued to any person; and
  - (b) the period prescribed for bringing that action and for bringing any action in respect of such a further conversion or wrongful detention as aforesaid has expired; and
  - (c) he has not during that period recovered possession of the chattel—
- his title to the chattel shall be extinguished.

*Actions to Recover Land and Rent*

No. 5914 s. 7.

**7. No title by adverse possession against Crown**

Notwithstanding any law or enactment now or heretofore in force in Victoria, the right title or interest of the Crown to or in any land shall not be and shall be deemed not to have been in any way affected by reason of any possession of such land adverse to the Crown, whether such possession has or has not exceeded sixty years.

S. 7A  
inserted by  
No. 120/1993  
s. 77,  
amended by  
No. 104/1997  
s. 50(a)(b).

**7A. No title by adverse possession against PTC**

Despite any rule of law or provision made by or under this or any other Act but without limiting section 7, the right, title or interest of the Public Transport Corporation established under the **Transport Act 1983** or of Victorian Rail Track established by Division 2 of Part 2 of the **Rail Corporations Act 1996** to or in any land is not, and must be taken never to have been, affected by reason only of any possession of that land adverse to that Corporation or Victorian Rail Track (as the case requires), irrespective of the period of that possession.

No. 5914 s. 8.

**8. Action to recover land**

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No action shall be brought by any person to recover any land after the expiration of fifteen years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person:

Provided that if the right of action first accrued to the Crown the action may be brought at any time before the expiration of fifteen years from the date on which the right of action accrued to some person other than the Crown.

**9. *Accrual of right of action in case of present interests in land***

No. 5914 s. 9.

- (1) Where the person bringing an action to recover land or some person through whom he claims—
- (a) has been in possession thereof; and
  - (b) has while entitled thereto been dispossessed or discontinued his possession—

the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

- (2) Where—
- (a) any person brings an action to recover any land of a deceased person, whether under a will or on intestacy; and
  - (b) the deceased person was on the date of his death in possession of the land, or, in the case of a rentcharge created by will or taking effect upon his death, in possession of the land charged, and was the last person entitled to the land to be in possession thereof—

the right of action shall be deemed to have accrued on the date of his death.

- (3) Where—

- (a) any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him or to some person through whom he claims by a person who at the date when the assurance took effect was in possession of the land or, in the case of a rentcharge created by the assurance, in possession of the land charged; and
- (b) no person has been in possession of the land by virtue of the assurance—

the right of action shall be deemed to have accrued on the date when the assurance took effect.

No. 5914 s. 10.

**10. *Accrual of right of action in case of future interests***

- (1) Subject as hereafter in this section provided, the right of action to recover land shall, in a case where—
  - (a) the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest; and
  - (b) no person has taken possession of the land by virtue of the estate or interest claimed—be deemed to have accrued on the date on which the estate or interest became an estate or interest in possession.
- (2) If the person entitled to the preceding estate or interest, not being a term of years absolute, was not in possession of the land on the date of the determination thereof, no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of fifteen years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or six years from the date on which the

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right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.

- (3) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

- (4) Where any person—

(a) is entitled to any estate or interest in land in possession; and

(b) while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under this Act—

no action shall be brought by that person, or by any person claiming through him, in respect of the future estate or interest unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

**11. *Provisions in case of settled land and land held on trust***

No. 5914 s. 11.

- (1) Subject to the provisions of sub-section (1) of section twenty-one of this Act, the provisions of this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in like manner as they apply to legal estates; and accordingly a right of action to recover the land shall, for the

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purposes of this Act but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.

- (2) Where the period prescribed by this Act has expired for the bringing of an action to recover land by a tenant for life or a statutory owner of settled land, his legal estate shall not be extinguished so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by this Act; and the legal estate shall accordingly remain vested in the tenant for life or statutory owner and shall devolve in accordance with the **Settled Land Act 1958**; but when every such right of action as aforesaid has been barred by this Act the said legal estate shall be extinguished.

- (3) Where—

- (a) any land is held upon trust including a trust for sale; and
- (b) the period prescribed by this Act for the bringing of an action to recover the land by the trustees has expired—

the estate of the trustees shall not be 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 when every such right of action has been so barred the estate of the trustees shall be extinguished.

- (4) Where any settled land is vested in a statutory owner or any land is held upon trust including a trust for sale, an action to recover the land may be
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brought by the statutory owner or trustees 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 notwithstanding that the right of action of the statutory owner or trustees would apart from this provision have been barred by this Act.

- (5) Where any settled land or any land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale, not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Act to accrue during such possession to any person in whom the land is vested as tenant for life statutory owner or trustee, or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

**12. *Accrual of right of action in case of forfeiture or breach of condition***

No. 5914 s. 12.

A right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken:

Provided that if such a right has accrued to a person entitled to an estate or interest in reversion or remainder and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his estate or interest fell into possession as if no such forfeiture or breach of condition had occurred.

**13. *Accrual of right of action in case of certain tenancies***

No. 5914 s. 13.

- (1) A tenancy at will shall for the purposes of this Act be deemed to be determined at the expiration of a



period of one year from the commencement thereof unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.

- (2) A tenancy from year to year or other period without a lease in writing shall for the purposes of this Act be deemed to be determined at the expiration of the first year or other period; and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

Provided that where any rent has subsequently been received in respect of the tenancy the right of action shall be deemed to have accrued on the date of the last receipt of rent.

- (3) Where—
- (a) any person is in possession of land by virtue of a lease in writing by which a rent amounting to the yearly sum of not less than \$2 is reserved; and
  - (b) the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease; and
  - (c) no rent is subsequently received by the person rightfully so entitled—

the right of action of the last-named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.

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- (1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as "adverse possession"); and where under the foregoing provisions of this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date the right of action shall not be deemed to accrue until adverse possession is taken of the land.
  - (2) Where a right of action to recover the land has accrued and thereafter before the right is barred the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right of action be deemed to accrue until the land is again taken into adverse possession.
  - (3) For the purposes of this section—
    - (a) possession of any land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent shall be deemed to be adverse possession of the rentcharge;
    - (b) receipt of rent under a lease by a person wrongfully claiming, in accordance with sub-section (3) of the last preceding section, the land in reversion shall be deemed to be adverse possession of the land.
  - (4) When any one or more of several persons entitled to any land or rent as joint tenants or tenants in common have been in possession or receipt of the entirety or more than his or their undivided share or shares of such land or of the profits thereof or of such rent for his or their own benefit or for the benefit of any person or persons other than the
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person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them but shall be deemed to be adverse possession of the land.

No. 5914 s. 15.

**15. *Limitation of redemption actions***

When the mortgagee of land has been in possession of any of the mortgaged land for a period of fifteen years no action to redeem or to compel discharge of the mortgage of the land of which the mortgagee has been in possession shall thereafter be brought by the mortgagor or any person claiming through him.

No. 5914 s. 16.

**16. *No right of action to be preserved by formal entry or continual claim***

For the purposes of this Act no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any land shall preserve any right of action to recover the land.

No. 5914 s. 17.

**17. *Administration to date back to death***

For the purposes of the provisions of this Act relating to actions for the recovery of land an administrator of the estate of a deceased person shall be deemed to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration.

No. 5914 s. 18.

**18. *Extinction of title after expiration of period***

Subject to the provisions of section eleven of this Act, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action or an

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action to compel discharge of a mortgage) the title of that person to the land shall be extinguished.

**19. *Actions to recover rent***

No. 5914 s. 19.

No action shall be brought to recover arrears of rent or damages in respect thereof after the expiration of six years from the date on which the arrears became due.

***Actions to Recover Money Secured by a Mortgage or Charge***

**20. *Actions to recover money secured by a mortgage or charge***

No. 5914 s. 20.

- (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, after the expiration of fifteen years from the date when the right to receive the money accrued, notwithstanding that the money is by any Act or instrument expressed to be a charge until paid.
- (2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of fifteen years from the date on which the right to foreclose accrued:  
  
Provided that if after that date the mortgagee was in possession of the mortgaged property the right to foreclose on the property which was in his possession shall not, for the purpose of this subsection, be deemed to have accrued until the date on which his possession discontinued.
- (3) The right to receive any principal sum of money secured by a mortgage or other charge and the

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right to foreclose on the property subject to the mortgage or charge shall not be deemed to accrue so long as that property comprises any future interest or any life insurance policy which has not matured or been determined.

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- (4) Nothing in this section shall apply to—
- (a) a foreclosure action in respect of mortgaged land, but the provisions of this Act relating to actions to recover land shall apply to such an action; or
  - (b) the recovery by any statutory authority of any rates or other moneys which by any Act are and until paid remain a charge on land.
- (5) Notwithstanding anything in sub-section (7) of section five of this Act—
- (a) where a prior mortgagee or other incumbrancer has been in possession of the property charged and an action is brought within one year of the discontinuance of such possession by the subsequent incumbrancer, the subsequent incumbrancer may recover by that action all the arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect thereof notwithstanding that the period exceeded six years; and
  - (b) where property subject to a mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

Heading  
preceding  
s. 20A  
inserted by  
No. 6845 s. 2.

*Actions to Recover Imposts*

S. 20A  
inserted by  
No. 6845 s. 2,  
substituted by  
No. 102/1993  
s. 4.

**20A. *Limitation on proceeding for recovery of tax*<sup>1</sup>**

- (1) Subject to sub-section (2), a proceeding for the recovery of money paid by way of tax or purported tax under a mistake (either of law or of fact) must be commenced—
  - (a) within 12 months after the date of payment;  
or
  - (b) in the case of a proceeding in accordance with another Act that provides for the refund or recovery of the money within a longer period, within that longer period.
- (2) Despite anything to the contrary in any other 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, a proceeding for the recovery of that money must (whether the payment was made voluntarily or under compulsion) be commenced within 12 months after the date of payment.
- (3) Sub-section (2) does not apply to a proceeding 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 that Act provides for the refund or recovery of the money within a period longer than 12 months after the date of the payment.
- (4) An order may not be made under this or any other Act enabling or permitting a proceeding to which sub-section (2) applies to be commenced after the

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expiration of the period referred to in that subsection.

(5) In this section—

**"proceeding"** includes—

- (a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction; or
- (b) seeking any order under the **Administrative Law Act 1978**;

**"tax"** includes fee, charge or other impost.

***Actions in Respect of Trust Property or the Personal Estate of Deceased Persons***

**21. *Limitation of actions in respect of trust property***

No. 5914 s. 21.

- (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—
  - (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
  - (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
- (2) Subject as aforesaid, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:



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Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.

- (3) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

No. 5914 s. 22.

***22. Actions claiming personal estate of a deceased person***

Subject to the provisions of sub-section (1) of the last preceding section no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of fifteen years from the date when the right to receive the share or interest accrued.

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**PART II—EXTENSION OF LIMITATION PERIODS**

***Disability***

**23. *Extension of limitation period in case of disability***

No. 5914 s. 23.

- (1) If on the date when any right of action accrued for which a period of limitation is prescribed by this Act the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years, or in the case of any action for which a less number of years is prescribed by this Act as the period of limitation then such less number of years, from the date when the person ceased to be under a disability or died whichever event first occurred notwithstanding that the period of limitation has expired:

Provided that—

- (a) this sub-section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims;
- (b) when a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person;
- (c) no action to recover land or money charged on land shall be brought by virtue of this sub-section by any person after the expiration of thirty years from the date on which the right of action accrued to that

person or some person through whom he claims;

- (d) this sub-section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any enactment, except where the action is brought by an aggrieved party.

S. 23(1)(e) repealed by No. 9884 s. 4.

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- (2) Any time during which it was not reasonably practicable for a person to commence any action by reason of any war or circumstances arising out of any war in which the Commonwealth of Australia is or was engaged shall be excluded in computing the period prescribed by this Act for the commencement of that action; and the said period shall not be deemed to expire before the end of twelve months from the date when it became reasonably practicable to commence the action.

Heading preceding s. 23A inserted by No. 8300 s. 3.

*Personal Injuries*

S. 23A inserted by No. 8300 s. 3, substituted by No. 9884 s. 5.

**23A. Personal injuries**

- (1) This section applies to any action for damages for negligence nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision) where the damages claimed consist of or include damages in respect of personal injuries to any person.
- (2) Where an application is made to a court by a person claiming to have a cause of action to which this section applies, the court, subject to sub-section (3) and after hearing such of the persons

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likely to be affected by that application as it sees

fit, may, if it decides that it is just and reasonable so to do, order that the period within which an action on the cause of action may be brought be extended for such period as it determines.

- (3) In exercising the powers conferred on it by sub-section (2) a court shall have regard to all the circumstances of the case including (without derogating from the generality of the foregoing) the following:
- (a) The length of and reasons for the delay on the part of the plaintiff;
  - (b) The extent to which, having regard to the delay, there is or is likely to be prejudice to the defendant;
  - (c) The extent, if any, to which the defendant had taken steps to make available to the plaintiff means of ascertaining facts which were or might be relevant to the cause of action of the plaintiff against the defendant;
  - (d) The duration of any disability of the plaintiff arising on or after the date of the accrual of the cause of action;
  - (e) The extent to which the plaintiff acted promptly and reasonably once he knew that the act or omission of the defendant, to which the injury of the plaintiff was attributable, might be capable at that time of giving rise to an action for damages;
  - (f) The steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.
- (4) The powers conferred on a court by sub-section (2) may be exercised at any time notwithstanding—
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- (a) that more than six years has expired since the cause of action accrued; or
  - (b) that an action in respect of such personal injuries has been commenced.
- (5) An application under this section shall be made by summons in the jurisdiction in which an action has been or is proposed to be brought and a copy of that summons shall be served on each person against whom the claimant claims to have the cause of action, provided that the Supreme Court may give leave to bring an action in any court which seems to it appropriate.

S. 23A(5)  
amended by  
No. 57/1989  
s. 3(Sch. item  
118.2(a)(b)).

***Acknowledgment and Part Payment***

**24. *Fresh accrual of action on acknowledgment or part payment***

No. 5914 s. 24.

- (1) Where there has accrued any right of action (including a foreclosure action) to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and—
  - (a) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or
  - (b) in the case of a foreclosure or other action by a mortgagee, the person in possession as aforesaid or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest—

the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.

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(2) Where a mortgagee—

- (a) is by virtue of the mortgage in possession of any mortgaged land; and
- (b) either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor or his equity of redemption or right to discharge of the mortgage—

an action to redeem or to compel discharge of the mortgage of the land in his possession may be brought at any time before the expiration of fifteen years from the date of the payment or acknowledgment.

(3) Where—

- (a) any right of action has accrued to recover any debt or other liquidated pecuniary claim or any claim to the personal estate of a deceased person or to any share or interest therein; and
- (b) the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof—

the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment:

Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.

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**25. *Formal provisions as to acknowledgments and part payments***

No. 5914 s. 25.

- (1) Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment.
- (2) Any such acknowledgment or payment as aforesaid may be made by the agent of the person by whom it is required to be made under the last preceding section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

**26. *Effect of acknowledgment or part payment on persons other than the maker or recipient***

No. 5914 s. 26.

- (1) An acknowledgment of the title to any land or mortgaged personalty by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.
- (2) A payment in respect of a mortgage debt by the mortgagor or any person in possession of the mortgaged property shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.
- (3) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption or right to discharge of the mortgage by one of the mortgagees shall only bind him and his successors and shall not bind any other mortgagee or his successors; and where the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the



mortgagor shall be entitled to redeem or to compel discharge of the mortgage of that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

- (4) Where there are two or more mortgagors and the title or right to redemption or to discharge of the mortgage of one of the mortgagors is acknowledged as aforesaid the acknowledgment shall be deemed to have been made to all mortgagors.
- (5) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledgor and his successors but not any other person:

Provided that an acknowledgment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the acknowledgment.

- (6) A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof:

Provided that a payment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any person other than the person making the payment and his successors, and shall not bind any successor on whom the liability devolved on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.

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- (7) An acknowledgment by one of several personal representatives of any claim to the personal estate of a deceased person or to any share or interest therein, or a payment by one of several personal representatives in respect of any such claim shall bind the estate of the deceased person.
- (8) In this section the expression "**successor**" in relation to any mortgagee or person liable in respect of any debt or claim means his personal representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolve, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise.

***Fraud and Mistake***

**27. *Postponement of limitation periods in case of fraud or mistake***

No. 5914 s. 27.

Where, in the case of any action for which a period of limitation is prescribed by this Act—

- (a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or
- (b) the right of action is concealed by the fraud of any such person as aforesaid; or
- (c) the action is for relief from the consequences of a mistake—

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it:

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Provided that nothing in this section shall enable any action to be brought to recover or enforce any charge against or set aside any transaction affecting any property which—

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed;  
or
  - (ii) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made by a person who did not know or have reason to believe that the mistake had been made.
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**PART III—GENERAL**

**28. *Application of Act to arbitrations***

No. 5914 s. 28.

(1) This Act shall apply to arbitrations in like manner as it applies to actions.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the arbitration agreement to be referred to arbitration until an award is made under the arbitration agreement, the cause of action shall for the purpose of this Act (whether in its application to arbitrations or to other proceedings) be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the arbitration agreement.

S. 28(2)  
amended by  
No. 10167  
s. 3(1).

(3) For the purposes of this Act an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the arbitration agreement, requiring him or them to submit the dispute to the person so named or designated.

S. 28(3)  
amended by  
No. 10167  
s. 3(1).

(4) Any such notice as aforesaid may be served—

(a) by delivering it to the person on whom it is to be served; or

(b) by leaving it at the usual or last-known place of abode of that person; or

(c) by sending it by post in a registered letter addressed to that person at his usual or last-known place of abode—

S. 28(4)  
amended by  
No. 10167  
s. 3(1).

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as well as in any other manner provided in the arbitration agreement.

- (5) Where a court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by this Act for the commencement of proceedings (including arbitration) with respect to the dispute referred.
- (6) This section shall apply to an arbitration under an Act of Parliament as well as to an arbitration pursuant to an arbitration agreement, and subsections (3) and (4) hereof shall have effect in relation to an arbitration under an Act as if for the references to the arbitration agreement there were substituted references to such of the provisions of the Act or of any order, scheme, rules, regulations or by-laws made thereunder as relate to the arbitration.

S. 28(6)  
amended by  
No. 10167  
s. 3(1).

No. 5914 s. 29.

**29. *Applications for foreclosure under Transfer of Land Act 1958***

This Act shall apply to applications for foreclosure under the **Transfer of Land Act 1958** in like manner as it applies to foreclosure actions.

No. 5914 s. 30.

**30. *Provisions as to set-off or counterclaim***

For the purposes of this Act, any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded.

No. 5914 s. 31.

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**31. Acquiescence**

Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

**32. Application to the Crown**

No. 5914 s. 32.

- (1) Save as in this Act otherwise expressly provided this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects:

Provided that this Act shall not apply to any proceedings by the Crown for the recovery of any tax or duty or interest thereon.

- (2) For the purposes of this section proceedings by or against the Crown shall include proceedings by or against any Government Department or any officer of the Crown as such or any person acting on behalf of the Crown.

**33. Saving**

No. 5914 s. 33.

The periods of limitation prescribed by this Act shall not apply to any action or arbitration for which a period of limitation is prescribed by any other enactment including, without affecting the generality of the foregoing, the provisions of section twenty-nine of the **Administration and Probate Act 1958** and section twenty of the **Wrongs Act 1958**.

**34. Abrogation of rule in *Weldon v. Neal (1887) 19 Q.B.D. 394***

S. 34  
repealed by  
No. 7457 s. 2,  
new s. 34  
inserted by  
No. 110/1986  
s. 136.

- (1) If a court would, but for the expiry of any relevant period of limitation after the day a proceeding in the court has commenced, allow a party to amend a document in the proceeding, the court must allow the amendment to be made if it is satisfied that no other party to the proceeding would by reason of the amendment be prejudiced in the

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conduct of that party's claim or defence in a way that could not be met by an adjournment, an award of costs or otherwise.

- (2) This section does not apply to an amendment in a proceeding commenced before 1 January 1987.

No. 5914 s. 35.

**35. *Provisions as to actions already barred and pending actions***

Nothing in this Act shall—

- (a) enable any action to be brought which was barred before the commencement of the **Limitation of Actions Act 1955** by an enactment repealed or amended by that Act, except in so far as the cause of action or right of action may be revived by acknowledgment or part payment made in accordance with the provisions of this Act; or
- (b) affect any action arbitration or application commenced before the commencement of that Act or the title to any property which is the subject of any such action arbitration or application.

S. 36  
inserted by  
No. 102/1993  
s. 5.

**36. *Supreme Court—limitation of jurisdiction***

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court entertaining a proceeding to which section 20A (as in force after the commencement of the **Limitation of Actions (Amendment) Act 1993**) applies that is brought after the expiration of the

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s. 37

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period referred to in that section, or making an Order of a kind referred to in sub-section (4) of that section.

**37. *Supreme Court—limitation of jurisdiction***

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court from entertaining an action brought in respect of any land by any person in possession of that land adverse to the Public Transport Corporation established under the **Transport Act 1983**.

S. 37  
inserted by  
No. 120/1993  
s. 78.



Sch.

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**SCHEDULE**

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<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
5914	<b>Limitation of Actions Act 1955</b>	So much as is not already or otherwise repealed.
5941	<b>Limitation of Actions (Extension) Act 1956</b>	The whole.

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**NOTES**

**1. General Information**

The **Limitation of Actions Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 892.

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## 2. Table of Amendments

This Version incorporates amendments made to the **Limitation of Actions Act 1958** by Acts and subordinate instruments.

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### **Limitation of Actions (Recovery of Imposts) Act 1961, No. 6845**

*Assent Date:* 19.12.61

*Commencement Date:* 19.12.61

*Current State:*

### **Limitation of Actions (Notice of Action) Act 1966, No. 7457**

*Assent Date:* 22.11.66

*Commencement Date:* 1.1.67: Government Gazette 21.12.66 p. 4264

*Current State:*

### **Limitation of Actions (Personal Injuries) Act 1972, No. 8300**

*Assent Date:* 17.10.72

*Commencement Date:* 1.1.73: s. 1(3)

*Current State:*

### **Age of Majority Act 1977, No. 9075**

*Assent Date:* 6.12.77

*Commencement Date:* 1.2.78: Government Gazette 11.1.78 p. 97

*Current State:*

### **Statute Law Revision Act 1980, No. 9427**

*Assent Date:* 27.5.80

*Commencement Date:* 27.5.80 (subject to s. 6(2))

*Current State:*

### **Limitation of Actions (Personal Injury Claims) Act 1983, No. 9884**

*Assent Date:* 10.5.83

*Commencement Date:* 11.5.83: Government Gazette 11.5.83 p. 1145

*Current State:*

### **Commercial Arbitration Act 1984, No. 10167**

*Assent Date:* 20.11.84

*Commencement Date:* 1.4.85: Government Gazette 20.2.85 p. 372

*Current State:*

### **Mental Health Act 1986, No. 59/1986**

*Assent Date:* 3.6.86

*Commencement Date:* Ss 1–3, 21, 23, Sch. 1 on 19.6.87: Government Gazette 17.6.87 p. 1538; rest of Act on 1.10.87: Government Gazette 30.9.87 p. 2585

*Current State:*

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**Supreme Court Act 1986 , No. 110/1986**

*Assent Date:* 16.12.86  
*Commencement Date:* 1.1.87: s. 2  
*Current State:*

**Limitation of Actions (Amendment) Act 1989, No. 21/1989**

*Assent Date:* 30.5.89  
*Commencement Date:* 30.5.89: Special Gazette (No. 27) 30.5.89 p. 1  
*Current State:*

**Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989**

*Assent Date:* 14.6.89  
*Commencement Date:* S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217  
*Current State:*

**Limitation of Actions (Amendment) Act 1993, No. 102/1993**

*Assent Date:* 23.11.93  
*Commencement Date:* 15.10.93: s. 2  
*Current State:*

**Transport (Amendment) Act 1993, No. 120/1993**

*Assent Date:* 7.12.93  
*Commencement Date:* Pt 1 (ss 1–3), ss 56, 58, 60, 61(2), 65–71, 73–79 on 7.12.93; Pt 2 (ss 4–55), ss 57, 59, 61(1), 62, 63 on 19.12.93: s. 2(2); rest of Act on 30.5.94: s. 2(4)  
*Current State:*

**Rail Corporations (Amendment) Act 1997, No. 104/1997**

*Assent Date:* 16.12.97  
*Commencement Date:* S. 50 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1  
*Current State:* This information relates only to the provision/s amending the **Limitation of Actions Act 1958**

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### 3. Explanatory Details

<sup>1</sup> S. 20A: Section 6 of the **Limitation of Actions (Amendment) Act 1993** reads as follows:

#### **6. Transitional provision**

Section 20A of the Principal Act, as substituted by this Act, applies to payments made before, on or after the commencement of this section, other than payments in respect of which proceedings have been brought before that commencement.