

Authorised Version No. 092
Limitation of Actions Act 1958

No. 6295 of 1958

Authorised Version incorporating amendments as at
1 January 2011

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Authorised Version No. 092
Limitation of Actions Act 1958

No. 6295 of 1958

Authorised Version incorporating amendments as at
1 January 2011

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thereby expressed to be repealed are hereby
repealed accordingly.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appointed or created by or under the repealed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respectively would have had if such Acts had not been so repealed;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 acknowledgment 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 rentservise;

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

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(Sch. 4 item 6).

- (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 Act 1986** or a represented person within the meaning of the **Guardianship and Administration Act 1986**.

S. 3(3) amended by No. 9884 s. 2, substituted by No. 59/1986 s. 143(2), amended by No. 52/1998 s. 311(Sch. 1 item 50).

- (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.

- (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

Division 1—Application

Pt 1 Div. 1
(Heading)
inserted by
No. 76/2004
s. 4(1)(a).

4 Application of Act

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

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

Division 2—Actions of contract, tort etc.

Heading
preceding s. 5
substituted as
Pt 1 Div. 2
(Heading) by
No. 76/2004
s. 4(1)(b).

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) Subject to subsections (1AAA), (1AA) and (1A), actions founded on simple contract (including contract implied in law) or actions founded on tort including actions for damages for breach of a statutory duty;

S. 5(1)(a)
amended by
Nos 9884
s. 3(a)(i)(ii),
52/2002
s. 3(1)(a)(b),
75/2005
s. 47(1).

- (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.

Limitation of Actions Act 1958
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Part I—Periods of Limitation

s. 5

S. 5(1AAA)
inserted by
No. 75/2005
s. 47(2).

(1AAA) An action for defamation must not be brought after the expiration of 1 year from the date of the publication of the matter complained of.

S. 5(1AA)
inserted by
No. 52/2002
s. 3(2).

(1AA) Subject to subsection (1A), an action for damages in respect of personal injuries must not be brought after the expiration of 3 years from the date on which the cause of action accrued.

S. 5(1A)
inserted by
No. 9884
s. 3(b),
amended by
Nos 21/1989
s. 3(a),
52/2002
s. 3(3).

(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 3 years from, and the cause of 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) Subsection (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 subsection is within six years before the commencement of that Act.

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

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

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

* * * * *

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**.

(9) Despite subsection (1C), this section does not apply to an action to which Part IIA applies.

S. 5(9)
inserted by
No. 60/2003
s. 11.

No. 5914 s. 6.

6 Successive conversions of goods

(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—

- (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.

Division 3—Actions to recover land and rent

Heading preceding s. 7 substituted as Pt 1 Div. 3 (Heading) by No. 76/2004 s. 4(1)(c).

7 No title by adverse possession against Crown

No. 5914 s. 7.

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.

7A No title by adverse possession against PTC or Victorian Rail Track

S. 7A inserted by No. 120/1993 s. 77, amended by Nos 104/1997 s. 50(a)(b), 54/2001 s. 39(a)(b), 6/2010 s. 203(1) (Sch. 6 item 28) (as amended by No. 45/2010 s. 22).

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 Victorian Rail Track within the meaning of section 3 of the **Transport Integration Act 2010** 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 Victorian Rail Track, irrespective of the period of that possession.

7AB No title by adverse possession against water authorities etc.¹

S. 7AB inserted by No. 85/2006 s. 161.

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—

- (a) of an Authority, within the meaning of the **Water Act 1989**; or
- (b) of the Melbourne Water Corporation under Part 6 the **Melbourne Water Corporation Act 1992**; or

(c) of a licensee under Division 1 of Part 2 of the **Water Industry Act 1994**—

to or in any land is not affected by any possession of that land adverse to the Authority, Corporation or licensee (as the case requires) irrespective of the period of that possession.

S. 7B
inserted by
No. 76/2004
s. 3.

7B No title by adverse possession against Councils

- (1) Despite any rule of law or provision made by or under this or any other Act, but without limiting section 7, the title of a Council to council land is not affected by reason only of any possession of that land adverse to the Council, irrespective of the period of that possession.
- (2) This section does not apply to a possession of council land adverse to a Council if—
 - (a) an application for title to all or part of that council land based on that adverse possession is made to the Registrar before, or within 12 months after, this section commences; and
 - (b) that adverse possession is for more than 15 years.
- (3) In this section—

Council has the same meaning as in the **Local Government Act 1989**;

council land means land of which a Council is a registered proprietor under the **Transfer of Land Act 1958**;

registered proprietor and ***Registrar*** have the same meanings as in the **Transfer of Land Act 1958**.

7C Adverse possession of common property

S. 7C
inserted by
No. 69/2006
s. 222.

- (1) Despite any rule of law or provision made by or under this or any other Act but without limiting section 7, the right, title and interest of an owners corporation, or an owner of a lot affected by the owners corporation, in land which is common property affected by the owners corporation is not affected by reason only of any possession of that land adverse to the owners corporation or the lot owner by another owner of a lot affected by the owners corporation, irrespective of the period of that possession.
- (2) Words and expressions used in this section have the same meanings as they have in the **Owners Corporations Act 2006**.

8 Action to recover land

No. 5914 s. 8.

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.

10 Accrual of right of action in case of future interests

No. 5914 s. 10.

- (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 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.

No. 5914 s. 11.

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

- (1) Subject to the provisions of subsection (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 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 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.

No. 5914 s. 12.

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

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.

No. 5914 s. 13.

13 Accrual of right of action in case of certain tenancies

- (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.

14 Right of action not to accrue or continue unless there is adverse possession

No. 5914 s. 14.

- (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 subsection (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 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.

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

No. 5914 s. 16.

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.

17 Administration to date back to death

No. 5914 s. 17.

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.

18 Extinction of title after expiration of period

No. 5914 s. 18.

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 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.

Heading
preceding
s. 20
substituted as
Pt 1 Div. 4
(Heading) by
No. 76/2004
s. 4(1)(d).

**Division 4—Actions to recover money secured by a
mortgage or charge**

No. 5914 s. 20.

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

- (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 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 subsection (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.

Division 5—Actions to recover imposts

Heading preceding s. 20A inserted by No. 6845 s. 2, substituted as Pt 1 Div. 5 (Heading) by No. 76/2004 s. 4(1)(e).

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

S. 20A(1) amended by No. 8/2004 s. 3(1)(a)(b).

20A Limitation on proceeding for recovery of tax²

- (1) Subject to subsection (2), a proceeding for the recovery of money paid by way of tax or purported tax or by way of an amount that is attributable to tax or purported tax under a mistake (either of law or of fact) or under colour of authority 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 or by way of an amount that is attributable to tax or purported tax is recoverable because of the invalidity of a law or provision of a law, 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.
- (2A) Subsections (1) and (2) apply to a proceeding between parties of any kind.

S. 20A(2) amended by No. 8/2004 s. 3(2)(a)(b).

S. 20A(2A) inserted by No. 8/2004 s. 3(3).

- (3) Subsection (2) does not apply to a proceeding for the recovery of money that, assuming that the law or provision of a law imposing or purporting to impose the tax had been valid, would nevertheless have represented an overpayment of tax or of an amount that is attributable to tax, if that law 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 subsection (2) applies to be commenced after the expiration of the period referred to in that subsection.
- (5) In this section—

law means—

- (a) an Act; or
- (b) a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**; or
- (c) any other instrument that—
- (i) applies as a law of Victoria; or
- (ii) is made under, and is enforceable in accordance with, the provisions of an Act or of an instrument referred to in paragraph (b) or subparagraph (i);

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

S. 20A(3)
amended by
No. 8/2004
s. 3(4)(a)–(d).

S. 20A(5)
def. of
law
inserted by
No. 8/2004
s. 3(5).

(b) seeking any order under the
Administrative Law Act 1978;

tax includes fee, charge or other impost.

S. 20B
inserted by
No. 8/2004
s. 4.

**20B Limitation on recovery of tax or amount
attributable to tax**

- (1) A proceeding to which this section applies is only maintainable to the extent that the person bringing the proceeding (*the claimant*) satisfies the court that recovery of the money would not result in a windfall gain to the claimant.
- (2) For the purposes of subsection (1), recovery of money would not result in a windfall gain to the claimant if—
 - (a) the claimant has not charged to, or recovered from, and will not charge to or recover from, any other person an amount in respect of that money, whether or not that amount was itemised or otherwise separately identified in any invoice or other document issued by the claimant; or
 - (b) the claimant has reimbursed, or has entered into an unconditional and enforceable agreement to reimburse, each other person to whom the claimant has charged, or from whom the claimant has recovered, an amount in respect of that money.
- (3) This section applies to—
 - (a) a proceeding between parties of any kind for the recovery of money paid by way of—
 - (i) tax or purported tax; or
 - (ii) an amount that is attributable to tax or purported tax—
under a mistake (either of law or of fact) or under colour of authority; or

(b) a proceeding between parties of any kind for the recovery of money so paid that is recoverable because of the invalidity of a law or provision of a law.

(4) In this section—

claimant includes a predecessor or successor of a claimant;

law means—

- (a) an Act; or
- (b) a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**; or
- (c) any other instrument that—
 - (i) applies as a law of Victoria; or
 - (ii) is made under, and is enforceable in accordance with, the provisions of an Act or of an instrument referred to in paragraph (b) or subparagraph (i);

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.

Heading preceding s. 21 substituted as Pt 1 Div. 6 (Heading) by No. 76/2004 s. 4(1)(f).

Division 6—Actions in respect of trust property or the personal estate of deceased persons

No. 5914 s. 21.

21 Limitation of actions in respect of trust property

- (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:

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.

22 Actions claiming personal estate of a deceased person

No. 5914 s. 22.

Subject to the provisions of subsection (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.

PART II—EXTENSION OF LIMITATION PERIODS

Division 1—Disability

Heading
preceding
s. 23
substituted as
Pt 2 Div. 1
(Heading) by
No. 76/2004
s. 4(2)(a).

No. 5914 s. 23.

S. 23(1)
amended by
No. 52/2002
s. 3(4).

23 Extension of limitation period in case of disability

- (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 (except under section 5(1AA) or (1A)) 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 subsection 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 subsection 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 subsection 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.

- (1A) Subsection (1) does not apply to a right of action to which Part IIA applies.

S. 23(1A)
inserted by
No. 60/2003
s. 12.

- (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,
substituted as
Pt 2 Div. 2
(Heading) by
No. 76/2004
s. 4(2)(b).

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

Division 2—Personal injuries

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 subsection (3) and after hearing such of the persons 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 subsection (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 subsection (2) may be exercised at any time notwithstanding—
- (a) that—
 - (i) in the case of an action to which section 5(1AA) or (1A) applies (not being an action to which section 23(1) applies), more than 3 years has expired since the cause of action accrued; and
 - (ii) in any other case more than 6 years has expired since the cause of action accrued; or
 - (b) that an action in respect of such personal injuries has been commenced.

S. 23A(4)(a)
substituted by
No. 52/2002
s. 3(5).

s. 23B

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

(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(6)
inserted by
No. 60/2003
s. 13.

(6) Except as provided by section 27M(2), this section does not apply to an action to which Part IIA applies.

Pt 2 Div. 2A
(Heading and
ss 23B, 23C)
inserted by
No. 75/2005
s. 48.

Division 2A—Defamation

S. 23B
inserted by
No. 75/2005
s. 48.

23B Defamation

- (1) A person claiming to have a cause of action for defamation may apply to a court for an order extending the limitation period for the cause of action.
- (2) A court, on an application under subsection (1), must, if satisfied that it was not reasonable in the circumstances for the plaintiff to have commenced an action in relation to the matter complained of within 1 year from the date of the publication, extend the limitation period mentioned in section 5(1AAA) to a period of up to 3 years from the date of the publication.
- (3) A court may not order the extension of the limitation period for a cause of action for defamation other than in the circumstances specified in subsection (2).

- (4) If a court orders the extension of a period of limitation applicable to a cause of action under this section, that period of limitation is accordingly extended for the purposes of an action brought by the applicant in that court on the cause of action that the applicant claims to have.
- (5) An order for the extension of a limitation period, and an application for such an order, may be made under this section even though the limitation period has already expired.

23C Transitional—Defamation Act 2005

S. 23C
inserted by
No. 75/2005
s. 48.

- (1) In this section—

existing law of defamation has the same meaning as in section 46 of the **Defamation Act 2005**;

existing limitation law means the provisions of this Act that applied in relation to the limitation period for defamation actions immediately before the commencement of the **Defamation Act 2005**;

new limitation law means sections 5(1AAA) and 23B as inserted by the **Defamation Act 2005**.

- (2) The new limitation law applies to the publication of any defamatory matter to which the **Defamation Act 2005** applies.
- (3) The existing limitation law continues to apply to any cause of action to which the existing law of defamation continues to apply by force of section 46 of the **Defamation Act 2005**.

Heading
preceding
s. 24
substituted as
Pt 2 Div. 3
(Heading) by
No. 76/2004
s. 4(2)(c).

No. 5914 s. 24.

Division 3—Acknowledgment and part payment

24 Fresh accrual of action on acknowledgment or part payment

- (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.
- (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.

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.

No. 5914 s. 26.

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

- (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.

S. 26(3)
amended by
No. 74/2000
s. 3(Sch. 1
item 71).

- (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.

- (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.

Heading preceding s. 27 substituted as Pt 2 Div. 4 (Heading) by No. 76/2004 s. 4(2)(d).

Division 4—Fraud and mistake

No. 5914 s. 27.

27 Postponement of limitation periods in case of fraud or mistake

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:

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 IIA—PERSONAL INJURY ACTIONS

Pt 2A
(Heading and
ss 27A–27N)
inserted by
No. 60/2003
s. 14.

Division 1—Introductory

27A Interpretation

S. 27A
inserted by
No. 60/2003
s. 14.

(1) In this Part—

S. 27A(1)
def. of
guardian
amended by
No. 48/2006
s. 42(Sch.
item 21).

guardian of a minor includes any person who is granted guardianship of the minor under the **Children, Youth and Families Act 2005** or any other Act or law;

long-stop limitation period, in relation to a cause of action for damages that relate to death or personal injury, means the period of 12 years from the date of the act or omission alleged to have resulted in the death or personal injury with which the action is concerned;

parent includes any person who has all the duties, powers, responsibilities and authority (whether conferred by a court or otherwise) which, by law, parents have in relation to children;

survivor action means a cause of action that survives for the benefit of the estate of a deceased person under section 29(1) of the **Administration and Probate Act 1958** but does not include a cause of action to which section 29(2A) of that Act applies.

- (2) In this Part in relation to a cause of action under section 159 of the **Fair Trading Act 1999** or section 236 of the Australian Consumer Law (Victoria), a reference to a court includes a reference to the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

S. 27A(2)
amended by
No. 72/2010
s. 48(Sch.
item 15(1)).

27B Application

S. 27B
inserted by
No. 60/2003
s. 14.

- (1) This Part applies to a cause of action for damages that relate to the death of or personal injury to a person, regardless of whether the action for damages is founded in tort, in contract, under statute or otherwise.
- (2) This Part does not apply to the following—
- (a) actions for damages to which Part IV of the **Accident Compensation Act 1985** applies;
 - (b) actions for damages in respect of an injury which entitles, or may entitle, a worker within the meaning of the **Workers Compensation Act 1958** to compensation under that Act;
 - (c) actions for damages to which Part 6 or Part 10 of the **Transport Accident Act 1986** applies;
 - (d) actions for damages in respect of an injury that is a dust-related condition within the meaning of the **Administration and Probate Act 1958**;
 - (e) actions for damages in respect of an injury resulting from smoking or other use of tobacco products (within the meaning of the **Tobacco Act 1987**) or exposure to tobacco smoke.

s. 27C

- (3) This Part extends to a cause of action that—
- (a) is a survivor action; or
 - (b) is an action that arises under Part III of the **Wrongs Act 1958**.
- (4) This Part applies despite anything to the contrary in section 159(3) of the **Fair Trading Act 1999** or section 236(2) of the Australian Consumer Law (Victoria).

S. 27B(4)
amended by
No. 72/2010
s. 48(Sch.
item 15(2)).

Division 2—Limitation period for personal injury actions

27C Application of Division

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

S. 27C
inserted by
No. 60/2003
s. 14.

27D Limitation period for personal injury actions— general

- (1) An action in respect of a cause of action to which this Part applies shall not be brought after the expiration of whichever of the following periods is the first to expire—
- (a) the period of 3 years from the date on which the cause of action is discoverable by the plaintiff;
 - (b) the period of 12 years from the date of the act or omission alleged to have resulted in the death or personal injury with which the action is concerned.
- (2) This section does not apply to a cause of action that is founded on a personal injury to a person who was under a disability at the date of the act or omission alleged to have resulted in the personal injury.

S. 27D
inserted by
No. 60/2003
s. 14.

**27E Limitation period for personal injury actions—
persons under a disability**

S. 27E
inserted by
No. 60/2003
s. 14.

- (1) This section applies to a cause of action to which this Part applies which is founded on a personal injury to a person who was under a disability at the date of the act or omission alleged to have resulted in the personal injury.
- (2) An action in respect of a cause of action to which this section applies shall not be brought after the expiration of whichever of the following periods is the first to expire—
 - (a) the period of 6 years from the date on which the cause of action is discoverable by the plaintiff;
 - (b) the period of 12 years from the date of the act or omission alleged to have resulted in the personal injury with which the action is concerned.

27F Date cause of action is discoverable

S. 27F
inserted by
No. 60/2003
s. 14.

- (1) For the purposes of this Part, a cause of action is *discoverable* by a person on the first date that the person knows or ought to have known of all of the following facts—
 - (a) the fact that the death or personal injury concerned has occurred;
 - (b) the fact that the death or personal injury was caused by the fault of the defendant;
 - (c) in the case of personal injury, the fact that the personal injury was sufficiently serious to justify the bringing of an action on the cause of action.
- (2) A person *ought to know* of a fact at a particular date if the fact would have been ascertained by the person had the person taken all reasonable steps before that date to ascertain the fact.

- (3) In determining what a person knows or ought to have known, a court may have regard to the conduct and statements, oral or in writing, of the person.
- (4) To remove doubt, a cause of action that arises under Part III of the **Wrongs Act 1958** is not discoverable before the date of death of the deceased.

S. 27G
inserted by
No. 60/2003
s. 14.

27G Application to survivor actions

Subject to section 27I, for the purposes of the application of this Part to a survivor action, the cause of action is deemed to be discoverable by the plaintiff at whichever is the earliest of the following dates—

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

S. 27H
inserted by
No. 60/2003
s. 14.

27H Application to Part III Wrongs Act actions

For the purposes of the application of this Part to a cause of action that arises under Part III of the **Wrongs Act 1958**, the long-stop limitation period is deemed to run from the date of death of the deceased.

27I Special limitation period for minors injured by close relatives or close associates

S. 27I
inserted by
No. 60/2003
s. 14.

- (1) If a cause of action is founded on the death of or personal injury to a person (**the victim**) who was a minor at the date of the act or omission alleged to have resulted in that death or personal injury and the cause of action is against a person who at that date was a parent or guardian of the victim or a close associate of a parent or guardian of the victim—
 - (a) the cause of action is, for the purposes of this Part, deemed to be discoverable by the victim when the victim turns 25 years of age or when the cause of action is actually discoverable by the victim, whichever is the later; and
 - (b) the long-stop limitation period for the cause of action is the period of 12 years from when the victim turns 25 years of age.
- (2) A person is a close associate of a parent or guardian of the victim if the person is a person whose relationship with the parent or guardian is such that—
 - (a) the parent or guardian might be influenced by the person not to bring an action on behalf of the victim against the person; or
 - (b) the victim might be unwilling to disclose to the parent or guardian the act or omission alleged to have resulted in the death or personal injury.
- (3) If the victim dies before turning 25 years of age, the period of limitation applicable to a survivor action that survives on the death of the victim is to be determined as if references in this section to when the victim turns 25 years of age were references to the death of the victim.

S. 27J
inserted by
No. 60/2003
s. 14.

27J Effect of legal incapacity on limitation period

- (1) A person is *under a legal incapacity* for the purposes of this section while the person—
 - (a) is a minor, but not while the minor is in the custody of a capable parent or guardian; or
 - (b) is an incapacitated person for a continuous period of 28 days or more, but not while—
 - (i) the person is a represented person; and
 - (ii) the guardian of the person is authorised by law to bring actions in the person's name.
- (2) If a person has a cause of action for which a period of limitation has commenced to run and the person is under a legal incapacity, the running of the period of limitation is suspended for the duration of the legal incapacity.
- (3) In determining when a cause of action is discoverable by a person who is a minor or an incapacitated person and who is not under a legal incapacity, facts that are known or ought to be known by a capable parent or guardian of the minor or the guardian of the represented person are deemed to be facts that are known or ought to be known by the minor or incapacitated person.
- (4) In this section—

capable parent or guardian of a minor means a person—

 - (a) who is a parent or guardian of the minor; and
 - (b) who is not under a legal incapacity;

guardian, in relation to a represented person,
means—

- (a) the guardian or administrator of that person under the **Guardianship and Administration Act 1986**; or
- (b) in the case of a protected person, State Trustees Limited;

incapacitated person means a person who is incapable of, or substantially impeded in, the management of his or her affairs in relation to the cause of action in respect of which the question arises, by reason of any disease or any impairment of his or her physical or mental condition;

represented person means—

- (a) represented person within the meaning of the **Guardianship and Administration Act 1986**; or
- (b) protected person within the meaning of section 85 of that Act.

Division 3—Extension of limitation period for personal injury actions

27K Extension of limitation periods

- (1) A person claiming to have a cause of action to which this Part applies may apply to a court for an extension of a period of limitation applicable to the cause of action under Division 2.
- (2) Subject to section 27L, the court—
 - (a) may hear any of the persons likely to be affected by the application as it sees fit; and
 - (b) may, if it decides that it is just and reasonable to do so, order the extension of the period of limitation applicable to the

S. 27K
inserted by
No. 60/2003
s. 14.

cause of action for such period as the court determines.

- (3) If a court orders the extension of a period of limitation applicable to a cause of action under this section, that period of limitation is accordingly extended for the purposes of an action brought by the applicant in that court on the cause of action that the applicant claims to have.

S. 27L
inserted by
No. 60/2003
s. 14.

27L Matters to be considered in determining applications for extension of limitation period

- (1) In exercising the powers conferred on it by section 27K, a court shall have regard to all the circumstances of the case, including (but not limited to) 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 or legal incapacity of the plaintiff arising on or after the date of discoverability;
 - (e) the time within which the cause of action was discoverable;
 - (f) the extent to which the plaintiff acted promptly and reasonably once the plaintiff 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;

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- (g) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of the advice he or she may have received.
- (2) To avoid doubt, the circumstances referred to in subsection (1) include the following—
- (a) whether the passage of time has prejudiced a fair trial of the claim; and
- (b) the nature and extent of the plaintiff's loss; and
- (c) the nature of the defendant's conduct.
- (3) In the application of this section to a cause of action that is a survivor action references in subsection (1) to the plaintiff include references to the deceased and the applicant, or any of them, as appropriate in the circumstances.
- (4) In the application of this section to a cause of action that arises under Part III of the **Wrongs Act 1958**, references in subsection (1) to the plaintiff include references to the deceased, the executor or administrator of the deceased, and the beneficiaries, or any of them, as appropriate in the circumstances.

27M Effect of expiry of limitation period prior to extension

S. 27M
inserted by
No. 60/2003
s. 14.

- (1) The powers conferred on a court by this Division may be exercised at any time even though—
- (a) the period of limitation has already expired; or
- (b) an action in respect of the death or personal injury has been commenced.
- (2) Section 23A(5) applies, with any necessary modifications, to an application under this Division.

Division 4—Transitional

S. 27N
inserted by
No. 60/2003
s. 14.

27N Transitional

- (1) This Part applies to causes of action where the act or omission alleged to have resulted in the death or personal injury with which the action is concerned occurs on or after 21 May 2003.
- (2) On and from 1 October 2003, this Part applies to causes of action where the act or omission alleged to have resulted in the death or personal injury with which the action is concerned occurred before 21 May 2003.
- (3) Subsection (2) does not apply to a cause of action for which proceedings were commenced in a court before 1 October 2003.
- (4) Despite subsection (2), nothing in Division 2 operates to extend a period of limitation applicable to a cause of action in relation to an act or omission that occurred before 21 May 2003 to a period longer than the period of limitation that would have applied to the cause of action if this Part had not been enacted.
- (5) Nothing in subsection (4) operates to prevent an application being made under Division 3 to extend a period of limitation referred to in that subsection.

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.
- (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.
- (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

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

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

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

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

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.

31 Acquiescence

No. 5914 s. 31.

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.
S. 33
amended by
No. 60/2003
s. 15

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, and except as provided in Part IIA, 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 be

reason of the amendment be prejudiced in the 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 period referred to in that section, or making an Order of a kind referred to in subsection (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.

38 Supreme Court—limitation of jurisdiction

It is the intention of section 5, as amended by the **Limitation of Actions (Amendment) Act 2002**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 38
inserted by
No. 52/2002
s. 4.

38A Supreme Court—limitation of jurisdiction

It is the intention of Part IIA to alter or vary section 85 of the **Constitution Act 1975**.

S. 38A
inserted by
No. 60/2003
s. 16.

38B Supreme Court—limitation of jurisdiction

- (1) It is the intention of section 20A, as amended by section 3 of the **Limitation of Actions (Amendment) Act 2004**, to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 20B to alter or vary section 85 of the **Constitution Act 1975**.

S. 38B
inserted by
No. 8/2004
s. 5.

39 Transitional

Sections 5, 23 and 23A, as amended by section 3 of the **Limitation of Actions (Amendment) Act 2002**, apply to causes of action that accrue on or after the commencement of that section 3.

S. 39
inserted by
No. 52/2002
s. 4.

39A Transitional—2004 amending Act

The amendments made to this Act by the **Limitation of Actions (Amendment) Act 2004** apply to and in relation to money paid before, on or after 4 March 2004 but do not apply to a proceeding commenced before that date.

S. 39A
inserted by
No. 8/2004
s. 6.

S. 40
inserted by
No. 52/2002
s. 4.

40 Saving

Despite anything to the contrary in this Act, this Act as in force immediately before the commencement of section 3 of the **Limitation of Actions (Amendment) Act 2002** continues to apply to—

- (a) actions for damages to which Part IV of the **Accident Compensation Act 1985** applies; and
- (b) actions for damages in respect of an injury which entitles, or may entitle, a worker within the meaning of the **Workers Compensation Act 1958** to compensation under that Act; and
- (c) actions for damages to which Part 6 or Part 10 of the **Transport Accident Act 1986** applies.

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No. 6295 of 1958

Sch.

SCHEDULE

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

ENDNOTES

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.

2. Table of Amendments

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

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

Assent Date: 19.12.61
Commencement Date: 19.12.61
Current State: All of Act in operation

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

Assent Date: 22.11.66
Commencement Date: 1.1.67: Government Gazette 21.12.66 p. 4264
Current State: All of Act in operation

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

Assent Date: 17.10.72
Commencement Date: 1.1.73: s. 1(3)
Current State: All of Act in operation

Age of Majority Act 1977, No. 9075/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 11.1.78 p. 97
Current State: All of Act in operation

Statute Law Revision Act 1980, No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80 (subject to s. 6(2))
Current State: All of Act in operation

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

Assent Date: 10.5.83
Commencement Date: 11.5.83: Government Gazette 11.5.83 p. 1145
Current State: All of Act in operation

Commercial Arbitration Act 1984, No. 10167/1984

Assent Date: 20.11.84
Commencement Date: 1.4.85: Government Gazette 20.2.85 p. 372
Current State: All of Act in operation

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: All of Act in operation

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

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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: All of Act in operation

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: All of Act in operation

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

Assent Date: 23.11.93
Commencement Date: 15.10.93: s. 2
Current State: All of Act in operation

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: All of Act in operation

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**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 50) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Limitation of Actions Act 1958**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 71) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Limitation of Actions Act 1958**

Transport (Further Amendment) Act 2001, No. 54/2001

Assent Date: 2.10.01
Commencement Date: S. 39 on 30.6.03: s. 2(5)
Current State: This information relates only to the provision/s amending the **Limitation of Actions Act 1958**

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Limitation of Actions (Amendment) Act 2002, No. 52/2002

Assent Date: 4.11.02
Commencement Date: 5.11.02: s. 2
Current State: All of Act in operation

**Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003,
No. 60/2003**

Assent Date: 16.6.03
Commencement Date: Ss 11–16 on 21.5.03: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Limitation of Actions Act 1958**

Limitation of Actions (Amendment) Act 2004, No. 8/2004

Assent Date: 11.5.04
Commencement Date: 4.3.04: s. 2
Current State: All of Act in operation

Limitation of Actions (Adverse Possession) Act 2004, No. 76/2004

Assent Date: 9.11.04
Commencement Date: 26.11.04: Special Gazette (No. 245) 26.11.04 p. 1
Current State: All of Act in operation

Defamation Act 2005, No. 75/2005

Assent Date: 2.11.05
Commencement Date: Ss 47, 48 on 1.1.06: s. 2
Current State: This information relates only to the provision/s
amending the **Limitation of Actions Act 1958**

**Children, Youth and Families (Consequential and Other Amendments) Act 2006,
No. 48/2006**

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 21) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Limitation of Actions Act 1958**

Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: S. 222 on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Limitation of Actions Act 1958**

Water (Governance) Act 2006, No. 85/2006

Assent Date: 17.10.06
Commencement Date: S. 161 on 18.10.06: s. 2(1); s. 162(2) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Limitation of Actions Act 1958**

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date: 2.3.10
Commencement Date: S. 203(1)(Sch. 6 item 28) on 1.7.10: Special Gazette
(No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s
amending the **Limitation of Actions Act 1958**

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Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10

Commencement Date: S. 48(Sch. item 15) on 1.1.11: Special Gazette
(No. 502) 20.12.10 p. 1

Current State: This information relates only to the provision/s
amending the **Limitation of Actions Act 1958**

3. Explanatory Details

¹ S. 7AB: The amendments proposed by section 162(2) of the **Water (Governance) Act 2006**, No. 85/2006 are not included in this publication due to an incorrect reference to section 7C. Section 162(2) reads as follows:

162 Repeal of Melbourne Water Corporation Act 1992

(2) In section 7C of the **Limitation of Actions Act 1958**—

(a) paragraph (b) is **repealed**; and

(b) **omit** ", Corporation".

² S. 20A: Section 6 of the **Limitation of Actions (Amendment) Act 1993**, No. 102/1993 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.