

QUEENSLAND LAW REFORM COMMISSION

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**A BILL TO AMEND AND CONSOLIDATE
THE LAW RELATING TO
LIMITATION OF ACTIONS**

WORKING PAPER NO. 11

21 June 1972

A Working Paper of the Queensland Law Reform Commission

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COMMISSIONERS

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LAW REFORM COMMISSION

WORKING PAPER ON A BILL TO AMEND
AND CONSOLIDATE THE LAW RELATING TO
LIMITATION OF ACTIONS

The first programme of the Law Reform Commission of Queensland as approved by the Honourable the Minister for Justice and Attorney-General includes an examination of the law relating to limitation of actions with a view to having a uniform or common period of limitation.

The enclosed working paper contains suggestions for a proposed Bill and other explanatory matter and is being circulated to persons and bodies known to be interested, from whom comment and criticism are invited.

This working paper is circulated on a confidential basis and recipients are reminded that any recommendations for the reform of the law are required to be submitted to the Minister and must have the approval of the Governor in Council before being introduced into Parliament. No inferences should be drawn as to any Government Policy.

It is requested that any observations you may desire to make be forwarded to the Secretary, Law Reform Commission, P.O. Box 312, North Quay, Queensland 4000, so as to be received no later than 31st July, 1972.

W. B. Campbell
(W. B. Campbell)
CHAIRMAN.

21 JUN 1972

A BILL TO AMEND AND CONSOLIDATE THE LAW
RELATING TO LIMITATION OF ACTIONS

COMMENTARY

The statute law in Queensland relating to the limitation of actions generally is contained in "The Limitation Act of 1960", "The Law Reform (Limitation of Actions) Act of 1956" and "The Limitation (Persons under Disabilities) Act of 1962".

Apart from these statutes, special provisions regarding the limitation of actions against the Crown, against public authorities, persons in public offices and against other particular persons, appear in various forms in numerous other enactments.

The multiplicity of such Acts and the steady increase in the varying requirements relating to the actions referred to therein, have made the law on the subject of limitations increasingly complex and confusing, not only to the laymen but also to the practising lawyer.

Actions in which claims are made for damages for negligence, nuisance or breach of duty, where the damages claimed consist of or include damages in respect of personal injury, already have a uniform period of limitation imposed under s. 5 of "The Law Reform (Limitation of Actions) Act of 1956". This section applies equally to private individuals, to the Crown and also to public authorities. It will be noted that s. 4(2)(b) of "The Law Reform (Limitation of Actions) Act of 1956" has already abolished the requirement of notice before action in relation to all causes of action to which that Act applies.

"The Limitation (Persons under Disabilities) Act of 1962" deals with time limitations where persons under certain disabilities have causes of action of the type referred to in s. 5 of "The Law Reform (Limitation of Actions) Act of 1956" and likewise applies to the Crown and to public authorities.

In the United Kingdom, since 4th June, 1954 (being the date on which the Law Reform (Limitation of Actions etc.) Act 1954 came into force) the periods of limitation applicable to actions against public authorities are the same as those applicable to similar actions against private persons. Prior thereto actions against public authorities were, in general, subject to a limitation period of one year. In the case of certain governing bodies of nationalised industries and other authorities, the one year period did not apply, although a special three year period was provided for in certain actions.

The Limitation Act, 1939 of the United Kingdom applies to all actions of the classes for which a period of limitation is laid down by the Act, except such actions for which a special period of limitation is provided by some other enactment.

As has already been done in part in the United Kingdom, and also in Queensland in regard to claims for personal injury, the enclosed draft Bill endeavours to bring the Crown, public authorities and other statutory bodies into line with private individuals and corporations by imposing on them all the same time limitation for all types of actions.

Another aspect of existing legislation which often causes a great deal of hardship is the frequent requirement of notice before action, and even occasionally for notice of injury, and it is proposed to abolish likewise all such requirements.

The enclosed Bill is based on "The Limitation Act of 1960" which in turn was drawn from the U.K. Limitation Act 1939 and the Victorian Limitation of Actions Act of 1958. As we were of the opinion that the periods of time provided generally by the existing Queensland legislation had proved satisfactory to date, little or no alteration has been made thereto.

Unfortunately, there will still remain certain Commonwealth Statutes which provide their own period of limitation. For instance, s.157 of the Post and Telegraph Act 1901-1970 provides that an action against the Postmaster-General or his officers must be commenced within six months after the act relied upon was done or committed, and not otherwise, and such action shall not be commenced until one month after notice thereof. However, it may be noted that such an action could be commenced against the Commonwealth, as the Postmaster-General's Department is a Department of State, and then could be commenced within three years of the cause of action. We understand that representations are currently being made by the Law Council of Australia to the Commonwealth Government to provide for a uniform period of three years within which such actions may be brought against any Commonwealth instrumentality.

We also recommend the adoption in substance of certain provisions introduced in the United Kingdom by the Limitation Act 1963, and in New South Wales by the Limitation Act 1969. These provisions would allow an extension of the limitation period in bringing an action for damages for personal injuries in cases where the injured person does not know, and could not reasonably be expected to know, the material facts relating to his cause of action, until the limitation period has almost expired or until after the expiry of the limitation period.

A list of statutes for repeal in whole or in part has been included as a Schedule to the draft Bill, but such list should not be treated as exhaustive. An extension of the list of Statutes by Proclamation is provided for in cl. 9(3).

SPECIFIC CLAUSES OF THE BILL

1. Short title.
2. Division of Act. It was considered desirable to divide the Bill into Parts as was done with "The Limitation Act of 1960."
3. Commencement of Act. By proclamation in the Gazette.
4. Repeal. As mentioned earlier in the Commentary the list of statutes in the Schedule should not be considered exhaustive.
5. Interpretation. "action" has been defined as in "The Limitation Act of 1960" but it will be noted that cl. 30(2) of the draft Bill specifically excludes claims for compensation under any statute or by-law or any regulation thereunder. This is to avoid any possible suggestion that, for example, the time limitations imposed by the Acquisition of Land Act 1967-1969 are affected.

"Crown" - the definition in no way purports to bind the Commonwealth.

"public authority" - although the proposed definition is somewhat repetitive we felt that it would be unwise to attempt to refine it further. The Public Authorities Protection Act, 1893 (U.K.) since repealed, did not define "public authority". That statute only dealt with "public duty or authority". No general definition of what is or what is not a public authority has been attempted by the courts, but the question has been discussed in a

number of specific instances - see Halsbury's Laws of England (3rd ed.) Vol. 30 at p. 682. In Griffiths v. Smith [1941] A. C. 170 at pp. 205 and 206 Lord Porter discussed what was a public authority. In arriving at a determination as to whether a particular body consisting of the managers of a school was a public authority, he said: "What then is a public authority.... the phrase is not confined to municipal corporations. There are many other bodies which perform statutory duties and exercise public functions." See also the reference of Latham C. J. in Renmark Hotel Incorporated v. Federal Commissioner of Taxation (1949) 23 A. L. J. 445 at p. 446.

"trust" and "trustee" - the definitions set out in the Trusts Bill 1971 have been adopted.

6. Application to the Crown. At the present time there are three principal classes of action maintainable against the Crown:-

- (1) those which have to be brought against a Nominal Defendant appointed under "The Claims Against Government Act of 1866";
- (2) those which can be brought against a Minister of the Crown or a body corporate representing the Crown; and
- (3) those which can be brought against any of the various instrumentalities of the Crown.

The rights of a subject to sue a Minister, a Government instrumentality or a public servant on behalf of some Government Department are contained in a wide variety of statutes with a wide variety of provisions. All of them provide a specific limitation period within which action must be taken, coupled in most instances with provisions for the giving of notice of action within a certain time and in some cases even for notice of injury. Many of these were copied from various English Public Authorities Protection Acts which were repealed by the Crown Proceedings Act 1947.

In our opinion all such provisions should be completely swept away. The concept of notice and for a specific (and in most cases a very short) time limitation in actions of this nature date back to the era when a servant of the Crown could not plead his superior's orders and the Crown did not indemnify its servants if they were found liable and judgment given against them. Today it cannot be claimed that the Crown needs any such protection. It normally has perfectly good information on the subject at issue and, through its police forces, it also has an efficient means of access to information on practically any subject at issue. Generally it is far more advantageously placed than the private citizen.

7. Saving for other limitation enactments. It will be noted that the Bill does not apply to any action or arbitration for which a limitation period is fixed by some other enactment, but the Bill does propose the repeal of certain specified statutes which are listed in the Schedule (see cl. 9).

8. Provisions as to actions already barred and pending action. This clause is self-explanatory.

9. Exclusion of other limitation enactments. In relation to any action or proceeding to which the Bill applies, this clause abolishes generally any specific time limitation, any notice of action or notice of injury. The clause follows fairly closely s. 4 of "The Law Reform (Limitation of Actions) Act of 1956" and likewise repeals any provision regarding the granting of costs.

Subclause (3) will enable any Acts which due to oversight have not been included in the Schedule to be added by Proclamation.

10. Periods of limitation for different classes of action, and
11. Actions of contract and tort and certain other actions. These were taken from "The Limitation Act of 1960". It will be noted that personal injury claims have been excluded from cl. 10(1)(a).
12. Limitation of actions in respect of personal injuries to persons. This clause was adapted from "The Law Reform (Limitation of Actions) Act of 1956" and preserves the same time limitation in relation to personal injury claims as did that Act. The clause has been extended to include "trespass" because of the decision in Letang v. Cooper [1964] 2 Q.B. 53.
13. Limitation in case of successive conversions and extinction of title of owner of converted goods. Subclauses(1) and (2) of this clause follow s. 10 of "The Limitation Act of 1960". A further subcl. (3) has been added to protect the plaintiff's title in appropriate circumstances. A similar provision (subcl. (3)) has been added to cl. 25 of the Bill which otherwise follows s. 22 of the 1960 Act. Both ss. 10 and 22 of this latter Act were taken from the U.K. Act of 1939 (ss. 3 and 16). However, neither Act made any provision for preserving the plaintiff's title when an action had been commenced prior to the expiration of the relevant limitation period. A similar provision to subcl. (3) has been included in the N. S. W. Limitation Act 1969 (Part 4).

In Queensland, as in the United Kingdom, it is only in relation to successive conversions and in actions for recovery of land that title is extinguished. In all other causes of action, unless the defendant appropriately raises the defence that the cause is statute barred, an action on that cause of action is not defeated by the statutory bar.

In New South Wales, on the other hand, their Limitation Act 1969 (s. 63 et. seq.) makes it a general rule that on the expiration of the limitation period for a cause of action, the personal right to debt, damages or other money, or the right of property, which the cause of action would enforce is extinguished. Their reasons for introducing such provisions are set out at p. 136 of the New South Wales Commission's first Report on Limitations dated October 1967. In their second Report on the subject dated 8th September, 1971 however, the New South Wales Commission have expressed doubts as to whether as a consequence of the extinction provisions contained in Part IV of the New South Wales statute the common law principles still apply. It may well be that if the right or title is extinguished, irrespective of the wishes of the parties, it is not competent to the defendant to waive the statutory bar to remedy, for there remains no right or title in respect of which remedy can be granted.

In Queensland the existing provisions have proved quite satisfactory and accordingly we see no reason to change them.

14 to 24. These clauses follow generally "The Limitation Act of 1960". As mentioned earlier in the Commentary the periods of limitation imposed by that Act appear to have proved satisfactory and follow mainly the U.K. Act of 1939. Accordingly there seemed no good reason for alteration except to rephrase several of the clauses. Reference to settled land etc. has also been deleted to conform with the Trusts Bill 1971.

25. Extinction of title after expiration of period. Subclause (1) follows "The Limitation Act of 1960". The reasons for the inclusion of subcl. (2) are set out in the Commentary to cl. 13 above.

26 to 29. These clauses also follow "The Limitation Act of 1960".

30. Limitation of actions against the Crown and public authorities etc. This clause is new and is based on s. 5 of "The Law Reform (Limitation of Actions) Act of 1956" which in turn follows the general form of limitation frequently

found in statutes relating to public authorities, e. g. s. 67 of "The Southern Electric Authority of Queensland Acts 1952 to 1958". The clause attempts to impose the same time limitation for all types of actions to which the Act applies whether against the Crown, public authorities, any of their instrumentalities or their officers as between subject and subject. The same arguments in relation to actions against the Crown apply just as forcibly to actions against local authorities. We accordingly recommend that, in the case of the Crown and all instrumentalities of the Crown, in the case of all local governing bodies, notices of action and notices of injury be abolished and that the time limitation for bringing any action be the same as if the action were against a private individual or corporation.

It will be noted that, as mentioned earlier in the Commentary, subs. (2) of this clause specifically excludes any claim for compensation under any Act conferring a right to compensation in respect of any loss or damage arising from the lawful exercise of any power thereunder.

31. Extension of limitation period in case of disability. This follows s. 27 of "The Limitation Act of 1960". Clause 31(d) exempts personal injury claims.

32. Interpretation, and

33. Ordinary action. These clauses are based on ss. 57 and 58 of the New South Wales Limitation Act 1969 which Act was proclaimed on 1st January, 1971. The legislation was introduced pursuant to recommendations of the New South Wales Law Reform Commission - vide their Report dated October 1967 and we acknowledge the assistance of this Report. The New South Wales sections were adapted from the U.K. Limitation Act 1963, chapter 47, which was passed in consequence of the report of the Edmund Davies Committee in 1962 (the Committee on Limitation of Actions in cases of personal injury).

The Committee was appointed after the decision in Cartledge v. E. Jopling & Sons Ltd. [1962] 1 Q.B. 189; [1963] A.C. 758. The judgment of the House of Lords was given after the Committee had made its report. It is, however, the opinion of some that the reform in England did not go far enough and it must be conceded that the litigation which it has provided has been somewhat restrictive in application - e. g. Goodchild v. Greatness Timber Company Limited [1968] 2 Q.B. 372.

In dealing with the question of extending a time limitation, the problem is one of satisfying the competing interests of all parties. As the Edmund Davies Committee pointed out, the law of limitation of actions has a three-fold purpose:-

- (a) to protect defendants from being vexed by stale claims relating to incidents long past concerning which records may no longer be in existence and as to which their witnesses, even if they are still available, may well have no accurate recollection;
- (b) to encourage plaintiffs not to go to sleep on their rights but to institute proceedings as soon as it is reasonably possible for them to do so; and
- (c) to ensure that a person may with confidence feel that after a given time he may treat as being finally closed an incident which might have led to a claim against him.

However, although the law of limitations is designed principally for the benefit of defendants, nevertheless one must not lose sight of the interests of persons who have sustained injury. A plaintiff who has lost the right to claim damages even before he can know of the existence of that right must inevitably feel that he has suffered a great injustice. Whilst it is in personal

injury cases that the problem is likely to arise most frequently and in a form likely to excite a feeling of injustice, the problem is not confined to such cases.

It is our opinion, however, that ignorance of the occurrence of damage which gives rise to a cause of action should not in general postpone the running of the limitation period and the statutory provision should be lifted only in a case where "the damages claimed by the plaintiff consist of or include damages in respect of personal injury". In this we have again followed s. 5 of "The Law Reform (Limitation of Actions) Act of 1956".

The Law Reform Commission of South Australia recently expressed a contrary view, being of the opinion that it should apply in all cases. The Law Reform Commission of New South Wales, on the other hand, favoured our approach, except that they confined their extension to causes of action for personal injury exclusively. As they point out in their Report on the subject (p. 133), in the great majority of personal injury cases where an extension of time would be available as under legislation on the lines of the U.K. Act of 1963, the defendant will be indemnified by insurance. Whilst this at first sight may not seem relevant, the fact remains that in such a circumstance the burden of a claim by a single plaintiff will be widely spread over the community and the action will be defended by an insurer whose business it is to defend such actions.

In these special circumstances they consider it is right to give to give less weight to the function of protecting defendants from being vexed by stale claims and greater weight to the injustice which otherwise an injured person would suffer. It is accordingly their contention that these considerations justify special treatment of cases of personal injury but do not justify a general relaxation of the law of limitation of actions in all cases of claims for damages.

With one reservation we agree with this opinion, particularly as it is generally only in personal injury claims that an injured person not only did not know but also could not reasonably be expected to know the material facts until after the expiration of the limitation period; for example, in the case of a factory worker who contracts some disease due to the negligence or breach of statutory duty of his employer and that particular disease does not manifest itself for some years. However, we feel their approach is a little too narrow in limiting the provision to personal injury claims solely.

Under the U.K. Limitations Act 1963, leave must be granted once the facts are made out (s. 2(2)(3)). Notwithstanding this, it is still open to the court at the trial to make a second finding on the facts and to hold the action to be statute barred because the facts justifying an extension have not been made out - see Cozens v. North Devon Hospital Management Committee [1966] 2 Q.B. 330. In this regard the U.K. Act follows the recommendation of the Edmund Davies Committee, rejecting a proposal that the court be given a discretion, on the grounds that a discretion would encourage hopeless applications and consequent waste of money, that the law should be certain, and that divergences of practice would arise.

With this we cannot agree. In our opinion it should be within the discretion of the court to grant or withhold an extension even if the facts are made out. This is also the attitude of the New South Wales Law Reform Commission. As the Commission said in their Report, the position under the U.K. Act is that a plaintiff is relieved of the statutory bar once the facts are made out, irrespective of the smallness of the amount of damages he is likely to recover and, in so far as the preliminary application is concerned, irrespective of whether his evidence is likely to be believed at the subsequent trial. Consequently, in giving a discretion to the court, actions of a speculative or fraudulent nature may well be discouraged or excluded rather than the reverse.

In regard to the question of certainty, we fail to see how this will be achieved if the trial Judge is empowered on the hearing later to hold the action to be statute barred.

In cl. 32 the New South Wales provisions have been altered again to include "trespass".

34. Surviving action. This provision will allow an order extending the time to be made, not only when the intending plaintiff has been ignorant of the material facts, but also where the deceased was similarly ignorant. This clause follows s. 3 of the U.K. Act of 1963 and s. 59 of the New South Wales Act. It will be noted that there are certain exceptions to what are material facts of a decisive character and is in line with similar recommendations of the New South Wales Law Reform Commission.

35. Prior bar ineffective. This clause stresses what is probably implicit in the previous two clauses.

36. Evidence. It was considered by the New South Wales Law Reform Commission that there should be some relaxation in the ordinary rules of evidence in these cases, otherwise a person applying for leave under the preceding clauses might well find it impossible to prove what was within the means of knowledge of the deceased. With this we are in agreement, particularly in view of the discretion granted to the court in the Bill. The U.K. Act of 1963 has no equivalent section. Whilst an application may be made ex parte, either the court or a judge may require that notice be given to any person. Presumably the court or a judge could also adjourn the determination of the application to the trial of the action.

37 to 40. These provisions are adapted from "The Limitation Act of 1960" and require no comment.

41. Costs of action. This has been drawn from s. 2(3) of "The Limitation (Persons under Disabilities) Act of 1962".

42. Contribution between tortfeasors. The statute of limitations does not begin to run in favour of a third party tortfeasor against whom a claim for contribution is made until after the liability of the original tortfeasor has been ascertained, for it is only then that the right to contribution arises: see per Windeyer J. in Brambles Constructions Pty. Ltd. v. Helmers (1966) 114 C. L. R. p. 221, also Halsbury (3rd ed.) at p. 194.

The liability of the original tortfeasor may be established by judgment in an action against the claimant for contribution, by accord with or without satisfaction, or by award in an arbitration. It would appear that at the present time a claim for contribution under s. 5(c) of the 1952 Act is subject to a limitation period of six years from the date on which such cause of action accrues, even where the damages claimed by the original plaintiff consist of or include damages in respect of personal injury to any person, a claim for contribution in respect of personal injuries not being a claim for personal injury under s. 5 of "The Law Reform (Limitation of Actions) Act of 1956" - Unsworth v. Commissioner for Railways, 101 C. L. R. at p. 73.

The U.K. Limitation Act of 1963 provides (s. 4) for a limitation period of two years for a claim for contribution under s. 6 of the Law Reform (Married Women and Tortfeasors) Act 1935, the source of our Act of 1952. The two year period runs from the date of the judgment or arbitral award establishing the liability of the claimant or, if liability is admitted by the claimant in respect of the damage, the date of the agreement fixing the amount to be paid by the claimant in discharge of his liability.

Section 4 of the U.K. Act, however, does not fix any limitation period where settlement of a claim is made without any admission of liability, and it may be that in consequence the section does not enable contribution to be recovered in those circumstances. In any event it leaves in considerable doubt the date from which time runs.

Again, under the U.K. Act the tortfeasor liable to pay contribution is in the unsatisfactory position that the running of the limitation period in his favour does not commence until the happening of an event, namely a judgment, arbitral award, or agreement, any of which may not happen for an indeterminate time after the happening of the facts making him liable as a tortfeasor. What is even more unsatisfactory, the event is outside his control and possibly even outside his knowledge.

We agree with the New South Wales Commission (p. 116 of their Report) that an independent limitation period should be fixed and we have adopted their recommendation of a limitation period expiring four years after the expiration of the limitation period for the liability for which the cause of action for contribution arises. This period, as the New South Wales Commission suggest, should give the person claiming contribution ample time to make his enquiries and to commence proceedings even if there are appeals or new trials or both, in the action against him.

From the point of view of the person against whom contribution is claimed, the possible period of ten years which may run before any claim against him is statute barred (although a long one) is, in our opinion, not unduly so in all the circumstances.

43. Application of Act to arbitrations. This clause may become redundant if the Arbitration Bill 1971 becomes law.

44. Provisions as to set-off or counterclaim, and

45. Acquiescence. These clauses were adopted from and follow "The Limitation Act of 1960" and the U.K. Act of 1939. Such clauses also appear in the Victorian Act of 1958 and are self-explanatory.

A Bill to Amend and Consolidate the Law relating to the Limitation of Actions.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:-

PART I - PRELIMINARY

1. Short title. This Act may be cited as the Limitation of Actions Act 197.

2. Division of Act. This Act is divided into Parts as follows:-

- PART I - PRELIMINARY, ss. 1-9;
- PART II - PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTION, ss. 10-30;
- PART III - EXTENSION OF LIMITATION PERIODS, ss. 31-42;
- PART IV - GENERAL, ss. 43-45.

3. Commencement of Act. This Act shall come into operation on a date to be fixed by the Governor in Council by Proclamation published in the Gazette, which date is herein referred to as the commencement of this Act.

4. Repeal. The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column to that Schedule.

5. Interpretation. [9 Eliz. 2, No. 7; 5 Eliz. 2, No. 19; U.K. 1939, s. 31; Vic. 1958, s. 3] (1) In this Act unless the context otherwise requires, the following terms shall have the meanings hereby respectively assigned to them, that is to say -

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

"Crown" means not only the Crown in right of the State of Queensland but also, as far as the legislative power of Parliament permits, the Crown in all its other capacities;

"damage" includes loss of life and personal injury;

"dependant" means any person for whose benefit an action may be brought under section 12 of the Common Law Practice Act Act 1867-1970;

Abbreviations. Abbreviations used in reference to other Acts in notes appearing at the beginnings of sections have the following meanings:-
31 Vic. No. 16 - "The Distress Replevin and Ejectment Act of 1867"; 5 Eliz. 2 No. 19 - "The Law Reform (Limitation of Actions) Act of 1956"; 9 Eliz. 2 No. 7 - "The Limitation Act of 1960"; 11 Eliz. 2 No. 20 - "The Limitation (Persons under Disabilities) Act of 1962 [of Queensland]; U.K. 1939 - Limitation Act 1939; U.K. 1963 - Limitation Act 1963 [of the United Kingdom]; N. S. W. 1969 - Limitation Act 1969 [of New South Wales]; Vic. 1958 - Limitation of Actions Act 1958 [of Victoria].

"encumbrance" includes every person within the meaning of that term as defined in "The Real Property Acts, 1861 to 1963" and also every person entitled to the benefit of an encumbrance or to require payment or discharge thereof;

"land" includes corporeal hereditaments, rent charges 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, it does not include any incorporeal hereditaments;

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

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

"public authority" includes local or public authorities of all descriptions;

"rent" includes a rentcharge and a rentservicé;

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

"ship" includes every description of vessel used in navigation not propelled by oars;

"trust" and "trustee" shall have the same meanings respectively as in the Trusts Act 197 ;

"trust for sale" in relation to land means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale.

(2) [9 Eliz. 2 No. 7, s. 4] For the purposes of this Act, a person shall be deemed to be under a disability while he is an infant, or of unsound mind, or a convict who after conviction is undergoing a sentence of imprisonment, and whose estate is not vested in the Public Curator pursuant to the provisions of Part IV of the Public Curator Act 1915-1971.

(3) [9 Eliz. 2 No. 7, s. 4] For the purposes of the last foregoing subsection, but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind -

- (a) while he is a patient within the meaning of "The Mental Health Acts, 1962 to 1964";
- (b) in respect of whom the Governor in the name of Her Majesty may give such order for safe custody during his pleasure in such place of confinement and in such manner as the Governor in Council may think fit, while he is in such custody; or
- (c) whom the Minister for Justice has in pursuance of Part IV of "The Mental Health Acts, 1962 to 1964" ordered to be detained in such security patients' hospital, prison, or other place of confinement, while he is so detained.

(4) [9 Eliz. 2 No. 7, s. 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; but 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) [9 Eliz. 2 No. 7, s. 4] References in this Act to a right of action to recover land shall include reference to a right to enter into possession of the land or, in the case of rentcharges, to distrain for arrears of rent, and reference to the bringing of such an action shall include references to the making of such an entry or distress.

(6) [9 Eliz. 2 No. 7, s. 4] Reference 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 land receipt of rent.

(7) [9 Eliz. 2 No. 7, s. 4] in Part III 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 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 action for an account, be construed as references to the date on which the matter arose in respect of 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.

6. Application to the Crown. [cf. Vic. 1958, 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.

(2) For the purposes of this section proceedings by or against the Crown shall include proceedings by or against any Government Department, instrumentality of the Crown, or any officer of the Crown in his official capacity or any person acting on behalf of the Crown.

7. Saving for other limitation enactments. [9 Eliz. 2 No. 7, s. 5; cf. U.K. 1939, s. 32; N.S.W. 1969, s. 7] Save as herein provided nothing in this Act applies to any action or arbitration for which a limitation period is fixed by or under an enactment other than this Act.

8. Provisions as to actions already barred and pending actions. [9 Eliz. 2 No. 7, s. 6; U.K. 1939, s. 33] (1) Except as provided in sections 33 and 34 of this Act nothing in this Act shall -

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

(2) [5 Eliz. 2 No. 19, s. 8] The time for bringing proceedings in respect of a cause of action which arose before this Act comes into force shall, if it is not then already expired, expire at the time when it would have expired apart from the provisions of this Act or at the time when it would have expired if the provisions of this Act had at all material times been in force, whichever is the later.

(3) Save as aforesaid, nothing in this Act shall affect any action or proceeding if the cause of action arose before this Act comes into force.

9. Exclusion of other limitation enactments. [cf. 5 Eliz. 2 No. 19, s. 4(2)]

(1) So much of the Acts mentioned in the Schedule to this Act as enacts that in any action or other proceeding to which this Act applies -

- (a) the action or proceeding be commenced within any particular time; or
- (b) a notice of action is to be given; or
- (c) a notice of any injury alleged is to be given; or
- (d) the defence is to be entitled to any particular kind or amount of costs or the plaintiff is to be deprived of costs in default of his bringing the action or proceeding within any particular time or in giving notice of action,

is hereby repealed.

(2) The provisions of this section shall apply notwithstanding the provisions of any Act hereinafter passed unless such latter Act expressly provides to the contrary.

(3) The Governor-in-Council may by Proclamation published in the Gazette declare that from a date specified in the Proclamation any Act not referred to in the Schedule is an Act to which this section applies.

PART II - PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTION

10. Periods of limitation for different classes of action. [9 Eliz. 2 No. 7, s. 8; U.K. 1939, s. 1; Vic. 1958, s. 4] The provisions of this Part of this Act shall have effect subject to the provisions of Part III of this Act which provide for the extension of the periods of limitation in the case of disability, acknowledgement, part payment, fraud and mistake.

Limitation of actions of contract and tort, other than where personal injuries are included and certain other actions

11. Actions of contract and tort and certain other actions. [9 Eliz. 2 No. 7, s. 9; U.K. 1939, s. 1; Vic. 1958, 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, that is to say -

- (a) actions founded on simple contract or quasi-contract or on tort where the damages claimed by the plaintiff do not consist of or include damages in respect of personal injury to any person;
- (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 any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.

(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 specialty shall not be brought after the expiration of twelve 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 twelve years from the date on which the judgment becomes enforceable.

(5) 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:

Provided that for the purposes of this subsection the expression "penalty" shall not include a fine to which any person is liable on conviction of a criminal offence.

(6) This section shall not apply to any cause of action within the Admiralty jurisdiction of the court which is enforceable in rem.

(7) 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 corresponding enactment repealed by this Act has heretofore been applied.

12. Limitation of actions in respect of personal injuries to persons. [5 Eliz. 2 No. 19, s. 5] Notwithstanding anything contained in any other Act or law or rule of law to the contrary, actions for damages for negligence, trespass, nuisance or breach of duty (whether the duty exists by virtue of a contract or a provision made by or under a statute or independently of any contract or any such provision) where damages claimed by the plaintiff for the negligence, trespass, nuisance or breach of duty consist of or include damages in respect of personal injury to any person shall be commenced within three years after the cause of such actions arose, but not after.

13. Limitation in case of successive conversions and extinction of title of owner of converted goods. [9 Eliz. 2 No. 7, s. 10; U.K. 1939, s. 3; Vic. 1958, s. 6; N.S.W. 1969, s. 65(2)] (1) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person, and 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 any such cause of action has accrued to any person and 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 he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished as against any purchaser, mortgagee, or any other person having a title to or interest in the chattel bona fide for value.

(3) Where, before the expiration of the limitation period fixed by or under this Act for a cause of action in respect of the further conversion or wrongful detention of a chattel, an action is brought on the cause of action, the

expiration of the limitation period does not affect the right or title of the plaintiff to the chattel -

- (a) for the purposes of the action; or
- (b) so far as the right or title is established in the action.

Actions to recover land and rent

14. Limitation of actions to recover land. [9 Eliz. 2 No. 7, s. 11; U.K. 1939, s. 4; Vic. 1958, s. 8] No action shall be brought by any person to recover any land after the expiration of twelve 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.

15. Accrual of right of action in case of present interests in land. [9 Eliz. 2 No. 7, s. 12; U.K. 1939, s. 5; Vic. 1958, s. 9] (1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and 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 any person brings an action to recover any land of a deceased person, whether under a will or on intestacy, and 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 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 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.

16. Accrual of right of action in cases of future interests. [9 Eliz. 2 No. 7, s. 13; U.K. 1939, s. 6; Vic. 1958, s. 10] (1) Subject as hereafter in this section provided, the right of action to recover any land shall, in a case where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and 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 fell into possession by the determination of the preceding estate or interest.

(2) If the person entitled to the preceding estate or interest, 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 twelve 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 is entitled to any estate or interest in land in possession and, 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.

17. Provisions in case land held in trust. [9 Eliz.2 No.7, s.14; Vic.1958, s.11] (1) Subject to the provisions of subsection (1) of section 28 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 any land is held by any trustee upon trust, including a trust for sale, and the period prescribed by this Act for the bringing of an action to recover the land by the trustee has expired, the estate of the trustee shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Act, but if and when every such right of action has been so barred, the estate of the trustee shall be extinguished.

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

(4) Where any land held upon 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 trustee, or to any person entitled to a beneficial interest in the land or in the proceeds of sale.

18. Accrual of right of action in case of forfeiture or breach of condition. [9 Eliz.2 No.7, s.15; U.K.1939, s.8; Vic.1958, 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.

19. Accrual of right of action in case of certain tenancies. [9 Eliz.2 No.7, s.16; U.K.1939, s.9; Vic.1958, 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 any person is in possession of land by virtue of a lease in writing by which a rent of not less than two dollars per annum is reserved, and 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 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.

20. Right of action not to accrue or continue unless there is adverse possession. [9 Eliz. 2 No. 7, s. 17; U.K. 1939, s. 10; Vic. 1958, 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 unless and until adverse possession is taken of the land.

(2) Where a right of action to recover 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 accrue unless and until the land is again taken into adverse possession.

(3) For the purpose 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; and
- (b) receipt of rent under a lease by a person wrongfully claiming, in accordance with subsection (3) of the last foregoing section, the land in reversion shall be deemed to be adverse possession of the land.

21. Limitation of redemption actions. [9 Eliz. 2 No. 7, s. 18; U.K. 1939, s. 12; Vic. 1958, s. 15] When a mortgagee of land has been in possession of any of the mortgaged land for a period of twelve years, no action to redeem the land of which the mortgagee has been so in possession shall thereafter be brought by the mortgagor or any person claiming through him.

22. No right of action to be preserved by formal entry or continual claim. [9 Eliz. 2 No. 7, s. 19; U.K. 1939, s. 13; Vic. 1958, 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.

23. Limitations applying as between joint owners. [9 Eliz. 2 No. 7, s. 20; cf. 31 Vic. No. 16, s. 9] When any one or more of several persons entitled

to any land or rent as coparceners, joint tenants or tenants in common shall 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 lastmentioned person or persons or any of them.

24. Administration to date back to death. [9 Eliz. 2 No. 7, s. 21; U.K. 1939, s. 15; cf. 31 Vic. No. 16, s. 14] 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.

25. Extinction of title after expiration of period. [9 Eliz. 2 No. 7, s. 22; U.K. 1939, s. 16; Vic. 1958, s. 18; N.S.W. 1969, s. 65(2)] (1) Subject to the provisions of section 17 of this Act, subsection (2) of this section and to "The Real Property Acts, 1861 to 1963", at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action), the title of that person to the land shall be extinguished.

(2) Where, before the expiration of the limitation period fixed by or under this Act for a cause of action to recover land, an action is brought on the cause of action, the expiration of the limitation period does not affect the right or title of the plaintiff to the land -

- (a) for the purposes of the action; or
- (b) so far as the right or title is established in the action.

26. Limitation of actions to recover rent. [9 Eliz. 2 No. 7, s. 23; U.K. 1939, s. 17; Vic. 1958, s. 19] No action shall be brought, or distress made, 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 or to
recover proceeds of the sale of land

27. Limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land. [9 Eliz. 2 No. 7, s. 24; U.K. 1939, s. 18; Vic. 1958, 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, or to recover proceeds of the sale of land, after the expiration of twelve years from the date when the right to receive the money accrued.

(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of twelve 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 purposes 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 the 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.

(4) Nothing in this section shall apply to 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.

(5) No action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of proceeds of the sale of land, or to recover damages in respect of such arrears shall be brought after the expiration of six years from the date on which the interest became due:

Provided that -

- (a) where a prior mortgagee or encumbrancee 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 encumbrancee, he may recover by that action all the arrears of interest which fell due during the period of possession by the prior encumbrancee or damages in respect thereof, notwithstanding that the period exceeded six years;
- (b) where the property subject to the 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.

(6) This section shall not apply to any mortgage or charge on a ship.

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

28. Limitation of actions in respect of trust property. [9 Eliz. 2 No. 7, s. 25; U.K. 1939, s. 19; Vic. 1958, 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:

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.

29. Limitation of actions claiming personal estate of a deceased person. [9 Eliz. 2 No. 7, s. 26; U.K. 1939, s. 20; Vic. 1958, s. 22] Subject to the provisions of subsection (1) of the last foregoing 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 twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

30. Limitation of actions against the Crown and public authorities etc.

(1) Notwithstanding anything contained in any other Act or rule of law to the contrary, and except as provided in subsection (2) of this section, all actions to which this Act applies howsoever arising against the Crown, any instrumentality of the Crown or against any public authority or any member thereof or any officer of the Crown or of any public authority or any person acting in his stead for anything done or intended or omitted to be done in pursuance or execution or intended execution of any Act or of any public duty or authority or in respect of any neglect or default in the execution of any such Act, duty or authority shall be commenced within the same period of time after the cause of such action ^{arose} as if such action were brought against a private individual but not after.

(2) In this section "actions howsoever arising" shall not be construed to include claims for compensation under any Act conferring a right to compensation in respect to any loss or damage arising from the lawful exercise of any power thereunder.

PART III - EXTENSION OF LIMITATION PERIODS

31. Extension of limitation period in case of disability. [9 Eliz. 2 No. 7, s. 27; U.K. 1939, s. 22; Vic. 1958, s. 23; 11 Eliz. 2 No. 20, s. 2] If, on the date when any right of action accrued, whether before or after the commencement of this Act, 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 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 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 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) [cf. 11 Eliz. 2 No. 20, s. 2] no action to recover damages in respect of personal injuries shall be brought by any person after the expiration of three years from the date when the person ceased to be under a disability or died, whichever event first occurred;
- (e) this section shall not apply to any action to recover a penalty or forfeiture, or sum by way of penalty or forfeiture, by virtue of

any enactment, except where the action is brought by an aggrieved party.

32. Interpretation. [N.S.W. 1969, s. 57] For the purposes of sections 32, 33, 34, 35 and 36 -

- (a) the material facts relating to a cause of action include the following:-
 - (i) the fact of the occurrence of negligence, trespass, nuisance or breach of duty on which the cause of action is founded;
 - (ii) the identity of the person against whom the cause of action lies;
 - (iii) the fact that the negligence, trespass, nuisance or breach of duty causes personal injury;
 - (iv) the nature and extent of the personal injury so caused; and
 - (v) the extent to which the personal injury is caused by the negligence, trespass, nuisance or breach of duty;
- (b) material facts relating to a cause of action are of a decisive character if, but only if, a reasonable man, knowing those facts and having taken the appropriate advice on those facts, would regard those facts as showing -
 - (i) that an action on the cause of action would (apart from the effect of the expiration of a limitation period) have a reasonable prospect of success and of resulting in an award of damages sufficient to justify the bringing of an action on the cause of action; and
 - (ii) that the person whose means of knowledge is in question ought, in his own interests, and taking his circumstances into account, to bring an action on the cause of action;
- (c) "appropriate advice", in relation to facts, means the advice of competent persons, qualified in their respective fields to advise on the medical, legal and other aspects of the facts, as the case may require;
- (d) a fact is not within the means of knowledge of a person at a particular time if, but only if:-
 - (i) he does not, at that time, know the fact; and
 - (ii) in so far as the fact is capable of being ascertained by him, he has, before that time, taken all reasonable steps to ascertain the fact.

33. Ordinary action. [cf. U.K. 1963, ss. 1 and 2; N.S.W. 1969, s. 58]

(1) This section applies to a cause of action for damages for negligence, trespass, nuisance or breach of duty (whether the duty exists by virtue of a contract or a provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, trespass, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person.

(2) Where on application to a court by a person claiming to have a cause of action to which this section applies, it appears to the court that -

- (a) any of the material facts of a decisive character relating to the cause of action was not within the means of knowledge of the applicant until a date after the commencement of the year next preceding the expiration of the limitation period for the cause of action; and

- (b) there is evidence to establish the cause of action, apart from any defence founded on the expiration of a limitation period -

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

(3) This section applies to a cause of action whether or not the limitation period for the cause of action has expired -

- (a) before the commencement of this Act; or
(b) before an application is made under this section in respect of the cause of action.

34. Surviving action. [U.K.1963, c.47, ss.1, 2, 3; N.S.W.1969, s.59]

(1) This section applies to a cause of action founded on negligence, trespass, nuisance or breach of duty, for damages for personal injury which has survived on the death of a person under section 12 of the Common Law Practice Act 1867-1970.

(2) Where on application to a court by a person claiming to have a cause of action to which this section applies, it appears to the court that -

- (a) any of the material facts of a decisive character relating to the cause of action was not within the means of knowledge of either the deceased or the applicant until a date after the commencement of the year next preceding the expiration of the limitation period for the cause of action; and
(b) there is evidence to establish the cause of action, apart from any defence founded on the expiration of a limitation period -

the court may order that the limitation period for the cause of action be extended so that it expires at the end of one year after that date and thereupon, for the purposes of an action on that cause of action brought by either the deceased or the applicant in that court the limitation period is extended accordingly.

(3) For the purposes of this section, the material facts of a decisive character do not include facts relating only to -

- (a) damages not recoverable by the applicant; or
(b) funeral expenses of the deceased.

(4) This section applies to a cause of action whether or not a limitation period for the cause of action has expired -

- (a) before the commencement of this Act; or
(b) before an application is made under this section in respect of the cause of action.

35. Prior bar ineffective. [N.S.W.1969, s.61] Where after the expiration of a limitation period to which this Part applies, the limitation period is extended by order under this Part, the prior expiration of the limitation period has no effect for the purposes of this Act.

36. Evidence. [N.S.W.1969, s.62] (1) An application under this Part may be made ex parte but the court or a judge may if it or he thinks fit require that notice of the application be given to any person.

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

Acknowledgement and part payment

37. Fresh accrual of action on acknowledgement or part payment. [9 Eliz. 2 No. 7, s. 28; U.K. 1939, s. 23; Vic. 1958, 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 acknowledgement or payment.

(2) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and 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 or redemption, an action to redeem the land in his possession may be brought at any time before the expiration of twelve years from the date of the payment or acknowledgement.

(3) Where 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 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 acknowledgement 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.

38. Formal provisions as to acknowledgement and part payment. [9 Eliz. 2, No. 7, s. 29; U.K. 1939, s. 24; Vic. 1958, s. 25] (1) Every such acknowledgement as aforesaid shall be in writing and signed by the person making the acknowledgement.

(2) Any such acknowledgement or payment as aforesaid may be made by the agent of the person by whom it is required to be made under the last foregoing 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.

39. Effect of acknowledgement or part payment on persons other than the maker or recipient. [9 Eliz. 2 No. 7, s. 30; U.K. 1939, s. 25; Vic. 1958, s. 26] (1) An acknowledgement 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 acknowledgement of the mortgagor's title or of his equity of redemption 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 acknowledgement is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgaged debt, the mortgagor shall be entitled to redeem 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 value of the whole of the mortgaged land.

(4) Where there are two or more mortgagors, and the title or right to redemption of one of the mortgagors is acknowledged as aforesaid, the acknowledgement shall be deemed to have been made to all the mortgagors.

(5) An acknowledgement of any debt or other liquidated pecuniary claim shall bind the acknowledgor and his successors but not any other person:

Provided that an acknowledgement 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 acknowledgement.

(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 devolves on the determination of the preceding estate or interest in property under a settlement taking effect before the date of payment.

(7) An acknowledgement by one of the 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 the 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.

40. Fraud and mistake. [9 Eliz. 2 No. 7, s. 31; U.K. 1939, s. 26; Vic. 1958, s. 27] Where in the case of any action for which a period of limitation is prescribed by this Act, either -

- (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 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.

41. Costs of action. [11 Eliz.2 No.20, s.2(3)] In dealing with the costs of any action to which this Part of this Act applies and which is commenced after the expiry of the period of limitation otherwise prescribed by this Act but before the expiry of the period of limitation prescribed by section 31 of this Act, there shall be taken into consideration by the court (in every case where an award of any costs may be made to the plaintiff), before awarding those costs -

- (a) whether reasonable diligence has been shown in the circumstances in commencing the action; and
- (b) whether any delay in commencing the action has prejudiced or may prejudice the defendant.

42. Contribution between tortfeasors. [N.S.W.1969, s.26] (1) An action on a cause of action for contribution under subsection (c) of section 5 of "The Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act of 1952" is not maintainable if brought after the first to expire of -

- (a) a limitation period of two years running from the date on which the cause of action for contribution first accrues to the plaintiff or to a person through whom he claims; and
- (b) a limitation period of four years running from the date of the expiration of the limitation period for the principal cause of action.

(2) For the purposes of paragraph (a) of subsection (1) of this section, the date on which a cause of action for contribution first accrues is -

- (a) if the plaintiff in the action for contribution or a person through whom he claims is liable in respect of the damage for which contribution is claimed by judgment in a civil action or by arbitral award - the date on which the judgment is given or the award is made, whether or not, in the case of a judgment, the judgment is afterwards varied as to quantum of damages; or
- (b) if, in a case to which paragraph (a) of this subsection does not apply, the plaintiff in the action for contribution or a person through whom he claims makes an agreement with a person having a cause of action for the damage for which the cause of action for contribution arises, which agreement fixes, as between the parties to the agreement, the amount of the liability in respect of that damage of the plaintiff in the action for contribution or a person through whom he claims - the date on which the agreement is made.

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

(4) Nothing in this section affects the construction of section 5 of "The Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act of 1952".

PART IV - GENERAL

43. Application of Act to arbitrations. [9 Eliz. 2 No. 7, s. 32; U.K. 1939, s. 27; Vic. 1958, s. 28] (1) This Act shall apply to arbitrations 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 agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of this Act and of any other such enactment (whether in their 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 agreement.

(3) For the purpose of this Act and of any such enactment as aforesaid, an arbitration shall be deemed to commence 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 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 either -

- (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 in Queensland 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 in Queensland,

as well as in any other manner provided in the arbitration agreement; and where a notice is sent by post in manner prescribed by paragraph (c) service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

(5) Where the court orders that an award be set aside, it 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 or any such enactment as aforesaid 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 or Rules of Court 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.

44. Provisions as to set-off or counterclaim. [9 Eliz.2 No.7, s.33; U.K.1939, s.28; Vic.1958, s.30] 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.

45. Acquiescence. [9 Eliz.2 No.7, s.34; U.K.1939, s.29; Vic.1958, s.31] Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

THE SCHEDULE

Acts Repealed

Limitation of Actions Act 197 - Section 9

Year	Number	Short title	Extent of Repeal
1849	13 Vic. No. 36	"Hawkers and Pedlars Act of 1849"	s. 30
1850	14 Vic. No. 4	"Brewers Act of 1850"	s. 12
1850	14 Vic. No. 9	"Gaming Act of 1850"	s. 15
1854	18 Vic. No. 27	"Inclosed Lands Act of 1854"	s. 8
1861	25 Vic. No. 14	"The Real Property Acts, 1861 to 1963"	s. 128 (3rd para)
1886	50 Vic. No. 17	"The Justices Acts, 1886 to 1968"	ss. 258 & 259
1894	58 Vic. No. 8	Stamps Act 1894-1971	s. 79
1895	59 Vic. No. 9	"The Suppression of Gambling Act of 1895"	s. 35
1896	60 Vic. No. 14	"The Inebriates Institutions Acts, 1896 to 1961"	s. 34
1900	64 Vic. No. 17	Sugar Experiment Stations Act 1900-1971	s. 40
		The Criminal Code	s. 703
1909	9 Edw. 7 No. 12	"The Metropolitan Water Supply and Sewerage Acts, 1909 to 1962"	s. 146
1912	3 Geo. 5 No. 29	Liquor Act 1912-1970	s. 159(2)
1914	5 Geo. 5 No. 24	Railways Act 1914-1971	s. 125(1)
1915	6 Geo. 5 No. 34	Land Tax Act 1915-1969	s. 57
1920	10 Geo. 5 No. 26	"The Main Roads Acts, 1920 to 1968"	s. 24 (part)
1921	12 Geo. 5 No. 22	"The Magistrates Courts Acts, 1921 to 1964"	s. 12(1) & (2)
1922	13 Geo. 5 No. 14	"The Brisbane Tramway Trust Act of 1922"	s. 39
1922	13 Geo. 5 No. 29	"The Irrigation Acts 1922 to 1965"	Sch. Pt. 1 cl. 11(2)
1926	17 Geo. 5 No. 12	Water Act 1926-1968	" "
1929	20 Geo. 5 No. 11	"The Diseases in Plants Acts 1929 to 1948"	s. 22
1929	20 Geo. 5 No. 12	"The Banana Industry Protection Acts 1929 to 1937"	s. 17
1931	22 Geo. 5 No. 27	Vagrants, Gaming and Other Offences Act 1931-1971	s. 56(1)
1937	1 Geo. 6 No. 1	Local Government Act 1936-1971	s. 52(10)(i)(a) & (12)
1937	1 Geo. 6 No. 12	Police Act 1937-1971	s. 66(1)
1937	1 Geo. 6 No. 31	Health Act 1937-1971	s. 156
1938	14 Geo. 6 No. 4	Co-Ordination of Rural Advances and Agricultural Bank Act 1938-1969	Sch. 1 cl. 9

The Schedule (continued)

Year	Number	Short title	Extent of Repeal
1945	9 Geo. 6 No. 16	"The Regional Electric Authorities Act 1945 to 1960"	s. 78(1)(a) & 79
1945	9 Geo. 6 No. 24	State Housing Act 1945-1971	s. 40
1949	13 Geo. 6 No. 26	Traffic Act 1949-1971	s. 50(1)
1952	1 Eliz. 2 No. 50	"The Southern Electric Authority of Queensland Acts, 1952 to 1964"	ss. 66(1)(a) & 67
1954	3 Eliz. 2 No. 54	Racing and Betting Act 1954-1971	s. 141
1955	4 Eliz. 2 No. 40	"The Harbours Acts 1955 to 1968"	s. 162(3)
1956	5 Eliz. 2 No. 19	"The Law Reform (Limitation of Actions) Act of 1956"	The whole
1958	7 Eliz. 2 No. 64	Prisons Act 1958-1969	s. 40
1960	9 Eliz. 2 No. 7	"The Limitation Act of 1960"	The whole
1962	11 Eliz. 2 No. 20	"The Limitation (Persons under Disabilities) Act of 1962"	The whole
1962	No. 42	Land Act 1962-1971	s. 25
1963	No. 39	"The Northern Electric Authority of Queensland Acts, 1963 to 1964"	ss. 75(1)(a) & 76
1964	No. 48	Fire Brigades Act 1964-1971	Sch. 1 Pt. III r. 35
1967	No. 42	District Courts Act 1967-1969	s. 50
1971	No. 30	Auctioneers and Agents Act 1971	s. 102

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A copy of this Working Paper has been circulated to the following:-

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Judges of the Supreme Courts, Brisbane, Townsville, Rockhampton
Chairman of the District Courts, Brisbane
The Dean of the Faculty of Law, University of Queensland
The Vice-Chancellor, University of Queensland
The Honourable Sir Harry Gibbs, High Court, Sydney
Sir George Paton, Law Foundation, Melbourne
The Law Commission, London
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Parliamentary Draftsman, Brisbane
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Research Officer, Department of the Attorney-General, Sydney
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Under Secretary, Department of Justice, Brisbane
The Agricultural Bank, Queensland
The City Solicitor, Brisbane City Council
The Commissioner of Corporate Affairs, Brisbane
Harbours and Marine Department, Brisbane
Department of Health, Brisbane
Irrigation and Water Supply Commission, Brisbane
Land Administration Commission, Brisbane
Commissioner of Land Tax, Brisbane
Local Government Department, Brisbane
Commissioner of Main Roads, Brisbane
Metropolitan Fire Brigades Board, Brisbane
Commissioner of Police, Brisbane
Primary Industries Department, Brisbane
Comptroller-General of Prisons, Brisbane
Queensland Housing Commission, Brisbane
Commissioner for Railways, Brisbane
Southern Electric Authority of Queensland
Commissioner of Stamp Duties, Brisbane
State Electricity Commission, Brisbane
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