

South Australia

## **Limitation of Actions Act 1936**

An Act relating to the limitation of actions and other legal proceedings.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Limitation of Actions Act 1936*.

### 3—Interpretation

- (1) In this Act, unless the context otherwise requires, or some other meaning is clearly intended—

**action** includes legal proceedings of all kinds;

**child** means a person under the age of 18 years;

**land** includes messuages and all other corporeal hereditaments, and any estate or interest in any land;

*limitation law* means—

- (a) a law of this State (including this Act) that provides for the limitation or exclusion of liability, or the barring of a right of action, if an action is not commenced within a particular time limit;
- (b) a law of another State or a Territory of the Commonwealth, or of New Zealand, that provides for the limitation or exclusion of liability, or the barring of a right of action, if an action is not commenced within a particular time limit;

*person* includes any number of persons, any body corporate or collegiate, and any class of creditors;

*person through whom another person claims* means any person by through or under or by an act of whom the person so claiming became entitled to the estate or interest claimed as heir issue in tail successor special or general occupant executor administrator legatee husband assignee appointee devisee or otherwise;

*rent* includes all services for which a distress may be made and all annuities or periodical sums of money charged upon any land.

- (2) This Act shall be construed subject to the *Real Property Act 1886*.

## **Part 2—Proceedings for recovery of land or rent**

### **4—Limitation in actions for recovery of rent or land**

No person shall make an entry or distress or bring an action to recover any land or rent but within fifteen years next after the time when the right to make that entry or distress or to bring that action first accrued to him or to some person through whom he claims.

### **5—Time of accrual of right of action**

The right to make an entry or distress or bring an action to recover any land or rent shall be deemed to have first accrued at the time prescribed in the following sections of this Act.

### **6—Where claimant has been in possession and discontinued possession**

When the person claiming any land or rent or some person through whom he claims has in respect of the estate or interest claimed been in possession or in receipt of the profits of that land or in receipt of that rent, and has while entitled thereto been dispossessed or has discontinued that possession or receipt, then the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued at the time of the dispossession or discontinuance of possession or at the last time at which any such profits or rent were or was so received.

### **7—Case where person in possession has died**

When the person claiming any land or rent claims the estate or interest of a deceased person who continued in possession or in receipt of the profits of that land or in receipt of that rent in respect of the same estate or interest until his death and was the last person entitled to such estate or interest who has been in such possession or receipt, then the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued at the time of the death of that person.

### **8—Case where land alienated**

When the person claiming any land or rent claims in respect of an estate or interest in possession granted appointed or otherwise assured by any instrument (other than a will) to him or some person through whom he claims, by a person being in respect of the same estate or interest in possession or in receipt of the profits of the land or in receipt of the rent, and no person entitled under that instrument has been in such possession or receipt, then the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued at the time when the person claiming as aforesaid or the person through whom he claims became entitled to such possession or receipt by virtue of that instrument.

### **9—Future estates**

When the estate or interest claimed has been an estate or interest in reversion or remainder or other future estate or interest and no person has obtained possession or receipt of the profits of the land or receipt of the rent in respect of that estate or interest, then the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have accrued at the time when that estate or interest became an estate or interest in possession.

### **10—Forfeiture or breach of condition**

When the person claiming any land or rent or the person through whom he claims has become entitled by reason of any forfeiture or breach of condition, then the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued at the time when that forfeiture was incurred or that condition was broken.

### **11—Where average of forfeiture is not taken by remainder-man**

When any right to make an entry or distress or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition has first accrued in respect of any estate or interest in reversion or remainder, and the land or rent has not been recovered by virtue of that right, then the right to make an entry or distress or bring an action to recover that land or rent shall be deemed to have first accrued in respect of that estate or interest at the time when it became an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

## **12—Mortgage**

When any person is entitled to or claims under any mortgage of land, then the right to make an entry or distress, or bring an action to recover the land shall be deemed to have first accrued at the time of the last payment of any part of the principal money or interest secured by that mortgage, although more than fifteen years may have elapsed since the time when the right to make the entry or distress or bring the action first accrued.

## **13—Reversioner to have new right**

In respect of an estate or interest in reversion, the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued when that estate or interest became an estate or interest in possession by the determination of any estate or estates in respect of which such land was held or the profits thereof or the rents were received, notwithstanding that the person claiming the lands or some person through whom he claims has at any time previous to the creation of the estate or estates which have determined, been in possession or in receipt of the profits of the land or in receipt of the rent.

## **14—Administrators**

For the purposes of this Act the administrator of a deceased person claiming the estate or interest of that person shall be deemed to claim as if there had been no interval between the death of the deceased person and the grant of the letters of administration.

## **15—Where land subject to tenancy at will**

When any person has been in possession or in receipt of the profits of any land or in receipt of any rent as tenant at will, the right to the person entitled subject thereto or of the person through whom he claims to make an entry or distress or bring an action to recover that land or rent shall be deemed to have first accrued either at the determination of that tenancy at will or at the expiration of one year next after the commencement of that tenancy, at which time that tenancy shall be deemed to have determined: Provided that no mortgagor or *cestui que trust*, shall be deemed a tenant at will within the meaning of this section to his mortgagee or trustee.

## **16—Tenancy from year to year**

When any person is in possession or in receipt of the profits of any land or in receipt of any rent as tenant from year to year or other period without any lease in writing, the right of the person entitled subject thereto or the person through whom he claims to make an entry or distress or bring an action to recover that land or rent shall be deemed to have first accrued at the determination at the first of such years or other period or at the last time any rent has been received whichever first happens.

## **17—Where rent amounting to two dollars reserved by a lease in writing, wrongfully received**

When—

- (a) any person is in possession or in receipt of the rents and profits of any land or in receipt of any rent by virtue of a lease in writing by which a rent amounting to the yearly sum of two dollars or upwards is reserved; and

- (b) the rent reserved by that lease has been received by some person wrongfully claiming to be entitled to the land or rent in reversion immediately expectant on the determination of that lease; and
- (c) no payment in respect of the rent reserved by the lease has afterwards been made to the person rightfully entitled thereto,

the right of the person entitled to such land or rent subject to such lease or of the person through whom he claims to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at the time at which the rent so reserved was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled.

### **18—Entry not to be possession**

No person shall be deemed to have been in possession of any land merely by reason of having made an entry thereon.

### **19—Continual claim**

No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or bringing an action.

### **20—Possession of joint tenant**

When any one or more of several persons entitled to any land or rent as joint tenants or tenants in common has been in possession or receipt of the entirety or more than his or their individual shares of that land or the profits thereof or of that rent for his or their own benefit or for the benefit of any persons other than the persons entitled to the other shares of that land or rent, that possession or receipt shall not be deemed the possession or receipt by the persons entitled to those other shares.

### **21—Effect of acknowledgment by person in possession**

When any acknowledgment of the title of the person entitled to any land or rent has been given to him or his agent in writing signed by the person in possession or in receipt of the profits of that land or in receipt of such rent, then—

- (a) that possession or receipt of or by the person by whom that acknowledgment was given shall be deemed to have been the possession or receipt of or by the person to whom or to whose agent the acknowledgment was given at the time of giving the same; and
- (b) the right of the last-mentioned person or any person claiming through him to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued at and not before the time at which the acknowledgment or the last of the acknowledgments, if more than one, was given.

## 22—Effect of future estates when estate in possession barred

When the right of any person to make an entry or distress, or bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession has been barred by the determination of the period limited by this Act and applicable to the case, and that person at any time during that period has been entitled to any other estate interest right or possibility in reversion remainder or otherwise in or to the same land or rent, no entry distress or action shall be made or brought by that person or any person claiming through him to recover that land or rent in respect of such other estate interest right or possibility unless in the meantime the land or rent has been recovered by some person entitled to an estate interest or right which has been limited or taken effect after or in defeasance of such estate or interest in possession.

## 23—Tenants in tail and remainder-men

When the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the land or rent has been barred by the expiration of the period limited by this Act and applicable to the case, no such entry distress or action shall be made or brought by any person claiming any estate interest or right which the tenant in tail might lawfully have barred.

## 24—Possession adverse to a tenant in tail to run against a remainder-man

Where a tenant in tail of any land or rent entitled to recover that land or rent has died before the expiration of the period limited by this Act and applicable to the case, no person claiming any estate interest or right which the tenant in tail might lawfully have barred shall make an entry or distress or bring an action to recover the land or rent but within the period during which, if the tenant in tail had so long continued to live, he might have made that entry or distress or brought that action.

## 25—Concealed fraud

- (1) In every case of a concealed fraud, the right of any person to bring equitable proceedings for the recovery of any land or rent of which he or any person through whom he claims has been deprived by that fraud shall be deemed to have first accrued at and not before the time when that fraud was or with reasonable diligence might have been first known or discovered: Provided that nothing in this section shall enable any owner of lands or rents to bring equitable proceedings for the recovery of those lands or rents on account of fraud against any *bona fide* purchaser for valuable consideration, who has not assisted in the commission of that fraud and who at the time when he made the purchase did not know and had no reason to believe that any such fraud had been committed.

- (2) In this section—

*equitable proceedings* means any proceedings of a kind which before the passing of the *Supreme Court Act 1878* could have been brought by way of a suit in equity.

## 26—Saving jurisdiction of equity

Nothing in this Act shall be deemed to interfere with any rule or jurisdiction of courts of equity in refusing relief on the ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this Act.

## **27—Time when mortgagor barred**

- (1) When a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor or any person claiming through him shall not bring an action to redeem the mortgage but within fifteen years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment of the title of the mortgagor or his right of redemption has been given to the mortgagor or some person claiming his estate or to the agent of the mortgagor or of that person in writing signed by the mortgagee or other person claiming through him.
- (2) If such an acknowledgment has been given no such action shall be brought but within fifteen years next after the time at which that acknowledgment or the last of those acknowledgments if more than one, was given.
- (3) When there is more than one mortgagor or more than one person claiming through the mortgagor or mortgagors, such an acknowledgment if given to any of those mortgagors or persons or his or their agent shall be as effectual as if it had been given to all such mortgagors or persons.
- (4) Where there is more than one mortgagee or more than one person claiming the estate or interest of the mortgagee or mortgagees such an acknowledgment signed by one or more of those mortgagees or persons—
  - (a) shall be effectual only as against a party signing as aforesaid and a person claiming any part of the mortgage money or land or rent by or from or under him and any person entitled to any estate or interest to take effect after or in defeasance of his estate or interest; and
  - (b) shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against any person entitled to any other undivided or divided part of the money or land or rent.
- (5) Where any mortgagee or any such person as aforesaid has given such an acknowledgment and is entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment with interest of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of that divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage.

## **28—Extinction of rights at end of period of limitation**

At the determination of the period limited by this Act to any person for making an entry or distress or bringing an action, the right and title of that person to the land or rent for the recovery whereof that entry distress or action might have been made or brought within that period, shall be extinguished.

## **29—Receipt of rent to be deemed receipt of profits**

The receipt of the rent payable by any tenant from year to year or other lessee shall as against such lessee or any person claiming under him (but subject to the lease) be deemed to be the receipt of the profits of the land for the purposes of this Act.

### **30—No descent, warranty etc to bar a right of entry**

No devolution on intestacy, discontinuance, or warranty which may happen or be made shall take away or defeat any right of entry or action for the recovery of land.

## **Part 3—Claims for trust property or breach of trust**

### **31—Application of Act to express trusts**

Subject to the next following section—

- (a) where any land or rent is vested in a trustee on any express trust, the right of the beneficiary or any person claiming through him, to bring an action against the trustee or any person claiming through him, to recover the land or rent, shall be deemed to have first accrued at, and not before, the time at which the land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against that purchaser and any person claiming through him;
- (b) no claim of a beneficiary against his trustee, in respect of any property held on an express trust, or in respect of any breach of an express trust, shall, subject to the next following subsection, be barred by any statute of limitations;
- (c) no action or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the money, legacy, or arrears would be recoverable if there were not any such trust.

### **32—Further provisions as to application of Act to trusts**

- (1) In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded on any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply:
  - (a) All rights and privileges conferred by this Act shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in the action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him.
  - (b) If the action or other proceeding is brought to recover money or other property, and is one to which no other provision of this Act applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead lapse of time as a bar to the action or other proceeding, in the like manner and to the like extent as if the action or other proceeding had been an action for money had and received; and that so this Act shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary is an interest in possession.

- (2) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action or other proceedings in which the judgment or order was obtained and this section had been pleaded.
- (3) This section shall apply only to actions or other proceedings begun after the twenty-third of December, 1893, and shall not deprive any executor or administrator of any right or defence to which he was then entitled under any then existing statute of limitations.

## **Part 4—Recovery of money charged on land and legacies**

### **33—Money charged upon land and legacies**

- (1) No action or other proceeding shall be brought to recover any money secured by any mortgage judgment or lien or otherwise charged upon any land or rent at law or in equity or any legacy but within fifteen years next after a present right to receive that money has accrued to some person capable of giving a discharge for or release of the money, unless in the meantime some part of the principal money or some interest thereon has been paid or some acknowledgment of the right thereto has been given in writing signed by the person by whom the money is payable or his agent, to the person entitled thereto or his agent.
- (2) If any such payment is made or acknowledgment is given, no such action or proceeding shall be brought but within fifteen years after such payment or acknowledgment or the last of such payments or acknowledgments if more than one was made or given.
- (3) For the purposes of section 45 of this Act the right to bring an action to recover money secured as aforesaid shall be deemed to have first accrued at the time of such payment or acknowledgment, or at the time of the last of such payments or acknowledgments, if more than one was made or given.

## **Part 5—Actions on specialty**

### **34—Limitation of action on specialty**

All actions for rent reserved by any lease by deed and all actions of covenant or debt upon any bond or other specialty or upon any judgment or recognisance shall be commenced and sued within fifteen years next after the cause of action accrued or the recovery of the judgment and not after: Provided that if any acknowledgment has been made either by writing signed by the party liable by virtue of the deed bond specialty judgment or recognisance or his agent or by part payment or part satisfaction of any principal or interest being then due thereon, any person entitled to any such action may bring an action for the money remaining unpaid and so acknowledged to be due within fifteen years after that acknowledgment by writing or part payment or part satisfaction.

## Part 6—Actions on simple contract and in tort

### 35—Actions on simple contract and in tort

The following actions namely:

- (a) actions founded upon any simple contract express or implied, or upon any award where the submission is not by specialty;
- (b) actions of account or for not accounting;
- (c) actions founded on tort;
- (d) actions or other proceedings to recover arrears of rent where the letting is not by deed;
- (e) actions to recover arrears of interest in respect of any sum of money charged upon any land or rent or arrears of interest in respect of any legacy;
- (f) actions to recover damages in respect of any such arrears of rent or interest;
- (g) actions for seamen's wages;
- (h) actions for money levied on a *feri facias* or for an escape;

shall, save as otherwise provided in this Act, be commenced within six years next after the cause of action accrued and not after.

### 36—Personal injuries

- (1) All actions in which the damages claimed consist of or include damages in respect of personal injuries to any person, shall be commenced within three years next after the cause of action accrued but not after.

- (2) In this section—

*personal injuries* include any disease and any impairment of a person's physical or mental condition.

### 37—Slander and penalties

All actions for slander and all actions for penalties damages or sums of money given to any party by any statute in force at or after the commencement of this Act shall be commenced within two years next after the cause of action accrued, but not after.

### 38—Limitation on actions for recovery of money

- (1) Subject to subsection (2), an action for the recovery of money paid under a mistake (either of law or of fact) or otherwise based on restitutionary grounds must be commenced—
  - (a) if the cause of action arose on or after the commencement of this section—within 6 years after the cause of action arose; or
  - (b) if the cause of action arose before the commencement of this section—within the limitation period that would have been applicable if this section had not been enacted or 6 years after the commencement of this section (whichever expires first).

- (2) If money paid by way of a tax or purported tax is recoverable because of the invalidity of the tax, an action for the recovery of that money must (whether the payment was made voluntarily or under compulsion) be commenced—
- (a) if the payment was made after the commencement of the 1994 amending Act or within four months before its commencement—within six months after the date of the payment; or
  - (b) if the payment was made more than four months before the commencement of the 1994 amending Act—within the limitation period that would have been applicable if that Act had not been enacted or two months after the commencement of that Act (whichever first expires),

(but this subsection does not apply to the recovery of an amount that would, assuming that the tax or purported tax had been valid, have nevertheless represented an overpayment of tax).

- (3) The period of limitation prescribed by subsection (2) cannot be extended, and if the action is not brought within that period, the right to recover the money is extinguished.
- (3a) An action for recovery of money paid by way of a tax or purported tax may be maintained only to the extent the person bringing the action satisfies the court that recovery of the money would not result in a windfall profit.
- (3b) The recovery of money paid by way of a tax or purported tax would result in a windfall profit to the extent the person bringing the action for recovery of the money—
- (a) has passed on the burden of making the payment to another person; and
  - (b) has not paid back, or entered into an enforceable agreement to pay back, the amount of the payment.

- (4) In this section—

**1994 amending Act** means the *Limitation of Actions (Recovery of Taxes and Substantive Law) Amendment Act 1994*;

**tax** includes a statutory business franchise or licence fee, or other statutory fee or charge.

- (5) In the case of an inconsistency between this section and the provisions of any other Act, the other Act prevails to the extent of the inconsistency.

### **38A—Limitation laws are substantive laws**

- (1) A limitation law of the State is a substantive law of the State.
- (2) A limitation law of another State or a Territory of the Commonwealth, or of New Zealand, is to be regarded as a substantive law of that place and applied accordingly.
- (3) If a court in this State applies a limitation law of another State or a Territory of the Commonwealth, or of New Zealand, a discretion conferred by that law is to be exercised, as far as practicable, in the same way as courts in that other place exercise the discretion in comparable cases.

### **39—Absence from State of person liable**

If any person against whom there is any such cause of action as is referred to in section 35, 36, or 37 of this Act was at the time when the cause of action accrued absent from the State the party entitled to the action may commence it within the time limited by this Act after the return of that person from beyond the seas as if that had been the time at which the cause of action accrued.

### **40—Absence from State of a joint debtor**

When any such cause of action as is referred to in section 35, 36, or 37 of this Act has accrued against two or more joint debtors the party entitled to the action shall not be entitled to any additional time within which to commence any action against any such joint debtor who was within the State at the time when the cause of action accrued by reason only that any such joint debtor was at that time absent from the State: and the party so entitled shall not be barred from commencing and prosecuting an action against any joint debtor after his return to the State by reason only that judgment has already been recovered against any joint debtor who was within the State when the cause of action arose.

### **41—Payment by a contractor**

Where there are two or more co-contractors or co-debtors whether bound jointly only or jointly and severally or executors or administrators of any co-contractors, no such co-contractor or co-debtor or executor or administrator shall lose the benefit of this Act so as to be chargeable in respect or by reason only of payment of any principal interest or other money by any other such co-contractor co-debtor executor or administrator.

### **42—Effect of oral acknowledgment**

- (1) In any action of debt or other action in the nature of an action founded upon simple contract no acknowledgment or promise by words only shall be deemed sufficient evidence of a new and continuing contract whereby to take any case out of the operation of this Act, or deprive any party of the benefit thereof, unless that acknowledgment or promise is made or contained by or in some writing to be signed by the party to be charged thereby or by his agent.
- (2) Where there are two or more joint contractors or executors or administrators of any contractors no such joint contractor executor or administrator shall lose the benefit of this Act so as to be made chargeable by or in respect only of any written acknowledgment or promise made and signed by any other or others of them.
- (3) Except as expressly provided in this Act nothing in this Act shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever.

### **43—Endorsements of payment**

No endorsement or memorandum of any payment written or made upon any promissory note bill of exchange or other writing by or on behalf of the party to whom that payment was made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of this Act.

#### 44—Simple contract debt by way of set-off

This Act shall apply to the case of any debt or simple contract alleged in the way of set-off on the part of any defendant either by his defence or notice or otherwise.

### Part 7—Miscellaneous

#### 45—Persons under legal disability

- (1) Where the time for bringing an action or proceeding is limited by this Act, or any other Act or law, and the person who is entitled to bring the action or proceeding is under a legal disability, the time for bringing that action or proceeding shall, subject to subsection (3) of this section, be extended by the period or periods for which the disability exists or continues after the time at which the right to bring the action or proceeding arose.
- (2) For the purposes of this section a person is under a legal disability in relation to an action or proceeding while he remains a child or while he is subject to a mental deficiency, disease or disorder by reason of which he is incapable of reasoning or acting rationally in relation to the action or proceeding that he is entitled to bring.
- (3) No period of limitation shall be extended by this section to more than thirty years from the time at which the right to bring the action or proceeding arose.

#### 45A—Special provision regarding children

- (1) If—
  - (a) a child (the *plaintiff*) suffers personal injury; and
  - (b) the time for bringing an action for damages is extended by this Act to more than 6 years from the date of the incident out of which the injury arose (the *relevant date*),

notice of an intended action must be given within 6 years after the relevant date by, or on behalf of, the child to the person or persons alleged to be liable in damages (the *defendant*).

##### Exception—

If the injury arises from an intentional tort and the action is to be brought against the person who actually committed the tort, notice of the action need not be given to that person, but if any other person is alleged to be liable for the tort, notice must be given to that other person.

- (2) If the injury is alleged to have arisen out of a motor accident, the notice must be given to the relevant third-party insurer.
- (3) The notice is to contain the information required by regulation.
- (4) The plaintiff (or, if the plaintiff is still a child, the plaintiff's parent or guardian) must comply with a reasonable request by the defendant—
  - (a) to provide copies of medical and other records and reports in the possession or power of the plaintiff (or the plaintiff's parent or guardian) relevant to the nature and extent of the plaintiff's injury and any consequent disability; or

- (b) to undergo examination, at the expense of the defendant, by a medical expert for the purpose of ascertaining the nature and extent of the plaintiff's injury and any consequent disability.
- (5) The defendant may, by written notice to the plaintiff (or, if the plaintiff is still a child, the plaintiff's parent or guardian) require the plaintiff, within 6 months after the date of the notice, to bring an action so that the claim may be judicially determined.
- (6) In any such action, the court may, if it thinks it appropriate, exercise its power to make a determination of liability and adjourn final assessment of damages until a later date.
- (7) Non-compliance with a requirement of this section on the part of a plaintiff does not prevent the plaintiff from bringing an action for damages but unless the court is satisfied that there is good reason to excuse the non-compliance—
  - (a) no damages will be allowed in such an action to compensate or allow for medical or gratuitous services provided before the date the action was commenced; and
  - (b) no legal or other costs incurred in contemplation of the action or a possible action will be allowed.

#### **46—Imprisonment or absence of persons entitled to action**

No person shall be entitled to any further time beyond the period fixed by this Act within which to bring any action or proceeding by reason of the fact that he has been absent from the State or imprisoned.

#### **46A—Extension of period of limitation where cause of action survives**

Where a cause of action survives for the benefit of the estate of a deceased person, the time limited for the commencement of the action shall be extended by a period equal to the period between the death of the deceased and the grant of probate or letters of administration to the executor or administrator of his estate, or by a period of twelve months, whichever is the lesser.

#### **47—Extension of certain periods of limitation**

- (1) Where any Act, regulation, rule or by-law limits the time within which an action to which this section applies may be brought to a period of less than twelve months from the time the cause of action arises, then, notwithstanding that limitation, that action may be brought at any time within twelve months from the time the cause of action arises.
- (2) This section applies to all actions except—
  - (a) a criminal action; and
  - (b) an action to try the validity of an election or of title to an office; and
  - (c) an action to try the validity of an assessment, rate or loan made by or to a local government body; and
  - (d) any other action to the nature or purpose of which the limitation is, in the opinion of the court, essential.

#### 48—General power to extend periods of limitation

- (1) Subject to this section, where an Act, regulation, rule or by-law prescribes or limits the time for—
- (a) instituting an action; or
  - (b) doing any act, or taking any step in an action; or
  - (c) doing any act or taking any step with a view to instituting an action,
- a court may extend the time so prescribed or limited to such an extent, and upon such terms (if any) as the justice of the case may require.
- (2) A court may exercise the powers conferred by this section in respect of any action that—
- (a) the court has jurisdiction to entertain; or
  - (b) the court would, if the action were not out of time, have jurisdiction to entertain.
- (3) This section does not—
- (a) apply to criminal proceedings; or
  - (b) empower a court to extend a limitation of time prescribed by this Act unless it is satisfied—
    - (i) that facts material to the plaintiff's case were not ascertained by him until some point of time occurring within twelve months before the expiration of the period of limitation or occurring after the expiration of that period and that the action was instituted within twelve months after the ascertainment of those facts by the plaintiff; or
    - (ii) that the plaintiff's failure to institute the action within the period of the limitation resulted from representations or conduct of the defendant, or a person whom the plaintiff reasonably believed to be acting on behalf of the defendant, and was reasonable in view of those representations or that conduct and any other relevant circumstances,and that in all the circumstances of the case it is just to grant the extension of time.
- (3a) A fact is not to be regarded as material to the plaintiff's case for the purposes of subsection (3)(b)(i) unless—
- (a) it forms an essential element of the plaintiff's cause of action; or
  - (b) it would have major significance on an assessment of the plaintiff's loss.

**Example—**

In a case involving personal injury, a fact might qualify as a fact material to the plaintiff's case if it establishes—

- (a) a substantial reduction of the plaintiff's capacity to work; or
- (b) that the plaintiff will require substantially more medical care than previously expected; or
- (c) a significant loss of expectation of life.

- (3b) In determining whether it is, in all the circumstances of a case, just to grant an extension of time, the court should have regard to—
- (a) the period of extension sought and, in particular, whether the passage of time has prejudiced a fair trial; and
  - (b) the desirability of bringing litigation to an end within a reasonable period and thus promoting a more certain basis for the calculation of insurance premiums; and
  - (c) the nature and extent of the plaintiff's loss and the conduct of the parties generally; and
  - (d) any other relevant factor.
- (4) Where an extension of time is sought pursuant to this section in respect of the commencement of an action, the action may be instituted in the normal manner, but the process by which it is instituted must be endorsed with a statement to the effect that the plaintiff seeks an extension of time pursuant to this section.
- (5) Proceedings under this section may be determined by the court at any time before or after the close of pleadings.
- (6) This section does not derogate from any other provision under which a court may extend or abridge time prescribed or limited by an Act, regulation, rule or by-law.

#### **49—Other rules of law or equity to be unaffected**

Nothing in section 47 or 48 of this Act affects any rule of law or equity under which a period of limitation affecting a right to bring an action may be extended, or an action may be brought notwithstanding the expiration of any such period of limitation.

#### **50—Dispensation with requirement of notice before action**

Where any provision of an Act, regulation, rule or by-law requires a person to give notice of his intention to bring an action, or of any claim that he intends to prosecute in an action, before the action is instituted in a court, the court may, if the justice of the case so requires, at any time before or after the close of pleadings, dispense with that requirement.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Limitation of Actions Act 1936* repealed the following:

*The Limitation of Suits and Actions Act 1866*

### Legislation amended by principal Act

The *Limitation of Actions Act 1936* amended the following:

*Supreme Court Act 1878*

*The Trustee Act 1893*

### Principal Act and amendments

New entries appear in bold.

| Year | No   | Title   | Assent     | Commencement   |
|------|------|---|------------|--|
| 1936 | 2268 | <i>Limitation of Actions Act 1936</i>   | 13.8.1936  | 13.8.1936  |
| 1948 | 45   | <i>Limitation of Actions Act Amendment Act 1948</i>                                     | 22.12.1948 | 22.12.1948   |
| 1956 | 17   | <i>Limitation of Actions and Wrongs Acts Amendment Act 1956</i>                         | 8.11.1956  | 8.11.1956  |
| 1959 | 33   | <i>Limitation of Actions Act Amendment Act 1959</i>                                     | 3.12.1959  | 3.12.1959  |
| 1972 | 58   | <i>Statutes Amendment (Miscellaneous Provisions) Act 1972</i>                           | 27.4.1972  | 18.5.1972 ( <i>Gazette 18.5.1972 p1926</i> )                                   |
| 1975 | 21   | <i>Limitation of Actions Act Amendment Act 1975</i>                                     | 27.3.1975  | 27.3.1975  |
| 1993 | 39   | <i>Limitation of Actions (Mistake of Law or Fact) Amendment Act 1993</i>                | 20.5.1993  | 17.6.1993 ( <i>Gazette 17.6.1993 p1974</i> )                                   |
| 1994 | 41   | <i>Limitation of Actions (Recovery of Taxes and Substantive Law) Amendment Act 1994</i> | 2.6.1994   | 2.6.1994: s 2(1) except ss 3, 5 & 6—9.6.1994 ( <i>Gazette 9.6.1994 p1669</i> ) |
| 2003 | 44   | <i>Statute Law Revision Act 2003</i>  | 23.10.2003 | Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )                           |

|             |          |   |                 |  |
|-------------|----------|---|-----------------|--|
| <b>2004</b> | <b>9</b> | <b><i>Law Reform (Ipp Recommendations) Act 2004</i></b> | <b>8.4.2004</b> | <b>Pt 3 (ss 73—76)—1.5.2004 (<i>Gazette 29.4.2004 p1172</i>)</b> |
| 2005        | 50       | <i>Defamation Act 2005</i>                              | 27.10.2005      | Sch 1 (cl 6)—1.1.2006: s 2                                       |
| 2005        | 78       | <i>Dust Diseases Act 2005</i>                           | 8.12.2005       | Sch 1 (cl 2)—8.2.2006 unless proclaimed earlier: s 2             |

## Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 6 of *The Public General Acts of South Australia 1837-1975* at page 19.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision         | How varied   | Commencement      |
|-------------------|--|-------------------|
| Long title        | amended by 44/2003 s 3(1) (Sch 1)  | 24.11.2003        |
| Pt 1              | heading inserted by 44/2003 s 3(1) (Sch 1)   | 24.11.2003        |
| s 2               | <i>deleted by 44/2003 s 3(1) (Sch 1)</i>   | <i>24.11.2003</i> |
| s 3               |  |                   |
| <b>child</b>      | <b>inserted by 9/2004 s 73</b>   | <b>1.5.2004</b>   |
| limitation law    | inserted by 41/1994 s 3  | 9.6.1994          |
| Pt 2              |  |                   |
| Pt 2 heading      | heading preceding s 4 deleted and Pt 2 heading inserted by 44/2003 s 3(1) (Sch 1)  | 24.11.2003        |
| Pt 3              |  |                   |
| Pt 3 heading      | heading preceding s 31 deleted and Pt 3 heading inserted by 44/2003 s 3(1) (Sch 1) | 24.11.2003        |
| Pt 4              |  |                   |
| Pt 4 heading      | heading preceding s 33 deleted and Pt 4 heading inserted by 44/2003 s 3(1) (Sch 1) | 24.11.2003        |
| s 33              |  |                   |
| s 33(3)           | s 33(2) second sentence designated as s 33(3) by 44/2003 s 3(1) (Sch 1)            | 24.11.2003        |
| Pt 5              |  |                   |
| Pt 5 heading      | heading preceding s 34 deleted and Pt 5 heading inserted by 44/2003 s 3(1) (Sch 1) | 24.11.2003        |
| Pt 6              |  |                   |
| Pt 6 heading      | heading preceding s 35 deleted and Pt 6 inserted by 44/2003 s 3(1) (Sch 1)         | 24.11.2003        |
| s 38              | substituted by 39/1993 s 3   | 17.6.1993         |
| s 38(2)           | substituted by 41/1994 s 4(a)  | 2.6.1994          |
| s 38(3a) and (3b) | inserted by 41/1994 s 4(b)   | 2.6.1994          |
| s 38(4)           |  |                   |
| 1994 amending Act | inserted by 41/1994 s 4(c)   | 2.6.1994          |
| s 38A             | inserted by 39/1993 s 3  | 17.6.1993         |
|                   | substituted by 41/1994 s 5   | 9.6.1994          |

Pt 7

|                          |  |                 |
|--------------------------|--|-----------------|
| Pt 7 heading             | heading preceding s 45 deleted and Pt 7 heading inserted by 44/2003 s 3(1) (Sch 1) | 24.11.2003      |
| <b>s 45</b>              |  |                 |
| <b>s 45(2)</b>           | <b>amended by 9/2004 s 74</b>  | <b>1.5.2004</b> |
| <b>s 45A</b>             | <b>inserted by 9/2004 s 75</b>   | <b>1.5.2004</b> |
| heading preceding s 46A  | deleted by 44/2003 s 3(1) (Sch 1)  | 24.11.2003      |
| heading preceding s 47   | deleted by 44/2003 s 3(1) (Sch 1)  | 24.11.2003      |
| <b>s 48</b>              |  |                 |
| <b>s 48(3a) and (3b)</b> | <b>inserted by 9/2004 s 76</b>   | <b>1.5.2004</b> |
| heading preceding s 50   | deleted by 44/2003 s 3(1) (Sch 1)  | 24.11.2003      |

## Transitional etc provisions associated with Act or amendments

### *Limitation of Actions (Recovery of Taxes and Substantive Law) Amendment Act 1994*

#### **6—Application of substituted s 38A**

The amendments made by section 5 (substituting section 38A of the principal Act) extend to a cause of action that arose before the commencement of that section unless court proceedings based on the cause of action had been started before the commencement of that section.

### *Law Reform (Ipp Recommendations) Act 2004 Sch 1*

#### **1—Transitional provision**

- (1) The amendments made by the *Law Reform (Ipp Recommendations) Act 2004* (the *Ipp Recommendations Act*) are intended to apply only prospectively.
- (2) If a cause of action that is based wholly or partly on an event that occurred before the commencement of the Ipp Recommendations Act arises after the commencement of the Ipp Recommendations Act, it will be determined as if the amendments had not been enacted.

#### **Example—**

Suppose that A was exposed to asbestos in 1990 but a resultant illness is not diagnosed until after the commencement of the Ipp Recommendations Act. An action is then brought in negligence in which damages are claimed for personal injury. The amendments made by the Ipp Recommendations Act would not affect the determination of liability or the assessment of damages.

- (3) As soon as practicable after the expiration of 3 years from the commencement of this Schedule, the Economic and Finance Committee must investigate and report to the Parliament on the effect of the Ipp Recommendations Act on the availability and cost of insurance to persons.

## Historical versions

Reprint No 1—17.6.1993

Reprint No 2—9.6.1994

Reprint No 3—24.11.2003