



## Don't let time pass you by – Understanding Limitation Periods in Bringing a Claim

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From time to time in business it may become necessary to enforce your legal rights by way of Court action. You may, for example, need to enforce the terms of a contract, seek redress for negligence or enforce your statutory rights. If you do find yourself in that position it is important to understand, as a starting point, what limitation periods apply to your proposed claim and whether they have expired or are close to expiring.

A 'limitation period' is the maximum period of time which can elapse from the time of a cause of action arises until the commencement of court proceedings pertaining to that cause of action. It operates as a statutory bar preventing a person from instituting a claim after a substantially long period of time after the cause of action first arises. If a cause of action were to be permitted to go ahead after substantial delay it could have a problematic effect on the administration of the court proceedings as it relates to the evidence presented, namely, the availability of witnesses and documents and the accuracy of detail which is the subject of the evidence. In that way limitation periods seek to balance the interests of all parties and the effective administration of justice.

In this article we provide a practical guide to understanding when and how limitation periods apply.

### Limitation periods for different causes of action

In Queensland, the *Limitation of Actions Act 1974* (Qld) ('**the Act**') prescribes the limitation periods applying to different causes of action.

The following table summarises various causes of action and their respective limitation period:

<b>Limitation Period (Years)</b>	<b>Actions</b>			
1	<i>Defamation.</i>	<i>Recovery of invalid levied tax.</i>	<i>Discrimination under the Anti-Discrimination Act 1991 (Qld).</i>	

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2	<i>Recovery of a penalty or forfeiture.</i>						
3	<i>Recovery of damages for death or personal injury for negligence, trespass, nuisance or breach of duty (exclusions apply for personal injury resulting from dust-related condition).</i>						
6	<i>Simple contract, or quasi-contract (including monies owing) or tort where the damages claimed do not consist of or include damages for personal injury.</i>	<i>An action to recover a sum recoverable by virtue of an enactment other than a penalty or forfeiture.</i>	<i>Enforcing an arbitration award, where the agreement to arbitrate is not under seal.</i>	<i>An action to recover a sum recoverable by virtue of an enactment other than a penalty or forfeiture.</i>	<i>- Action for account. - Action to recover rent or damages in respect thereof.</i>	<i>A beneficiary recovering trust property or recovering property in respect of non-fraudulent breach of trust.</i>	<i>A claim for arrears of interest on a legacy in a deceased estate or damages in respect of such arrears.</i>
12	<i>Specialty (a contract or obligation entered into under seal such as a deed).</i>	<i>Enforcing a judgment.</i>	<i>Recovering land or Mortgagor's redemption of mortgaged land.</i>	<i>Recovering money secured by mortgage or charge.</i>	<i>Foreclosure of mortgaged personal property.</i>	<i>A claim to personal property in a deceased estate.</i>	

**When does the limitation period start to run?**

Time, for the purpose of calculating a limitation period, starts running from when the cause of action accrues. When the cause of action arises will differ depending on the type of action you are looking to maintain. In short, a cause of action will accrue when all elements required to establish the particular claim come into existence. That may occur at once or progressively over a period of time.

For example a cause of action based on a breach of contract occurs when the breach itself occurs. An example may be the giving of negligent advice by a lawyer. The cause of action arises in contract when the negligent advice is given. The time period however for a claim in negligence (which would also arise by reason of the negligent advice) may not commence until a later time, that is, when any loss is suffered or damage occurs. A person may have causes of action in both contract and in negligence each with different limitation periods.

Calculation of commencement of a limitation period can be simple or it can be more complex depending on the cause of action and the circumstances. You should not delay in looking to commence court proceedings because if you do, you may miss a limitation period and lose your ability to enforce your legal rights.

The running of the limitation period is stopped by the commencement of the court proceedings.

Potential litigants should also be aware that even though they may commence an action within a relevant limitation period, a court will still have the inherent power to dismiss or stay an action based on delay in bringing the claim. By way of example, in *Reid International Pty Ltd v Ron Farris Real Estate Pty Ltd*, the Supreme Court of Western Australia dismissed an action on the basis that the three year delay between the relevant breach and commencement of proceedings amounted, in the factual circumstances of that case, to an abuse of process.

**Extensions and exceptions to limitation periods**

It is possible to seek an extension of a limitation period in certain (very limited) circumstances. In claims which include a claim for damages for personal injury based in tort (for example negligence, trespass, nuisance or breach of duty) an extension of up to 1 year may be granted where the claimant can establish that there was a material fact of a decisive character not within their means of knowledge until after the commencement of the last year of the limitation period and that there is evidence to establish the right of action.

It is also possible to seek an extension of a limitation period in claims for defamation. The court may extend the limitation period (ordinarily 1 year) by up to 3 years where it was "not reasonable" in the circumstances for a plaintiff to bring a

defamation action within 1 year. The test as to the reasonableness of the circumstances is objective and mere ignorance of the strict time limits fixed by virtue of the Act is not enough.

### **Summary**

Limitation periods are a threshold question. If a limitation period has expired, that will be a complete defence to your claim. You are best off keeping your money in your pocket.

The application of limitation periods, particularly the likelihood of an extension or relevance of any exception, can be a complex area of law. We recommend that you seek legal advice as to applicable limitation periods as soon as possible if you suspect that you may have a cause of action. Time waits for no one!

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