

# LIMITATION LEGISLATION AMENDMENT AND REPEAL BILL 2004

## EXPLANATORY MEMORANDUM

### **Part 1 - Preliminary**

**Clause 2** provides that the Act is to come into operation on the day on which the *Limitation Act 2004* comes into operation.

### **Part 2 - Repeal**

**Clause 4** repeals the *Limitation Act 1935* but saves that Act in respect of causes of action which accrued before the commencement day. The exceptions to this are the new test for when a cause of action accrues for personal injuries (clause 50 *Limitation Bill 2004*) and the new scheme for causes of action relating to childbirth (clause 4(5) and (6) *Limitation Bill 2004*). The *Limitation Act 1935* will also be saved in relation to asbestos-related diseases in that the cause of action will continue to accrue when knowledge of key facts was acquired, as provided by section 38A *Limitation Act 1935*, provided that the disease first manifested itself in a not insignificant form before the commencement day.

### **Parts 3, 5 and 8**

**Parts 3, 5 and 8** make consequential amendments to the *Commercial Arbitration Act 1985*, the *District Court of Western Australia Act 1969* and the *Supreme Court Act 1935* but save the repealed or amended provisions in respect of causes of action which accrued before the commencement day.

### **Part 4 - *Crown Suits Act 1947***

The specific notice of action, limitation and extension provisions in section 6 *Crown Suits Act* which apply to actions against the State of Western Australia are repealed but section 6 is saved in respect of causes of action which accrued before the commencement day.

### **Part 6 - *Fatal Accidents Act 1959***

Section 4 *Fatal Accidents Act* currently allows a personal representative on behalf of the dependants of a deceased person or those dependants to commence an action for damages relating to the death if the deceased person, but for the death, would have been entitled to maintain an action and recover damages, in other words if the limitation period for the deceased's cause of action had not expired prior to the death.

The amendment to section 4 by the addition of subclause (2) enables the personal representative or the dependants to commence an action under the *Fatal Accidents Act* if the deceased, before he or she died -

- (a) was not aware of the physical cause of the injury and it was reasonable for the person not to be aware of that cause;
- (b) was aware of the physical cause of the injury but was not aware that the injury was attributable to the conduct of a person and it was reasonable for the person not to be aware that the injury was so attributable; or
- (c) was aware of the physical cause of the injury and that the injury was attributable to the conduct of a person but after reasonable inquiry, had been unable to establish that person's identity.

The amendment to section 4 is in line with the extension provision in clause 34 *Limitation Bill 2004*.

Section 7 *Fatal Accidents Act* is to be repealed in relation to the limitation period and its extension. Section 7 currently contains the limitation period for claims under section 4 of the Act. The limitation period and provision for extension of that period are now provided for in clause 10(2) and Part 3 *Limitation Bill 2004*. The limitation period is to be 3 years from the date of death rather than the current 12 months.

Section 7 is saved in respect of causes of action which accrued before the commencement day.

#### **Part 7 - Law Reform (Miscellaneous Provisions) Act 1941**

The new limitation regime set out in the *Limitation Bill 2004* will apply to actions which survive for the benefit of an estate or against an estate. Consequently, section 4 *Law Reform (Miscellaneous Provisions) Act* has been amended but is saved in respect of causes of action which accrued before the commencement day.