

Limitation Legislation Amendment and Repeal Bill 2004

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Limitation Legislation Amendment and Repeal
Bill 2004**

A Bill for

An Act to repeal the —

- *Limitation Act 1935*;

to amend various Acts as a consequence of the enactment of the *Limitation Act 2004*, and to make provision in respect of savings matters concerning limitation periods applicable to causes of actions accruing before the commencement of the *Limitation Act 2004*.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Limitation Legislation Amendment and Repeal Act 2004*.

5 **2. Commencement**

(1) Subject to subsection (2), this Act comes into operation on the day on which the *Limitation Act 2004* comes into operation.

(2) Part 9 comes into operation on the day on which the *Workers' Compensation Reform Act 2004* section 79 comes into operation.

10

3. Meaning of “commencement day”

In this Act —

“**commencement day**” means the day on which the *Limitation Act 2004* comes into operation.

Part 2 — Repeal

4. *Limitation Act 1935* repealed and savings provisions

- (1) The *Limitation Act 1935* is repealed.
- 5 (2) The *Limitation Act 1935* continues to apply, despite its repeal and the enactment of the *Limitation Act 2004*, to causes of action that accrued before commencement day.
- (3) Subsection (2) is subject to the *Limitation Act 2004* section 4(3) and (5).
- 10 (4) A reference in a written law to the *Limitation Act 2004* may, in relation to causes of action that accrued before commencement day and where the context so requires, be read as if it were a reference to the *Limitation Act 1935*.

Part 3 — Commercial Arbitration Act 1985

5. The Act amended

The amendments in this Part are to the *Commercial Arbitration Act 1985**

5 [* Reprint 1 as at 2 April 2004.]

6. Section 48 amended and a savings provision

(1) Section 48(1) is amended as follows:

(a) by deleting “Subject to subsection (3), the” and inserting instead —

10 “ The ”;

(b) by deleting “or taking any proceeding” and inserting instead —

“ (other than taking any proceeding) ”.

(2) Section 48(2) is amended by deleting “act or taking the proceeding.” and inserting instead —

15 “ act. ”.

(3) Section 48(3) is repealed.

(4) The *Commercial Arbitration Act 1985* section 48, as it was immediately before commencement day, continues to apply after commencement day to causes of action that accrued before commencement day as if subsections (1), (2) and (3) had not been enacted.

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Part 4 — *Crown Suits Act 1947*

7. The Act amended

The amendment in this Part is to the *Crown Suits Act 1947**.

[* *Reprint 2 as at 9 May 2003.*

5 *For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 96.]*

8. Section 6 repealed and a savings provision

(1) Section 6 is repealed.

10 (2) The *Crown Suits Act 1947* section 6, as it was immediately
before commencement day, continues to apply to causes of
action that accrued before commencement day as if
subsection (1) had not been enacted.

Part 5 — *District Court of Western Australia Act 1969*

9. The Act amended

The amendments in this Part are to the *District Court of Western Australia Act 1969**.

5 [* Reprinted as at 19 January 2001.
For subsequent amendments see *Western Australian
Legislation Information Tables for 2003, Table 1, p. 107-8.*]

10. Section 37 amended and a savings provision

(1) Section 37 is amended as follows:

10 (a) by deleting “section 47A of the *Limitation Act 1935*,”
and inserting instead —

“
the *Limitation Act 2004* (except section 9 of that Act),
”;

15 (b) by deleting “done.” and inserting instead —

“
done, and this section has effect subject to Part 3 of the
Limitation Act 2004.
”.

20 (2) The *District Court of Western Australia Act 1969* section 37, as
it was immediately before commencement day, continues to
apply to causes of action that accrued before commencement
day as if subsection (1) had not been enacted.

Part 6 — Fatal Accidents Act 1959

11. The Act amended

The amendments in this Part are to the *Fatal Accidents Act 1959**.

5 [* Reprinted as at 7 February 2003.
For subsequent amendments see *Western Australian
Legislation Information Tables for 2003, Table 1, p. 132.*]

12. Section 4 amended

Section 4 is amended as follows:

- 10 (a) by inserting before “Where” the subsection designation
“(1)”;
- (b) at the end of the section by inserting the following
subsection —

“

- 15 (2) An injured party who did not commence an action
relating to the injury before the limitation period for
commencing the action expired is to be taken to be
entitled, for the purposes of subsection (1), to maintain
an action in respect of the injury if, before the person
20 died, the person —
- (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;
- 25 (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
- 30 (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

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enquiry, had been unable to establish that
person's identity.

”.

13. Section 7 replaced and a savings provision

- 5 (1) Section 7 is repealed and the following section is inserted
instead —

“

7. Restriction of number of actions

10 No more than one action lies under this Act for and in
respect of the same subject matter of complaint.

”.

- 15 (2) The *Fatal Accidents Act 1959* section 7, as it was immediately
before commencement day, continues to apply to causes of
action that accrued before commencement day as if
subsection (1) had not been enacted.

**Part 7 — Law Reform (Miscellaneous Provisions)
Act 1941**

14. The Act amended

5 The amendments in this Part are to the *Law Reform
(Miscellaneous Provisions) Act 1941**.

[* Reprinted as at 12 July 2002.

*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 210.]*

15. Section 4 amended and a savings provision

10 (1) Section 4(1) is amended as follows:

- (a) by deleting “section,” and inserting instead —
“ section and the *Limitation Act 2004*, ”;
- (b) after “benefit of” by inserting a comma.

(2) Section 4(2)(ca) is deleted.

15 (3) Section 4(3) is repealed.

(4) The *Law Reform (Miscellaneous Provisions) Act 1941* section 4,
as it was immediately before commencement day, continues to
apply to causes of action that accrued before commencement
day as if subsections (1), (2) and (3) had not been enacted.

Part 8 — *Supreme Court Act 1935*

16. The Act amended

The amendments in this Part are to the *Supreme Court Act 1935**.

5 [* *Reprinted as at 9 February 2001.*
*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 381-2.*]

17. Section 25 amended

Section 25(2) is repealed.

10 **18. Section 29 repealed and a savings provision**

(1) Section 29 is repealed.

(2) The *Supreme Court Act 1935* section 29, as it was immediately before commencement day, continues to apply to causes of action that accrued before commencement day as if subsection (1) had not been enacted.

15

19. Section 30 amended

Section 30 is amended by deleting “the last preceding 4 sections” and inserting instead —

“ sections 26, 27 and 28 ”.

Part 9 — *Workers' Compensation and Injury Management Act 1981*

20. The Act amended

5 The amendments in this Part are to the *Workers' Compensation and Injury Management Act 1981**.

[* Reprinted as at 14 September 2001.

For subsequent amendments see 2003 Index to Legislation of Western Australia, Table 1, p. 438-9, and the Workers' Compensation Reform Act 2004.]

10 **21. Section 93CC amended**

Section 93CC is amended as follows:

- 15 (a) by inserting before "This" the subsection designation "(1)";
- (b) at the end of the section by inserting the following subsection —

“

- 20 (2) Despite subsection (1) and section 93CB, this Subdivision applies to a worker who claims to be suffering an injury attributable to the inhalation of asbestos if, before section 79 of the *Workers' Compensation Reform Act 2004* comes into operation —

- 25 (a) the worker sought to agree the degree of the disability of the worker for the purposes of section 93E; or
- (b) a dispute as to the degree of the disability of the worker was referred under section 93D(11) to a medical panel for determination.

”.

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22. Section 93I amended

Section 93I is amended as follows:

- (a) by inserting before "This" the subsection designation "(1)";
- 5 (b) at the end of the section by inserting the following subsection —

“

- 10 (2) Despite subsection (1), this Subdivision applies to a worker who claims to be suffering an injury attributable to the inhalation of asbestos if, on or after the day on which section 79 of the *Workers' Compensation Reform Act 2004* comes into operation —

- 15 (a) the worker seeks to agree the worker's degree of permanent whole of person impairment for the purposes of section 93K; or
- (b) an assessment of a medical panel to evaluate the worker's degree of permanent whole of person impairment is sought under section 93R.

20

”.

Part 10 — Amendments to various written laws

23. “Limitation Act 1935” replaced with “Limitation Act 2004”

The provisions of written laws that are set out in the Table to this section are amended in each case by deleting “*Limitation Act 1935*” and inserting instead —

“ *Limitation Act 2004* ”.

Table

Written law	Provisions
<i>Agriculture and Related Resources Protection Act 1976</i>	s. 64(3)
<i>Federal Courts (State Jurisdiction) Act 1999</i>	s. 11(1) “limitation law”
<i>Local Government (Miscellaneous Provisions) Act 1960</i>	s. 410A(4)
<i>Motor Vehicle Dealers Act 1973</i>	s. 37A(6)
<i>Rates and Charges (Rebates and Deferments) Act 1992</i>	s. 49
<i>Residential Tenancies Act 1987</i>	s. 71(6) and 72(5)
<i>Small Claims Tribunals Act 1974</i>	s. 22(6)
<i>Trustees Act 1962</i>	s. 38(1)

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