

Queensland



ANNO VICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

No. 75 of 1974

An Act to consolidate and amend the law relating to the
limitation of actions

[ASSENTED TO 1ST NOVEMBER, 1974]

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 1974*.

2. **Commencement.** This Act shall commence on 1st July 1975.

Abbreviations. Abbreviations used in reference to other Acts in notes appearing at the beginnings of sections have the following meanings:—31 Vic. No. 16 *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*; U.K. 1939 *Limitation Act 1939* (United Kingdom); U.K. 1963 *Limitation Act 1963* (United Kingdom); N.S.W. 1969 *Limitation Act 1969* (New South Wales); Vic. 1958 *Limitation of Actions Act 1958* (Victoria).

3. Arrangement. This Act is divided into Parts as follows:—

PART I—PRELIMINARY, ss. 1–8;

PART II—PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTIONS, ss. 9–28;

PART III—EXTENSION OF PERIODS OF LIMITATION, ss. 29–40;

PART IV—GENERAL, ss. 41–43;

SCHEDULE.

4. Repeals. The Acts set forth in the schedule are repealed to the extent in that schedule indicated.

5. Interpretation. [Cf. 9 Eliz. 2 No. 7, s. 4; 5 Eliz. 2 No. 19; U.K. 1939, s. 31; Vic. 1958, s. 3]. (1) In this Act, save where a contrary intention appears—

“action” includes any proceeding in a court of law;

“Crown” includes not only the Crown in the right of the State but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities;

“damage” includes loss of life and personal injury;

“encumbrance” means a charge on land created for the purpose of securing the payment of an annuity or sum of money other than a loan;

“encumbrancee” includes a person not being a mortgagee for whose benefit an estate or interest in land is charged with an annuity or sum of money other than a loan and also a person entitled to the benefit of an encumbrance or to require payment or discharge thereof;

“land” includes corporeal hereditaments, rentcharges 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 is provided in this definition, does not include an incorporeal hereditament;

“mortgage” includes a charge or lien on property for securing money or money’s worth but does not include a possessory lien on goods nor a binding effect on the property arising under a writ of execution against the property;

“mortgagee” includes a person claiming a mortgage through an original mortgagee;

“mortgagor” includes a person claiming property subject to a mortgage through an original mortgagor;

“personal estate” and “personal property” do not include chattels real;

“personal injury” includes a disease and an impairment of a person’s physical or mental condition;

“rent” includes a rentcharge and a rentservise;

“rentcharge” means any annuity or periodical sum of money charged upon or payable out of land save a rentservise or interest on a mortgage on land;

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

“trust” and “trustee” have the same meanings respectively as in the *Trusts Act 1973*;

“trust for sale” means in relation to land 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) For the purposes of this Act, a person shall be taken 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 Part IV of the *Public Curator Act 1915-1973*.

(3) For the purposes of subsection (2), but without prejudice to the generality thereof, a person shall be presumed conclusively to be of unsound mind—

- (a) while he is a patient within the meaning of the *Mental Health Act 1974*;
- (b) while he is in strict custody pursuant to an order of the Court or in safe custody pursuant to an order given by the Governor in the name of Her Majesty, under section 647 of *The Criminal Code*;
- (c) while he is detained in a hospital or security patients' hospital pursuant to an order made under Part IV of the *Mental Health Act 1974*.

(4) A person shall be taken 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 an estate or interest by virtue of a special power of appointment shall not be taken to claim through the appointor.

(5) A reference in this Act to a right of action to recover land includes a reference to a right to enter into possession of the land or, in the case of a rentcharge, to distrain for arrears of rent and a reference to the bringing of such an action includes a reference to the making of such an entry or distress.

(6) A reference in this Act, in the case of a rentcharge—

- (a) to the possession of land, shall be read and construed as a reference to receipt of the rent;
- (b) to the date of dispossession or discontinuance of possession of land, shall be read and construed as a reference to the date the rent was last received.

(7) In Part III, a reference to a right of action includes a reference to—

- (a) a cause of action;
- (b) a right to receive money secured by a mortgage or charge on property or to recover proceeds of the sale of land;
- (c) a right to receive a share or interest in the personal estate of a deceased person,

and a reference to the date of accrual of a right of action—

- (d) shall, in the case of an action for an account, be read and construed as a reference to the date on which the matter arose in respect of which the account is claimed;

(e) shall, in the case of an action upon a judgment, be read and construed as a reference to the date on which the judgment became enforceable;

(f) shall, in the case of an action to recover arrears of rent or interest or damages in respect thereof, be read and construed as a reference to the date on which the rent or interest became due.

6. Application to Crown. [Cf. Vic. 1958, ss. 7, 32; N.S.W. 1969, s. 10]. (1) Subject to subsections (3) and (4), this Act binds the Crown and the Crown has the benefit of this Act.

(2) For the purposes of this Act, an action by or against the Crown includes an action by or against an officer of the Crown as such or a person acting on behalf of the Crown.

(3) This Act does not apply to—

(a) a prosecution by the Crown for an offence against any Act;

(b) an action by the Crown—

(i) for the recovery of a fee, tax, duty or other sum of money or interest on a fee, tax, duty or other sum of money;

(ii) in respect of the forfeiture of a ship.

(4) Notwithstanding any law or enactment now or heretofore in force in the State, the right, title or interest of the Crown to or in any land shall not be and shall be deemed not to have been in any way affected by reason of any possession of such land adverse to the Crown for any period whatever.

7. Saving of other limitations. [Cf. 9 Eliz. 2 No. 7, s. 5; U.K. 1939, s. 32; N.S.W. 1969, s. 7]. This Act does not apply to an 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. [Cf. 9 Eliz. 2 No. 7, s. 6; 5 Eliz. 2 No. 19, s. 8; U.K. 1939, s. 33]. (1) Save as is provided in sections 31 and 32, nothing in this Act—

(a) enables an action to be brought that was barred before the commencement of this Act by an enactment repealed by this Act, save so far as the cause of action or right of action may be revived by an acknowledgment or part payment made in accordance with this Act;

(b) affects an action or arbitration commenced before the commencement of this Act or the title to property that is the subject of such an action or arbitration.

(2) The time for bringing proceedings in respect of a cause of action that arose before the commencement of this Act shall, if it has not then expired, expire at the time when it would have expired—

(a) apart from this Act; or

(b) if this Act had at all material times been in force, whichever is the later.

(3) Save as is provided in this section, nothing in this Act affects an action if the cause of action upon which that action is founded arose before the commencement of this Act.

PART II—PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTIONS

9. Application. [Cf. 9 Eliz. 2 No. 7, s. 8; U.K. 1939, s. 1; Vic. 1958, s. 4]. This Part applies subject to Part III.

10. Actions of contract and tort and certain other actions. [Cf. 9 Eliz. 2 No. 7, s. 9; U.K. 1939, s. 2; Vic. 1958, s. 5; N.S.W. 1969, s. 14].

(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose:—

- (a) an action 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) an action to enforce a recognizance;
- (c) an action to enforce an award, where the agreement to arbitrate is not by an instrument under seal;
- (d) an action to recover a sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of a penalty or forfeiture.

(2) An action for an account shall not be brought in respect of a matter that 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.

This subsection does not affect an action in respect of which a shorter period of limitation is prescribed by any other provision of this Act.

(4) An action shall not be brought upon a judgment after the expiration of twelve years from the date on which the judgment becomes enforceable.

For the purposes of this subsection, a judgment of a court of a place outside the State becomes enforceable on the date on which the judgment becomes enforceable in the place where the judgment is given.

(5) An action to recover a penalty or forfeiture or sum by way of a penalty or forfeiture shall not be brought after the expiration of two years from the date on which the cause of action accrued.

In this subsection “penalty” does not include a fine to which a person is liable on conviction of a criminal offence.

(6) This section—

- (a) does not apply to a cause of action within the Admiralty jurisdiction of the court that is enforceable *in rem*;
- (b) does not apply to a claim for specific performance of a contract or for an injunction or other equitable relief, save so far as any provision thereof may be applied by the court by analogy in the same manner as the corresponding enactment repealed by this Act has heretofore applied.

11. Actions in respect of personal injury. [Cf. 5 Eliz. 2 No. 19, s. 5]. Notwithstanding any other Act or law or rule of law, an 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 a contract or such provision) in which damages claimed by the plaintiff consist of or include damages in respect of personal injury to any person shall not be brought after the expiration of three years from the date on which the cause of action arose.

12. Actions in cases of successive conversions and extinction of title of owners of converted goods. [Cf. 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 a 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, an action shall not 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 a cause of action to which subsection (1) applies has accrued to any person and the period prescribed for bringing that action or any action in respect of which a further conversion or wrongful detention referred to in subsection (1) 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 a purchaser, mortgagee or other person having a title to or an interest in the chattel bona fide for value.

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

13. Actions to recover land. [Cf. 9 Eliz. 2 No. 7, s. 11; U.K. 1939, s. 4; Vic. 1958, s. 8]. An action shall not be brought by a person to recover 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.

14. Accrual of right of action in cases of present interests in land. [Cf. 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 a person brings an action to recover 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 a person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him or some person through whom he claims by a person who on 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.

15. Accrual of right of action in cases of future interests in land. [Cf. 9 Eliz. 2 No. 7, s. 13; U.K. 1939, s. 6; Vic. 1958, s. 10]. (1) Subject to this section, the right of action to recover land 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 shall 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, action shall not 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) A person shall not bring an action to recover an 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 an action.

(4) Where a person is entitled to an estate or interest in land in possession and, while so entitled, is also entitled to a future estate or interest in that land and his right to recover the estate or interest in possession is barred under this Act, action shall not be brought by that person or by a 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.

16. Provisions in cases of land held in trust. [Cf. 9 Eliz. 2 No. 7, s. 14; Vic. 1958, s. 11]. (1) Subject to the provisions of subsection (1) of section 27, 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 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 land is held by a 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 has not accrued or has not been barred by this Act; but if and when every such right has been so barred the estate of the trustee shall be extinguished.

(3) Where 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 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, a right of action to recover the land shall be deemed for the purposes of this Act not 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.

17. Accrual of right of action in cases of forfeiture or breach of condition. [Cf. 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; but where such 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 be deemed not to have accrued to that person until his estate or interest fell into possession as if no forfeiture or breach of condition had occurred.

18. Accrual of right of action in cases of certain tenancies. [Cf. 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 land subject to the tenancy shall be deemed to have accrued on the date of its 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 on the date of its determination.

Where rent has subsequently been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date the rent was last received.

(3) Where a 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 lastnamed person to recover the land shall be deemed to have accrued on the date when the rent was first received by the person wrongfully claiming and not on the date of the determination of the lease.

19. Right of action not to accrue or continue unless there is adverse possession. [Cf. 9 Eliz. 2 No. 7, s. 17; U.K. 1939, s. 10; Vic. 1958, s. 14]. (1) A right of action to recover land shall be deemed not to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (in this section referred to as "adverse possession")

and where under the provisions of this Act 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 be deemed not 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 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 section 18 the land in reversion, shall be deemed to be adverse possession of the land.

20. Redemption actions. [Cf. 9 Eliz. 2 No. 7, s. 18; U.K. 1939, s. 12; Vic. 1958, s. 15]. Where a mortgagee of land has been in possession of any of the mortgaged land for a period of twelve years, an action to redeem the land of which the mortgagee has been in possession shall not thereafter be brought by the mortgagor or a person claiming through him.

21. Right of action not preserved by formal entry or continual claim. [Cf. 9 Eliz. 2 No. 7, s. 19; U.K. 1939, s. 13; Vic. 1958, s. 16]. For the purposes of this Act, a person shall be deemed not to have been in possession of land by reason only of having made a formal entry thereon, and a continual or other claim upon or near land shall not preserve a right of action to recover the land.

22. Application of limitation as between joint owners. [Cf. 9 Eliz. 2 No. 7, s. 20; 31 Vic. No. 16, s. 19]. When one or more of several persons entitled to land or rent as coparceners, joint tenants or tenants in common has or 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 be deemed not to have been the possession or receipt of or by such lastmentioned person or persons or any of them.

23. Administration to date back to death. [Cf. 9 Eliz. 2 No. 7, s. 21; U.K. 1939, s. 15; 31 Vic. No. 16, s. 14]. For the purposes of the provisions of this Act with respect 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.

24. Extinction of title after expiration of period of limitation. [Cf. 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 section 17, subsection (2) of this section and the *Real Property Act* 1861–1973, where the period of limitation prescribed by this Act within which a person may bring an action to recover land (including a redemption action) has expired, the title of that person to the land shall be extinguished.

(2) Where an action to recover land is brought before the expiration of the period of limitation prescribed by this Act, the expiration of that period does not affect the right or title of the plaintiff to the land—

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

25. Actions to recover rent. [Cf. 9 Eliz. 2 No. 7, s. 23; U.K. 1939, s. 17; Vic. 1958, s. 19]. An action shall not be brought nor a 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.

26. Actions to recover money secured by mortgage or charge or to recover proceeds of the sale of land. [Cf. 9 Eliz. 2 No. 7, s. 24; U.K. 1939, s. 18; Vic. 1958, s. 20]. (1) An action shall not be brought to recover a principal sum of money secured by a mortgage or other charge on property whether real or personal nor to recover proceeds of the sale of land after the expiration of twelve years from the date on which the right to receive the money accrued.

(2) A foreclosure action in respect of mortgaged personal property shall not be brought after the expiration of twelve years from the date on which the right to foreclose accrued; but if after that date the mortgagee was in possession of the mortgaged property, the right to foreclose on the property that was in his possession shall, for the purposes of this subsection, be deemed not to have accrued until the date on which his possession discontinued.

(3) The right to receive a 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 be deemed not to accrue so long as that property comprises a future interest or a life assurance policy that has not matured or been determined.

(4) The provisions of this section do not apply to a foreclosure action in respect of mortgaged land, but the provisions of this Act with respect to an action to recover land apply to such an action.

(5) An action to recover arrears of interest payable in respect of a 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 not be brought after the expiration of six years from the date on which the interest became due.

Notwithstanding this subsection—

- (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 that fell due during the period of possession by the prior encumbrancee or damages in respect thereof, although the period exceeded six years;
- (b) where the property subject to the mortgage or charge comprises a future interest or life assurance policy and it is a term of the mortgage or charge that arrears of interest be treated as part of the principal sum of money secured by the mortgage or charge, interest shall be deemed not to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

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

27. Actions in respect of trust property. [Cf. 9 Eliz. 2 No. 7, s. 25; U.K. 1939, s. 19; Vic. 1958, s. 21]. (1) A period of limitation prescribed by this Act shall not apply to an action by a beneficiary under a trust, being an action—

- (a) in respect of a 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 to subsection (1), an action by a beneficiary to recover trust property or in respect of a 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.

Notwithstanding this subsection, the right of action shall be deemed not to have accrued to a beneficiary entitled to a future interest in the trust property until the interest fell into possession.

(3) A beneficiary as against whom there would be a good defence under this Act shall not 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.

28. Actions claiming personal estate of a deceased person. [Cf. 9 Eliz. 2 No. 7, s. 26; U.K. 1939, s. 20; Vic. 1958, s. 22]. Subject to subsection (1) of section 27, an action in respect of a claim to the personal estate of a deceased person or to a share or interest in that estate, whether under a will or on intestacy, shall not be brought after the expiration of twelve years from the date on which the right to receive the share or interest accrued and an action to recover arrears of interest in respect of a legacy or damages in respect of such arrears shall not be brought after the expiration of six years from the date on which the interest became due.

PART III—EXTENSION OF PERIODS OF LIMITATION

29. Extension in cases of disability. [Cf. 9 Eliz. 2 No. 7, s. 27; U.K. 1939, s. 22; Vic. 1958, s. 23; 11 Eliz. 2 No. 20, s. 2]. (1) If on the date on which a 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 on which the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired.

(2) Notwithstanding subsection (1)—

- (a) where a right of action that 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, a further extension of time shall not be allowed by reason of the disability of the second person;

- (b) an action to recover land or money charged on land shall not be brought by virtue of this section by a person after the expiration of thirty years from the date on which the right of action accrued to that person or a person through whom he claims;
 - (c) an action to recover damages in respect of personal injury shall not be brought by a person after the expiration of three years from the date on which that person ceased to be under a disability or died, whichever event first occurred.
- (3) This section does not apply—
- (a) in a case where the right of action first accrued to a person (not under a disability) through whom the person under a disability claims;
 - (b) to an action to recover a penalty or forfeiture or sum by way of a penalty or forfeiture by virtue of an enactment save where the action is brought by an aggrieved party.

30. Interpretation. [Cf. N.S.W. 1969, s. 57]. For the purposes of this section and sections 31, 32, 33 and 34—

- (a) the material facts relating to a right of action include the following:—
 - (i) the fact of the occurrence of negligence, trespass, nuisance or breach of duty on which the right of action is founded;
 - (ii) the identity of the person against whom the right 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 right 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 right of action would (apart from the effect of the expiration of a period of limitation) have a reasonable prospect of success and of resulting in an award of damages sufficient to justify the bringing of an action on the right 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 right 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) 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.

31. Ordinary actions. [Cf. U.K. 1963, ss. 1, 2; N.S.W. 1969, s. 58].

(1) This section applies to 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 a contract or 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 injury to any person.

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

- (a) that a material fact of a decisive character relating to the right of action was not within the means of knowledge of the applicant until a date after the commencement of the year last preceding the expiration of the period of limitation for the action; and
- (b) that there is evidence to establish the right of action apart from a defence founded on the expiration of a period of limitation,

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

(3) This section applies to an action whether or not the period of limitation for the action has expired—

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

32. Surviving actions. [Cf. U.K. 1963, ss. 1, 2, 3; N.S.W. 1969, s. 59]. (1) This section applies to actions founded on negligence, trespass, nuisance or breach of duty, for damages for personal injury that have survived on the death of a person for the benefit of his estate under section 15D of the *Common Law Practice Act 1867–1972*.

(2) Where on application to a court by a person claiming to have a right of action to an action to which this section applies, it appears to the court—

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

the court may order that the period of limitation for the action be extended so that it expires at the end of one year after that date and thereupon, for the purposes of the action brought by the deceased or the applicant in that court, the period of limitation 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;
- (b) funeral expenses of the deceased.

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

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

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

34. Practice. [Cf. N.S.W. 1969, s. 62]. (1) An application under this Part may be made *ex parte* but the court or a judge may require that notice of the application be given to any person to whom it or he thinks it proper that notice should be given.

(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.

35. Fresh accrual of action on acknowledgement or part payment. [Cf. 9 Eliz. 2 No. 7, s. 28; U.K. 1939, s. 23; Vic. 1958, s. 24]. (1) Where there has accrued a right of action (including a foreclosure action) to recover land or a 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 referred to in subparagraph (a) 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 mortgaged land and receives a sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor or his equity of 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 a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a claim to the personal estate of a deceased person or to a share or interest therein and the person liable or accountable therefor acknowledges the claim or makes a 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.

Notwithstanding subsection (1), 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 a payment of interest shall be treated as a payment in respect of the principal debt.

36. Formal provisions as to acknowledgement and part payment. [Cf. 9 Eliz. 2 No. 7, s. 29; U.K. 1939, s. 24; Vic. 1958, s. 25]. Every acknowledgement referred to in section 35 shall be in writing and signed by the person making the acknowledgement.

Any acknowledgement or payment may be made by the agent of the person by whom it is required to be made under section 35 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.

37. Effect of acknowledgement or part payment on a person other than the maker or recipient. [Cf. 9 Eliz. 2 No. 7, s. 30; U.K. 1939, s. 25; Vic. 1958, s. 26]. (1) An acknowledgement of the title to land or mortgaged personalty by a 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 a 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 bind him and his successors only 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 an ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment with interest of the part of the mortgage debt that 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, the acknowledgement shall be deemed to have been made to all the mortgagors.

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

Notwithstanding this subsection, 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 a 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 a debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof.

Notwithstanding this subsection, 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 a person other than the person making the payment and his successors and shall not bind a 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 a claim to the personal estate of a deceased person or to a share or interest therein or a payment by one of the several personal representatives in respect of such claim shall bind the estate of the deceased person.

(8) In this section the expression "successor" in relation to a mortgagee or person liable in respect of a 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.

38. Postponement in cases of fraud or mistake. [Cf. 9 Eliz. 2 No. 7, s. 31; U.K. 1939, s. 26; Vic. 1958, s. 27]. Where in an action for which a period of limitation is prescribed by this Act—

- (a) the action is based upon the fraud of the defendant or his agent or of a person through whom he claims or his agent;
- (b) the right of action is concealed by the fraud of a person referred to in subparagraph (a); 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, as the case may be, mistake or could with reasonable diligence have discovered it.

Nothing in this section enables an action to be brought to recover or enforce a charge against or set aside a transaction affecting property that—

- (d) 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 a fraud had been committed; or
- (e) 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.

39. Costs. [Cf. 11 Eliz. 2 No. 20, s. 2 (3)]. In dealing with the costs of an action to which this Part applies and that is commenced after the expiration of the period of limitation otherwise prescribed by this Act but before the expiration of the period of limitation prescribed by section 29 the court shall, in every case where costs may be awarded to the plaintiff, before awarding such costs, take into consideration—

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

40. Contribution between tortfeasors. [Cf. N.S.W. 1969, s. 26].

(1) An action for contribution under subparagraph (c) of section 5 of *The Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act of 1952* shall not be brought after the expiration of the first of the following periods to expire—

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

(2) For the purposes of subparagraph (a) of subsection (1), the date on which a right 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 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 subparagraph (a) 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 right of action for the damage for which the right 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 subparagraph (b) of subsection (1), the expression “the period of limitation for the principal action” means the period of limitation prescribed by this Act or by any other enactment (including an enactment repealed by this Act) for the 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

41. Application to arbitrations. [Cf. 9 Eliz. 2 No. 7, s. 32; U.K. 1939, s. 27; Vic. 1958, s. 28]. (1) This Act shall apply to arbitrations in the same manner as it applies to actions.

(2) Notwithstanding any term in an agreement to arbitrate to the effect that a cause of action shall not accrue in respect of a matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purposes of this Act (whether in its application to arbitrations or to other proceedings), be deemed to have accrued in respect of such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this Act, 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 agreement to arbitrate 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) A notice pursuant to subsection (3) may be served—

- (a) by delivering it to the person to whom it is directed;
- (b) by leaving it at the usual or last known place of abode or business in the State of the person to whom it is directed;
- (c) by sending it by registered post to the person to whom it is directed at his usual or last known place of abode or business in the State,

as well as in any other manner specified in the agreement to arbitrate.

(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 be excluded in computing the time prescribed by this Act for the commencement of proceedings (including an arbitration) with respect to the dispute referred.

(6) This section applies to an arbitration under an Act or rules of court as well as to an arbitration pursuant to an agreement to arbitrate and subsections (3) and (4) have effect, in relation to an arbitration under an Act, as if for the references to the agreement to arbitrate 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.

42. Provisions as to set-off or counterclaim. [Cf. 9 Eliz. 2 No. 7, s. 33; U.K. 1939, s. 28; Vic. 1958, s. 30]. For the purposes of this Act, a 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.

43. Acquiescence. [Cf. Eliz. 2 No. 7, s. 34; U.K. 1939, s. 29; Vic. 1958, s. 31]. Nothing in this Act affects the equitable jurisdiction of a court to refuse relief on the ground of acquiescence or otherwise.

SCHEDULE

[s. 4]

Year and Number of Act	Short Title	Extent of Repeal
13 Vic. No. 36 ..	<i>The Hawkers and Pedlers Act of 1849</i>	Section 30
14 Vic. No. 4 ..	<i>The Brewers Act of 1850</i> ..	Section 12
14 Vic. No. 9 ..	<i>The Gaming Act of 1850</i> ..	Section 15
18 Vic. No. 27 ..	<i>The Inclosed Lands Act of 1854</i>	Section 8
25 Vic. No. 14 as amended	<i>Real Property Act 1861-1973</i>	The proviso in section 128 with the following note in and at its beginning "Notice of action to be served on Registrar-General and Attorney-General" The expression in section 128 "(except as aforesaid)"
50 Vic. No. 17 as amended	<i>Justices Act 1886-1974</i> ..	Sections 258, 259
58 Vic. No. 8 as amended	<i>Stamp Act 1894-1974</i> ..	Section 79
59 Vic. No. 9 as amended	<i>The Suppression of Gambling Acts 1895 to 1964</i>	Section 35
60 Vic. No. 14 as amended	<i>The Inebriates Institutions Acts 1896 to 1968</i>	Section 34
63 Vic. No. 9 First Schedule as amended	<i>The Criminal Code</i> ..	Section 703
64 Vic. No. 17 as amended	<i>Sugar Experiment Stations Act 1900-1973</i>	Section 40

SCHEDULE—continued

[s. 4]

Year and Number of Act	Short Title	Extent of Repeal
9 Edw. 7 No. 12 as amended	<i>The Metropolitan Water Supply and Sewerage Acts 1909 to 1962</i>	Section 146
3 Geo. 5 No. 29 as amended	<i>Liquor Act 1912–1973</i> ..	Section 159 (2)
5 Geo. 5 No. 24 as amended	<i>Railways Act 1914–1972</i> ..	Sections 125 (1), 125 (2)
6 Geo. 5 No. 34 as amended	<i>Land Tax Act 1915–1973</i> ..	Section 57
10 Geo. 5 No. 26 as amended	<i>Main Roads Act 1920–1972</i>	The expression “52 (12)” in section 24
12 Geo. 5 No. 22 as amended	<i>The Magistrates Courts Acts 1921 to 1964</i>	Sections 12 (1), 12 (2), 12 (3)
13 Geo. 5 No. 14	<i>The Brisbane Tramway Trust Act of 1922</i>	Section 39
13 Geo. 5 No. 29 as amended	<i>Irrigation Act 1922–1973</i> ..	Schedule Part I clause 11 (2)
14 Geo. 5 No. 28 as amended	<i>The Cotton Industry Acts 1923 to 1926</i>	Section 33 (2)
14 Geo. 5 No. 41 as amended	<i>Co-ordination of Rural Advances and Agricultural Bank Act 1938–1969</i> (title given by 2 Geo. 6 No. 4)	Schedule I clause 9
17 Geo. 5 No. 12 as amended	<i>Water Act 1926–1973</i> ..	Schedule Part I clause 11 (2)
20 Geo. 5 No. 11 as amended	<i>Diseases in Plants Act 1929–1972</i>	Section 22
20 Geo. 5 No. 12 as amended	<i>The Banana Industry Protection Acts 1929 to 1937</i>	Section 17
22 Geo. 5 No. 27 as amended	<i>Vagrants, Gaming and Other Offences Act 1931–1971</i>	Section 56
1 Geo. 6 No. 1 as amended	<i>Local Government Act 1936–1974</i>	Sections 52 (10) (i) (a), 52 (10) (iii), 52 (12)
1 Geo. 6 No. 12 as amended	<i>Police Act 1937–1973</i> ..	Section 66
1 Geo. 6 No. 31 as amended	<i>Health Act 1937–1973</i> ..	Section 156
9 Geo. 6 No. 16 as amended	<i>The Regional Electric Authorities Acts 1945 to 1964</i>	Sections 78 (1) (a), 78 (2), 79
9 Geo. 6 No. 24 as amended	<i>State Housing Act 1945–1973</i>	Section 40
1 Eliz. 2 No. 50 as amended	<i>The Southern Electric Authority of Queensland Acts 1952 to 1964</i>	Sections 66 (1) (a), 66 (2), 67
3 Eliz. 2 No. 54 as amended	<i>Racing and Betting Act 1954–1972</i>	Section 141
4 Eliz. 2 No. 40 as amended	<i>Harbours Act 1955–1972</i> ..	Sections 162 (3), 162 (5) (a) Note in and at the beginning of section 162 (5)

SCHEDULE—continued

[s. 4]

Year and Number of Act	Short Title	Extent of Repeal
5 Eliz. 2 No. 19 ..	<i>The Law Reform (Limitation of Actions) Act of 1956</i>	Sections 1, 2, 3, 4, 5, 8
7 Eliz. 2 No. 64 as amended	<i>Prisons Act 1958–1969</i> ..	Section 40
9 Eliz. 2 No. 7 ..	<i>The Limitation Act of 1960</i>	The whole
11 Eliz. 2 No. 20	<i>The Limitation (Persons under Disabilities) Act of 1962</i>	The whole
42 of 1962 as amended	<i>Land Act 1962–1974</i> ..	Section 25
39 of 1963 as amended	<i>The Northern Electric Authority of Queensland Acts 1963 to 1964</i>	Sections 75 (1) (a), 75 (2), 76
48 of 1964 as amended	<i>Fire Brigades Act 1964–1973</i>	Schedule I Part III rule 35
42 of 1967 as amended	<i>District Courts Act 1967–1972</i>	Section 50
55 of 1971 as amended	<i>State and Regional Planning and Development, Public Works Organization and Environmental Control Act 1971–1974</i>	Sections 112 (2) (a), 112 (4), 113