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# LIMITATION PERIODS

## A STATE-BY-STATE REVIEW

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**L**imitation periods for personal injury actions have changed with the introduction of national tort reform. It is only with the passage of time that cases have come before the courts to interpret those amendments. Eight years post-reform, a body of case law is starting to emerge for practitioners to consider. It is difficult to say whether, on balance, the changes have been positive for plaintiffs. Some states have reduced the time period during which a plaintiff may bring legal proceedings for injury, and this has especially affected claims for children. Others have introduced pre-court procedures that require the potential plaintiff to adhere to a number of obligations disclosing details of their action so that the potential defendant has time to start investigating. The purpose behind such pre-court procedures is to provide full and timely disclosure to a defendant and lead to the expeditious disposal of legal proceedings.

The practical effect for the plaintiff lawyer has been a requirement to investigate new client enquiries to a significant extent in order to comply with the laws, notwithstanding that the action, once fully investigated, may well not meet the criteria for issuing a Statement of Claim and for certification of reasonable prospects of success. This must be balanced against softer provisions determining when time starts to run against a plaintiff. This

article provides a state-by-state review of limitation laws and guides the plaintiff practitioner on matters to be aware of when considering taking on a medical negligence claim involving adults, children, and claims on behalf of families arising from a death.

### PRE-COURT PROCEDURES

In the **ACT**, pre-court procedures require a potential plaintiff to give notice to a potential defendant that they may pursue a legal case. Under s51 of the *Civil Law (Wrongs) Act 2002*, the claimant must give written notice of their claim within nine months of the injury, or four months of instructing a lawyer. If the claimant does not comply with these procedures, the respondent may, on application, have costs awarded in their favour.<sup>1</sup> This requirement to give notice exists for children in the ACT through their parent or guardian.<sup>2</sup> If such notice is given outside the specified period, a respondent may waive compliance or the claimant may make application to the court for a declaration that the claimant has remedied any non-compliance or for authorisation to proceed.<sup>3</sup>

Significant obligations exist for plaintiff practitioners in **Queensland** to commence proceedings under the *Personal Injuries Proceedings Act 2002* (PIPA). In relation to claims for adults, an Initial Notice must be served on potential defendants at the earliest of either nine months from the date of

the injury (or of symptoms appearing) or one month from instructing a solicitor.<sup>4</sup> If such notice is given outside the specified period, the claimant needs to provide a reasonable excuse for the delay in delivery of the Initial Notice.<sup>5</sup> Reasonable excuses include a belief on reasonable grounds of an expectation of improvement in symptoms.<sup>6</sup>

The obligations in relation to claims made on behalf of children are not clear. A parent or legal guardian has to give Part 1 of the Notice of Claim at the earliest of within six years after they know or reasonably ought to have known that the injury had occurred, or within 18 months after they first consult a solicitor.<sup>7</sup> Practitioners should also be aware that PIPA appears to make provision for service of an Initial Notice on behalf of a child.<sup>8</sup> It is unclear whether this obligation is mandatory, as PIPA uses the words 'may' instead of 'must'. The absence of a specific provision dealing with service of an Initial Notice on behalf of a child has created ambiguity as to whether the intention was for a Initial Notice to be served or not.<sup>9</sup> The writers' view is that the safest approach is to serve an Initial Notice at the earlier of nine months from the date of the injury (or of symptoms appearing) or one month from instructing a solicitor.<sup>10</sup> However, practitioners need to be aware that service of the Initial Notice may trigger the obligation to serve the Part 1 Notice of Claim before the time period set out above,<sup>11</sup> and should therefore serve the Part 1 Notice at the earliest possible time. Practitioners should also be aware that they can be charged with professional misconduct for not serving a Part 1 Notice of Claim as soon as practicable after being instructed by the parent or legal guardian to serve it.<sup>12</sup>

Where a compulsory conference has taken place under s36 and the matter has not resolved, PIPA can alter the statutory limitation period set out in the *Limitations of Actions Act* Qld 1974. In these circumstances, court proceedings need to be filed and served within 60 days after the conclusion of the compulsory conference.<sup>13</sup>

In the **Northern Territory**, a claimant is also not entitled to commence court proceedings without complying with the pre-court steps, as set out in the *Personal Injuries (Civil Claims) Act* 2007. A claimant must give a notice within 12 months after the day the incident in relation to the personal injury occurred,<sup>14</sup> or 12 months from symptoms first appearing.<sup>15</sup> If the claimant serves the notice any later, they must give a reasonable excuse for the delay,<sup>16</sup> or the court can grant leave to serve the Notice outside the timeframe.<sup>17</sup>

#### TIME TO SUE (ADULTS)

In **NSW** and **Tasmania**, the limitation period for a personal injury claim continues to be three years for

adults, subject to a 'discoverability' criterion. Under s50D of the *Limitation Act* 1969 (NSW), an action is not discoverable until such time as the plaintiff knew or ought to have known that they were injured or there was a death, that it was the fault of the defendant and that the injury was sufficiently serious to justify bringing an action. A long-stop limitation period of 12 years after the act or omission allegedly causing injury or death applies as the earlier alternative. An extension of time may be sought after the discoverability period has expired, and the court may extend the limitation period to three years after the date of discoverability.<sup>18</sup> Identical criterion exists in **Tasmania** for causes of action accruing after 1 January 2005.<sup>19,20</sup>

A recent decision of the NSW Court of Appeal<sup>21</sup> confirmed that a minor plaintiff could not know that the injury was the fault of the defendant until such time as their lawyer received an expert report indicating negligence. Additionally, the plaintiff could not know the seriousness of their injury until they had the relevant legal and medical information available so as to make an informed decision about taking legal action. The practical outcome of these changes, and the interpretation by the courts to date, provide for a fair compromise in **NSW** for plaintiffs and defendants, and avoid the need for a plaintiff to bring an application to extend the limitation period in, for example, a delayed diagnosis of cancer case, where the plaintiff may be unaware they have cancer until more than three years from the breach of duty.

In the **ACT**, the *Limitation Act* 1985 has been amended for causes of actions arising after 1 July 2003.<sup>22</sup> For adults, an action must be commenced within three years of when the injury occurred or, if the injury is a disease or disorder, three years from the date when the plaintiff first knows that he or she has the disease or disorder and knows that it is attributable to another party's act or omission. 'Disease or disorder' covers a multitude of medical conditions such as cancer, pregnancy or renal failure. A recent case confirmed that there is no discretion to extend the limitation period in personal injury claims arising after 1 July 2003;<sup>23</sup> however, for those actions accruing prior to that time, the court may extend the time for commencement of an action if it decides that it is just and reasonable to do so.<sup>24</sup>

In **WA**, **SA** and **NT** the limitation period is three years from when the cause of action accrues.<sup>25</sup> For an adult in **WA**, the cause of action is said to have accrued when the person becomes aware that they have sustained a not insignificant injury, or when the first symptom or other manifestation occurs, whichever is the earlier.<sup>26</sup> The court has the discretion to extend the limitation period in certain circumstances.<sup>27</sup> In **SA**, for personal injuries that are latent after the act or omission, the limitation period >>

commences to run three years from when the injury first comes to the plaintiff's knowledge.<sup>28</sup> As yet, there is no case law the authors are aware of that gives guidance as to how the courts may interpret these sections.

In **Victoria**, significant changes to time limits for the commencement of proceedings were incorporated into the *Limitation of Actions Act* 1958 in 2003. In particular, the limitation period for adults was reduced from six years to three years. As with NSW and TAS, a 'discoverability' criterion applies, as does a 12-year long-stop period.<sup>29</sup> The statutory definition of discoverability is the same as that in NSW and Tasmania, and 'ought to have known' means that the person would have known had they taken reasonable steps to ascertain the fact.<sup>30</sup>

The concept of discoverability has come before Victorian courts on a number of occasions in recent times. This has provided some clarity and guidance and an overall sense of leniency towards the plaintiff in determining when a cause of action is discoverable. In one case, it was found that the word 'fault' should be given its ordinary everyday meaning of culpability or blameworthiness,<sup>31</sup> and in another, the court found that the cause of action was not discoverable until an expert opinion was obtained to link the plaintiff's injury with the treatment of the defendant.<sup>32</sup> In both those cases, it was found that the proceedings were issued within time.

Many other cases<sup>33</sup> have looked at whether it was just and reasonable to extend the time under s27K,<sup>34</sup> which allows an application to be made to the court for an extension of time to commence a claim if it is statute-barred, or the 12-year long-stop period has expired. In considering whether to extend the time period, the court will take into consideration a number of matters, including the length and reasons for the delay, the potential prejudice to the defendant, the date of discoverability, the actions of the plaintiff once they became aware of the possibility of a claim, and the nature and extent of the plaintiff's loss.<sup>35</sup>

In **Queensland**, court proceedings must be commenced within three years from the date of the cause of action.<sup>36</sup> In contrast to the softer discoverability provisions in NSW, Tasmania and WA, the limitation period commences at the time the injury was first suffered, even if the plaintiff is unaware of this. An application can be made for an extension of the limitation period<sup>37</sup> to lodge proceedings within one year of discovering a material fact of a decisive character. In practice, though, the plaintiff bears an onerous task in satisfying a court that there is a material fact of a decisive character relating to the right of action, and that the material fact was not within the

means of knowledge of the plaintiff until after the commencement of the last year preceding the expiration of the limitation period.<sup>38</sup> Also, the plaintiff must show evidence to establish a right of action,<sup>39</sup> and it must be established that the material fact in question was not within the means of knowledge of the plaintiff, and the plaintiff has taken all reasonable steps to find out the fact before that time.<sup>40</sup> The court must also be satisfied that the defendant is not prejudiced, such that a fair trial of the action can be conducted.<sup>41</sup>

#### CHILDREN AND PERSONS UNDER A DISABILITY

Limitations in claims involving children have undergone significant change. Minority is considered to be a disability, as is being incapacitated for a continuous period of 28 days. Across Australia, the limitation period continues to be suspended when a plaintiff is disabled;<sup>42</sup> however, in **NSW, VIC** and **TAS**, a child or disabled person is not considered to be under disability where they have a capable parent or guardian, or are a protected person. In those situations, in NSW and TAS, the three-year discoverability date applies, and what is known by the capable parent or guardian of the minor, or the guardian of the incapacitated person, is taken to be facts known or ought to have been known by the minor or incapacitated person.<sup>43</sup> Similar provisions apply in Victoria, but with a six-year discoverability date.<sup>44</sup>

A provision exists in **NSW** for extending the limitation period for a minor with a parent or guardian. Under s62D of the *Limitation Act* 1969, the court will look to whether the limitation period expired before or within one year after the applicant turned 18 years; the failure to commence an action is attributable to an irrational decision by a parent or guardian made while the applicant was a minor; and there is evidence to establish a cause of action apart from any defence founded on the expiration of the limitation period. If these criteria are met, the court may extend the limitation period so that it expires at the end of one year after the making of the court's order. There is no case law that the authors are aware of that can assist with interpreting what the courts have considered to be an 'irrational decision' by the parent or guardian. However, one can imagine that excuses such as a fear of upsetting a treating doctor, fear of an adverse costs order or lack of funds to pay for legal advice might well be real factors that persuade a parent or guardian not to take legal action – but whether they are 'irrational' remains to be seen.

In the **ACT**, the defendant has the advantage of knowing about the claim because the plaintiff is required to give notice. If a person has a guardian, a defendant may give notice to the guardian to

proceed on a claim and, accordingly, that person will cease to be considered to be under a disability.<sup>45</sup> For claims involving children and an injury through health services in the ACT, a child has six years from the date of the accident giving rise to the claim to commence legal proceedings.<sup>46</sup> There is no provision to extend this period. However, in the case of a disease or disorder, the cause of action must be brought within whichever is the earlier: six years from when the plaintiff or their parent or guardian knows or ought reasonably to have known that the plaintiff first suffered an injury that includes a disease or disorder or that the injury is related to someone else's act or omission, or 12 years after the date of the accident giving rise to the injury.

Interestingly, the ACT limitation criteria for a child with a disease or disorder differs from that of an adult in so far as the child need only know that they have the disease or disorder, or that it is related to someone else's act or omission, before time starts to run. But balanced against this, s36 of the *Limitation Act* permits the period to be extended. The matters the court will take into consideration for an extension include medical expert opinion on the question of when the plaintiff first knew or ought to have known or ought reasonably to have known that they suffered an injury, or that the injury is related to someone else's act or omission.

In **WA**, a somewhat complicated situation applies under the *Limitation Act* 2005, which replaced the 1935 Act. For children with a cause of action that accrued prior to them turning 15, an action must be commenced within six years of the cause of action accruing.<sup>47</sup> For an action accruing when a person is 15, 16 or 17, proceedings must be commenced prior to the child turning 21.<sup>48</sup> If a cause of action accrues when a child is under 18 and is without a guardian from the date of the action accruing and before they reach 18, then the time the child is without a guardian does not count towards the running of the limitation period.<sup>49</sup> Notwithstanding this, no action can be brought if the person has reached 21 years. Similarly, time ceases to run for a person with a mental disability who is without a guardian, although the cause of action may not be commenced if 12 years have elapsed since the cause of action accrued.<sup>50</sup>

The court may extend the limitation period until the person is 21 years old for a person who was under 18 at the time the action accrued and had a guardian but failed to commence an action, so long as the court is satisfied that in the circumstances, it was not unreasonable for the plaintiff's guardian not to have commenced an action.<sup>51</sup> A similar situation applies to a person with a mental disability with a guardian: the court will extend the limitation period up to 12 years from when the cause of action

accrued.<sup>52</sup> Requiring the plaintiff to demonstrate that the failure to commence an action was not unreasonable is similar to the NSW provision, but softer in that the failure need not be 'irrational'.

Special provisions apply in WA to personal injuries arising from childbirth. In those cases, an action must be commenced within six years of the cause of action accruing and ss30 and 31, which allow for extensions, do not apply. Additionally, if the birth occurred prior to the commencement of the Act (15 November 2005), the cause of action cannot be commenced if six years have elapsed since the commencement date or the limitation period that would have applied has expired.<sup>53</sup>

This situation is actually better for a plaintiff, because under the 1935 *Limitation Act*, a plaintiff was prevented from bringing an action against public authorities, the Crown and local government authorities (such as a public hospital) and their employees more than one year after the cause of action accrued. An extension was available under s47A, with either consent of the defendant or leave of the court so long as the action was brought within six years. Given that diagnoses of conditions arising from birth (such as cerebral palsy) are rarely made before a child reaches one year of age, limitation extension applications or seeking the consent of the defendant to extend the limitation period were commonly sought.

A recent case involving the birth of a child with cerebral palsy in November 1996 was unsuccessful in obtaining an extension. In arriving at that decision, the trial judge considered the situations that might satisfy a court that it was not unreasonable for a parent not to commence an action. The plaintiff's claim was against a public hospital and had expired under the 1935 Act. The plaintiff argued that s41 of the 2005 Act should be used to allow the plaintiff to commence proceedings up until the age of 24.<sup>54</sup>

The court declined to extend the limitation period, but noted that if an extension had been granted, the plaintiff's mother would have satisfied the requirement that the delay in commencing proceedings was not unreasonable due to the fact she was being treated for post-traumatic stress disorder, she had difficult personal circumstances during the relevant period (including marital breakdown), she did not appreciate the full extent of the plaintiff's injuries until many years later, and she became aware of the possibility of suing the defendant for failing to perform a caesarean only when relevant evidence was obtained in 2009.

In **SA**, the fact that a child has a parent or guardian does not stop the limitation period from running during the child's minority, but the child must give notice of an intended action to the

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defendant within six years of the incident said to have caused the injury.<sup>55</sup> A defendant can require a plaintiff to commence a legal action after receiving the said notice, but the court could adjourn the issue of damages to a later date.<sup>56</sup> Non-compliance with this section does not prevent the plaintiff from bringing an action for damages; however, unless the court is satisfied that there is a good reason to excuse the non-compliance, no damages will be allowed to compensate for medical or gratuitous services provided before the date the action was commenced, and no legal or other costs incurred in contemplation of the action will be allowed.<sup>57</sup> An ultimate bar of 30 years exists from the time when the right to bring a cause of action arose.<sup>58</sup> In the NT, there is also an ultimate bar of 30 years from the time when the right to bring a cause of action arose.<sup>59</sup>

In **Queensland**, a person is deemed to be under a disability if they are an infant, convict or undergoing a sentence of imprisonment, or if they are of 'unsound mind'. This requires evidence of incapacity to manage affairs in the manner of a reasonable person.<sup>60</sup> In Queensland, the law recognises that children and people with a disability are not in a position to commence proceedings. Instead, they are required to commence court proceedings before the expiration of three years from the date the disability ceased.<sup>61</sup> Therefore, for children without an ongoing disability causing unsoundness of mind, proceedings must be commenced before their 21<sup>st</sup> birthday.<sup>62</sup> This limitation period can be extended by making an application to the court in the same manner as outlined above.<sup>63</sup> There is therefore less responsibility placed on parents or legal guardians to commence proceedings, and the provisions seem to be fairer as they do not discriminate against children or people with disabilities based on a failure of their parents or legal guardians to commence a claim.

### COMPENSATION FOR RELATIVES' CLAIMS

Claims for the benefit of family arising from a person's death generally follow the same formula as claims for adults who are injured. In **NSW**, the three-year discoverability criterion applies, with the long-stop period commencing from the date of death of the deceased.<sup>64</sup> The court may extend the 12-year long-stop limitation period but, when making such an order, it may exclude any beneficiary or class of beneficiaries so that they will not have the benefit of any award.<sup>65</sup> If the cause of action of the deceased was not discoverable by the deceased before his or her death, the court may order that the expiration of the limitation period against the deceased has no effect on a claim for compensation to relatives.<sup>66</sup>

In **Victoria**, an adult has three years and a child six years to bring a claim for damages relating to the

death of a person, and a discoverability provision continues to apply. There is a specific provision in the *Limitation of Actions Act 1958*, stating that a cause of action in a dependency claim is not discoverable before the date of death, and the long-stop limitation period of 12 years is deemed to run from the date of death.<sup>67</sup>

**Tasmania's** limitation period is the earliest of the following scenarios: three years post-discoverability, or three years post the date when the personal representative was appointed if he or she knew or ought to have known the date of discoverability at that time, or three years post the date when the personal representative first knew or ought to have known the date of discoverability if they acquired that knowledge after being appointed to the position, or 12 years from the date of the act or omission which it is alleged resulted in the death.<sup>68</sup>

In the **ACT**, the limitation period is the earlier of six years immediately following the relevant wrongful act, neglect or default, or three years immediately following the day of the death of the person injured by that act, neglect or default.<sup>69</sup> There is discretion to extend a limitation period on an application by the personal representative of the deceased, if it decides it is just and reasonable to do so, for a maximum period of six years commencing on the date of death of the deceased.<sup>70</sup> The application for extension may be brought whether or not the limitation period has expired since the death of the deceased, and regardless of whether or not an action has been commenced.<sup>71</sup>

In **SA**, where a cause of action survives for the benefit of the estate of a deceased person, the time for commencement of the action is extended by a period equal to the period between the death of the deceased and the grant of probate or letters of administration or by a period of 12 months, whichever is less.<sup>72</sup>

In **WA**, an action under the *Fatal Accidents Act 1959* for damages relating to the death of a person cannot be commenced if three years have elapsed since the death.<sup>73</sup> An action may still be brought by a person who is injured so long as they can show that they were not aware of the physical cause of injury and it was reasonable for them not to have been aware of the cause; they were aware of the physical cause of the injury but were not aware that it was attributable to the conduct of a person and it was reasonable for the person not to have been so aware; or they were aware of the physical cause of the injury and that it was attributable to the conduct of a person, but that after reasonable enquiry, were unable to establish that person's identity.<sup>74</sup>

In **Queensland**, an adult has three years from the date upon which they lose their dependency.<sup>75</sup> A child has until the day before their 21<sup>st</sup> birthday.<sup>76</sup>

The same provisions apply for a person with a disability as above, and practitioners should also be aware the pre-court procedures under PIPA need to be adhered to.<sup>77</sup>

In the NT, claims for the benefit of family arising from a person's death are governed by the *Compensation (Fatal Injuries) Act 2004*, unless the reason why a person sought medical treatment was a motor vehicle accident.<sup>78</sup> Court proceedings must be commenced by a personal representative or other beneficiary within three years.<sup>79</sup> A personal representative has six months to bring the claim; otherwise, any other beneficiary can commence a claim.<sup>80</sup> The pre-court procedures under the *Personal Injuries (Civil Claims) Act*<sup>81</sup> also apply to claims of this kind.

## CONCLUSION

Many of the changes to the law are variations on a theme and therefore case law in one jurisdiction is very helpful on a national level. Ultimately, unless the intention of the parliament is plain and unambiguous regarding a roll-back of rights, there appears to be much scope for the plaintiff lawyer to be brave and creative in defending a generous interpretation of the new limitation laws. The biggest challenge will be for those claims involving children with brain injuries. Often the child's parents are not in a position, either emotionally or financially, to consider legal action for many years, and it is only when the child gets older and there is a fear of who will look after them that the parents give consideration to a legal action. It would seem unfair, therefore, that in some jurisdictions the limitation periods are more generous than in others. The practical effect is that plaintiffs are prevented from seeking legal remedies based on their place of injury rather than objective criteria weighing up the disadvantage to those people in not being able to have access to a remedy against public policy considerations. Further uniform reform of the limitation laws could rectify this situation. The non-advertising restrictions against plaintiff lawyers in many jurisdictions make it harder again for a parent to find the right lawyer who can ascertain whether they do indeed have a valid basis to consider a legal claim for their child. Accordingly, it is imperative that practitioners are aware of fundamental changes to limitation laws in order to properly service their clients and prevent a different type of action occurring. ■

**Notes:** **1** *Civil Law (Wrongs) Act 2002* (ACT), s62. **2** *Ibid*, s51(4). **3** *Ibid*, s59). **4** *Personal Injuries Proceedings Act 2002* (Qld), s9A(4). **5** *Ibid*, s9A(6). **6** See *Chapman v The Body Corporate for Endeavour Inn* [2005] QDC 18 and *Hodges v Avdyt Trading as Daniell's Nursery & Garden Supplies* [2003] QDC 347. **7** *Personal*

*Injuries Proceedings Act 2002* (Qld, s20C(1)(a) and (b). **8** *Ibid*, s9A(5). **9** Compare ss9A and 20C *Personal Injuries Proceedings Act 2002* (Qld). **10** *Ibid*, s9A. **11** *Ibid*, s20C. **12** *Ibid*, s20C(3). **13** *Ibid*, s42. **14** *Personal Injuries (Civil Claims) Act 2007* (NT), s8(1)(a). **15** *Ibid*, s8(1)(b). **16** *Ibid*, s8(3)(a). **17** *Ibid*, s8(3)(b). **18** *Limitation Act 1969* (NSW), ss62A and 62B. **19** *Limitation Act 1974* (Tas), ss2(1) and 5A (3) and (5). **20** *Limitation Act 1969* (NSW), s62C(1). **21** *Baker-Morrison v State of NSW* [2009] 35. **22** *Limitation Act 1985* (ACT), s16B (2). **23** *Dj v Rhys and Jf* [2004] ACTSC 12 (unreported judgment, Connolly J, 2 April 2004). **24** *Limitation Act 1985* (ACT), s36(2). **25** *Limitation Act 2005* (WA), s14(1); s36 *Limitation of Actions Act 1936* (SA) and s12(b) *Limitation Act* (NT). **26** Sections 55(1) (a) and (b) *Limitation Act 2005* (WA). **27** *Ibid*, s39. **28** *Limitation of Actions Act 1936* (SA) s36. **29** *Limitation of Actions Act 1958* (Vic), s27D. **30** *Ibid*, s27F(2). **31** *Spandideas v Vellar* [2008] VSC 198 at pp8-17. **32** *Callan v Healthscope Ltd* [2008] VSC 88. **33** Some examples include: *Tucker v Barwon Health* [2008] VSC 229; *Edwards v Kennedy and others* [2009] VSC 74; *Delai v Western District Health Service and Bird* [2009] VSC 151. **34** *Limitation of Actions Act 1958* (Vic), s27K. **35** *Ibid*, s27L. **36** *Limitation of Actions Act 1974* (Qld), s11. **37** *Ibid*, s31. **38** *Ibid*, s31(2)(a). **39** *Ibid*, s31(2) (b). **40** *Ibid*, s30(1)(c). **41** See *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541. **42** *Limitation Act 1969* (NSW), s50F(1); *Limitation Act 1985* (ACT), s30(1); s35 *Limitation Act 2005* (WA), s2(2) *Limitation Act 1974* (Tas); s45(2) *Limitation of Actions Act 1936* (SA); s27J *Limitation of Actions Act 1958* (Vic). **43** *Limitation Act 1969* (NSW, s50F(1) and (2)(a) and (b); *Limitation Act 1974* (Tas), s26. **44** *Limitation of Actions Act 1958* (Vic), s27E. **45** *Limitation Act 1985* (ACT), s31. **46** *Ibid*, s30B. **47** *Ibid*, s30. **48** *Ibid*, s31. **49** *Ibid*, s32. **50** *Ibid*, s35. **51** *Ibid*, s41. **52** *Ibid*, s42. **53** *Ibid*, s7(2). **54** *Asher-Relf BHT Douglas Bean v Minister for Health & Ors* [2009] WADC 202. **55** *Limitation of Actions Act 1936* (SA), s45A. **56** *Ibid*, s45(6). **57** *Ibid*, s45A(7). **58** *Ibid*, s45(3)). **59** *Limitation Act 2007* (NT), s36(4). **60** See *King v Coupland* [1981] QdR 121 at 123. Things to take into account are capacity to instruct a solicitor, capacity to exercise reasonable judgement upon a possible settlement and capacity to appreciate the nature and extent of any available claim. **61** *Limitation of Actions Act 1974* (Qld), s29(2). **62** *Ibid*, s5(2) states a person who is under a disability is an infant. Section 36 of the *Acts Interpretation Act 1954* (Qld) defines a child as an individual under 18 years. So you take the limitation period to expire three years from the date the child turned 18. **63** Relying on s31 *Limitation of Actions Act 1974* (Qld). **64** *Limitation Act 1969* (NSW), s50C; s5A *Limitations Act 1974* (Tas). **65** *Limitation Act 1969* (NSW), ss62A(4) and 62A(5). **66** *Ibid*, s62C(1). **67** *Limitation of Actions Act 1958* (Vic), ss27F(4) and 27H. **68** *Limitation Act 1974* (Tas), ss5A and B. **69** *Limitation Act 1985* (ACT), s16. **70** *Compensation (Fatal Injuries) Act 1968*, ss39(1), 39(2). **71** *Ibid*, s39(4). **72** *Limitation Act 1974* (Tas), s46(A)). **73** *Fatal Accidents Act 1959* (WA), s14(2). **74** *Ibid*, s4 (2). **75** *Limitation of Actions Act 1974* (Qld), s11. **76** *Ibid*, s29(2) provides a claim must be commenced within three years from the date they cease to be under a disability. **77** In the dictionary schedule of PIPA, personal injury is defined as to include fatal injury and has been held to apply to a claim for loss of dependency. See *Taylor v Stratford* [2004] 2 Qd R 224. **78** *Compensation (Fatal Injuries) Act* (NT), s5. **79** *Limitations Act* (NT), s17. **80** *Compensation (Fatal Injuries) Act* (NT), s13. **81** Section 4 *Personal Injuries (Civil Claims) Act* (NT) defines 'injury' to include fatal injuries.

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