



## LIMITATION LAWS – NEW SOUTH WALES

There is a time limit within which claims for compensation such as medical negligence and public liability claims need to be commenced by filing with a court. The applicable legislation is the Limitation Act 1969 (NSW).

### 3 year limitation period

There are some complexities but broadly speaking, under section 50C a claim cannot be made if it is brought after expiry of the period of 3 years, running from and including the date on which the cause of action is discoverable by the plaintiff.

#### Discoverability

Under section 50D a cause of action is discoverable by a person on the first date that the person knows or ought to know of each of the following facts-

- the fact that the injury or death concerned has occurred,
- the fact that the injury or death was caused by the fault of the defendant,
- in the case of injury, the fact that the injury was sufficiently serious to justify the bringing of an action on the cause of action.

A person “ought to know” of a fact at a particular time if the fact would have been ascertained by the person had the person taken all reasonable steps before that time to ascertain the fact.

### 12 year long stop period

Despite the apparent flexibility provided by the concept of discoverability, there is also a 12 year long-stop limitation period, which is the period of 12 years running from the time of the act or omission alleged to have resulted in the injury or death with which the claim is concerned.

In some circumstances the 12 year long stop period can be extended, under section 62A of the Act.

#### Minors and persons under a disability

There are special provisions in relation to children and persons under a disability. However section 50F makes clear that a person is “under a disability”

- while the person is a minor, but not while the minor has a capable parent or guardian, or
- is an incapacitated person for a continuous period of 28 days or more, but not while the person is a protected person.

#### Minors injured by close relatives

There are also special provisions for minors injured by close relatives, under section 50E. If a cause of action is founded on the death of or injury to a person (“the victim”) who was a minor at the time of the act or omission alleged to have resulted in that death or injury and the cause of action is against a person who at that time was a parent or guardian of the victim or a close associate (as defined in section 50E) of a parent or guardian of the victim, the cause of action is discoverable by the victim when the victim turns 25 years of age or when the cause of action is actually discoverable by the victim, whichever is the later, and the 12 year long-stop limitation period for the cause of action is a period of 12 years running from when the victim turns 25 years of age.