Law Reform Commission

REPORT 21 (1975) - THE LIMITATION OF ACTIONS: SPECIAL PROTECTIONS

Table of Contents

Preface

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This is the twenty-first report of the Commission on a reference from the Attorney General. Its short citation is L.R.C. 21.

Table of Cases

Jones v. Bird (1822) 5 B. & Ald. 837	14	6
Jones v. Nicholls (1844) 13 M. & W. 361	14, 16	6, 8
Leutich v. Walton [19601 W.A.R. 109	37	
Lunn v. Regal Quarries Pty. Ltd. [19591 V.R. 382	34	25
Mason v. The Birkenhead Improvement Commissioners (1860) 6 H. & N. 72	15	7
Miliani v. Victorian Railways Commissioners (1892) 18 V.L.R. 331	15	7
Mitchell v. State Rivers & Water Supply Commission [1958] V.R. 664	34, 35	25, 26
Newton v. Ellis (1855) 5 El. & Bl. 115	14	4
Peisley v. Ashfield Municipal Council (1971) 23 L.G.R.A. 166	118	83
Scoles v. Commissioner for Government Transport (1960) 104 C.L.R. 339	14	6
Smith v. Northleach Rural District Council [1902] 1 Ch. 197	129	
Upper Chapman Roads Board v. Jupp (1912) 14 W.A.L.R. 167	15	7
Varga v. Jongen (1970) 92 W.N. 1032	115, 117	7
Williamson v. Commissioner for Railways [1960] S.R. (N.S.W.) 252	15	7

REPORT 21 (1975) - THE LIMITATION OF ACTIONS: SPECIAL PROTECTIONS

Introduction

To the Honourable J. C. Maddison, B.A., LL.B., M.L.A.,
Attorney General for New South Wales.

1. This Commission has a reference “To review the law relating to the limitation of actions, notice of action, and incidental matters”.

2. Two reports have been made to your predecessor under that reference, the first (L.R.C. 3) on 27 October 1967, and the second (L.R.C. 12) on 7 June 1971. There remain for consideration particular matters described in paragraph 2 of the first report (L.R.C. 3) as follows:

> These particular matters include the large number of special provisions for the limitation of actions against public authorities, persons in public offices, and other persons, and for notice of action; also the question of fixing limitation periods for the enforcement of statutory charges on land, for example, rates under the Local Government Act, 1919; and further consideration of the limitation period for an action by the Crown to recover land.

3. We may dispose at once of limitation periods concerning enforcement of statutory charges on land and concerning actions by the Crown to recover land. Having reviewed these matters, we make no recommendation concerning them at this stage. Our inquiries suggest that the law in the latter respect is, at least for the time being, satisfactory as it stands. The law and practice concerning statutory charges may not be satisfactory but they should, we believe, be considered with land titles and the transfer of land generally rather than in this report.

4. We also draw attention here to those enactments grouped under the heading “2. Claims for Compensation for Damage” in Appendix A to this report. We are making no recommendation concerning them at present. They do not fall within the ordinary categories of limitation to which this report is directed, though it may be that they should be re-examined at some future time. They are, rather, special conditions attaching to special statutory rights.

5. Our examination of the special protections for public authorities has drawn our attention to some over-long limitation periods fixed by the Limitation Act, 1969. In this report we recommend some changes to the periods fixed by that Act notwithstanding that they were fixed on our own recommendation.

6. Our remarks and recommendations on these matters are contained below under heading A (commencing at paragraph 9) as regards Actions Against Public Authorities, and under heading B (commencing at paragraph 134) as regards Variation of Limitation Periods.

7. In a few places what we say in this report may also be relevant to our proposed report under reference “To review the law relating to proceedings by and against the Crown and incidental matters”. But there will be no significant overlapping, so the present report may proceed independently.

8. In preparing this report we have consulted many of the State's public authorities, and invited other bodies or persons to comment on the state of law as it is and as it ought to be. We set out in Appendix C to this report the names of those who assisted us in that way. We are grateful for their observations and suggestions. We also record here our thanks to the law reform agencies of the other Australian States and of New Zealand for information and assistance readily given in response to our inquiries concerning the working of their limitation laws.

A. Actions Against Public Authorities

9. In this State, provisions relating to actions against public authorities have not been collected under a single statute as was formerly done in England under the Public Authorities Protection Act 1893 and section 21 of the Limitation Act 1939. [1] Here, protective provisions requiring notice of action within a limited time and imposing a period of limitation for bringing an action after the accrual of the cause of action, have been written into statutes constituting and regulating a large number of public authorities. We may hereafter refer to such protective provisions as "the special protections".

10. Those provisions are not uniform. For instance, under the Ambulance Service Act, 1972, notice of action is required at least one month before the commencement of an action, and there is a limitation period of twelve months for bringing an action. Under section 58 of the Gaming and Betting Act, 1912, there is a requirement of one month's notice, and three months' limitation period. Under the Irrigation Act, 1912, there is to be one month's notice, and three years' limitation. Under section 65 of the Summary Offences Act, 1970, there is to be one month's notice and a six months' limitation period.

11. In Appendix A we set out in tabular form, so far as we have been able to discover them up to the end of 1974, the statutes that impose limitations for the benefit of public authorities or public officers, and a summary of those statutory provisions that are material to this report. In such a form the diversity between the limitation periods is readily seen. It demonstrates the degree of difficulty and confusion that confronts lawyers let alone laymen who want to know what are the requirements of the law for bringing actions against public authorities or public officers.

12. To deal with these matters it will be convenient to divide this portion of our report into two parts dealing respectively with notice of action, and with the limitation of time for bringing actions in the cases now under review. [2]

I. NOTICE OF ACTION

13. Notices of action are called for in many statutes of this State. We cite an example from section 29 of the Public Transport Commission Act, 1972:

> (1) Proceedings in respect of any damage or injury to a person or to property shall not be commenced against the Commission or any member, officer or employee of the Commission or any person acting in its or his aid for anything done or intended to be done or omitted to be done under this Act, until the expiration of one month after notice in writing has been served on the Commission, member, officer, employee or person as provided in this section.
>
> (2) The notice shall state-
>
> (a) the cause of action;
> (b) the time and place at which the damage or injury was sustained; and
> (c) the name and place of abode or business of the intended plaintiff and of his attorney, if any, in the case.

In our assessment, aside from procedure applicable to all litigants, [3] it should no longer be necessary that special notice of action be given to public authorities or public officers. Our reasons follow.

14. Notice was not a requirement of the Public Authorities Protection Act 1893 (U.K.). However, it had been required in England before 1893 under statutes relating to public officers or instrumentalities, [4] where its purpose was said to be "to give the defendants an opportunity to tender amends, [5] and it ought not to be scanned very nicely. Its object is at an end the moment the action is brought, and it is only necessary to refer to it, in order to see whether, substantially, the defendant has been informed of the ground of the complaint". [6]

15. Similar requirements of notice came to Australia under some received Imperial Acts, or more commonly, were incorporated into Australian statutes constituting or regulating public authorities. Generally speaking, such notices have been strictly construed. [7]

16. We propose to go beyond the admonition of Pollock, C.B., that "we must import a little common sense into notices of this kind", [8] to inquire whether notices of action are needed at all for the purposes being considered here.

17. The community may be presumed to tolerate the present state of the law about notices of action because it surmises that good grounds must exist for preferring instrumentalities of the Crown or of public bodies in these matters. But what are the grounds? And are they good?

18. So far as we can see there is really only one substantial ground concerning notice of action, namely that public authorities need prompt notice in order to marshal evidence and, particularly, the testimony of witnesses being employees of, or persons connected with, the authority, whose employment or connection may be of only limited duration. [9]

19. We think that this is not a good enough reason for giving preferential treatment to public authorities in respect of notice. Large private corporations share with public authorities the same problem of turnover of staff and others who might be needed as witnesses should there be litigation. If public authorities are protected, why is no protection given to bodies of comparable size and importance but under private control? History may furnish an answer but justice and utility do not. If, on the one hand, the community benefits by the special protection of its public authorities, then, on the other hand, the community suffers through the prejudice sustained by its members whose just claims may be defeated by merely procedural advantages secured under that special protection. The law should promote, but the special protections defeat, the reasonable expectations of ordinary men.

20. What we say accords with what was said in similar circumstances in a "Report by Department of Justice Limitation Act 1950" upon which the then Law Revision Committee of New Zealand recommended legislation passed in 1962 to amend the Limitation Act 1950. On the subject of statutory notice, the report says in part:

> Where failure to give the required notice results in a claim being barred we think the provision is unjust. There is no reason why public authorities should be handicapped through lack of notice of an intended claim ... But if there is any justification in keeping the provision we are of the opinion that there is equal justification for providing that all large business undertakings should receive notice. However the difficulties that would follow from such a provision would be worse than exist under the present law. As a department that handles a number of claims for personal injuries we do not think there would be any great difficulty if the notice was dispensed with. Although the notice is useful in giving prior warning of a claim we think it more desirable that public authorities should accept equality with other litigants. [10]

21. We think that the protection of public authorities in matters of notice is an anachronism. We believe that the special protections are out of date in a number of respects, but two examples will suffice here. The idea was conceived at a time when public authorities were not funded by government as is almost uniformly, though with variations in degree, the case in Australia today. At that time also there was not the same facility as there is today for public authorities to insure against risks of the kind now being examined.

22. It is also a weighty consideration that modern legislation regularly confers immunities upon officials of the Crown or of public authorities in respect of actions performed by those officials in good faith and in the course of their duty. [11]

23. But the greatest objection to continuing any requirement for special notice of action to public authorities is that the requirement is discriminatory and unfair. One critic of such requirement has written that: "The most obscure country shire is to receive notice of claim before any action may be taken against it or its servants. The largest private retail store in which thousands of people pass dairy is not to receive such notice. There is discrimination in favour of public bodies as against private persons". [12] We endorse the criticism.

24. It is also important to see what has been done elsewhere with comparable laws calling for special notice of action to be given to public authorities. We set out below a summary of reforms made or proposed in other States and countries. It would, we think, be a mistake for New South Wales to close its eyes to developments in other jurisdictions and to retain a system that has been generally abandoned because it has been found unsatisfactory.

25. In England, the requirements of notice were, in most cases, superseded by the Public Authorities Protection Act 1893.

26. In Parliament, the Bill for that Act was submitted as being essentially a measure of consolidation. It was not based upon the recommendation of any committee. In the House of Lords the Lord Chancellor (Lord Herschell) observed that:

> This is a Bill which was introduced ... for the purpose of consolidating in one statute the provisions on this subject which are now scattered over a number of statutes for giving protection to -public authorities who may have actions brought against them. The times in reference to notice and other particulars differ in many cases, and it is thought much better they should be brought into one uniform system which will be applicable to all cases. [13]

27. In New Zealand, section 23 of the Limitation Act 1950 required, *inter alia*, notice to be given of an action proposed to be brought against "any person (including the Crown) for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty, or authority". By "An Act to amend the Limitation Act 1950", No. 112 of 1962, that section was wholly repealed.

28. In Ontario, a Report on Limitation of Actions (1969) of the Ontario Law Reform Commission made recommendations about discontinuing notices of action under various statutes including the Proceedings Against the Crown Act 1962-63. It was the Commission's opinion that:

> A notice of claim which must be given within a limited time as a condition precedent to the bringing of an action achieves the same result as a limitation period. It is, in effect, a limitation period within a limitation period ... The Commission does not believe that a person should be absolutely barred from bringing an action merely because he has failed to give the notice required. If such requirements are to continue, and there is some justification for their retention [in certain cases], [14] then the courts must be able to give relief from any of these provisions where it would be just to do so. [15]

29. In British Columbia, the Report on Limitations (Part 2-General) of the Law Reform Commission of British Columbia (1974) has proposed the repeal of sections of Acts that call for special notice of action to be given to certain public authorities of that Province. The Commission remarked that: "The potential injustice which can be created by a notice provision, and the undesirability of certain institutions receiving preferred treatment under the law of limitations, outweighs the benefits which the community may receive from the existence of those notice requirements". [16]

30. In Tasmania, section 4 (1) of the Public Officers Protection Act 1934 made provision for notice to be given in terms substantially similar to those of the New Zealand Act of 1950 mentioned above. The

subsection was wholly omittted by the operation of section 3 of the Limitation of Actions Act 1954. From that time no special notice has been requisite in that State.

31. In Queensland, the Law Reform (Limitation of Actions) Act of 1956 makes provision about notice in respect of actions for damages for negligence, or for the breach of a duty where the damages are for or relate to personal injury. [17] The expression “personal injury” is defined to include any disease and any impairment of a person’s physical or mental condition.” Within those ambits, the Act binds the Crown; it repeals so much of any other statute as enacts that, in any relative action or proceeding, notice of action must be given, or that the action ,or proceeding must be commenced within a limited time; [19] and it :substitutes a special limitation period of three years [20] without necessity for notice.

32. The then Attorney-General for Queensland, W. Power, in introducing the Bill for that Act, declined to submit general alterations to the law relating to the limitation of time in cases involving public authorities, but, in personal injury cases, he thought the position to be different. In those cases, he could not see “any necessity at all why notices should be served . . . The receipt of a writ is sufficient notice. The giving of notice increases costs . . . In the case of personal injury or death, I can see no justification for any variation, and I can see no reason why the Crown or any other semi-governmental instrumentality should be in any different position from the ordinary citizen”. [21]

33. Not only do public authorities in Queensland appear to have suffered no prejudice from the Act of 1956, but the Law Reform Commission of that State in 1972 proposed the complete abolition of all remaining requirements of notice before action in cases involving limitation periods, [22] and the Queensland Parliament legislated accordingly in 1974. [23]

34. In Victoria, notice giving “reasonable information of the circumstances upon which the proposed action will be based” was to be given within a limited time after the accrual of a cause of action against a public authority. That was called for by section 34 of the Limitation of Actions Act 1958.24 The section was repealed by the Limitation of Actions (Notice of Action) Act 1966. The Minister of Labour and Industry, on moving the second reading of the Bill for that Act, said:

> The Government has always been uneasy about the compromise that section 34 represents, and is less satisfied from year to year that there is any compelling reason for the special protections it affords public authorities, particularly as it would appear that very few public authorities are prepared to observe the spirit of section 34 by waiving their right to receive notice in cases where they would not be prejudiced in the slightest degree by the absence of it. [25]

35. No doubt opinion in Victoria had been influenced also by the lenient interpretation of section 34 made by the Supreme Court of that State, the effect of which was to allow such great latitude to those who had not in time given the necessary notice, as to reduce the section to a very narrow compass. [26]

36. In South Australia, Act No. 33 of 1959 inserted a new section (s. 47) in the Limitation of Actions Act, 1936-1956. It had the effect of requiring a notice of action to be given within a time that was limited but was more liberal than under prior legislation. It followed a report on “Law Relating to Limitation of Time for Bringing Actions” (1970) by the Law Reform Committee of South Australia. Notices of action in the Committee’s view: “simply act as a trap for the unwary and the badly injured”. [27] We would agree that the greater the injury, the less the victim’s capacity to give, or even apply his mind to giving, notice of action within a limited time.

37. The law in Western Australia is partly governed by the Limitation Act, 1935 (as amended). By the Limitation Act Amendment Act, 1954, a new section 47A was added to the 1935 Act. That new section contained requirements for giving notice based on the New Zealand legislation of 1950. There has been little litigation on the presently relevant aspect of the section in Western Australia, though the case of Luetich v. Walton [28] lends weight to the conclusion , drawn from Victorian experience, that the courts are disposed to be lenient in construing the section. Actions against the Crown are subject to a period of three months’ (or earlier practicable) notice under section 6 of the Crown Suits Act, 1947, as re-enacted by the Crown Suits Act Amendment Act, 1954.

38. We conclude that the preponderance of modern policy in other places comparable to New South Wales is against continuing to favour public authorities with the benefit of special notice of action. In summary, the objections to the benefit are that it suggests favouritism, creates an obstacle to litigation, may cause meritorious claims to fail on procedural grounds alone, increases costs, and is, and has been, a source of injustice. Moreover, the law on the subject is scattered, hard to find, and uncertain because of variable wordinc, from one Act to another, or because the claims to which the benefit applies are described in abstract terms (e.g., "for anything done or omitted or purporting to have been done or omitted under this Act"- Government Railways Act, 1912, s. 143). Those conclusions accord with the results of the long-standing legislative policy on the matter in England, which have also been applied in Tasmania and, to some extent, in Queensland. Public authorities in those States and in England seem not to have been handicapped through loss of protection. In New Zealand, Victoria and Western Australia, a compromise, under which failure to give notice for reasonable cause is excused, has not proved wholly satisfactory. New Zealand and Victoria have got rid of it by abandoning the whole concept of special notice.

39. We can see no advantage in adopting such a compromise for this State. Rather, we are recommending the repeal of those sections, or portions of sections, of Acts which at present require notice of action to be given in respect of proceedings intended to be brought against public authorities.

II. PERIODS OF LIMITATION

40. The special protections originated in England. It seems that the enactment of legislation giving short limitation periods to public authorities began in the first half of the eighteenth century (the earliest example we have seen is the Lotteries Act 1732, s. 32). A few years later there was an enactment enabling a public authority to tender amends (Poor Relief Act 1743, s. 23). In the first half of the nineteenth century the special protections reached a developed form, as for instance, in the Criminal Law Act 1827, s. 75. Soon afterwards the enactment of similar legislation commenced in New South Wales. [29]

41. The law of New South Wales in respect of these special protections, and especially those relating to periods of limitation, is in a state similar to the law of England in 1893 before the numerous English enactments with diverse requirements were consolidated in the Public Authorities Protection Act. The same diversity may be found on examining Appendix A to this report where limitations in force in this State, ranging from limits of months to limits of years, are set out. And we may emphasize that there is no up-to-date composite information, of the kind collected in Appendix A after research, available to the public or to practitioners. [30]

42. There should be no mystery about the requirements, whatever they may be, of taking legal proceedings against, or recovering compensation from, public authorities. People should be in a position to know, broadly speaking, where they stand if they intend to institute such proceedings or to claim compensation. But, as the law is now, in this State, the search for the relative sections (sometimes obscurely placed) in statutes (often unfamiliar) can be a task time-consuming and perplexing to the lawyer, let alone to the layman.

43. We approach our investigation with the view that, whether or not special limitation periods should apply to public authorities, there should at the very least be uniformity in the procedure for taking action against those authorities. To that extent the present law needs revision.

44. The results of our inquiries and research have led us to believe that the opportunity for revising the law should be taken to overhaul entirely the concepts of limitation periods as they affect public authorities.

45. In sum, we recommend, on grounds stated below, that private litigants and public authorities should, in general, be placed on an equal footing, so far as concerns the operation of the Limitation Act, 1969. In particular, for contemplated actions arising out of personal injury cases, we think that,a new limitation period of three years [31] should be imposed and that it operate uniformly, withoutthe need for prior notice, whoever the defendant may be.

46. First we comment on the state of comparable law in other jurisdictions.

(i) The Position in England

47. The principles expounded in the reports of two Committees are of assistance. We refer, first, to the Law Revision Committee's Fifth Interim Report (Statutes of Limitation), [32] (the Wright Committee) of 1936 and, secondly, to the Report of the Committee on the Limitation of Actions" [33] (the Tucker Committee) of 1949.

48. The Wright Committee, so far as is here relevant, recommended that the period of limitation under the Public Authorities Protection Act 1893 be extended from six months to one year. That recommendation was implemented by section 21 of the Limitation Act 1939.

49. Although the Wright Committee was not prepared to suggest that the Public Authorities Protection Act be wholly dispensed with, [34] it did acknowledge that the then prevailing operation of the Act was defective:

We have carefully considered how far it is advisable to interfere with the policy of the Public Authorities Protection Act. That policy is quite clear, namely, to protect absolutely the acts of public officials, after a very short lapse of time, from challenge in the courts. It may well be that such a policy is justifiable in the case of important administrative acts, and that serious consequences might ensue if such acts could be impugned after a long lapse of time. But the vast majority of cases in which the Act has been relied upon are cases of negligence of municipal tram drivers or medical officers and the like, land there seems no very good reason why such cases should be given special treatment merely because the wrong doer is paid from public funds. [35]

50. By 1949 the view was taken, by the Tucker Committee, that the Public Authorities Protection Act 1893 was no longer necessary nor desirable and that it should be repealed.

51. Special periods of limitation under the Public Authorities Protection Act 1893, so the Committee contended, were "a curtailment of the rights of the individual and can only be justified if it is clearly established that there is a real likelihood of injustice on a considerable scale resulting in the event of the repeal of the Act". [36] On investigation of English case law, and consideration of submissions made, the Committee found no risk of injustice arising from the Act's repeal. It concluded that "the Crown should, in respect of the period of limitation, stand on the same footing as a private individual". [37]

52. The Tucker Committee also recommended, amongst other things, that:

> (a) the period of limitation for actions in respect of personal injuries should be two years from the accrual of the cause of action, but the court should have a discretion to grant leave to bring an action after the expiration of that period, but no later than six years from the accrual of the cause of action;
> (b) the period of limitation for actions founded upon contract or tort (other than actions for personal injuries) should remain at ... six years. [38]

The recommendations were substantially implemented by the Law Reform (Limitation of Actions &c.) Act 1954. However, the proposed period of two years was enlarged to three years, [39] and no discretion was allowed for extending the time for bringing an action. [40]

53. The result is that, in England, public authorities and the public are in an equal position so far as concerns the procedural aspects of instituting actions. In those cases where the action turns on personal injuries, a uniform limitation period of three years, without necessity for notice, is imposed.

(ii) The Position in New Zealand

54. By the Limitation Amendment Act 1962, [41] section 23 of the Limitation Act 1950 was repealed. That section had prescribed, in effect, that proceedings against public authorities be notified within a limited time and commenced within a limited time. The result of the repeal was to equate the position of all litigants so far as limitation of actions was concerned.

55. One of the recommendations upon which the 1962 amendment was founded was that:

> It may seriously be doubted whether there is any justification for retaining a special period of limitation for the Crown and public authorities. Although s. 23 is a considerable improvement on the present law it still leaves these bodies in a privileged position . . . It seems likely that any suggestion to abolish these discriminatory provisions in New Zealand would still be opposed at least by local authorities, including Harbour Boards. However there can be no question that the special provisions fixed for the benefit of these bodies are a curtailment of the rights of the individual and can only be justified if it can be clearly established that there is a real likelihood of injustice on a considerable scale resulting from their removal. [42]

56. The amended law did not attract much criticism when enacted and it has since operated for over ten years without detriment to the authorities affected. [43] All defendants in New Zealand are, by section 4 (7) of the Limitation Act 1950, given a limitation period of two years in respect of actions relating to personal injury.

57. The successful working of that arrangement over a lengthy period suggests that public authorities could manage without protection of the kind given to them in this State.

(iii) The Position in Australia, Other Than in New South Wales

58. In Western Australia, the Limitation Act Amendment Act, 1954, added to the Limitation Act, 1935, a new section 47A under the title “Actions Against Public Authorities”. It requires an action against tiany person (excluding the Crown) for any act done in pursuance or execution or intended execution of any Act, or of any public duty or authority, or in respect of any neglect or default in the execution of the Act, duty or authority” [44] to be commenced within one year from the date of accrual of the cause of action. “Person” in the section is defined to include “a body corporate, Crown agency or instrumentality of the Crown created by an Act or an official or person nominated under an Act as defendant on behalf of the Crown”. [45]

59. A comparable provision concerning actions against the Crown, is made by section 6 (1) of the Crown Suits Act, 1947, as amended by the Crown Suits Act Amendment Act, 1954.

60. By contrast, the legislature of Queensland, in 1956, substantially adopted the Law Reform (Limitation of Actions &c.) Act 1954 (U.K.). A three year limitation period was applied to actions in respect of personal injuries. [46] But, other actions remained without uniformity, so that limitation periods continued, under some statutes, to favour public authorities as against the private litigant. [47]

61. In a draft Bill for a Limitation of Actions Act, [48] the Queensland Law Reform Commission proposed, *inter alia*, that:

> (a) the Act apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects ; [49]
> (b) portions of specified Acts requiring notices of action or of injury and limiting times for commencing actions should be repealed; [50]
> (c) actions founded on simple contract or tort, and certain other actions, should be subject to a limitation period of six years; [51]
> (d) actions in respect of personal injury should be subject to a limitation period of three years. [52]

Those proposals have been put into effect by the Limitation of Actions Act, 1974, the relevant sections being referred to in notes 49 to 52 below.

62. The Victorian Limitation of Actions Act 1958, [53] by section 5, dealt with limitation periods in respect of actions on contract, tort and like matters. In cases of simple contract or tort a six year period was prescribed, [54] but subsection (6) provided, similarly to section 2 (1) of the Law Reform (Limitation of Actions &c.) Act 1954 (U.K.), that actions for damages for negligence nuisance or breach of duty, where damages claimed included damages in respect of personal injuries (as defined), could not be brought after the expiration of three years from ,the accrual of the cause of action. Section 32 rendered the Act equally applicable to the Crown and to private citizens or instrumentalities.

63. The sections referred to were, in all presently material respects, the same as sections identically numbered in the Limitation of Actions Act 1955. [55] The prior history of the matter in Victoria, illustrative of concern felt and expressed by public authorities to save themselves from expected prejudice, was summarized in the 1950 Report from the Statute Law Revision Committee on Limitation of Actions:

> Bills to consolidate and amend the law relating to -the limitation of time for commencing actions . . . were introduced into the Legislative Assembly in 1947, 1948 and 1949, but none of the Bills was passed into law. The 1947 Bill was prepared as the result of a Report by a special sub-committee of the Chief Justice's Committee on Law Reform . . . This Bill proposed the equation of the rights of public authorities with those of other defendants, but the 1948 Bill substantially retained the special protections for public authorities, usually a short period of limitation within which an action can be commenced and, in some cases, the requirement of serving a notice in statutory form within a very short time after the cause of action arose. [56]

64. In recommending that such special protection for public authorities should be abandoned, the Committee expressed themselves to be "more concerned with injustices to the individual which had occurred and will occur ... than with the disadvantages which possibly may be experienced by public authorities if the protection is removed". [57] This accorded with recommendations made the year before by a subcommittee of the Statute Law Revision Committee that:

> It is desirable that there should be one period of limitation applicable to all public authorities, and the . . . sub-committee thinks that that period should be no greater than is the case with any ordinary private individual who is sued in the courts. It is considered that it should be the same period of time in both instances; it is thought desirable that the period should be no less and no greater than is the case with private citizens. [58]

65. The operation of those principles in Victoria since 1955 again suggests to us, in the light of inquiries we have made through the Law Reform Commissioner of that State, that public authorities do not need the protection of special short limitation periods when defendants to actions arising from personal injuries. [59]

66. In South Atistralia, section 35 of the Limitation of Actions Act, 1936-1959, sets a six year limitation period for actions on simple contracts and certain torts. Section 36 imposes a three year limitation on actions for assault, trespass to the person, menace, battery, wounding or imprisonment. Otherwise, as in New South Wales, a multiplicity of separate statutes regulate limitation periods for actions against the Crown or public authorities.

67. By section 3 of the Limitation of Actions Act Amendment Act, 1959 (S.A.), a new section 47 was added to the principal enactment having the effect, for all practical purposes, of enabling actions previously subject to a statutory limitation period of six months or less to be brought within twelve months, notice being first given. The section was expressed to bind the Crown.

68. That position still obtains, though we observe from the report of the Law Reform Committee of South Australia on Law Relating to Limitation of Time for Bringing Actions that it is there recommended that: "As far as concerns the time within which actions are to be brought against the Crown or any instrumentality of the Crown . . . these should simply be assimilated to the normal times for bringing actions against a subject for the same cause of action". [60]

69. In Tasmania the material legislation is the Limitation Act 1974. Its section 5 (1) is in similiar terms to section 5 (6) of the Victorian Limitation of Actions Act 1958, the limitation period being three years for personal injury cases. The limitation applies whether the defendant is or is not a public authority.

70. Section 5 (3) of the Tasmanian Act enables that time to be extended by a judge if it is "just and reasonable so to do", but not so that the action can be brought after six years from its accrual. As was said by Burbury, C.J., in Hammond v. The Australian Coastal Shipping Commission (1972, unreported) in relation to section 2 of the Limitation of Actions Act 1965 which imposed a limitation of two years and a half:

> The legislative policy of the Limitation Act is to avoid stale claims being litigated before the Courts. The period of 21 years is reasonably long ... Much as the Court may sympathize with the applicant who was let down, either by his Trade Union Secretary, or by his Solicitors, or by both, an extension of time is not to be granted simply because of that circumstance, or because of his own, or of his agent's ignorance of the law. Some good reason in justice must be found for taking this case out of the general time limit prescribed by the Act. [61]

71. So far as concerns public authorities being statutory creatures of the Parliament of the Commonwealth of Australia, exemption from ordinary limitation periods has generally been withheld. Significant exceptions are Part IX of the Post and Telegraph Act 1901-1973, [62] and sections 220-225 of the Customs Act 1901-1973. The explanation for these seems to be that they were drafted from statutes in force in the colonies before Federation (cf. Postage Act, 1867 (N.S.W.) 31 Vic. No. 4 s. 83, Customs Regulation Act, 1879 (N.S.W.) 42 Vic. No. 19 ss. 185-188). Another exception used to appear in sections 78 and 79 of the Commonwealth Railways Act 1917-1966, which provided respectively for the commencement within six months of actions relating to matters "done under this Act", and for notice thereof as soon as practicable. However, those sections were wholly repealed by the Commonwealth Railways Act 1968.

(iv) The Position in New South Wales

72. As shown in Appendix A to this Report, the number of statutes which affect the time for bringing actions against public authorities in this State is large. And it is growing: in 1972 and 1973 at least six Acts were passed imposing special limitation periods. The inconsistency of the Limitation periods is not only confusing, but "thoroughly undesirable". [63]

73. In examining whether the retention of such special treatment of public authorities is justified, it is necessary to recall that the nature of litigation has changed considerably since the concept of protecting public authorities was first evolved. As was said by Viscount Hailsham in the Lords debate on the Bill for the Law Reform (Limitation of Actions &c.) Act 1954 (U.K.):

> I cannot conceive that a local authority is more a target for litigation than an insurance company . . . Modern litigation is largely a fight between a legally assisted person and a great corporation of some kind, and there seems to me to be absolutely no distinction, in principle, as regards target, between any of these potential, large, wealthy defendants who form the great mass of defendants at the present time. [64]

Another commentator on the same Act observed that:

> The implications of increased State intervention in the commercial, industrial and private affairs of citizens have engendered, within the legal system, a movement towards razing the legal privileges enjoyed in the past by the Crown and other public authorities when being sued or prosecuted by private persons for alleged wrongs. [65]

74. With that we read the initial premise of the Tucker Committee, already quoted, that the imposition of special limitations to protect public authorities is "a curtailment of the rights of the individual". [66] We think that we should approach the existing position of public authorities in a spirit of critical inquiry, seeking a positive case in order to be convinced that they should continue to be protected in respect of

the limitation of actions. Unless we are so convinced, we will feel justified in recommending that the protections be dropped.

75. It is, of course, nothing new to say that the special protections for public authorities have attracted criticism over a long period, and continue to do so. We regard it as significant that the Bar Council and, the Council of the Law Society have told us that they regard these protections as unfair and that they would wish to see public authorities put in the same position as other defendants in litigation.

76. These views of the profession are, we believe, formed by references to cases where, at least as it has appeared to outsiders, someone conducting a defence on behalf of a public authority has let his, or his client's, keenness to win the case prevail over ordinary ideas of fairness and has used the special protections to defeat a just claim.

77. We go on to refer to matters arising from what has been put to us by a number of the State's public authorities to which the special protections apply. Most of the authorities concerned tell us that they wish to -retain-the benefits of their respective Acts.

78. The principal grounds they have given for their preference maybe summarized and reduced to the following, to. which in turn we append our comments:

79. (a) Financial Considerations: The most common ground is that public authorities will have difficulty in preparing their budgets if limitation periods are extended. On such an extension, so it is put, there will be increased litigation, greater likelihood of speculative and state claims, and risk of large sums being awarded in damages against an authority without the opportunity to make in advance financial provision to cover them. We understand also that such authorities, if they do not insure, are not ordinarily able to accumulate reserves to meet contingent claims.

80. We can go some distance with these representations. Public authorities must stand to be inconvenienced in financial planning if]imitation periods are enlarged: the greater the enlargement, the worse the inconvenience. Hence, should an enlargement be made, its proportion ought to be moderate.

81. But those who contend that there is no room for any enlargement do not, in our assessment, make out a convincing case. Limitation periods of twelve months or less have been shown in England, in some Australian States, and elsewhere, to be a hardship upon plaintiffs. [67] We think it unfair that such parties should be disadvantaged merely in aid of the budgeting of large instrumentalities of state that have public revenue resources to support them should any unexpectedly large liability in damages consume their annual allocation of funds. Public risk insurance is available to public authorities as wen as to other prospective defendants.

82. The protection afforded by special limitation periods for public authorities appears to us to have a quite limited relevance to the budgetary forecasting of those bodies. We have no access to the facts, but it seems reasonable to assume that in, for example, the great majority of personal injury cases, departmental reports would be at least as useful for budgetary purposes as notices of action and short limitation periods would be. And major cases of personal injury are not likely to go unreported. There is the problem of the fraudulent claim, but fraudulent claims are unlikely to be so large or so numerous as significantly to. affect budgets.

83. Moreover, as regards forecasting, it seems to us that a public authority conducting a large volume of similar operations should be in a comparatively good position to apply -the experience of the past in making an estimate of the future. We should have thought also that, commonly, the larger the authority the less the budget problems would be.

84. We speak of a "comparatively good position" in the sense that in these matters, a public authority is better placed in comparison with a small-scale business where a single unprecedented accident might create liabilities exceeding the assets of the business, and where the volume of business may be too small to use as a basis for forecasting.

85. If the special protections for public authorities are dropped, the likely result would be, firstly, a tendency for some postponement in the settlement of claims (by agreement or by litigation) and, secondly, a tendency for some claims, that would not otherwise have been made at all, to be made and successfully pursued. No doubt each tendency would operate to the disadvantage of the public authority. But we would expect the combined effect to be no more than marginal. We repeat that our inquiries, made of public authorities in places where the special protections have been abandoned, reinforce this view.

86. (b) Difficulty of Keeping Records: It is also represented to us that the larger public authorities, especially those controlling public transport, would be severely handicapped by having to retain records for limitation periods longer than those which now obtain. If they could not cope physically or economically with the task of accommodating such records they say that they would be exposed to stale or fraudulent claims.

87. A similar representation was made to the Tucker Committee, and it has been repeated since. We think that the answer then given by the Tucker Committee is still valid, and that the operation of the law as amended in England and elsewhere following that Committee's report vindicates its argument that:

> At the present time, many large commercial and industrial organizations have activities as multifarious and diverse as public authorities, but do not enjoy the privilege under discussion, although subject to the same difficulties and open to the same type of attack as those mentioned by the public authorities who have made representations to us. Moreover, public authorities engage today to an ever increasing extent in business in much the same way as the organizations above referred to, and do so for profit.
>
> We see no reason to think that the system of reporting accidents and of the keeping of records by a public authority is less efficient than that of a commercial undertaking, or that such an authority is-in the absence of special protection-more vulnerable than a commercial undertaking in respect, for instance, of stale or bogus claims. Still less should it be in a position to rely upon this special protection to defeat honest claims. [68]

88. We recognize that public authorities have problems in keeping records and that it may unreasonably burden them were there to be an enlargement, to say six years, of the limitation period for actions arising out of death or personal injury. But we are not convinced that public authorities are unable to cope with any enlargement of the limitation period. An administrative problem for a defendant is not a ground for injustice to a plaintiff. The three year period that we are proposing seems to us, in the light of experience elsewhere, to be not unreasonable.

89. (c) Loss of Evidence: Large instrumentalities have a substantial turnover of staff. We are told, for example, that of 43 845 persons employed by the N.S.W. Railways Department in 1970, there left from service in that year 10 713 employees. With turnovers of that size it is difficult, even with the present short limitation period, to trace former servants if needed to give evidence on an authority's behalf. The longer the limitation period for actions against public authorities, the greater the risk that valuable testimony will be lost.

90. We recognize the force of this. But it suggests to us either that the general limitation periods are too long, or that all prospective defendants, or at least all big organizations being defendants, should be entitled to notice of action. It does not suggest that the affairs of some public authorities are so singular as to require special protection.

91. There are public authorities in New South Wales that manage without special protection. We instance the Departments of Education and of Public Works, the Housing Commission and, indeed, the Crown generally. The universities have no such protection. Nor do any of the large private enterprises - be they steel works, or retail stores, or transport companies, to mention only a few - with large and constantly changing staffs. Surely they have a difficulty at least equal to that of protected public authorities in protecting themselves should the testimony of former employees be needed.

92. It does not seem at all fair that a person injured in Sydney by a government bus should have only twelve months to bring his action against the authority; while a person also injured in Sydney but by a tourist bus operated by a large inter-State transport company, should have six years to bring his action. How can a company running its operations on a large scale throughout the State and in all other States be in any less need of protection than a State government agency on the grounds of loss of evidence? The existing law discriminates against, and is unfair to, private defendants. It should, therefore, in our view, be reformed so that all defendants stand equally in the matter of limitation periods.

93. (d) The Element of Risk: One ground upon which public authorities rely for the continuance of special protections is the element of risk to which they are exposed in running their affairs.

94. On the one hand, they are under a risk of liability to the public because those authorities are not, in fundamental respects, free to choose the activities that they undertake. On account of the functions by statute committed to them and required to be carried out, they are not free, as are those carrying on a private business, to abandon an enterprise if the risk of liabilities to the public is too high.

95. On the other hand, there is said to be a risk to public authorities, more so than to other persons, because the basis on which they operate may be upset. For instance, legislation may be held invalid, or insufficient to support a long-standing administrative arrangement. Because of that risk, so it is put, public authorities are in a special position and should be specially protected.

96. The first suggested area of risk seems to us to carry too far the idea of the separateness of a public authority. The Public Transport Commission, for example, although incorporated and thus given a distinct legal personality, is the creature of government as a fit body to perform statutory functions. In a real sense, though not in law, its property is government property and its liabilities to the public are government liabilities. It may be true that a public authority has little or no power to shape its activities but the public authority is the mandatary of government, and the government has that power. To say this is not to lose sight of all the social and political considerations which may constrain a government to continue some activity notwithstanding that it loses money, whether or not legal liabilities for damages are significant contributors to the loss.

97. Nor does the second suggested area of risk support a case for the far-reaching special protections now under discussion. The cases in question are met in part by the Limitation of Actions (Recovery of Imposts) Act, 1963, an Act which, though within our terms of reference, is outside the scope of our present study. Other cases are usually met by special legislation which can be framed to meet the particular circumstances, as in the Meat Industry (Amendment) Act, 1971.

98. (e) Officers of Public Authorities or of the Crown: Some public authorities carry out their functions in public, or in circumstances where the persons affected are present or at least have a right to be present. A magistrate sitting in a court of petty sessions is an example. A police constable breaking up a brawl is another. A person complaining of a thing done openly in circumstances such -as these has no need for a long limitation period.

99. Claims against magistrates and law enforcement officers are, we believe, infrequent ;and are unimportant in financial terms, but receive much publicity and can be the source of mental suffering to the defendant. Such claims are usually based on allegations of assault, false imprisonment or malicious prosecution. We agree that claims so based do not need a long limitation period: the plaintiff can hardly be ignorant of the facts. That is why we recommend that, although the special protections should be dropped, the general limitation period for claims of these kinds should be reduced from six years to three.

100. Another point that may be considered here is where allegations are made which may lead to litigation impugning the conduct of an officer of a public authority, promotion of the officer may be inhibited while litigation remains a possibility or while litigation runs its course. It is put that it is unfair to the officer, or at least unnecessary, that this inhibition should endure for six years and upwards.

101. This, once again, goes in support of a reduction of some limitation periods as regards,all defendants, not in support of the special protections.

102. (f) Other Grounds: Some further grounds were put to us supporting the continued protection of public authorities. They included suggestions that litigation would otherwise be increased and that false and fraudulent claims would otherwise be stimulated. But, consequences of that kind seem not to have been a source of difficulty in those places where the special protection of public authorities has been dropped. We recognize that such consequences may occur here, but we think that they would be of minor account. The fear that A may succeed in a fraudulent claim is not a ground for putting B's just claim in hazard.

103. We should also notice here the suggestion put to us that juries are biased against public authorities. Such a bias may be acknowledged, but we think that it is a bias suffered by every defendant which the jury thinks has a deep purse, or is indemnified by an insurance company with a deep purse. At all events, we do not see a relationship between that bias and the privileges given by the special protections. In the eye of a public authority dealing with numerous claims, success in some cases under the special protections may in a general way compensate for verdicts suffered in other cases at the hands of biased juries. But the injustice to one plaintiff through an over-rigorous reliance on the special protections is not mitigated by the undeserved success of another plaintiff.

(v) Consequences of Judicial Interpretation

104. The course of judicial interpretation of protective limitations in the statutes regulating public authorities requires attention. It demonstrates some of the evils of the existing legislation, and shows that, in a number of situations, a perceptive plaintiff stands to defeat the protection by suing, not a public authority, but its employee or agent.

105. We begin with a case decided in 1957, Herschell v. Board of Fire Commissioners of N.S.W. [69] It arose out of injuries sustained by the plaintiff when using an emery wheel in the course of his employment by the Board. Section 47 of the Fire Brigades Act, 1909, stipulates that:

> No action shall be brought against the board, or against any person, for anything purporting to have been done under this Act, unless such action is commenced within six months after the act complained of was committed, or the damage sued for was sustained, and notice in writing of such intended action has been delivered at the office of the board..... at least one month before the commencing of such action.....

In the subject case notice had not been given and the action was commenced after six months from the occurrence of the injury.

106. For the plaintiff it was contended that the section did not apply: the point of contest was whether the work that caused his injury was something "done under" the Act. Prior, A.J., was satisfied that the Act did apply, and that the plaintiff must fail for non-compliance with it:

> The plaintiff was directly employed in work which the Board was bound under the Act to carry out, and was working on a machine provided under its powers for such purpose. I am of opinion that even if the Board was in breach of its common law duty to provide proper and safe appliances for its employees, the employment of the plaintiff on the subject machine was an act not only purporting to have been done under the Act, but actually done under the Act. [70]

107. In 1961 a related point arose for determination by the High Court, in Board of Fire Commissioners of N.S.W. v. Ardouin, [71] concerning section 46 of the same Act. The section, so far as is relevant, provides that:

> The board, the chief officer, [or] an officer of the board.... exercising any powers conferred by this Act or the by-laws, shall not be liable for any damage caused in the bona fide exercise of such powers ...

The plaintiff's case was that he had suffered personal injury and damage to his motorcycle as the result of a collision occasioned by the negligent driving of a fire engine on a public highway while on its way to the scene of a fire. The defendant pleaded in reliance on section 46 and the plaintiff demurred to the plea.

108. With one dissentient, the High Court found that the driving of the fire engine was not something done in exercise of any power conferred by the relative Act. It was not an action for which the Board could claim statutory protection. In the opinion of Dixon, C. J.:

> Upon the proper construction s. 46 it does not cover the use of the roadway by fire brigade vehicles for the purpose of proceeding to a fire nor does it cover performances of functions of such description of the Board of Fire Commissioners by its servants or agents. When s. 46 speaks of the bona fide exercise of the Board's powers it appears to me to be referring primarily to the exercise of powers which of their nature will involve interferences with persons or property. [72]

109. In the judgment of Taylor, J.:

> It is . . . quite erroneous to treat the expression "powers conferred by this Act" as including the aggregate of the capacities which the Board enjoys as a body corporate constituted by s. 7 of the Act; that expression is appropriate only to specify what may be described as the extraordinary powers conferred upon the Board in order that it may properly and effectively fulfil its functions. [73]

110. Windeyer, J., pointed out that:

> No special power is conferred by the Act and none is needed to enable members of a fire brigade to go to a fire or to enable a fireman to drive a fire engine upon a highway to the place of a fire. But, said the appellant, there is a power conferred by the Act to disregard speed limits and traffic regulations. But only by what I think is a mistaken use of language can such exemptions from rules that apply to other persons be described, in this context, as conferring powers. A person who avails himself of an immunity does not in such a case as this exercise a power. [74]

111. Thereafter, the High Court made use of the principles expressed in *Ardouin's Case* to interpret, unfavourably to public authorities, the phrase "done under this Act" commonly employed in the protective limitation of sections of statutes constituting those authorities. The first such case was *Hudson v. Venderheld,* [75] which came before the High Court in 1968. Tle plaintiff suffered injuries in a collision between a motor car in which she was travelling and a vehicle owned by a city council constituted under the Local Government Act, 1919. The latter vehicle was driven by the defendant, a council employee, then returning to the council depot after repairing high tension wires that were the council's responsibility.

112. Section 580 (1) of the Local Government Act, 1919, provides that:

> A writ or other process in respect of any damage or injury to person or property shall not be sued out or served upon the council or any member thereof, or any servant of the council or any person actina, in his aid for *anything done or intended to be done or omitted to be done under this Act,* until the expiration of one month after notice in writing has been served on the council or the member servant or person as provided in this section.

Subsection (6) further requires that the contemplated action be commenced within twelve months after the occurring of the cause of action.

113. In *Hudson's Case,* it was submitted for the defendant that he was a servant of the council, and that what he was doing at the time of the accident was "done under" the Act within the meaning of section 580 (1). In the District Court these submissions were accepted and they were upheld on appeal to the Court of Appeal. [76] The Judges of Appeal distinguished *Ardouin's Case* because it was confined to the particular words of section 46 of the Fire Brigades Act, 1909. [77]

114. The High Court, with one dissentient, took a different view. In a joint decision, Barwick, C.J., Kitto, Taylor and Owen, JJ., held *that Ardouin's Case* was relevant and that it should be followed with the result that section 580 had no application and that the plaintiff should take judgment:

> We are unable to accept the view that what the defendant did was "done under" that Act. There is no doubt, of course, that the Act expressly empowered the Council to supply electricity and to maintain electric wires erected in connection therewith, and this would carry with it by necessary implication a statutory authority to do all those incidental acts necessary to the exercise of that power which the Council and its employees could not lawfully perform without such an authority. But as Kitto J. pointed out in *Board of Fire Commissioners (N.S.W.) v. Ardouin,* such an implication arising as it does from necessity, must be limited by the extent of the need. There can be no implication of a grant of power to do, in the performance of the duty, what is in any case lawful" [Section 46 of the Fire Brigades Act, 1909] differs substantially in its language from that contained in s. 580 (1) of the Local Government Act but the principle stated by Kitto J. is one of general application.
>
> In driving along a public highway the defendant was doing something which the law - apart altogether from the Local Government Act - gave him a right to do. It is true that he was acting on the instructions of an officer of the Council and in the course of his employment, but that does not mean that what he was doing was being "done under" the Local Government Act. [78]

115. Soon after that decision, the Court of Appeal had to consider *Benn v. Cribb,* [79] where the plaintiff, who had been injured in a collision between a car and a fire engine proceeding to a fire, sued the driver of the fire engine without giving the notice called for by section 47 of the Fire Brigades Act, 1909. The court found that the casc fell within the principles stated by the High Court in *Hudson v. Venderheld, so* that the defendant's action was not "done under" the relative Act and no statutory immunity was available to him. The Court of Appeal took a similar view in *Varga v. Jongen,* [80] an action against a bus driver for injuries sustained in a collision. The driving of the bus was held not to be something "done under" the Transport (Division of Functions) Act, 1932.

116. A significant extension of the last case has been made in *Armytage v. Commissioner for Government Transports* [81] where the plaintiff was injured and her husband was killed when a car in which they were travelling collided with a bus operated by the Commissioner for Government Transport and driven by his servant. The plaintiff gave notice of action under section 233 of the Transport Act, 1930, and commenced action against the Commissioner within the limitation period of twelve months specified under that Act. However, only after that period had expired, the plaintiff suffered further symptoms allegedly due to nervous shock resulting from the accident and her husband's death. The plaintiff applied to amend her declaration by adding a count claiming additional damages for nervous shock.

117. In allowing the amendment, Brereton, J., made the following assessment of the law:

> In *Varga v. Jongen,* which was an action brought against the driver of a government omnibus personally, it was held by the Court of Appeal that the defendant was not exercising a power of performing a duty under any Act. It followed that s. 233 of the Transport Act, by virtue of which a notice of action is required, was not applicable, and is must also follow that neither s. 232 (2) of the Transport Act or s. 27 of the Transport (Division of Functions) Act applied to him, which is the section which imposed the twelve months' limitation.
>
> After a careful analysis of the judgments in that case I find it impossible to distinguish the Commissioner from his servants. If, in driving the motor omnibus on a public street his servant is not acting by virtue of any statute, equally in employing the servant to do so the Commissioner, not acting under any statute, though in operating omnibuses generally, on a route on which he and only he may do so, he may be. It follows therefore that no notice of action in respect of the amended claim was necessary and that no period of limitation has as yet expired. [82]

118. While many cases remain where wrongs complained of can be said clearly to have been "done under" protective statutes, [83] the effect of *Hltdson v. Vetiderheld* and later decisions must be to cast considerable doubt on when protective limitation periods apply to public authorities.

119. From the standpoint of a prospective plaintiff and his advisers there then exists the dilemma of whom to sue, and when, in order to have the best chance of success. Ingredients of that kind tend to reduce litigation to a gamble: a situation in which justice cannot be administered with certainty nor to the public satisfaction.

120. The common statutory protections have another vice. If a man has a claim against, say, the Public Transport Commission for an injury suffered on a railway station, and he seeks legal advice in due time, it is probably comparatively easy for his advisers to say that the claimant should, at least as a matter of precaution, conform to sections 143 and 144 of the Government Railways Act, 1912.

121. The claimant is, however, in a much different position if all he knows is that he has been injured by the negligence of some man, Smith let us call him. For all the claimant knows, Smith is just an ordinary citizen and the law allows six years for the commencement of proceedings and does not require any notice of action. The claimant has no means of finding out whether Smith can claim the benefit of one of these protective provisions (for example as the servant of some public authority) until he sees Smith's defence. It is then too late to conform with the protective provisions and the claim must fail for want of procedural steps which the claimant had no means of knowing were required. Sometimes (usually in recent Acts), a statute gives a discretion to ease the rigour of the special protection: e.g., Ambulance Service Act, 1972, s. 54 (7), (8). But an injured man should not be put to craving an indulgence.

122. Such a case may not often arise, but the mere statement of its possibility demonstrates, we suggest, that it should be made impossible.

123. In summary, the tenor of the cases here examined gives us the stronger reason to conclude that the special protections for public authorities are, in general, mischievous and inimical to the due course of justice. We think the decisions clearly point to a need for some revision of the law. The best solution, in our view, is to strike at the source of the problem and eliminate the advantages which public authorities are given over private litigants.

(vi) Other Statutory Limitation Periods

124. In Appendix B to this report we list other statutes which impose limitation periods. The list does not purport to be exhaustive. The statutes included there differ from the statutes listed in Appendix A in that they do not exclusively relate to actions or proceedings against public authorities. In general they apply indiscriminately to all persons affected by them. Some of them relate to matters other than actions and proceedings.

125. We take the view that the Acts referred to in Appendix B do not call for further attention by us under the present terms of reference. The only exception is that it should be made clear that changes to the law, which we are recommending in respect of public authorities -and the limitation of actions, should not be allowed to interfere with, nor to affect the operation of, the provisions of the Motor Vehicles (Third Party Insurance) Act, 1942, or of the Workers' Compensation Act, 1926.

126. Some of the provisions referred to in Appendix B seem to be disused and they are possibly ripe for repeal. We instance, section 20 (1) of the Anatomy Act, 190 1, section 6 of the Contractors' Debts Act of 1897, and section 102 of the Friendly Societies Act, 1912. We do not think it appropriate to make any comprehensive review of such matters under this reference.

127. Numerous statutory limitations govern the bringing of appeals of various kinds. They are not referred to here as we consider them to be outside our terms of reference. By way of example we instance the limitation imposed by section 14 of the Rivers and Foreshores Improvement Act, 1948, of the time for bringing appeals as to "benefited lands" under that Act, and by section 14 of the Business Franchise Licences (Petroleum) Act, 1974, of the time for making objections to and appealing against assessments under that Act.

(vii) Tender of Amends and Related Matters

128. We are recommending the amendment of statutes affecting public authorities so as to remove the historical relics of tender of amends, preference in costs (if surviving after the passing of the District Court Act, 1973), and the right to plead the general issue. The plea of the general issue has been abolished by the Supreme Court Act, 1970, and by the District Court Act, 1973. Costs in proceedings by or against public authorities should be in the same position as costs in other proceedings, namely, costs should be in the discretion of the court, but would as a rule follow the event.

129. Tender of amends is an anachronism. It was made applicable to public authorities under section 1 (c) of the Public Authorities Protection Act 1893 (U.K.), [84] but its significance became attenuated. "The whole section", said Farwell, J., in *Smith v. Northleach Rural District Council,* is of a penal nature . . . It must, therefore, not be extended to any case not exactly covered by its language". [85] Tender of amends was abolished in England through the repeal of the Public Authorities Protection Act by the Law Reform (Limitation of Actions &c.) Act 1954. We propose that it be abolished here.

130. Under the general law a valid tender before action of an adequate sum of money, coupled with payment into court, is a good defence and leads to an order for costs in favour of the defendant, but only where the claim is for a liquidated sum. By statute some public authorities are put in a similar position as regards a claim for unliquidated damages. We think that use of the statutory provisions is very rare indeed.

131. Tender of amends, as provided for in the special protections given to public authorities, is a crude procedure. Even if the statute authorizes tender not only to the plaintiff but also to his attorney or agent (e.g., Public Transport Commission Act, 1972, s. 29 (7)), the attorney or agent must presumably be authorized to accept the tender:

> a situation which, we imagine, rarely arises. The tender must be made in "legal tender", that is, in Commonwealth notes or coins, not by cheque, unless this requirement is waived by the plaintiff or, if so authorized, by his attorney or agent. The plaintiff must either accept or reject the tender at once: he has no right to ask for time to see what his outlook is when his medical condition is stabilized. It is questionable in policy at the present day whether, say, a badly injured man worried by debts should be exposed to the temptation of bargaining away his cause of action by the offer of a large sum in ready cash. We realize that an offer of settlement can be made without special statutory authority: the statutes only offer to the defendant marginal advantages on questions of costs. What we question is whether such a procedure should be encouraged by statute.

132. The statutory provisions for tender of amends are open to another charge of unfairness. Suppose that there is a limitation period of six months, to which is added a requirement of one month's notice of action, and a provision for tender of amends. A prospective defendant is therefore enabled to make a tender at the end of five months after a cause of action accrues. But often in personal injury cases five months after the accident is too soon to be able to assess the damage. The prospective defendant makes an offer out of a fund whose depletions are spread over the community generally or over a large class none of whom is seriously affected. The prospective plaintiff, however, is called upon to make a prompt decision with inadequate information on a matter which may have the most serious consequences for himself and his dependents. In such a case it is only by accident that a tender of amends can be made in a fair amount. An injured man ought not to be made to gamble on a matter so serious to him.

133. For these reasons we think that the provisions for tender of amends should be dropped and the draft of a Bill to that end is set out in Appendix E to this report. The rules and practice relating to costs should, if necessary, be changed by rule of court so that a plaintiff claiming unliquidated damages will put himself at risk as to costs if, where practicable, he does not, before suing, make a claim on the defendant, giving the defendant a reasonable opportunity to make an offer of settlement. By this we do not contemplate that, say in a serious personal injury case, the parties should, before litigation, attempt to assess the amount of damages which might ultimately be awarded. We do not envisage that this

proposal should lead to a change in the way these cases are handled at present, including medical examinations and so on up to the time of trial. What we have in mind is that where, before proceedings are commenced, a claimant has materials on which a fair estimate of damages can be made, he should give particulars of those materials and make his claim to the prospective defendant. To take a simple case, where the damage is property damage to a motor car, and the car has been repaired, there should be a sanction in costs to encourage the claimant to put the prospective defendant in a position to make an offer of settlement before proceedings are commenced.

FOOTNOTES

1. The 1893 Act and section 21 of the 1939 Act were repeated by the Law Reform (Limitation of Actions, &c.) Act 1954, s, 1.
2. Part II commences at paragraph 40.
3. We have in mind such provisions for notice as are found, for example, in section 53 (1) of the Workers' Compensation Act, 1926, and sections 25 (2), 26 (2) and 30 of the Motor Vehicles (Third Party Insurance) Act, 1942.
4. And to other persons such as contractors employed by local authorities; see, for example, Newton v. Ellis (1855) 5 El. & Bl. il5, [199 E.R. 424].
5. See paragraphs 127-128 below. No doubt there were other reasons for requiring notice in such cases. For instance, in Callinan v. Railway Commissioners (1901) 1 S.R. (N.S.W.), 89, it was said by Darley, C.J., of the Government Railways Act of 1888 (N.S.W.): "It is manifest that the Legislature, [foresaw] that actions might be brought against the Commissioners, and that they had to do work all over the colony, and that they themselves would know nothing of what was done, and, therefore, the Act required that notice should be given to them of any action which was to be brought against them, so that they might, within a reasonable time, make investigation, and see whether they were liable or not" (at 96).
6. Per Best, J., Jones v. Bird (1822) 5 B. & Ald. 837 at 846 [106 ER. 1397]; and note Jones v. Nicholls & Roberts (1844) 13 M. & W. 361 [153 E.R. 149]; James Smith & Co. v. The West Derby Local Board (1878) 3 C.P.D. 423; and cf. Scoles v. Commissioner for Government Transport (1960) 104 C.L.R. 339 at 344.
7. In Victoria it has been said by a sub-committee that such a notice "must be as formal as a pleading and cannot be amended", Appendix to Report from Statute Law Revision Committee on the Limitation of Actions Bill (D. No. 1) Votes & Proceedings (Legislative Assembly, Victoria) 1949, 684. For English authority favouring strict construction see Mason v. The Birkenhead Improvement Commissioners (1860) 6 H. & N. 72 [158 E.R. 30]; and for some Australian examples-Arnold v. Johnston (1844) 1 Legge 198; Miliani v. Victorian Railways Commissioners (1892) 18 V.L.R. 331; Upper Chapman Roads Board v. Jupp (1912) 14 W.A.L.R. 167. But cf. Williamson v. Commissioner for Railways (1960] S.R. (N.S.W.) 252. For a comparative commentary see G. P. Barton, "Limitation Periodsi for the Protection of Public Authorities", (1960-1962) 3 Victoria University of Wellington Law Review 133 at 153.
8. In Jones v. Nicholls & Roberts (1844) 13 M. & W. 361 at 363 (153 E.R. 149].
9. For further comment on the fear of losing evidence see paragraphs 89-92.
10. Report "L.R. 175", 9.
11. "See generally Benjafield and 'Whitmore, Principles of Australian Administrative Law (4th ed., 1971) chapter XI.
12. J. A. Redmond, "Notices Before Action" (1964) 37 A.L.J. 316 at 317.
13. Parliamentary Debates Vol. 9 (4th Series) Lords, 21 February 1893, cc. 1-2.
14. The cases were: (a) actions against the Crown (i) under statute for failure to repair a highway, or (ii) for certain damages based on occupier's liability; (b) actions against municipalities under statute for failure to repair a highway; (c) actions in respect of frequency changeovers under the Power Commission Act; and (d) certain actions for defamation; Report at 83.
15. Ibid., at 81 and 84.
16. Report "LRC 15", at 116.
17. S. 4 (1).
18. S.3.
19. S. 4 (2).
20. S. 5.

21. Queensland Parliamentary Debates, Vol. 215, 1126.
22. Working Paper on a Bill to Amend and Consolidate the Law Relating to Limitation of Actions, (1972), Q.L.R.C.W. 11, 1.
23. Limitation of Actions Act, 1974, No. 75.
24. “Section 34 is . . . in essence a code covering the subject of the notice which must be given before actions may be brought against persons or bodies in respect of acts which ran be the subject of legal remedies and which are alleged to have been done in the pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such Act, duty or authority”. Attorney-General for the State of Victoria v. Craig [1958] V.R. 34 at 36. For the historical background to its enactment see Votes & Proceedings (Legislative Asgembly, Victoria) 1949, 677 and 1950-51 (1), 945. For a vigorous criticism of section 34 see Redmond, “Notices Before Action” (1964) 37 A.L.J. 316.
25. Victorian Parliamentary Debates Vol. 283, 874. As to waiver of right to receive notice, it was said by Herring, C.J., in Mitchell v. State Rivers and Water Supply Commission [1958] V.R. 664 at 666: “Parliament has thought it proper to enact sub-section (3) [of s. 34] and to give such bodies [as the Commission] power to consent and therefore must be taken to have contemplated that in appropriate cases consent would be given and not withheld. Unless this is done, the provision will become a dead letter and the clearly expressed intention of Parliament will be flouted”. Cf. Lunn v. Regal Quarries Pty Ltd [1959] V.R. 382.
26. For example, Mitchell’s Case [1958] V.R. 664.
27. Twelfth Report, (1970) 5.
28. [1960] W.A.R. 109.
29. As in, for example, the Sydney Police Act, 1833 (4 Will. IV No. 7), s. 74.
30. An earlier list was prepared and published bv us in 1967-First Report on the Limitation of Actions (L.R.C. 3) pp. 11-22, and in 1969-Law Society Journal (1969, Vol. 7) pp. 92-96.
31. See paragraph 140.
32Cmd. 5334.
33 Cmd. 7740.
34. Report 36-37, par. 26.
35. Ibid.
36. Report 5, par. 6.
37. Id., 9, par. 25.
38. Id., 12, Summary of Recommendations.
39. There are observations on the point by Lord Tucker, 187 Parliamentary Debates (Lords), c. 825.
40. But see the Edmund Davies Committee Report (Cmnd. 1829) of 1962; the Limitation Act 1963 (U.K.); Law Reform Commission (N.S.W.) First Report on the Limitation of Actions (L.R.C. 3), 131-135; Limitation Act, 1969 (N.S.W.), ss. 57-62. The Law Reform Committee has recommended that three years be retained as the normal period of limitation in personal injury cases-Twentieth Report (Interim Report on Limitation of Actions) (1974) Cmnd. 5630, p. 50, par. 148 (1).
41. Section 3. For a description of the evils remedied by the legislation see G. P. Barton “Limitation Periods for the Protection of Public Authorities” (1960-1962) 3 Victoria University of Wellington Law Review 133.
42. ”Limitation Act 1950, Report by Department of Justice L.R. 175”, 5-6. The last portion of the quote adopts the test propounded by the Tucker Committee, see note 36 above.
43. Ibid., 5, and information supplied by the Department of Justice, Wellington. A two year period is also favoured in Canada. See Ontario Law Reform Commission, Report on Limitation of Actions (1969), for comments on the position there and in other Provinces.
44. Section 47A (1).
45. Section 47A (4) (a).
46. Section 5 of the Law Reform (Limitation of Actions) Act of 1956. For other limitation periods see the Limitation Act of 1960.
47. See Queensland Statutes (1962 Reprint) Vol. 9, 775 note, and Queensland Law Reform Commission, Working Paper on a Bill to Amend and Consolidate, the Law Relating to Limitation of Actions (Q.L.R,C.W. 11), 1.
48. Q.R.L.C.W. 11, 9.
49. Id., I 1, draft s. 6, (ss. 5 and 6 of 1974 Act)
50. Id., 12, draft, s. 9, (s. 4 of 1974 Act).
51 Id., 12, draft s. 11, (s. 10 of 1974 Act).

52. Id., 13, draft s. 12, (s. 11 of 1974 Act).
53. No. 6295.
54. Section 5 (1).
55. No. 5914.
56. Votes & Proceedings (Legislative Assembly, Victoria), 1950-51 (1), 947 clause 1. Cf. the view of O'Bryan, J., that "it is (not] likely that the public authorities will give up these protections, without struggle" V. & P. (L.A., Victoria), 1949, 677 at 691. That was an accurate forecast: "Because of the storm of objections raised by the public authorities to the proposed course, the 1950 Bill proceeded no further", Victorian Parliamentary Debates 1966, Vol. 283, 875 (the Minister of Labour and Industry, Mr Wilcox).
57. V. & P. (L.A., Victoria) 1950-51 (1), 947 clause 4.
58. Evidence of O'Bryan, J., V. & P. (L.A., Victoria) 1949, 677 at 69 1.
59. We have found, for example, that in Victoria the abolition of the special protections has not caused "any substantial prejudice" to the State Electricity Commission. That body considered judicial interpretation of the previous law to have rendered the special protections illusory, and its policy was usually to waive them on application by a plaintiff. Again, the abolition has "made no substantial practical difference" to the Melbourne and Metropolitan Board of Works. The solicitor for the Melbourne and Metropolitan Tramways Board has written that the Board "has been disadvantaged if you look at it in a 'before and after' way", but that perhaps no more than ten stale or "non-reported" accident claims are litigated each year. The Board is believed to favour the view that "a statutory corporation should not be put in any more privileged a position than other members of the community unless very special circumstances exist". On the other hand, the Solicitor for Railways finds the Victorian Railways disadvantaged by abolition of the special protections. He regards claims made more than six months after the accrual of a cause of action as being stale, and has had many such claims since the protections were removed. And in some cases the first intimation to the Victorian Railways Board of alleged injuries has not been received until long outside the previous period of protection.
60. Twelfth Report (1970), 5.
61. (1972) unreported at time of writing. Serial No. 81/1972, List "A", at 7.
62. Sections 157-159.
63. Benjafield & Whitmore, Principles of Australian Administrative Law (Sydney, Fourth Ed., 1971), 318.
64. 187 Parliamentary Debates (Lords), cc. 827-828.
65. C. Grunfeld, (1954) 17 M.L.R. 557.
66. Cmd. 7740, 5 par. 6; see also notes 34 and 41.
67. See, for example, the Tucker Committee Report, Cmd. 7740, par. 12. We here draw attention to the following observations reported to have been made by Sheppard, J., in dismissing an action for damages against the Public Transport Commission because it was brought after twelve months (Sydney Morning Herald, 30 June 1973, 20):
"[The] case was another example of a very unsatisfactory state of affairs existing with actions against some of the State's public -authorities . . . It was puzzling that the court had power under some Acts, but not others, to give relief against the severe consequences after failure to bring an action within time".
68. Id., 8, pars. 17-18.
69. (1957) 73 W.N. (N.S.W.) 65
70. At 658.
71. (1961) 109 C.L.R. 105.
72. At 109.
73. At 124.
74. At 127.
75. (1968) 118 C.L.R. 171.
76. Reported *sub nom. Hudson v. Vanderizeld* (1967) 67 S.R. 332.
77. Per Wallace, P., 337 and Holmes, J.A., 339. 78. (1968) 118 C.L.R. at 175.
79. (1968) 89 W.N., (N.S.W.) Pt. 1 439.
80. (1970) 92 W.N. (N.S.W.) 1032.
81. [1972] 1 N.S.W.L.R. 331.
82. At 340.
83. For example, *Concord Municipal Council v. Knight* (1970) 20 L.G.R.A. *238; Peisley v. Ashfield Municipal Council* (1971) 23 L.G.R.A. 166; and for a less clear instance, *Commissioner for Railways v. Hvala* (1970) 91 W.N. (N.S.W.) 926.

84. For its prior application to such bodies see *Attorney-General v. Hackney ,Local Board* (1875) 20 L.R. Eq. 626.
85. [1902] 1 Ch. 197 at 202.

B. Variation of Limitation Periods

134. What we have said so far amounts to a recommendation that all special protections be abolished. But, as we have foreshadowed, the result of our examination is that we think some existing limitation periods are too long, and we address ourselves now to Division 2 of Part II of the Limitation Act, 1969. There sections 14 and 19, in our view, call for modification. Of these, section 14 is the more important and the portion presently material is as follows:

> (1) An action on any of the following causes of action is not maintainable if brought after the expiration of a limitation period of six years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he claims-
>
> > (a) a cause of action founded on contract (includinc, quasi contract) not being a cause of action founded on a deed;
> > (b) a cause of action founded on tort, including a cause of action for damages for breach of statutory duty . . .

135. Six years was selected for section 14 so that some uniform period might apply. The period of six years goes back historically at least as far as 1623 and is widely known by laymen as well as lawyers. But there is nothing immutable about it. An alteration may take some people by surprise but, if within reasonable bounds, would not do any other harm, and would stand,to do much good.

136. Six years was, in its origin, a period arbitrarily selected. Other limitation periods for different causes of action within section 3 of 21 James I c.16 (the Limitation Act 1623) were four years and two years. They represented a return to ancient law in prescribing fixed limits of years [86] and a departure from the intervening English practice of limiting times, where necessary, by reference to notable events such as the demise or accession of the Crown. Such previous limitations had related only to matters affecting land.

137. In Coke's *Second Institutes* [87] it isobserved that:

> But albeit these times of limitations were reasonable, when these statutes were made, yet in process of time (there being set times appointed in former kings raignes) the times of necessity grew too large, whereupon many suits, troubles, and inconveniences did arise, and therefore the makers of the statute of 32 H.. 8. [c.2] took another, and more direct course which might endure for ever, and that was to impose diligence and vigilancy in him that was to bring his action, so that by one constant law certaine limitations might serve both for the time present, and for all times to come . . .
>
> And seeing personall actions are at this day more frequent then they have been in times past, it were to be wished for establishment of quiet, and avoiding of old suits. . . . that they were limited within some certain time.
>
> Since we wrote this commentary, there is a good statute made concerning personall actions, in *anno 21 Jacobi regis,* ca. 168.

138. It may be noted that "the framers of the earliest Limitation Act dealing with chattels [built] their scheme on a procedural basis". [88] Whatever its present day basis may be, the continuance for over three centuries of a six year limitation period should not, of itself, recommend its retention if it has become unpractical, inconvenient or unsuited to modern conditions.

139. The particular cases that now call for abridgement of the existing six year limitation are those involving actions for damages for death or personal injury. In volume of litigation and sums at stake such cases fall into a distinct category. But they should also be viewed separately if, as we propose, the special limitations are abolished, for it would be unreasonable that public authorities be exposed to actions of this kind towards the expiry of so long a period as six years.

140. In other countries and States the limitation period for actions for damages for death or personal injury generally varies between two or three years. We have stated the comparative position above. [89] The period we favour is three years, with power in the court in which the action is brought to grant an extension of up to one year further "if satisfied that sufficient cause is shown or that having regard 'to all the circumstances of the case, it would be reasonable so to do". That formula, we adopt from section 63 (3) (a) of the Workers' Compensation Act, 1926, where it appears to have operated efficiently.

141. The purpose of this proposal to modify the statutory bar is to give a little flexibility in cases where the short limitation period may operate harshly. It recognizes the fallibility of human nature and the possibility of an accidental miscarriage of an attempt to comply with the limitation rules.

142. In the common case, the -solicitor or other adviser of a claimant will know of the three year limitation period and will attempt to comply with it. A solicitor for a claimant will do so because if the limitation period is allowed to expire he will have to bear the costs of an application for extension and, if the application fails, may face a liability in damages for negligence. In this situation we think that applications for extension would be uncommon and that the provision would have little or no effect on the budget problems of anorganization facing numerous claims in the course of its activities.

143. There is something to be said for a further provision that would modify the statutory bar. Where a person believes that another person may have a claim to litigate against him, the first-mentloned person should, we suggest, be enabled to apply to a court for an order that the claimant sue, if at all, within a period expiring before the expiration of the relevant limitation period. [90] He may have good reason for wanting finality. For example, witnesses may be lost or may die, the possibility of litigation or of an adverse judgment may frustrate planning for the future and, indeed, a person may fear that the outcome will be so severe and his future hopes so prejudiced as to sap his present incentives to work and save money. The community has an interest that that should not happen.

144. Thisproposal would have a somewhat limited operation, for it would only be useful if the prospective defendant knew that a claim might be made. And it would be scarcely any use against a fake claim. But, that admitted, we tend to the view that such a provision would be an aid to prospective defendants in a significant number of cases, would not be unjust to claimants, and therefore should be adopted. We deal with the matter in section 7 of the draft Bill formin Appendix D to this report.

145. For those cases not involving an action for damages for death or personal injury, somewhat different considerations may apply. In cases arising out of contract wethink that the present six year limitation should stand. It is not excessive, is very widely known, and is the basis of various business practices. In cases arising out of tort and we see no advantage for this purpose in distinguishing between specific torts we think that the present six year limitation is too long and that it could advantageously be reduced to three years. In cases of tort it is reasonable to expect a plaintiff to bring his action promptly and not to rely upon a stale claim. In our assessment, most tort actions are stale after the lapse of three years from their accrual. In cases where fraud, concealment or mistake are involved, sections 55 and 56 of the Limitation Act, 1969, provide for postponement of the bar and are, we think, a sufficient protection.

146. We refer now to section 19 of the Limitation Act, 1969, and recommend that the limitation period for actions under the Compensation to Relatives Act, 1897, should be reduced from six years to three years after the date of death. Again, we think it desirable that plaintiffs proceeding under this section be encouraged to act promptly. And, in this area, public authorities stand to benefit by the proposed change. At present, plaintiffs under the Compensation to Relatives Act need not give notice of action [91]

and, as the special protections do not apply, such plaintiffs can take proceedings within six years after the death. [92]

147. Draft legislation to give effect to these recommendations is set out in Appendix D.

FOOTNOTES

86. Blackstone, *Commentaries* (4th ed, Kerr) M, 319.
87. Vol. I, 95-96.
88. Jenks, "A Blind Spot in English Law" (1933) 49 *L.Q.R.* 215 at 217; cf. Jackson, "The Legal Effects of the Passing of Time" (1970) 7 *Melbourile U.L.,R,* 407 and 449, especially at 425 ff.
89. Paragraphs 53-69.
90. *Cf.* the provisions concerning notice to proceed, Limitations Act, 1969, s.53.
91. *Harding v. Municipality of Lithgow* (1937) 57 C.L.R. 186.
92. Similarly public authorities stand to benefit in relation to claims for contribution under the Law Reform (Miscellaneous Provisions) Act, 1946, s. *5* (1) (c), (2).

C. Recommendations

148. We here partly recapitulate, and partly add to, the recommendations of this report.

149. Three principal areas for reform have been examined. They are, first, the lack of uniformity now existing in periods of limitation affecting actions for damages for personal injuries; second, the inconsistencies in, and questionable merits of, limitation protections operating to protect public authorities; and, third, the variable and discriminatory procedure prescribed for pursuing claims against public authorities.

150. We recommend that the first of these matters be reformed by ,the addition of a new section 14B to the Limitation Act, 1969, subsection (1) of which would impose a general limitation period of three years in actions for damages for personal injuries (see Appendix D).

151. We further recommend -that the second and -third matters be met by amendment of the relative statutes. The amendments we propose are set out in the Schedule to the draft Bill in Appendix E. Their effect would be to relegate actions against public authorities to the periods of limitation laid down in Division 2 of Part II of the Limitation Act, 1969. Taken with the changes proposed by the draft Bill in Appendix E there would also be an abolition of special requirements for notice of action and of special privileges to make tender of amends. An parties, whether private litigants or public authorities, would then be on an equal footing so far as concerns this aspect of the limitation of actions.

152. We recommend the enactment of legislation to the effect of the draft Bills contained in Appendix D and Appendix E: and we further recommend that Rules of Court be made to deal with the matters referred to in paragraph 133 of this report.

C. L. D. MEARES
Chairman.

R. D. CONACHER
Deputy Chairman.

12th May, 1975.

Appendix A - Special Limitations Enactments Affecting Actions Against Public Authorities (as at 31 December, 1974)

1. ACTIONS GENERALLY

Title	Section	Period of limitation	Subject matter	Notice of action	Tender of amends
Ambulance Service Act, 1972	54	Twelve months	Actions for damage to person or property.	One month	Yes, s.54(9)
Broken Hill Water and Sewerage Act, 1938	126(3)		Actions for anything done under the Act.	One month	No.
Builders licensing Act, 1971	58	Twelve months	Actions for damage to person or property.	One month	Yes, s.58(8)
Child Welfare Act, 1939	158(2)	Six months; or six months from discharge if plaintiff	Action against Minister or any officer of Department.		No.
City and Suburban Electric Railways Act, 1915	12(2)		Action for damage or injury	Within 12 months of cause of action and	No.

				carrying out of work	
Cobar Water Supply Act, 1963	48(3)		Action against Board or any member or officer.	One month	No.
Courts of Petty Sessions (Civil Claims) Act, 1970	10	Six months	Anything done under Act	One month	No.
Crimes Act, 1900	563(1)	Six months	Anything done under Act	One month	Yes, s.563(2).
Crown Lands Consolidation Act, 1913	249	Twelve months	Actions against officers	One month	Yes, s.249
Dairy Industry Authority Act, 1970	81	Twelve months	Actions for damage to person or property.	One month	Yes, s.81(8).
Electricity Commission Act, 1950	100	Twelve months	Actions for damage to person or property.	One month	Yes, s.100(6).
Fire Brigades Act, 1909	47	Twleve months	Actions against Board	One month	Yes, s.47
Fisheries and Oyster Farms Act, 1935	108	None	Anything done in pursuance of the Act.	One month	No.
Gaming and Betting Act, 1912	58	Three months	Anything done or omitted in pursuance of the Act.	One month	Yes, s.57
Government Railways Act, 1912	143, 144	One year	Actions against Commissioner or other persons for things done or omitted	One month	Yes, s.146(1)

			under the Act.		
Grain Elevators Act, 1954	56	Twelve months	Proceedings against the Board or members or servants for acts or omissions under the Act.	One month	Yes, s.56(6)
Hawkers and Pedlers Act, 1901	26	Six months	Actions for anything done under the Act.	One month	Yes, s.26
Health Commission Act, 1972	29	Twelve months	Proceedings for damage to person or property.	One month	Yes, s.29(7)
Hunter District Water, Sewerage and Drainage Act, 1938	135(3)(b)	Twelve months	Actions against the Board or members or servants for acts or omissions under the Act.	One month	No.
Inebriates Act, 1912	31(2)	Three months (six months by special leave).	Action or suit for anything done under the Act.		No.
Irrigation Act, 1912	17B, 17C	Three years	Actions against officers for anything done under Act or other Act under which Commission has duties.	One month	yes, s.17D
Justices Act, 1902	139	Six months	Actions against Justices	One month	Yes, s.141
Land Development Contribution Management Act, 1970	16(2)	Twelve months or date of cancellation of disposition if later	Refund or waiver of contribution.		No.
Liquor Act, 1912	171	Three months	Actions against Chairman etc. for anything done under Act.		No.

Local Government Act, 1919	580	Twelve months	Proceedings for damage to person or property or for anything done or omitted under Act.	One month	Yes, s.580(7)
Maritime Services Act, 1935	40	Twelve months	Actions against Board etc. for anything done or omitted.	One month	Yes, s.40(6)
Metropolitan Water, Sewerage and Drainage Act, 1924	132(3)(b)	Twelve months	Writs or process for anything done or omitted under the Act.	One month	No.
Ministry of Transport Act, 1932	16, 17	One year	Actions against Board or person for anything done under Act.	One month	Yes, s.19
Municipal Council of Sydney Electric Lighting Act, 1896	38	Twelve months	Actions against Council or officers for anything done under Act.	One month	Yes, s.38
Obsecene and Indecent Publications Act, 1901	17	Three months	Actions against persons for anything done under Act.	One month	Yes, s.18
Pawnbrokers aCt, 1902	45	Three months	Action against Justice or Constable for thing done under Act.		No.
Police Offences Act, 1901	114(1), (2)	Two months	Actions and prosecutions for anything done under Act.	One month	Yes, s.114(4)
Prevention of Cruelty to Animals Act, 1901	12(1)	Three months	Action for anything done pursuant to Act.	One month	Yes, s.12(1)
Prisons Act, 1952	47	One year	Action against any person for thing done under Act.	One month	No.
Private Irrigation Districts and Water (Amendment) Act, 1973	87	Twelve months	Proceedings for damage to person or property.	One month	Yes, s.87(8)

Public Transport Commission Act, 1972	29	Twelve months	Proceedings for damage or injury to person or property.	One month	Yes, s.29(7)
Quarantine Act, 1897	37(III)	Six months	Action against Pilot etc. for thing done in pursuance of Act.		No.
Real Property Act, 1900	128		Action against Registrar-General for error etc. in register book.	One month	No.
		Six months	Action against Registrar-General or Assurance Fund.		No.
Seamen's Act, 1898	111(1)	Three months	Action against officer for anything done under Act.		No.
Stage-carriages Act, 1899	14(1)	Three months	Anything done in pursuance of the Act.		No.
State Planning Authority Act, 1963	70	Twelve months	Actions for damages for anything done under Act.	One month	Yes, s.70(6)
State Pollution Control Commission Act, 1970	30	Twelve months	Actions for damage to person or property.	One month	Yes, s.30(8)
Summary Offences Act, 1970	65	Six months	Actions for damages for anything done under Act.	One month	No.
Sydney Cove Redevelopment Authority Act, 1968	53	Twelve months	Actions for damage to person or property.	One month	Yes, s.53(8)
Sydney Farm Produce Market Authority Act, 1968	44	Twelve months	Proceedings for damage to person or property.	One month	Yes, s.44(6)
Sydney Harbour Bridge Act, 1922	19(2), (3)	Twelve months from notice to bring action	Actions for damages for anything done under Act.	Twelve months	No.

Sydney Harbour Transport Act, 1951	34	Twelve months	Actions for damage to person or property.	One month	Yes, s.34(6)
Transport Act, 1930	232(2), 233	One year	Actions against Commissioner.	One month	Yes, s.235
Transport (Division of Functions) Act, 1932	27, 28	One year	Actions for anything done or omitted to be done under the Act.	One month	Yes, s.30
Travel Agents Act, 1973	72	Twelve months	Proceedings for damage to person or property.	One month	Yes, s.72(7)
Waste Disposal Act, 1970	54	Twelve months	Actions for damage to person or property.	One month	Yes, s.54(8)
Water Act, 1912	54(1)		Actions for damage upon entry to land.	Three months	No.
Zoological Parks Board Act, 1973	35	Twelve months	Proceedings for damage to person or property.	One month	Yes, s.35(7)

2. CLAMS FOR COMPENSATION FOR DAMAGE ETC.*

Title	Section	Period of limitation	Subject matter
Broken Hill Water and Sewerage Act, 1938	26(5)	Six months	
Cattle Compensation Act, 1951	8(3)	Thirty days	
Cobar Water Supply Act, 1963	13(3)		Within six months after damage sustained

Drainage Act, 1939	33(2)	Six months	
Growth Centres (Land Acquisition) Act, 1974	10(2)	Six months	
Hunter District Water, Sewerage and Drainage Act, 1938	32(5)	Six months	
Hunter Valley Flood Mitigation Act, 1956	32(1)		Ninety days after the doing of the act out of which the claim arises
Local Government Act, 1919	342AC(1)	Time prescribed (claims for injurious affection - town and country planning)	
Main Roads Act, 1924	27C(5)(e)	Twelve months	
Metropolitan Water, Sewerage and Drainage Act, 1924	32(5)	Three months	
Mine Subsidence Compensation Act, 1961	12(2)(a)		As prescribed
New South Wales-Queensland Border Rivers Act, 1947	17	Unreasonable delay	Within six months
Public Works Act, 1912	49(2), (3)	Two years	Fourteen days minumum before proceedings
River Murray Waters Act, 1915	19	Unreasonable delay	Within six months
Swine Compensation Act, 1928	8(3)	Sixty days	

Sydney Collieries Limited Enabling Act, 1924	4(4)		Ninety days of first becoming aware of damage

3. RECOVERY OF CERTAIN MONEYS

Title	Section	Period of limitation	Subject matter
Limitation of Actions (Recovery of Imposts) Act, 1963	2	Twelve months	Actions for recovery of taxes, imposts etc.
Motor Vehicles Taxation Management Act, 1949	12	Three years	Refund of tax
Stamp Duties Act, 1920	140(4)	Three years	Action for refund of duty

4. CERTAIN ACTIONS BY EMPLOYEES*

Title	Section	Period of limitation	Subject matter
Government Railways Act, 1912	100D	Six months	Election by employee to sue Commissioner for damages
Transport Act, 1930	124B	Six months	Election by employee to sue Commissioner for damages

* No amendment is proposed.

NOTES ON APPENDIX A

1. This Commission has, in its *First Report on Statute Law Revision* (L.R.C. 10), recommended the repeal of the Quarantine Act, 1897, the Stage-carriages Act, 1899, and the Sydney Collieries, Limited, Enabling Act, 1924.

2. Section 11 of the Irrigation Act, 1912, dissolved the trusts constituted by the Wentworth Irrigation Act (54 Vic. No. 7), the Hay Irrigation Act, 1902, and the Balranald Irrigation Act, 1902. Subsection (3) of section 11 provides that "the said Acts shall be read with such other amendments as are necessary to bring those Acts into conformity with this Act". Section 17c of the Irrigation Act deals with notice of action against the Water Conservation and Irrigation Commission, the successor to the trustees under the abovementioned trusts. To that extent there is an implied repeal of section 20 of the Wentworth Irrigation Act, section 15 of the Hay Irrigation Act, and section 19 of the Balranald Irrigation Act; of which the first two impose a limit of ninety days for actions, and the last a limitation of six months.

Appendix B - Some Other Limitations of Time Imposed By Statute (as at 31 December, 1974)

Name of statute	Section	Period of limitation	Subject matter
Advances to Settlers (Government Guarantee) Act, 1929 (No.46)	32	One year	Proceedings in respect of offence under Act.
Agricultural Holding Act, 1941 (No.55)	15(7)(b)		Claim for compensation for disturbance.
Albury-Wodonga Development Act, 1974	36(5)	Five years	Action to recover a loss or profit
Anatomy Act, 1901 (No.9)	20(1)	Six months	Action for anything done in pursuance of the Act.
Annual Holidays Act, 1944 (No.31)	13(1)	Eighteen months	Proceedings for arrears for holiday pay.
Auctioneers and Agents Act, 1941 (No.28)	42A		Action for commission and expenses.
	74(3)	Six months after becoming aware of offence or two years after commission of offence whichever is shorter.	Application to Fidelity Guarantee Fund.
Banks and Bank Holidays Act, 1912 (No.43)	12	Two years	Action for offence under Act
Cattle Slaughtering and Diseased Animals and Meat Act, 1902 (No.36)	58(1)	Six weeks	Information or complaint for offence under s. 47 (sale of diseased animals).
Charitable Collections Act, 1934 (No.59)	13(4)	Six months from time when facts first came to knowledge of Minister	Proceedings in respect of offence under Act.
Cimematographic Films Act, 1935 (No.41)	13(2)	Two years	Proceedings for recovery of penalty
Clean Waters Act, 1970 (No.78)	13(1)	Prescribed time	Objection to classification of waters
Coal Mines Regulation Act, 1912 (No.37)	70(a)	Six months	Complaint or information made or laid pursuant to Act.

Commercial Agents and Private Inquiry Agents Act, 1963 (No.4)	37(3)	Two years	Action upon agent's fidelity bond
Companies Act, 1961 (No.71)	48(6)	Two years	Action against director for irregular allotment of shares.
	311(5)	Twenty years after dissolution	Proceedings for recovery of moneys paid into prescribed account.
Compensation to Relatives Act, 1897 (No.31)	5	Six years	Action brought under the Act
	6C(2)	Twelve months	Action against deceased wrongdoer
Contractors' Debts Act of 1897 (No.29)	6	Three months	Actions for debts due for material or labour.
Crown Lands Consolidation Act, 1913 (No.7)	16(1)	Six years	Certain complaints before a Local Board.
	235B		No possessory title to certain Crown lands.
Dentists Act, 1934 (No.10)	12A(3)	Three months (minimum)	Action by dentists to recover fees
Egg Industry Stabilisation Act, 1971 (No.74)	41(1)	Twenty-eight days	Application for review of base quotas.
Factories Shops and Industries Act, 1962 (No.43)	48(5)	Twelve months	Proceedings in respect of certain offences.
Forestry Act, 1916 (No.55)	46	Twelve months	Information or complaint for recovery of penalty, fine, etc.
Friendly Societies Act, 1912	102		Recovery of subscriptions due to registered society.
Growth Centres (Development Corporations) Act, 1974 (No.49)	33(5)	Five years	Action to recover loss or profit
Housing Act, 1912 (No.7)	49(3)	Twelve months from facts coming to knowledge of Commission	Proceedings for offence against the Act.
Imperial Acts Application Act, 1969 (No.30)	35(3)	Six months	Commencement of proceedings for anything done under section.
Inclosed Lands Protection	9	Two months	Actions for anything done

Act, 1901 (No.33)			in pursuance of the Act.
Industrial Arbitration Act, 1940 (No.2)	92(2)	Twelve months after termination of employment	Application by ex-employees to recover balance of award wages.
Justices Act, 1902 (No.27)	56	Six months	Information or complaint under the Act.
Land Aggregation Tax Management Act, 1971 (No.18)	35(1)	Thirty days	Objection to assessment
Land Development Contribution Management Act, 1970 (No.22)	22(1)	Twenty-eight days	Objection to assessment
	46(1)	Twenty-eight days	Objection to valuation
Land Tax Management act, 1956 (No.26)	35(1)	Thirty days	Objection to assessment
Landlord and Tenant Act, 1899 (No.18)	8(3)	Six months	Suit for relief against forfeiture of lease.
Landlord and Tenant (Amendment) Act, 1948 (no.25)	31G(1), 32, 35(3), 64, 65, 68	Various periods	Matters in respect of rent and letting of premises.
Legal Practitioners Act, 1898 (No.22)	21	One month (minimum)	Action by solicitor for costs
	56(2)(b)	Three months	Claim on solicitors' fidelity guarantee fund.
Liqour Act, 1912 (No.42)	110	Six months	Actions in relation to adulteration of liquors.
Local Government Act, 1919 (No.41)	43(2), (3)	Three months after election etc	Ouster of office
	435(1)		Complaint to justices re impounding.
	596	Twenty years	Recovery of rates
	615(2)	Six years	Recovery of fees
Long Service Leave Act, 1955 (No.38)	12	Two years before action brought	Order for payment of long service leave.
Matrimonial Causes Act, 1899 (No.14)	54	Three yearrs prior to petition	Damages for adultery
Medical Practitioners Act, 1938 (No.37)	35(2)	Three months (minimum)	Action by registered medical practitioner to recover fees.

Mines Inspection Act, 1901 (No.75)	42(3)	Three months after specified events	Laying of information for offence under section.
Money-lenders and Infants Loans Act, 1941 (No.67)	30(4)	Twelve months	Proceedings on re-opening of transactions of money-lender.
Motor Vehicles (Third Party Insurance) Act, 1942 (No.15)	15(2)(b)		Action against authorised insurer etc. where insured person is dead etc.
	26(3)(a)(iii)	No action until six months after occurrence.	Action for hospital expenses etc.
	25(2) 26(2) 30(1)(a)(b) 30(2)(b)		Actions against nominal defendant and authorised insurer.
Parliamentary Electorates and Elections Act, 1912 (No.41)	184	Twelve months	Commencement of prosecution for penalties under the Act.
Pastures Protection Act, 1934 (No.35)	39(2)	Two years	Proceedings in respect of returns under section.
Pistol License Act, 1927 (No.10)	15(2)	Twelve months	Information for offence against section.
Poisons Act, 1966 (No.31)	45B	Two years	Information for certain offences
Prisons Act, 1952 (No.9)	38A	Six months	Proceedings for certain offences
Pure Foods Act, 1908 (No.31)	41	Fifty days	Limit of time for prosecutions
Real Property Act, 1900 (No.25)	45		Statute of Limitation not to apply to title.
Secret Commissions Prohibition Act, 1919 (No.26)	14(3)	Six months or two years from specified events	Commencement of prosecution under Act.
Securities Industry Act, 1970 (No.35)	62(5)	Three months	Proceedings against stock exchange after service of notice of disallowance of claim.
Small Debt Recovery Act, 1912 (No.33)	11(3)	Six years	Action for debt or claim
Soil Conservation Act, 1938 (No.10)	21C(5)	Twelve months	Laying of information for offence under section.
Stage-carriages Act, 1899 (No.24)	33	Various times	Prosecutions under the Act

Stamp Duty Act, 1920 (No.47)	13(2)	Twelve months	Laying of information or complaint re recovery of fines.
Testator's Family Maintenance and Guardianship of Infants Act, 1916 (No.41)	5	Twelve months after grant or resealing of Probate or Letters of Administration	Applications for Maintenance out of estate of testator or intestate.
Timber Marketing Act, 1945 (1946, No.7)	9(2)	Eighteen months	Institution of proceedings for offences under the Act.
Tobacco Leaf Stabilization Act, 1967 (No.34)	26	Twelve months	Institution of prosecution for offence.
Valuation of Land Act, 1916 (No.2)	29(1), (2)	Time stated in valuation notice	Owner's objection to valuation
	31(1)	Prescribed time	Objection to valuation by rating or taxing authority.
Weights and Measures Act, 1915 (No.10)	29N(3)	Six months or twelve months after certain events	Institution of prosecution for offence.
Will, Probate and Administration Act, 1898 (No.13)	93(1)	Three months	Action against estate after notice by executor to institute proceedings.
Workers' Compensation Act, 1926 (No.15)	63(3)	Three years	Action against employer after workers' compensation received.

Appendix C - Public Authorities And Other Organizations From Which Substantial Submissions Were Received

Board of Fire Commissioners of New South Wales.
- Chief Secretary's Department.
- Department of Agriculture.
- Department of the Attorney General and of Justice.
- Department of Child Welfare and Social Welfare.
- Department of Corrective Services.
- Department of Lands.
- Department of Local Government.
- Department of Main Roads, N.S.W.
- Department of Public Health.
- Electricity Commission of N.S.W.
- Fire and Accident Underwriters Association of N.S.W., The
- Hunter District Water Board, The.
- Law Society of New South Wales, The
- Maritime Services Board of N.S.W., The
- Metropolitan Water Sewerage and Drainage Board.
- Ministry of Transport, N.S.W.
- N.R.M.A. Insurance Limited.
- New South Wales Ambulance Transport Service Board.
- New South Wales Bar Association, The
- Non-Tariff Insurance Association of Australia, The
- Registrar General's Department.
- Registry of Friendly Societies.
- Sydney County Council, The
- Water Conservation and Irrigation Commission.

Western Lands Commission.

Appendix D - Proposed Limitation (Amendment) Bill

A BILL

To make further provisions with respect to the limitation of actions; to amend the Limitation Act, 1969; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:-

1. This Act may be cited as the "Limitation (Amendment) Act, 1975 — Short title.

2. This Act shall commence upon a day to be appointed by the Governor and notified iby proclamation published in the Gazette. — Commencement.

3. Section 3 of the Limitation Act, 1969, is amended by inserting next before "Part III" in the matter relating to Part II the following new matter- — Amendment of Act No.31, 1969.

"DIVISION 6.-*Shortening the period*-s. 50A".

4. Section 11 (1) of the Limitation Act, 1969, is amended by- — Further Amendment of Act No.31, 1969.

(a) inserting next before "Crown" the words 'Breach of duty' extends to the breach of any duty, whether arising by statute, contract or otherwise, and includes trespass to the person.";
(b) inserting next before "Personal representative" the words : "'Personal injury' includes any disease and any impairment of the physical or mental condition of la person.". — Sec. 11. (Interpretation).

5. Section 14 of the Limitation Act, 1969, is amended by- — Further amendment of Act No.31, 1969.

(a) omitting subsection (1) (b) — Sec.14 (General).

(b) inserting next after subsection (1) the following new subsections-
(1A) Notwithstanding subsection (1) of this section an action on a cause of action mentioned in subsection (1) of this section for damages for personal injury is not maintainable if brought after the expiration of three years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he claims.
(1B) An action on a cause of action founded on tort, including a cause of action for damages for breach of statutory duty, is not maintainable if ,brought after the expiration of a limitation period of three years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom he claims.

6. The Limitation Act, 1969, is further amended by omitting from section 19 the word "six" and by inserting instead the word "three". — Further amendment of Act No.31, 1969.

Sec.19 (Compensation to relatives).

7. The Limitation Act, 1969, is further amended by insexdng next after section 50 the following new Division-

Further amendment of Act No.31, 1969. New Division of Part III.

DIVISION 6.-*Shortening the period*

50A. (1) This section applies to a cause of action to which any of the other provisions of this Part applies.

Shortening the period.

(2) Where, on application to the Supreme Court it appears to the Court that-

(a) the applicant has cause to apprehend that a person may bring an action against the applicant on a cause of action to which this section applies;
(b) the limitation period fixed by an enactment repealed or omitted by this Act or fixed by any other provision of this Part for that cause of action has more than three months to run before it expires; and
(c) sufficient cause is shown for making an order under this section, or that having regard to all the circumstances of the case it is reasonable to make an order under this section-

the Court may order that the limitation period be shortened so as to expire at a time not sooner than 28 days after the time when the order takes effect, and thereupon, for the purposes of an action on that cause of action brought by that person against the applicant in any court and for the purposes of section 26 (1) (b) of this Act, and for all other purposes, the limitation period is shortened accordingly.

8. Section 57 of the Limitation Act, 1969, is amended by omitting-

Further amendment of Act No.31, 1969. Sec.57 (Interpretation).

(a) paragraph (1) (a) ; and
(b) subsection (2).

9. The Limitation Act, 1969, is further amended by inserting next after section 57 the following new section-

Further amendment of Act No.31, 1969. Sec.57A.

57A. (1) This section applies to-

Extension up to one year.

(a) a cause of action for damages for personal injury; and
(b) a cause of action which arises under section 3 of the Compensation to Relatives Act of 1897.

(2) Where, on application to a court by a person claiming to have a cause of action to which this section applies, it appears to the court that sufficient cause is shown for making an order under this section or that having regard to all the circumstances of the case it is reasonable to make ianorder under this section, the court may order that the limitation period for the cause of action be extended so that it expires not later than one year after the date on which it would expire if not extended under this section and thereupon for the purposes of an action on that cause of action brought by the applicant in that court, and for the purposes of section 26 (1) (b) of this Act, the limitation period is extended accordingly.

(3) This section applies ito a cause of action whether or not a limitation period for the cause of action

has expired before an application is made under this section in respect of the cause of -action.

10. This Act does not,apply to,any,action on a cause of action which has accrued before the commencement of this Act. Transition.

Appendix E - Proposed Notice Of Action And Other Privileges Abolition Bill

A BILL

To repeal or amend certain enactments relating to notice of action, limitation of actions and tender of amends; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:-

1. This Act may be cited as the "Notice of Action and Other Privileges Abolition Act, 1975". Short title.

2. This Act shall commence upon,a day to be appointed by the Governor and notified by proclamation published in the Gazette. Commencement.

3. (1) So much of any Act (except the Limitation Act, 1969) as enacts that in relation to any proceeding to which the Limitation Act, 1969, applies- Repeal and amendment of enactments. 1893 c.61, s.2.

(a) the proceeding is to be commenced within any particular time;
(b) notice of action is to be given; or
(c) tender of amends before action is to be a defence - is repealed.

(2) In particular, each Act specified in column 1 of the Schedule to this Act is amended as specified opposite that Act in column 2 of the Schedule.

4. (1) This Act does not affect proceedings pending at the commencement of this Act. Saving. 1893 c.61, s.2.

(2) This Act does not affect the operation of-

(a) section 63 of the Worker's Compensation Act, 1926;
(b) section 15 or section 26 of the Motor Vehicles (Third Party Insurance) Act, 1942;
(c) Division 8 of Part III of the Defamation Act, 1974.

(3) Section 3 (1) does not affect the general law relating to tender before action of a debt or Equidated sum.

Schedule
Amendment of Acts

Year and number of Act	Short title	Amendment
1896, 60 Vic.	Municipal Council of	Section 38-

No.23.	Sydney Electric Lighting Act, 1896	Omit the section.
1897, No.25	Quarantine Act, 1897	Section 37 (III)- Omit the subsection.
1898, No.46	Seamen's Act, 1898	Section 111(1)- Omit the words ", and unless such action is commenced within three months".
1899, No.24	Stage-carriages Act, 1899	Section 14- Omit the section.
1900, No.25	Real Propery Act, 1900	Section 128- Omit the section.
1900, No.40	Crimes Act, 1900	Section 130 (1) and (2)- Omit the subsections
1901, No.5	Police Offences Act, 1901	Section 563- Omit the section.
1901, No.12	Obscene and Indecent Publications Act, 1901	Section 114- Omit the section.
1901, No.28	Hawkers and Pedlers Act, 1901	Sections 17 and 18- Omit the sections.
1901, No.64	Prevention of Cruelty to Animals Act, 1901	Section 26- Omit the section.
1902, No.27	Justices Act, 1902	Section 12 (1)- Omit the words ", except that the time limited for commencing any such action shall be three months next after the act complained of was committed".
		Section 139- Omit the section.
		Section 141 (1)- Omit the subsection.
		Section 141 (2)- Omit the words "if he has not made any tender as aforesaid or in addition to such tender,".
1902, No.66	Pawnbrokers Act, 1902	Section 45- Omit the section.
1909, No.9	Fire Brigades Act, 1909	Section 47- Omit the section.
1912, No.24	Inebriates Act, 1912	Section 31 (2)- Omit the subsection.
1912, No.25	Gaming and Betting Act, 1912	Sections 57 and 58- Omit the sections.

1912, No.30	Government Railways Act, 1912	Sections 143, 144 and 146- Omit the sections.
1912, No.42	Liquor Act, 1912	Section 171- Omit the section.
1912, No.44	Water Act, 1912	Section 54 (1)- Omit the words “within three Month thereafter”
1912, No.73	Irrigation Act, 1912	Sections 17B, 17c and 17D- Omit the sections
1913, No.7	Crown Lands Consolidation Act, 1913	Section 249- Omit the section.
1915, No.29	City and Suburban Electric Railways Act, 1915	Section 12 (2)- Omit the subsection.
1919, No.41	Local Government Act, 1919	Section 580- Omit the section.
1922, No.28	Sydney Harbour Bridge Act, 1922	Section 19 (2) and (3)- Omit the subsections.
1924, No.50	Metropolitan Water, Sewerage and Drainage Act, 1924	Section 132 (3) (b)- Omit the paragraph.
1930, No.18	Transport Act, 1930	Section 232 (2)- Omit the subsection.
1932, No.3	Ministry of Transport Act, 1932	Sections 233 and 235- Omit the sections.
19332, No.31	Transport (Division of Functions) Act, 1932	Sections 16, 17 and 19- Omit the sections.
1935, No.47	Maritime Services Act, 1935	Sections 27, 28 and 30- Omit the sections.
1935, No.58	Fisheries and Oyster Farms Act, 1935	Section 40- Omit the section.
1938, No.11	Hunter District Water, Sewerage Act, 1938	Section 108- Omit the section.
1938, No.20	Broken Hill Water and Sewerage Act, 1938	Section 135 (3) (b)- Omit the paragraph.
1939, No.17	Child Welfare Act, 1939	Section 126 (3)- Omit the subsection.
		Section 158 (2)- Omit the subsection.
		Section 158 (3)-

		Omit the words “, or that the suit or action was commenced after the expiration of the six months aforesaid”.
1950, No.22	Electricity Commission Act, 1950	Section 100- Omit the section.
1951, No.11	Sydney Harbour Transport Act, 1951	Section 34- Omit the section.
1952, No.9	Prisons Act, 1952	Section 47- Omit the section.
1954, No.36	Grain Elevators Act, 1954	Section 56- Omit the section.
1963, No.44	Cobar Water Supply Act, 1963	Section 48 (3)- Omit the subsection.
1963, No.59	State Planning Authority Act, 1963	Section 70- Omit the section.
1968, No.11	Sydney Farm Produce Market Authority Act, 1968	Section 44- Omit the section.
1968, No.56	Sydney Cove Redevelopment Authority Act, 1968	Section 53- Omit the section.
1970, No.11	Court of Petty Sessions (Civil Claims) Act, 1970	Section 10- Omit the section.
1970, No.22	Land Development Contribution Management Act, 1970	Section 16 (2)- Paragraphs (b) and (c)- Omit the paragraphs. Paragraph (d)- Omit the words “the application is made, within twelve months after the date of revocation and unless”.
1970, No.29	Dairy Industry Authority Act, 1970	Section 81- Omit the section.
1970, No.95	State Pollution Control Commission Act, 1970	Section 30- Omit the section.
1970, No.96	Summary Offences Act, 1970	Section 65- Omit the section.
1970, No.97	Waste Disposal Act, 1970	Section 54- Omit the section.
1971, No.16	Builders Licensing Act, 1971	Section 58- Omit the section.
1972, No.15	Ambulance Service Act, 1972	Section 54- Omit the section.

1972, No.53	Public Transport Commission Act, 1972	Section 29- Omit the section.
1972, No.63	Health Commission Act, 1972	Section 29- Omit the section.
1973, No.34	Zoological Parks Board Act, 1973	Section 35- Omit the section.
1973, No.47	Private Irrigation Districts and Water (Amendment) Act, 1973	Section 87- Omit the section.
1973, No.71	Travel Agents Act, 1973	Section 72- Omit the section.

A NOTE ON THE DRAFT BILL CONTAINED IN APPENDIX E

In many Acts that have special sections relating to notice of action there is a subsection giving a defendant, being a public authority, rights to inspect damaged property [Local Government Act, 1919, s. 580 (3); Electricity Commission Act, 1950, s. 100 (3); Sydney Harbour Transport Act, 1951, s. 34 (3); Grain Elevators Act, 1954, s. 56 (3) ; State Planning Authority Act, 1963, s. 70 (3); Sydney Farm Produce Market Authority Act, 1968, s. 44 (3); Sydney Cove Redevelopment Authority Act, 1968, s. 53 (3); Dairy Industry Authority Act, 1970, s. 81 (3) ; State Pollution Control Commission Act, 1970, s. 30 (3); Waste Disposal Act, 1970, s. 54 (3) ; Builders Licensing Act, 1971, S. 58 (3) ; Ambulance Service Act, 1972, s. 54 (3) ; Public Transport Commission Act, 1972, s. 29 (3); Health Commission Act, 1972, s. 29 (3); Zoological Parks Board Act, 1973, s. 35 (3); Private Irrigation Districts and Water (Amendment) Act, 1973, s. 87 (3); Travel Agents Act, 1973, s. 72 (3)].

Section 580 (4) of the Local Government Act, 1919, also gives a defendant council powers to require medical inspection of an injured person.

In proposing the repeal of the sections in whichthose subsections appear, we point out that such inspections do not now need legislative sanction. Adequate provision to ihe same effect is contained in Part 25 of the Supreme Court Rules, 1970, and in Part 23 of the District Court Rules, 1973.