

SUBMISSION TO THE  
STANDING COMMITTEE ON LEGISLATION  
WESTERN AUSTRALIA

LIMITATION BILL 2004  
AND  
LIMITATIONS LEGISLATION  
AMENDMENT AND REPEAL BILL  
2004

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Supported by  
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December 26, 2004

**STANDING COMMITTEE ON LEGISLATION**

Legislative Council of Western Australia  
Parliament House,  
Perth WA 6000  
Australia.

Dear Standing Committee,  
This is a:

**SUBMISSION  
LIMITATIONS BILL 2004 AND LIMITATION AMENDMENT AND REPEAL  
BILL 2004**

I wish to draw the committee's attention to inadequacies of the current legislation and also of the proposals as set out in the Discussion Paper, *Limitations Law Reform*.

The current Limitation Act in Western Australia (WA) is not only out of step with other jurisdictions, but also highly discriminatory against plaintiffs whom through no fault of their own have been unable to make civil claim against another party for damages or personal injury suffered within the legislated timeframes.

The current legislation in WA does not allow any scope for the court to exercise discretionary decision for an extension of time.

From my reading of the Discussion Paper the new legislation proposed also denies this discretionary scope of the court and justice system.

Although the new proposals are improved on the current Act, the new laws will only replaced one FIXED time limit with other FIXED time limits.

I believe this is not well considered.

It is also out of line with most other Australian states and other jurisdictions that allow the justice system to exercise discretionary extensions of time.

Fixed time limits on limitations is not in the spirit of law or justice.

Limitations acts serve a particular purpose of providing a protection of time period passed where a party can no longer be held legally responsible for past actions or negligence.

This provides a protection from events that a defendant may not be aware, and also provides protection of simply being “in the clear” due to a time factor of law.

My main concern with regards to the Discussion Paper and the WA government’s stated position in regards to court discretionary extension of time.

**I draw the committee’s attention to:**

Discussion Paper, Executive Summary Item 2; The WA government does NOT accept the recommendation central to the Law Reform Commission’s 1997 Report.

*(2b)...there should be ability in the courts in exceptional circumstances to allow the commence of proceedings where the extension was in the interest of justice.*

**A DUBIOUS ARGUMENT**

The Executive Summary continues ***that such a scheme will produce enormous uncertainty, which will be translated into significantly increased litigation and insurance premiums. There is also concern about the issue of discoverability and evidentiary disputes.***

However in Item F of the Paper’s Introduction we find a table of the Limitations law in other jurisdictions.

The scare-mongering generated by the WA government is clearly demonstrated to be absolutely unfounded, and only adds to the perception of the outsider that somehow laws of economics must be completely different in Western Australia than the rest of the world.

At Item F, we see 9 other comparable regimes.

Seven (7) of those nine exercise scope for judiciary extension of time.

Yet somehow they manage to avoid all the increased costs, litigation, increased insurance premiums, and consequent major problems of uncertainty that the WA government professes will occur in WA.

For what miraculous reasons does the WA government believe these issues are avoided in all these other jurisdictions, but we are not capable of doing so here?

In fact it can be seen at Item F that the 2 remaining examples of the 9 do allow extensions of time if just, up to a fixed period.

However, contrary to the WA government’s view of increased costs on society, both the two economies in the examples are less dynamic and have a history of requiring subsidies to attract business.

On the basis of the WA government's argument to reject the Law Reform Commissions recommendation of allowing extension of time when just and equitable, it can be seen that there is absolutely no reason at all; Other than to continue to deny the citizens of Western Australia a fair justice system.

Yet again at Item A of the Paper's Introduction it is stated: ***The government's position is that open ended limitation periods or broad discretionary mechanisms for the extension of time are not in society's best interest.***

Yet Item F clearly demonstrates otherwise.

Notwithstanding the objectives of a Limitations Act, it is not apparent that the Law Reform Commission recommendations suggest "broad discretionary mechanisms". The Commission's recommendations are similar to the 7 of 9 regimes demonstrated at Item F.

For the WA government to also state that it does not have faith in the appointed judiciary is also cause for concern.

*(Executive Summary Item 2.)*

What are the ramifications of this?

Continuing WA Limitations Act with FIXED extension periods, is only a slight improvement by degrees on the current Act.

In this regard, insurers, business, individuals, and government also blatantly abuse the current law in WA.

Time is bought by intentionally stalling, lying, and fabrication of information for the simple purpose of allowing the FIXED time period to pass.

Without discretionary extension as recommended by the Law Reform Commission, this abuse will continue.

**The simple alternative is to amend the legislation in accordance with the spirit of justice and by applying the law that is exercised in most other states.**

**That is;**

**If the time period of the Limitations Act has passed, a plaintiff may apply to the court for an extension of time.**

*If the cause of the delay is reasonable, such as;*

*The defendant can demonstrate that they have been lied to, or received incorrect information, or any reason that the court considers a valid reason for delay, and the time period passed does not prejudice the defendant unduly, an extension of time is granted for the claim to legally proceed, without a limitations defence.*

Without such discretionary scope, again WA will still be considered the Dinosaur State where justice is often lost and abuse of public power and law prevails.

### **SUBSTANTIATION OF SUBMISSION:**

Unfortunately the examples provided here of allegations of abuse of law are all by the WA government, it's own agencies, or government funded bodies.

No doubt private interests also utilise the same tactics, but by providing these examples, one can demonstrate that the mentality of thwarting the spirit of law is encouraged (by example) by the same agency that professes citizens' rights to justice are an instrument of public government.

FIXED time (without discretionary scope for extension) in the Limitations Act actively encourage lying, cheating, concealment, and corruption.  
From a pure law and legislative viewpoint, this public behaviour is entirely justified. It should not be.

**Nor should the apparatus that makes it so remain.**

### **ASBESTOS / MESOTHELIOMA**

In WA we are the World Capital for mesothelioma. This is not only due to the business of mining, packing, and transport of blue asbestos product and tailings, but also due to the WA government's practice of denial of occupational hazards. The WA public health department had full knowledge of not only the hazards of the asbestos, but also the absolutely extreme dust conditions that the workers in Wittenoom were exposed. They installed instruments, knew the results, but did nothing. (Ref: *Blue Murder*)

Some doctors in the system warned of the coming epidemic, but their warnings were ignored.

As workers began to die, more questions were asked and it was found that death was caused by exposure to the deadly blue asbestos. Workers Compensation claims were lodged, fought won or lost.

The real problem came when it was found that not only was the mining company negligent, but also the many state government agencies that concealed the hazards, used the tailings for civil works, or concealed facts from sick workers.

Being an industrial disease WA government was the insurer through the government Insurance Commission.

As numbers of dying workers increased, they realised they were victims of a cruel policy of being nothing but cannon fodder for industry and government.

Despite the obvious negligence many times over, the government insurer's defence was easy: WA's LIMITATIONS ACT.

Past six years, ...therefore no legal responsibility.

It was only through the sheer numbers of sick and dying in WA from asbestos related diseases that the Asbestos Diseases Society was formed and lobbied the WA government for justice for the victims. The WA government was simply *shamed* into making new law to allow asbestos victims to make civil claim for their injuries.

**It is worthwhile noting**, that the WA government did not use this opportunity to amend the Limitations Act to bring it into line with other states. Instead entirely new legislation was drafted, discriminating on the basis of impairment, allowing **asbestos only** injuries to be exempt from the Limitations Act. By this act, the WA government demonstrated it had no intention of improving the availability of justice to citizens, but simply caved in to the embarrassing large number of dying Wittenoom victims that could not be ignored. Under the Equal Opportunity Act discrimination based on impairment is illegal, yet the WA government went to this length, instead of overhauling the Limitations Act for all citizens in this state.

The WA government again exhibited the dinosaur mentality when Larry Graham MP was forced to introduce a private members bill only very recently that allowed the claim to continue after death by the victims' estate. ...As in other jurisdictions, but again not in the wonderful State of WA.

Prior to this, the WA Insurance Commission was frequently accused of the usual stalling and time delaying tactics by citizens and families affected by mesothelioma. The mode of operation was to use every available trick to stall. When the victim died, so did the claim. Once again Public Officers won brownie points, and the WA government would save some more money, despite being party to the cause of unnecessary death and totally avoidable suffering of innocent WA citizens.

**AGRICULTURAL PROTECTION BOARD (APB) WORKERS POISONED  
KILLED (by definition of the WA Criminal Code) BY THE WA GOVERNMENT**

At the time of writing this submission, several former APB workers have moral claim against the WA government for negligence of duty of care and causing illness and death of workers exposed to chemical illegally supplied by the WA government to the workers.

Many workers were employed on Aboriginal employment schemes and / or live in remote areas unable to gain redress to their claims and health needs.

Around 50 of these former workers are now dead. They are not dying of old age. Yet the WA government has denied responsibility despite the availability of evidence supporting the workers' claims. Although the WA government has immorally, and probably illegally, stated that this evidence does not exist.

Under the current Limitations Act, these workers can not initiate the claim via legal process, because although given ample opportunity, the WA government will not waive it's right to the Limitations defence.

**So although on one hand they deny responsibility, on the other they will not allow normal legal process to prove so.**

Given that the proposed changes to the Limitations Act will not be retrospective (*Discussion Paper, Exec Sum #12*), it is doubtful whether the new legislation will be of any assistance to the dying workers and their families.

However the point by this example is to demonstrate that if personal injury is to be recognised as "the time of discovery", this will and can be open to argument.

The APB workers "discovered" they were sick due to the supplied chemical twenty years ago. Today the WA government's argument is that there is still no discovery that the illnesses (only cancer) are associated to the alleged offending chemical.

**In fact the denial of basic Workers Compensation entitlements has been on this basis.**

Yet it is quite foreseeable that the WA government will support the workers claim of discovery 20 years ago to bar them from making civil claim due to being outside the fixed period of limitations, simply because it suits the legal defence.

Such is the ambiguity of the WA government's legal schizophrenia, we even have a newspaper reporting that the WA Crown Solicitor's Office was arguing that the State of Western Australia was a person, even though this has previously been proven otherwise.

With regard to the APB workers' case; I believe there is also ample evidence that the WA government will spend large amounts of public money to generate misleading "expert" reports to denigrate workers claims, suppress evidence of relevant facts and official statements and submissions.

In other words, what chance does a claimant have if before they even initiate action, the defendant such as the WA government has employed a small army of "independent" investigators or service providers to ensure that the claimant has the wrong information and therefore will not make claim in the time period required.

**As a perfect example of this I submit a letter from the government funded Aboriginal Legal Service informing workers of completely wrong information.**  
(See Attachment 1).

### **LEAD POISONED WORKERS NOT INFORMED OF CONTRACTING NOTIFIABLE DISEASE**

This is another case that highlights the requirement for extension of time by judiciary discretion over and above fixed limitations periods.

The WA government is aware that workers in this state have been exposed to extremely high levels of lead during occupational activities.

Despite monitoring blood lead levels of workers and being aware of the high rates of exposure the Health department of the day did not inform the workers of the severe and dangerous nature of their exposure. Nor did the doctor advise the workers of the requirement for immediate medical attention and hospitalisation that was required by established and conventional medical practice.

Even though one worker "discovered" he was sick early, the "experts" at the WA Health department advised the worker there was "nothing to worry about".

Yet these same officials were obliged to make official notification to the Commissioner of Public Health, as is the practice for notifiable diseases.

Later inquiries from the worker's private physician also received a response indicating nothing serious.

Another worker has also requested blood test results from the WA government and has been supplied with some test results all indicating "safe" blood lead levels. Yet he is fully aware he had many more blood tests and was removed from duties due to his high levels and collapsed at work due to illness.

WorkSafeWA have advised him that no other records exist.

**The writer of this submission has personally seen records of the worker that WorkSafeWA say do not exist.**

Interestingly, this same advice of lack of records was also supplied to Alannah MacTiernan MLA when she tried to recover records for another lead-exposed worker. However in further correspondence, the department contradicted itself in referring to records that it earlier advised did not exist.

In regards to the lead poisoned workers, there is also evidence of the Crown Solicitors Office supplying fabricated facts and misinformation to the WA Attorney General, ensuring more stalling by the generation of red herring arguments to buy time.

These workers are now permanently injured.

There probably are others, but they have never been informed.

**Therefore how can they claim damages for injuries with such wide-ranging symptoms, for a disease that they have deliberately NOT been informed by the State they have contracted?**

To initiate civil action against a defendant such as the WA government is dependant on receiving correct facts from various government agencies in a timely manner.

The circumstances of the lead-poisoned workers are similar to the aforementioned asbestos workers and the former APB worker.

No doubt there are others affected in different circumstances.

All are victims of WA government negligence, deceit, and active concealment of records. All are victims to the injustice of the WA government's own fixed period Limitations Act, which the same government uses to deny its own citizens justice.

Some insurers would not insure asbestos workers in 1913 due to the recognised risk. Yet in WA the government knowingly sent workers to mine deadly blue asbestos until mine closure in 1966.

In WA, asbestos victims only won the right to sue after the 1983 Act was introduced. By that time many citizens had already died. Larry Graham's bill for claims not to die with the claimant legislated about 2003. It took about 90 years for the WA government to catch up with the justice of a recognised risk.

The former APB workers have been seeking justice against lies for more than 20 years. The WA government still goes to great lengths to refuse responsibility and deny innocent citizens justice.

The lead-poisoned workers have got no sense from the WA government for more than 8 years since "discovering" they had contracted the disease. The WA government has only generated more misinformation about the circumstances.

In each of these cases, had "NORMAL" justice of public government been provided, the government of WA would not be able to hide behind the fixed period Limitations defence. It is probable that claimants would not have been even required to go through complete court process, simply because the solid integrity of the victims' evidence, and the actions of the WA government against its own citizens is so indefensible.

Without the threat of court ruling, the WA government currently does nothing for the citizens it has caused injury or death. More importantly, there is no incentive for improvement of internal systems that allow such criminal negligence.



## **Discussion Paper ITEM Q - FRAUDULENT AND IMPROPER CONDUCT**

It is noted that the government supports entitlement for a proposed plaintiff to apply to a court to vary a limitation period where fraud or other moral turpitude by the defendant caused the plaintiff not to bring proceedings within time.

It is easy to establish this cause in the case of criminal conviction, however as with the examples demonstrated above against negligence and actions of the WA government it is near impossible to secure convictions of public officials, unless it apparently satisfies some political motive.

There are clear acts of criminal conduct causing injury or death (many times over) in the examples supplied above.

Yet despite the hundreds of deaths, no public officer whose duty it was to avoid these fatalities and injuries to working WA citizens, has been convicted of any serious crime.

One might believe that the WA government's view is that all these people died by their own decision to poison themselves, or by simple bad luck.

The WA government has certainly made zero effort to find those persons responsible for the killing and injuring of our innocent citizens, who have done nothing wrong apart from trying to make an honest living.

### **IF WA government is involved: No charges, no convictions, therefore no official evidence of fraud or improper conduct.**

As demonstrated in the three known examples above, all injured parties are victims of WA government negligence and subsequent improper conduct, yet no charges have ever been laid against the public officials personally responsible for the injuries and death. So although clear evidence exists of the plaintiffs' delay being caused by improper or criminal conduct, no substance exists to support the legal requirement of *Fraudulent or Improper Conduct*.

**On sheer statistics, it seems it can be demonstrated that the WA government is the major offender** in this state for negligence causing injury or death.

Therefore how can this cause for delay be supported when the WA government has so many mechanisms in place to avoid open criminal investigation, and discovery of true facts?

**This is a fair question, because although there are dead bodies everywhere, nobody is apparently responsible.**

Obviously something is wrong.

We have what I believe to be the main offender causing personal injury and death in this state, that is often also the regulatory body, the advisory agency, and frequently even the insurer.

Therefore what is the likelihood of timely release of relevant evidence?

This is the WA government with a history of continually acting in a self-serving capacity to utilise the fixed period limitation mechanism to defeat justice.

**Scope for extension of time due to fraud or improper conduct will be mostly useless against the MAJOR OFFENDER in this state while the WA government operates outside the law of the land.**

For example, I have written to both the Attorney General and the Premier about breaches of the WA Criminal Code by government officers. (See Attachments 2 & 3)

The police requiring to be responsible for their public resources, fail to take on the Crown Solicitor's Office and Attorney General's Office despite sufficient evidence. They need to be reasonably sure of successful prosecution before pursuing charges. Taking on City Hall is tough and expensive. The Ombudsman is not allowed to investigate the AG or the CSO due to restrictions. The Corruption and Crime Commission are also government employees who fear for their job security if they upset the big fish.

**Along with the Limitations Act Reform, in an effort to allow full benefit of amendments, the WA government practical criminal immunity needs to be removed. The upside of this is that professional responsibility will be restored to public officers and less avoidable deaths and injuries will result.**

**In the case of government being the defendant in personal injury or other civil claims, the no fault / denial mentality needs to be banished. Human error does occur. People accept honest mistakes. Generally, mistakes are not criminal. Concealment of facts, denials, omission of records, and professional deceit is criminal, and should be treated as such. Each opportunity of plaintiffs' claims should be used to improve the public government system and procedures to avoid similar recurrence.**

**Discussion Paper ITEM S – STATE AND STATE ENTITIES**

**This submission supports Item 11 of the Commission's recommendations: Ordinary Limitation rules should apply in actions against public authorities.**

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Attachment 1	Letter ALS
Attachment 2	Premier
Attachment 3	Organised Crime.

ATTACHMENT 1

How can plaintiff with little formal education gain justice within fixed time limitations when the government funded legal agency provides such information? Why did the (government funded) ALS inform poisoned workers of incorrect legal advice?

Did the ALS receive pressure to cease assistance to the workers who were poisoned while in the employ of the WA government?



**ABORIGINAL LEGAL SERVICE  
OF WESTERN AUSTRALIA (INC.)**

Your Ref: [REDACTED]

Our Ref: [REDACTED]

[REDACTED]

Dear Sir,

**RE: CHEMICAL EXPOSURE**

We confirm that we opened a file on your behalf to investigate the possibility of commencing proceedings against the State of Western Australia for the conduct of one of its agencies namely the Agricultural Protection Board in exposing you to harm in the course of your employment and thereby causing you personal injury.

The writer has recently had cause to review your file and regrets to advise that he is of the view that it ought be closed as there is no cause of action.

The basis for this view is that there is a limitation period against commencing proceedings against the State of 6 years. Given that the conduct complained of occurred in 1984 it is now clear that the 6 year limitation period has long expired.

Additionally, although you may have a claim for workers compensation we regret to advise that the limitation period for workers compensation claims is 1 year after the incident. Although in certain circumstances the court may be prepared to extend the limitation period for workers compensation claims we do not consider that a court would exercise this discretion given the passage of time between now and the work performed by you.

Accordingly we now propose to close our file.

Yours faithfully,

**This advice supplied  
to a former APB chemically poisoned  
worker.**

**DAVID MACLEAN**  
Senior Solicitor (Civil)  
for **DAVID IMLAH**  
Principal Legal Officer

**This advice is contrary to the  
the Workers Compensation  
and Rehabilitation Act**

**84I (1) (d)**

PERTH - HEAD OFFICE

1st Floor, Piccadilly Suites, Nash St, East Perth, WA - Post Office 8194, Stirling Street, East Perth WA 6849  
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## ATTACHMENT 2

It is suggested in this submission that statistically the WA government is the biggest single offender of killing or injuring citizens through acts of alleged negligence, lack of duty of care, or professional malpractice.

Yet if a delay to is caused by fraudulent or improper conduct that may, under the proposed new Limitations Act, be a justifiable reason to apply to the court for an extension of time. How do you substantiate improper conduct or criminal activities when the WA government has not pursued any charges for the hundreds of deaths and injuries already caused by its agencies?

The Premier says Public Officers are not immune from prosecution.

**Why are so many innocent citizens dead, and no convictions?**



Premier of Western Australia



Our reference: 1112 MB: BL

Mr A Hobday  
PO Box 100  
ARMADALE WA 6992

Dear Mr Hobday

Thank you for your comments to me dated 29 November, noted on the copy of your letter to the Editor of *The West Australian* that you forwarded to me.

You have asked why Government decision-makers are "effectively exempt from being charged under the Criminal Code."

I can assure you that there is no immunity or protection given to Government officers and employees for conduct which breaches the Criminal Code or indeed any other statute creating criminal offences.

I can also assure you that this Government takes a strict attitude to public officers that engage in misconduct, including criminal misconduct. It is for this reason that we introduced the *Corruption and Crime Commission Act 2003*. This Act creates a strong, independent Commission to investigate misconduct, including criminal misconduct, by public officers.

If you have a specific complaint of criminal misconduct by a public officer that you would like investigated, I suggest you write to the Corruption and Crime Commission at PO Box 7667, Cloisters Square, WA 6850.

Yours sincerely,

DR GEOFF GALLOP MLA  
PREMIER

- 8 JAN 2004

### ATTACHMENT 3

Letter from Premier at Attachment 2 is response to this correspondence.  
How does a plaintiff apply for a limitations extension if there is active concealment of improper activities and fraudulent actions by WA government agencies?

**Other correspondence items to the Attorney General specifically addressing several and particular breaches of the WA Criminal Code by public agencies and officers remain unanswered.**



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P.O. BOX 1000  
ARMADALE WA 6992  
AUSTRALIA

#### LETTERS TO THE EDITOR (also Premier & AG)

West Australian Newspaper, Perth WA

November 7, 2003

Dear Editor,

I refer to last week's media report regarding a behind the walls look at the Gypsy Joker bikers' clubhouse.

State Attorney General, Jim McGinty was quoted:

***"You're dealing with people who, through their own organisation, are able to go about the place engaging in organised crime and engaging in murder."***

My public advice to Jim McGinty is he should get his own responsibilities in order, instead of setting the example of how his government cover up the organised crime of murdering innocent citizens.

To continually allow our own government agencies to inflict permanent injuries on innocent citizens with the full knowledge that death will be the result is by definition; murder. For State government agencies to collude in concealing the crime is by definition; **organised crime**. (See WA Criminal Code and the number of asbestos, APB chemical workers, etc dying)

The practice of the State government concealing facts and misinforming workers and citizens of fatal hazards did not end with the asbestos debacle in Wittenoom.

The shameless deception continues as former Agricultural Department workers suffer and die due to State government deceit, denying them legitimate entitlements and medical costs.

Workers are not informed of contracting diseases and are denied access to their own records. Communities are frequently misled about toxic substances located within their environs by the government and the subsequent results to people's health and water supply.

I have formally advised Mr. McGinty of several breaches of the criminal code by government officers, and additionally reminded him of his position as Attorney General being knowledgeable of these crimes and the ramifications of his failure to act. (April 15, 2002)

I have been fighting the Attorney General's office for five years about the cover-ups of lead poisoned workers in WA.

Carl Drysdale in Derby has been fighting for 23 years to help former Dept of Agriculture workers and the families of dead and dying.

The Asbestos Disease Society is now an iconic Western Australian institution with WA being the world capital for those dying of another avoidable death, mesothelioma.

So if the Gypsy Jokers and like amateurs consider themselves "outlaws", they should have a look at Jim McGinty and the Government of Western Australia to see real professionals of organised crime engage in murder.

Not only do they do it on epidemic scales, but also the Attorney General ensures they get away with murder, and many times over.

ORIGINAL SIGNED: AFH