



## JML E-Newsletter: The Limitation Period

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In business and personal life, it may become necessary to enforce your legal rights by way of Court action. If you find yourself in that position, it can be confusing and difficult to find a starting point. It is always paramount to seek legal advice soon after the cause of action to avoid both the future complications and consequences of missing the limitation period.

### What is the limitation period?

In each State of Australia, legislation imposes a time period called the limitation period by which proceedings must be commenced for a claim of dispute. The limitation period is the maximum period of time which can elapse from the time a cause of action arises until the corresponding commencement of court proceedings.

### Why is it important to not miss the limitation period?

Over time, evidence can become harder to gather and it can become more difficult to determine what damages are necessary for a cause of action. Limitation periods prevent individuals from instituting a claim after an exceptionally long period and ensures that the courts hear matters which are reasonably capable of having an exact result; which balances the interests of all parties and ensures the effective administration of justice. Court proceeding commencement should not be delayed, otherwise a limitation period could be missed resulting in the litigant losing their ability to enforce their legal rights.



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## When does the limitation period start?

The limitation period starts when the cause of action accrues. When the cause of action arises and the length of the limitation period differs depending on the type of action you are seeking (e.g. contract, negligence etc). The limitation period is halted when court proceedings commence.

## Example of case dismissal due to missing a limitation period:

Potential litigants should be aware that a court will still have the power to dismiss or stay an action based on delay in bringing a claim. In *Reid International Pty Ltd v Ron Farris Real Estate Pty Ltd*, the Supreme Court of Western Australia dismissed an action on the basis that the three year delay between the breach and commencement of proceedings amounted to an abuse of process.



## Always consult a lawyer first!

Limitation periods can become a complex area of law if left to chance. We especially recommend that to avoid this issue completely, you seek legal advice as soon as possible if you suspect you have a cause of action. Time waits for no one!

## Different causes of action and associated limitation periods:

### Personal Injury:

Causes of action relating to personal injury claims cannot be commenced if 3 years have elapsed since the cause of action accrued.

### Defamation:

An action relating to the publication of defamatory matter cannot be commenced if one year has elapsed since the publication.

### Trespass to the Person:

An action for trespass to the person including assault, battery or imprisonment cannot be commenced if 3 years have elapsed since the cause of action accrued.



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# A Q & A with Prof. Dr. Gerhard Janssen

## What is your advice for law graduates who are trying to get legal experience?

After graduation, it is important to get into an environment that suits your ambition. It is not necessary to fixate yourself on an area of law in which you want to work for the rest of your life. It is rather unlikely that your opinions and the choices you make upon entering the legal community will be the final choice for your life with regard to the work and subjects you will work on. It is more important to make sure that the team and the working environment you are joining, as well as the way in which the law is approached, suit you. Being motivated from the first moment will help you to join and enjoy the fantastic areas of work that law can offer you for the rest of your working life.



## How do you think the Australian legal industry will change because of COVID-19?

It is a learning process, which has only just started. The use and support of technology as well as the way in which lawyers approach clients and their own team will change. The overused phrase “never waste a good crisis” still rings true. Through the reduction of costs and the trust that is paid back by a good team during the time of the COVID-19 crisis will create new pathways for the management side of the law firm. Clients will be able to see the difference in their day-to-day communication with the law firm. They will come to realise who continued to look after them during a time in which the legal community had to prove that there is a reason we are privileged and that we continue to be seen as an essential industry in Australia.

## What is the biggest culture difference between the German & Australian legal community?

When I first came to Australia, I enjoyed the respect shown between all people in court and during out-of-court negotiations. Having completed an entire study and graduated under Australian Law, I may say that a lot of the differences discussed nowadays between people within the legal community do not exist. It is fair to say that due to the lack of knowledge about the German legal system, colleagues have tried to stress the differences. They may have learnt about some keywords but ultimately speak without knowing the meaning and real background of the German system. While the legal systems are not so different, I had to adjust to the reduced working hours and different work ethics in Australia.

It was a significant challenge to accept that the legal community does not necessarily define itself as a 24/7 service provider. There are good justifications for the Australian system, which still offers the lawyer a private life. This in turn influences the relationship between the lawyer and the entire team within the office. I have yet to fully adapt to the Australian system in this regard and, from time to time, get a little reminder from the people surrounding me.



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## Who is “Prof Criminal Law”?

Prof Criminal Law (Prof Strafrecht) was a nickname given to me by the media back in Germany before my emigration to Australia. Fighting for Human Rights in high profile criminal cases attracted the attention of a number of newspapers and TV stations. Despite Janssen + Maluga Legal’s effort to remain as a silent law firm, some of the cases - involving international syndicates or major German companies in corruption cases - were intensively monitored by the media. Of a similar nature is our current work as lawyers of the victims of the Loveparade catastrophe, which is generally seen as the court proceeding with the highest media interest in Germany since the establishment of the Federal Republic of Germany. In all honesty, when I first read the nickname, I thought it was a joke, and most definitely didn’t expect it to last.

## What is your favourite football team and why?

My favourite football team is Schalke 04. It is a working-class team from the “coal and mining heart of Germany” – the Ruhr area. The atmosphere in the stadium and the fans form the heart of the club. Even though there is no big investor in the club, Schalke 04 have on a couple of occasions won the German Cup as well as the 1997 UEFA cup. Despite the fact that Schalke hasn’t won a German Bundesliga Championship since 1958, every home game is sold out. The sensation of 63,000 people singing as one, regardless of whether they win or lose, is incomparable.



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