

# Adherence to time limits essential

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Adherence to time limits – both in relation to commencing proceedings and once proceedings are issued – is one of the most important areas of practice and one where the Courts are interpreting time limits more strictly than before. Despite the importance of time issues Law Claims continues to see claims based on missed time limits.

If the relentless focus of Law Claims on issues concerning time limitations seems tiresome it is because time limitations remain one of the largest areas of claims against practitioners. This shows no sign of changing and the Courts are giving every indication that time limitations provisions will be interpreted strictly. See, for example, *Ireland v Wightman* [2014] SASFC 52 and the Riskwatch article in the November 2014 *Law Society Bulletin*.

In the September 2014 Riskwatch article the issue of missed time limits under the *Criminal Assets Confiscation Act 2005* (SA) (CAC Act) causing a number of claims against criminal lawyers was addressed. Under the CAC Act a person whose property is subject to a restraining order under that Act (i.e. because of an allegation that the relevant property is the instrument of, or the proceeds of, a serious offence) is subject to a strict time limit of six months from the date of conviction to apply to exclude that property from the restraining order and to prevent forfeiture to the Crown. Such applications could be made on the grounds, for example, that the property in question was not the proceeds of a serious offence.

The September 2014 article referred to the decision of Judge Tilmouth in *DPP v Hall* [2014] SADC 156 which held that no extension of time in order to bring an application to exclude property from restraint/forfeiture was available. The applicant in that case appealed from this decision to the Full Court, submitting (in part) that Judge Tilmouth erred in his application of s 47 of the *Limitation of Actions Act 1936* (SA) (LoFA Act). This section (s 47 (1)) provides that where an Act provides for a time limit of less than 12 months, then notwithstanding that limitation the relevant action may be brought within 12 months from the time the cause of action arose. Sub-section (2) (d) of s 47 also provides, however, that s 47 (1) does not apply to any action where “the nature or purpose of the limitation is, in the opinion of the court, essential”.

Recently, The Full Court unanimously confirmed Judge Tilmouth’s decision - *Hall v DPP* [2015] SASFC 19. The major issue on the appeal was whether or not the six-month limitation for the bringing of the application to exclude the property from restraint/forfeiture was “essential” in the scheme of CAC Act. The Full Court held that the six-month time limit was essential, underlining the strict approach that the Courts are now taking to the application of time limits.

In the leading Judgment in the Full Court, his Honour Justice Gray (with whom Justices Stanley and Parker agreed) also made some interesting comments about s 47 of the LoFA Act which signal an interpretation of that section which would limit its usefulness and which are consistent with a tighter approach to time issues.

Echoing the comments of his Honour Justice Cox in *Re Litchfield* (1989) 51 SASR 87, Gray J suggested that s 47 would only apply to extend six-month time limits

to 12 months to a time limit which was contained in legislation passed prior to 27 March 1975, being the date on which s.47 came into force in its present form. This is because there would be little point in Parliament legislating for a time limit less than 12 months (such as the six-month limit contained in the CAC Act) if it was intended that s 47 (1) would have application and automatically extend that period to 12 months.

Further, Gray J also referred to s 75 of the CAC Act which provides that any extension of time in which to seek an exclusion order cannot extend beyond 15 months from the date of conviction. This shows that, even if the exclusion application is made within the initial six-month period, it must be prosecuted diligently, and, presumably, to conclusion with the 15 month “long stop” period.

**The bottom line is that adherence to applicable time limits is one of the most important aspects of legal practice.**

So, as has been the experience of Law Claims in other time limitation claims, the issue of an originating application is just the beginning; for example there has been a spate of claims recently involving instances where practitioners have issued proceedings in respect of motor vehicle accidents within time, but then failed to serve them within the time limited for service under the relevant Court rules.

The bottom line is that adherence to applicable time limits is one of the most important aspects of legal practice.