



TASMANIAN INDUSTRIAL COMMISSION

CITATION: [2026] TASIC 45 - T15227 of 2025 – Robert Karl Gozzi v ACU Powder

PARTIES: Robert Karl Gozzi (Applicant)

ACU Powder (Respondent)

SUBJECT: Industrial Relations Act 1984, s 29(1A) application for hearing of an industrial dispute

FILE NO: T15227 of 2025

HEARING DATE(S): 14 October 2025 (President D J Barclay)

HEARING LOCATION: Tasmanian Industrial Commission, Hobart

DATE REASONS ISSUED: 4 August 2026

COMMISSIONER: Commissioner S D Thompson

CATCHWORDS: Industrial law – Long service leave entitlements – Dispute about Failure to pay long service leave after more than six years – Whether statute-barred by the *Limitation Act 1974* (Tas) – *Blackburn v Tamanian Paints Pty Ltd* wrongly decided.

Procedure – Limitation of actions – Interpretation of the *Limitation Act 1974* (Tas) – whether the *Limitation Act* extends to claims for money in administrative tribunals – Consideration of ‘action’ and ‘court’ – Broad interpretation preferred consistent with the *Limitation Act*’s context and purpose.

REPRESENTATION:

Bill Fitzgerald for the Applicant

Mark Rinaldi for the Respondent

ROBERT KARL GOZZI v ACU POWDER

REASONS FOR DECISION

HOBART, 4 AUGUST 2026

[1] Robert Karl Gozzi (the Applicant) has claimed payment of long service leave (LSL) which he says he was entitled to but did not receive for the period 2003 to 2013. His putative former employer, ACU Powder (ACU, or the Respondent), contends that Mr Gozzi's claim is barred by the *Limitation Act 1974*, s 4(1)(d) because it has been made more than six years after any employment ended. ACU also disputes that it employed Mr Gozzi, although that issue need not be determined now.

[2] The issue that I must decide is whether the *Limitation Act* extends to a claim for LSL payment under the *Industrial Relations Act 1984* (IR Act), s 29(1A).

[3] For the reasons which follow, I accept ACU's submission that Mr Gozzi's claim is statute barred. The application must therefore be dismissed.

Mr Gozzi's application

[4] Mr Gozzi says that he was employed by ACU between 2003 and March 2013 but did not receive payment for LSL in respect of that period. ACU says that Mr Gozzi was not entitled to LSL because he was an independent contractor rather than an employee.

[5] Mr Gozzi's claim, which was not made until July 2025, is made under the IR Act s 29(1A)(c) and (d). The provision allows a former employee to:

apply for a hearing before a Commissioner in respect of an industrial dispute relating to:

...

(c) a breach of an award or a registered agreement involving the former employee; or

(d) a dispute over the entitlement to long service leave, or payment instead of any such leave, or the rate of ordinary pay at which any such leave or payment is to be paid in respect of the former employee...

[6] The *Long Service Leave Act 1976* (LSL Act) governs long service leave entitlements. It is unnecessary to consider Mr Gozzi's entitlements in detail as the issue that I must determine is one of the correct statutory construction of the Limitation Act and the IR Act.

[7] Before considering the legislative provisions, it is appropriate to explain why I am determining this matter. Mr Gozzi's application was allocated to Barclay P, who received written and heard oral submissions and reserved his decision on the preliminary issue raised by ACU. But Barclay P's appointment ended before he determined the issue. The application was subsequently allocated to me. In response to a letter sent on 1 July 2026, the parties agreed for me to determine the matter based

on their written submissions and transcript of submissions before Barclay P. I have done so.

Limitation Act 1974

[8] ACU's objection is based on the *Limitation Act*. Section 4(1) provides:

4. General period in actions of contract, tort, &c.

(1) Except as otherwise provided in this Division, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued, that is to say:

- (a) actions founded on simple contract (including contract implied by law) or founded on tort, including actions for damages for a breach of statutory duty;
- (b) actions to enforce a recognizance;
- (c) actions to enforce an award, where the submission is not by an instrument under seal;
- (d) actions to recover any sum recoverable by virtue of an enactment, other than a penalty or forfeiture or a sum by way of penalty or forfeiture.

[9] Section 4 prevents certain *actions* from being brought after six years. It is agreed that Mr Gozzi was last paid by ACU sometime in 2013. Accordingly, the six-year period has expired. But that is not the end of the matter. Mr Gozzi contends that his claim under the IR Act, s 29(1A) is not an 'action' within the meaning of the *Limitation Act* such that the six-year period is inapplicable. ACU contends that it is.

[10] For completeness, I record that Mr Gozzi does not rely on any of the exceptions prescribed by the *Limitation Act*, Pt III.

Is a claim for payment under the IR Act, s 29(1A) an 'action' under the *Limitation Act*?

[11] The starting point is to identify what is an 'action' under the *Limitation Act*. Section 4(1)(d) includes "actions to recover any sum recoverable by virtue of an enactment...". Here, Mr Gozzi relies on his entitlement to LSL under the LSL Act. To the extent, as was faintly raised during submissions, that Mr Gozzi relies on a *contractual* entitlement to LSL, I would be bound to dismiss his application in any event because the Commission lacks jurisdiction with respect to contracts at common law.

[12] More generally, what is an action under the *Limitation Act*? Section 2(1) defines 'action' as "includ[ing] any proceeding in a court of law".

[13] The Commission, established by the IR Act, is not a 'court of law'. It is an administrative body exercising administrative, not judicial, power. So much is consistent with well-established authority such as *Blue Ribbon Products Pty Ltd v*

*Tasmanian Industrial Commission (No 2)*¹. So much is conceded by ACU and is consistent with the approach taken to similar industrial tribunals' statutory schemes.

[14] But that is not the end of the matter. ACU nonetheless submits that Mr Gozzi's claim is an 'action' for the purposes of the *Limitation Act*. This is a question of statutory instruction.

[15] The *Limitation Act* must be interpreted according to its text whilst, at the same time, having regard to its context and purpose: *SZTAL v Minister for Immigration and Border Protection*.² An interpretation which promotes the Act's purpose or object is to be preferred over one which does not: *Acts Interpretation Act 1931*, s 8A.

[16] There are several factors supporting ACU's interpretation.

[17] First, the *Limitation Act's* context and purpose point towards 'action' not being limited to a court proceeding but extending to a claim or proceeding in some form of tribunal. The Act's long title describes it as:

An Act to consolidate with amendments certain enactments relating to the limitation of actions *and arbitrations* [emphasis added].

[18] These express words suggest an intention to extend the Act's operation beyond actions in court to arbitrations. As ACU submits, the Act's "obvious purpose... is to prevent claims being brought after long periods of time beyond the prescribed limitation period".

[19] Second, the definition of 'action' in s 2(1) of the *Limitation Act* uses the word 'includes'. Were an action to be *limited* to proceedings in courts of law, the word 'includes' would have no work to do. Parliament is presumed not to have included an unnecessary word. Having said that, I accept that 'action' may be a word of protean meaning. In some contexts, it may have a narrow and technical meaning: see, for example, the *Supreme Court Rules 2000*, r 88 (read with rr 89 and 90 which relate to applications). But such a narrow and technical meaning to be adopted would render the *Limitation Act's* reference to an action even narrower than the express definition in s 2 which refers to "any proceeding in a court of law". Such a result would be absurd. It would be inconsistent with s 2 and with the Act's long title.

[20] Third, there is superior court authority supporting ACU's broad interpretation. In *China v Harrow Urban District Council*,³ the Queen's Bench Division considered the *Limitation Act 1939 (UK)*, ss 2 and 31. Those provisions were in strikingly similar terms to ss 2 and 4 of the *Limitation Act* that is before me. Lord Goddard CJ held that "the legislature meant to bring every class of litigation, before whatever tribunal it might come, within the ambit of the statute".⁴ Havers J held that the Act extended to "proceedings to which the term 'action' would not normally be appropriate".⁵

[21] In *Jones v Shropshire Council*,⁶ the Queen's Bench Division again considered the issue, this time in the context of a local council's planning enforcement decision. After considering *China v Harrow Urban District Council*, Mould J concluded:⁷

¹ [2004] TASSC 28 at [19] (Blow J).

² (2017) 272 CLR 362; [2017] HCA 34 at [14] (Kiefel CJ, Nettle, and Gordon JJ).

³ [1954] 1 QB 178.

⁴ *Ibid*, at 183.

⁵ *Ibid*, at 190.

⁶ [2025] EWHC 365 (Admin).

⁷ *Ibid*, at [53].

Applying that analysis to the class of action now described in s 9(1) of the 1980 Act, the class of action for which a time limit of six years is prescribed in that section is concerned extends to include any proceedings brought in a court of law to recover sums recoverable by virtue of an enactment. *In the modern courts system, I would accept that the class may extend also to proceedings brought in a tribunal for that purpose.* [Emphasis added]

[22] In *Ajaimi v Giswick Pty Ltd*,⁸ M Osborne J considered the *Limitation of Actions Act 1958 (Vic)* (Victorian Act), which adopted the exact same definition of ‘action’ in s 3 as s 2 of the *Limitation Act*. His Honour held it to extend to “a proceeding in a court (or equivalent)”.

[23] There are, however, several cases supporting Mr Gozzi’s interpretation. It suffices to refer to two. The first was candidly identified by counsel for ACU. The second was relied upon by Mr Gozzi and is the crux of his case.

[24] ACU referred me to *Lanigan v Circus Oz & Ors* [2022] VSC 35. That was an appeal from a decision of the Victorian Civil and Administrative Tribunal (VCAT) in respect of a claim under the *Equal Opportunity Act 2010 (Vic)*. I decline to follow *Lanigan*. In determining that VCAT was not a “court” for the purpose of the definition of ‘action’ in the Victorian Act, McDonald J appears to have focused on the taxonomical and jurisprudential question of whether VCAT is a court (for example, for the purposes of Ch III of the *Commonwealth Constitution*) without considering the extended definition in the Victorian Act. His Honour also reasoned that the appellant’s anti-discrimination claim was not an ‘action founded tort’ for the purposes of the Victorian Act, at least in part because the *Equal Opportunity Act* expressly stated that a contravention does not create civil liability unless otherwise provided. *Lanigan* is distinguishable on that basis. Here, Mr Gozzi relies on a statutory entitlement to LSL.

[25] Mr Gozzi relies on *Blackburn v Tamanian Paints Pty Ltd*,⁹ which is another decision of this Commission. Abey DP held that the *Limitation Act* did not apply because a claim for long service leave under the IR Act, s 19A was not an action and the Commission was not a court.

[26] I digress to observe that *Blackburn* was considered, albeit briefly, by the Full Bench in *J K Peddell and S E Peddell trading as Bing-I-Oysters and Nowak*.¹⁰ The majority noted *Blackburn* and expressed the view that “the application of the [Limitation Act] to the TIC has not been authoritatively determined”. I do not consider that statement to be an expression of doubt about the correctness of *Blackburn*. That would be reading too much into a single sentence. Instead, I consider it to be an uncontroversial statement of fact: a decision of a single Commissioner does not ‘authoritatively determine’ an issue for the Full Bench.

[27] Returning to *Blackburn*, I am not bound by the Commission’s previous decisions save for those of the Full Bench. However, comity suggests that I should follow an earlier decision with respect to statutory construction unless satisfied that the decision is clearly wrong: *McKenzie v Tasmania* [2011] TASSC 42 at [29]. With great respect to Abey DP, I am of the view that *Blackburn* is clearly wrong. I consider that the Commission took an erroneously narrow view of the meaning of ‘action’ in the *Limitation Act*. The Commission reasoned, correctly, that it was an administrative

⁸ [2022] VSC 131 at [178]-[179].

⁹ T13749 of 2010, Abey DP, 16 August 2011.

¹⁰ T13901 of 2012, Leary P and Deegan C, 8 August 2012

tribunal rather than a court and that it exercised administrative rather than judicial power. It then appears to have reasoned that an *action* in the *Limitation Act* is limited to a court's exercise of judicial power. As I have endeavoured to explain above, such an approach is inconsistent with the *Limitation Act*'s context and purpose. It is also inconsistent with the modern approach to statutory interpretation as summarised in *SZTAL*.

[28] I repeat that the Commission is not a *court* and Mr Gozzi's application is not an *action* in the narrow, technical sense of the word. But neither of those conclusions is dispositive. The *Limitation Act* is not limited to courts, nor is it limited to technical actions.

[29] I hold that the *Limitation Act* extends to disputes in respect of long service leave in s 29(1A) of the IR Act. Although unnecessary to decide, it also appears, for the same reasons, that the *Limitation Act* applies also to other claims for payment under sub-s (1A), including breaches of awards and agreements (subject to an exception) and disputes about severance pay.

Conclusion

[30] The *Limitation Act* applies to Mr Gozzi's application. The application is statute-barred. It is therefore unnecessary to consider the merits of Mr Gozzi's claim or ACU's reliance on the (putative) three-year limitation period in the LSL Act, s 15(1).

[31] The application is dismissed.



S D Thompson
Commissioner