

Limitation Periods in New South Wales

Statute of Limitations - Criminal Procedure Act (NSW) 1986

Last year a client walked through my door who was charged with his third Drive Whilst Disqualified offence. This unhappy young man was facing the very real prospect of going to prison. He avoided this fate because I was able to show that the police had failed to lay the charge within the six month limitation period. As such, the court had no jurisdiction to hear the matter and he walked out of court a greatly relieved free man.

This article will explain in simple terms how the limitation period applies in the state of New South Wales. For every matter, counsel must determine:

1. Whether the six month limitation period applies to the offence,
2. When the limitation expires, and
3. When legal proceedings were commenced.

The Six Month Limitation Period

Section 179 Criminal Procedure Act 1986 provides that charges for summary offences must be laid within six months from when the offence was alleged to have been committed. For example, if you were detected driving whilst disqualified on 1 January then the police would have up until 30 June to commence proceedings.

When is a proceeding commenced?

Once you have calculated when the six month limit expires, the next step is to determine when the proceedings were commenced. This is not any of the following:

- When the Defendant was arrested,
- When the Court Attendance Notice was created by the informant, or
- When the Court Attendance Notice was served on the defendant.

Section 178(1) Criminal Procedure Act provides:

'All proceedings are taken to have commenced on the date on which a court attendance notice is filed in the registry of a relevant court in accordance with this Division'

So the proceedings are not commenced until the Court Attendance Notice (CAN) is filed in the court registry. Filing CANs is usually a very low priority for a busy police member. Most likely they will not file it until after it is served on the defendant and even then they will wait till the end of the month and file all of their CANs together.

This is what saved my client at the beginning of this article. After he was arrested, he went overseas for five months. Upon his return the police served him with a CAN. The CAN was created and served within the six month limitation period but the informant neglected to file it at the registry until one week after the limitation period had expired.

Summary & Indictable Offences

Now for the bad news. There is no limitation period for indictable offences including those that are triable summarily. The limitation period only applies to summary offences. So the first task is to determine whether the offence is summary or indictable.

Section 6 Criminal Procedure Act provides that a summary offence is:

...
(c) an offence for which the maximum penalty that may be imposed is not, and does not include, imprisonment for more than 2 years, excluding the following offences:

- (i) an offence that under any other Act is required or permitted to be dealt with on indictment,*
- (ii) an offence listed in Table 1 or 2 to Schedule 1.*

So step one is to go to the government legislation website at www.legislation.nsw.gov.au and find the section that creates the specific offence. If:

1. The maximum penalty is two years imprisonment or less, AND
2. No statute permits or requires an indictment, AND
3. The offence is not listed in the tables to Schedule 1 of the Criminal Procedure Act,

then it is a summary offence to which the six month limitation applies.

Penalty Notices

However, just to make it more confusing – If the proceedings are commenced by a penalty notice (and most traffic offences are) then the time for filing the CAN is extended to 12 months.¹

Common Summary Offences

Road Rules 2008 Clause 20 Exceed Speed Limit Clause 59 Proceed Through Red Light Clause 67 Disobey Stop sign Clause 167 Disobey No Stopping Sign	Summary Offences Act s4 Offensive Conduct / Language s9 Disobey a move on direction s11C Custody of knives / weapons s19 Soliciting prostitution
Road Transport Act 2013 s54 Drive Disqualified / Suspended s68 Drive Unregistered Vehicle s110 Proscribed Concentration of Alcohol s117 Negligent / Reckless/ Furious Drive	Drug Misuse & Trafficking Act s10 Possess Prohibited Drug

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¹ s37A Fines Act 1996