



HIGH COURT OF AUSTRALIA

Public Information Officer

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SARAH DAVISON v STATE OF QUEENSLAND
VANESSA FAYNE JEAN GIBSON v STATE OF QUEENSLAND
STEPHEN GIRARD v STATE OF QUEENSLAND
JASON THOMAS ORR v STATE OF QUEENSLAND
NATASHA YARRIE v STATE OF QUEENSLAND
ALEXANDER JANE ORR v STATE OF QUEENSLAND

Six former wards of the State of Queensland will be able to argue for an extension of time to bring action against the State, the High Court of Australia held today.

The six wished to commence actions in tort relating to abuse allegedly suffered as children in foster care under the care and supervision of the State. The three-year limitation period had long since expired. Each sought an order extending the limitation period, pursuant to section 31(2) of the *Limitation of Actions Act*, which provides that where a material fact of a decisive character relating to the right of action was not within the means of knowledge of an applicant until a date during the last year of the limitation period, the court may extend the limitation period so that it expires one year after that date. Each appellant argues that a material fact of a decisive character became known to them on 18 June 2003 when Brisbane's *Courier-Mail* newspaper ran a story detailing widespread abuse of foster children. However, due to the time elapsed, each failed to comply with rules for commencing proceedings set out in the *Personal Injuries Proceedings Act*.

Section 43 of this Act provides for actions to be brought, despite non-compliance, if a court is satisfied of an urgent need to start a proceeding. An order giving leave to do so may be made on conditions the court considers necessary or appropriate. Each appellant applied to the Queensland Supreme Court for leave under section 43 during the one-year period referred to in section 31(2). Justice James Douglas refused the applications, holding there was no urgent need to start proceedings. Appeals were dismissed. The appellants filed further applications, which Justice Catherine Holmes granted. Proceedings were commenced and applications to extend time under section 31(2) filed, but these applications have not been heard because an appeal from the State was allowed. The Court of Appeal held that an applicant seeking a section 43 order after the expiry of the ordinary limitation period must demonstrate a reasonably arguable case to grant an extension which it said the appellants had failed to do. The appellants then appealed to the High Court.

The Court unanimously allowed the appeals. It held that the function of section 43 of the Personal Injuries Act is to avoid harsh results flowing from failure to comply with the preconditions contained in that Act for commencing proceedings in cases where the limitation period, or the one-year period in section 31(2) of the Limitations Act, was about to expire. The Court held that to require of those seeking leave to initiate proceedings under section 43 to show a reasonably arguable case to grant an extension, was to read words into section 43 in an impermissible manner. The risk of injustice for defendants from leave granted too freely under section 43 is reduced by a court's capacity to impose appropriate conditions. The Court held there was some prospect of establishing at a hearing for a section 31(2) application that a material fact of a decisive character relating to the right of action was not within the appellants' means of knowledge until 18 June 2003. The appellants claimed to be unaware of widespread abuse or of the State's possible knowledge of abuse or of criminal investigations relating to such abuse, and each believed they were the only victim of abuse in their foster family. They did not realise before the *Courier-Mail* story that the State might be at fault. The Court held that Justice Holmes was right to say there was a strong basis for an argument that a material fact of a decisive character became known to the former foster children on 18 June 2003.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*