



AUSTRALIAN CAPITAL TERRITORY

## **Limitation (Amendment) Act 1993**

**No. 82 of 1993**

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### **An Act to amend the *Limitation Act 1985***

*[Notified in ACT Gazette S242: 30 November 1993]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### **Short title**

1. This Act may be cited as the *Limitation (Amendment) Act 1993*.

#### **Commencement**

2. This Act commences on the day on which it is notified in the *Gazette*.

#### **Principal Act**

3. In this Act, “Principal Act” means the *Limitation Act 1985*.<sup>1</sup>

#### **Insertion**

4. After section 21 of the Principal Act the following section is inserted in Division 2 of Part II:

#### **Tax, licence fee or duty or penalty tax**

“21A. (1) An action for recovery of a revenue amount is not maintainable unless proceedings in relation to the amount are instituted before the expiration of the period of 6 months after the date the amount was paid.

“(2) Subsection (1) does not apply to an action for recovery of an amount that would have been recoverable as an overpayment if the purported tax, licence fee or duty had been valid.

“(3) Subsection (1) is part of the substantive law of the Territory.

“(4) In subsection (1)—

‘revenue amount’ means an amount of money paid voluntarily or under compulsion as—

(a) a tax, licence fee or duty imposed, or purportedly imposed, under an Act; or

(b) penalty tax in relation to such a tax, licence fee or duty;

being an amount that would have been legally due if the provision under which it was paid had been valid.”.

#### **Part IV**

**5. (1)** The Principal Act is amended by omitting the heading “**PART 5—MISCELLANEOUS**” and substituting the following heading:

**“PART IV—MISCELLANEOUS”.**

**(2)** A reference in an Act made before the commencement of this Act to Part 5 of the Principal Act shall be read as a reference to Part IV of the Principal Act as amended by this Act.

#### **Insertion**

**6.** After section 53 of the Principal Act the following section and Division are inserted:

#### **Recovery of State or Territory revenue amounts**

“54. (1) An action against a State or another Territory for recovery of a revenue amount imposed, or purportedly imposed, under a law of the State or Territory is not maintainable if the relevant limitation period of the State or Territory has expired.

“(2) In subsection (1)—

‘relevant limitation period’, in relation to a State or another Territory, means the limitation period that would apply to an action for recovery of a revenue amount if the action were brought in the State or Territory;

‘revenue amount’ means an amount of money paid voluntarily or under compulsion as—

(a) a tax, licence fee or duty imposed, or purportedly imposed, under a law; or

(b) penalty tax in relation to such a tax, licence fee or duty;

being an amount that would have been legally due if the provision under which it was paid had been valid.

“(3) In subsection (1), a reference to an action against a State or another Territory shall be read as including a reference to an action against an officer, a Minister or an authority of the State or Territory.

#### *“Division 4—Choice of law*

#### **Interpretation**

“55. In this Division, unless the contrary intention appears—

‘court’ includes arbitrator;

‘limitation law’ means a law that provides for the limitation or exclusion of any liability or the barring of a right of action in respect of a claim by reference to the time when a proceeding on, or the arbitration of, the claim is commenced.

#### **Characterisation of limitation laws**

“56. If the substantive law of another place being a State, another Territory or New Zealand, is to govern a claim before a court of the Territory, a limitation law of that place is to be regarded as part of that substantive law and applied accordingly by the court.

#### **Exercise of discretion under limitation law**

“57. Where a court of the Territory exercises a discretion conferred under a limitation law of a place being a State, another Territory or New Zealand that discretion, as far as practicable, is to be exercised in the manner in which it is exercised in comparable cases by the courts of that place.”.

**Application**

**7. (1)** Section 21A of the Principal Act as amended by this Act applies with respect to a revenue amount paid before the commencement of this Act as if a reference in the section to the expiration of the period of 6 months after the date the amount was paid were a reference to the earlier of—

- (a) the expiration of the limitation period which would have applied if this Act had not been made; or
- (b) the expiration of the period of 6 months from the commencement of this Act.

**(2)** Section 54 of the Principal Act as amended by this Act also applies with respect to a revenue amount paid before the commencement of this Act.

**(3)** Division 4 of Part IV of the Principal Act as amended by this Act also applies to a cause of action that arose before the commencement of this section but does not apply to proceedings instituted before the commencement of this section.

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**NOTE**

1. Reprinted as at 31 August 1993.

*[Presentation speech made in Assembly on 23 November 1993]*

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