

**LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

LIMITATION (AMENDMENT) BILL 1993

EXPLANATORY MEMORANDUM

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Limitation (Amendment) Bill 1993

Outline

This is an amending Bill. It amends the *Limitation Act 1985* which lays down limitation periods within which litigation must be commenced. The generally applicable limitation period in the ACT is 6 years.

The amending Bill provides for 2 matters.

LIMITATION PERIOD FOR CLAIMS TO RECOVER MONEY COLLECTED UNDER AN INVALID REVENUE MEASURE

The first is precautionary.

In *Capital Duplicators v ACT* [66 ALJR 794] the High Court decided the Legislative Assembly did not have power to impose duties of excise. The litigation concerns the *Business Franchise ("X" Video) Act 1990* the Court left the question of whether that Act imposes a duty of excise to further proceedings which were heard in April 1993. A decision on this point is expected to be handed down before the end of 1993.

Although the decision will relate to the X Video Act it could indicate that a number of ACT, State and Northern Territory revenue measures are invalid. This would happen if the Court applies a definition of "excise" that is inconsistent with previous decisions. Those decisions having been relied on to support legislation imposing business franchise fees on the liquor, petrol and tobacco industries in most States and Territories.

In view of the possible ramifications of the decision Commonwealth, State and Territory Governments have been examining various legislative options to protect State and Territory revenues. The options include, the amendment of State and Territory limitation laws which will limit the impact of an adverse decision.

In *Antill Ranger & Co Pty Ltd v Commissioner of Motor Transport* [1954-56] 93 CLR 83 the High Court dealt with the validity of the New South Wales *State Transport Co-ordination (Barring of Claims and Remedies) Act 1954*. This Act was enacted following the Privy Council's decision that the *State Transport (Co-ordination) Act 1931* was invalid on the basis that it offended the guarantee of free trade that is contained in section 92 of the Constitution.

The Court found the Barring of Claims Act invalid. However, in doing so it made a number of observations that suggest it would be acceptable for legislation to provide a limitation period that applies only to actions to recover moneys paid under a revenue law that is subsequently held to be invalid.

The Court did not specify the limitation period that would be acceptable. It is understood Tasmania and the Northern Territory have decided on a 6 month period. Other States have provided for a 12 month period.

In *Barton v Commissioner for Motor Transport* (1957) 97 CLR 633 the High Court explained that to comply with the *Antill Ranger* principle it was necessary that the limitation period be imposed prospectively. That case dealt with a limitation period of 12 months which was imposed once the *Antill Ranger* decision was handed down.

The Bill provides the limitation period for action to recover moneys under a revenue measure that has been found to be invalid will be 6 months. A provision which will phase out the existing limitation period which is 6 years is included. This phasing out will occur over the first 6 months of the Bill's operation. During that period claimants will be able to lodge claims that are based on the existing limitation period. The Bill also includes provisions which will result in the ACT's limitation period applying, even if it is involved in litigation to recover money paid under a revenue measure in another State or Territory. Conversely the limitation law of another State or Territory is to be applied by ACT courts.

CHOICE OF LAW FOR LIMITATION PERIODS

The second is a measure to reform the choice of law rules regarding limitation periods.

In *McKain v R W Millar & Co (South Australia) Pty Ltd* 66 ALJR 186 the High Court confirmed that statutes that set down limitation periods form part of the procedural law. Accordingly, the limitation law that is to be applied is that of the jurisdiction in which an action is commenced. For example, if a motor vehicle collision happens in South Australia, which has say a 3 year limitation period for personal injuries matters, but a person who was injured in the collision resides in and commences proceedings in New South Wales, which has say a 6 year limitation period, the New South Wales period will be applied. This is so even though in other respects the law to be applied will be that of South Australia on the basis that its law has the closest connection to the matters that lead to the proceedings being taken.

The Standing Committee of Attorneys-General has resolved that each State and Territory should enact legislation that will provide that the limitation law to be applied is that of the place that supplies the substantive law that will govern a matter. In the example given above the substantive law would be South Australia's and its limitation law would apply.

REVENUE IMPLICATIONS

The *Capital Duplicators* will primarily relate to business franchise schemes. Approximately \$60,000,000 is collected under these schemes annually.

The measures to reform the choice of law rules regarding limitation periods has no cost or revenue implications.

Details of Bill

Clauses 1, 2 and 3 are formal they deal with citation and commencement.

Clause 4 will insert a new section sections 21A in the Act.

New section 21A will provide a limitation period of 6 months for actions to recover moneys that have been paid under a revenue measure that has been found to be invalid.

The section will not affect the rights a taxpayer would have had if the revenue measure was in fact valid. For example, appeals to establish the extent of an overpayment and action to recover any overpayment will not be affected.

The limitation period is declared to be part of the substantive law of the ACT. This should result in the period being applied by the courts in the States and other Territories in the event action is taken to recover moneys from the ACT in those courts.

Clause 5 corrects an editorial matter in the Limitation Act. It changes the heading of what is at present referred to as Part 5 of the Act to Part IV.

Clause 6 will insert a new section 54 and a new Division 4 [Choice of Laws sections 55 to 57] in the Act.

New section 54 provides that actions in an ACT court to recover moneys that were paid under a revenue measure from another State or Territory are subject to the limitation period of that other State or Territory. It is understood that the Northern Territory and Tasmania have adopted a 6 month limitation period for such actions and that other States have adopted a 12 month period.

New Division 4 *Choice of Law* comprising sections 55 to 57

New section 55 is formal it defines "court" and "limitation law" for the purposes of the Division.

New section 56 provides that if the substantive law of a State, another Territory or New Zealand is to govern a claim that law is to be taken to include the limitation law of that place. [See example, in introductory comments.]

New section 57 provides that a discretion that forms part of the limitation law of a place is to be exercised by the ACT's courts in the same way that it would be exercised by the courts of that place. Most limitation laws provide courts with a discretion to extend a limitation period in appropriate cases. For example, the limitation period for personal injuries claims in the ACT, 6 years from the date of the accident, may be extended in cases where the injuries or their extent did not become apparent till some time after the accident.

Clause 7 sets out which claims will be affected by the various provisions that are inserted in the Act.

Section 21A will apply to claims for moneys that are paid after the commencement of the Act. Claims for moneys that were paid before the commencement will be subject to the existing limitation period. However, the claim will have to be made within 6 months of the commencement of the *Limitation (Amendment) Bill 1993*.

Section 54 will apply to money paid before and after the commencement of the *Bill*.

Division 4 will apply to all proceedings that are commenced after the commencement of the Act regardless of when the cause of action arose.