

CHOICE OF LAW (LIMITATION PERIODS) BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of this Bill is to ensure that limitation laws are treated as matters of substantive law for the purposes of choice of law and therefore governed by the law of the cause and not that of the forum. Accordingly, when the law of another place (being another State, a Territory or New Zealand) is applied by a Queensland court as the law governing the proceedings, the limitation laws of that place will also be applied.

Reasons for the Bill

The High Court, in *McKain v. R W Miller & Company (South Australia) Pty. Limited* (1991) 174 CLR 1, decided that, according to the general rules as to choice of law, limitation periods are treated as governed by the law of the place where the proceedings are brought, regardless of where the cause of action arose. This may tend to encourage forum shopping to take advantage of the longest limitation periods.

Achievement of Objectives

The Bill is based on a model Bill proposed by the Parliamentary Counsel's Committee and which has been approved by the Standing Committee of Attorneys-General (SCAG). In order to ensure that limitations periods are treated as matters of substantive law for the purposes of choice of law, every other State and Territory has passed the model Bill. By making this Bill uniform legislation throughout Australia the policy objective will be achieved.

The passing of the model Bill by the States and Territories is the only option available to ensure implementation of the policy objective and uniform application of that objective throughout Australia.

Estimated Cost for government Implementation

There will be no cost for Government.

Fundamental Legislative Principles

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation adversely affects rights and liberties, or imposes obligations, retrospectively.

Clause 3 of the Bill (the application clause) provides that the amendment applies to a cause of action that arose before commencement, but not proceedings started before the commencement. It is not directed at retrospectively affecting the rights of potential litigants. Retrospective laws are generally passed to validate past actions, correct defects in legislation or confer benefits retrospectively. The purpose of the Bill is to obviate the contentious decisions of the High Court of Australia in cases such as *Stevens v. Head* (1993) 67 ALJR 343 and *McKain v. Miller* (1991) 174 CLR 1 which evidence some disagreement between the members of the Court concerning procedural and substantive aspects of the law.

Consultation

The agencies and persons consulted include the Litigation Reform Commission, the Bar Association of Queensland, the Queensland Law Society Inc., Nominal Defendant (Queensland), Insurance Commissioner, Motor Accident Insurance Commission, and the Department of Training and Industrial Relations.

NOTES ON PROVISIONS

Clause 1 Short title

Clause 2 provides for the Act to commence on a date to be fixed by proclamation.

Clause 3 provides that the Act applies to causes of action that arose before the commencement of the Act. It does not apply to a proceeding started before the commencement of the Act.

It provides that the Act will not apply to New Zealand until declared to apply by regulation and modifies the transitional provisions accordingly.

Clause 4 defines “court”, “limitation law” and “relevant place” for the purposes of the Act.

Clause 5 ensures that a limitation law of another State, a Territory or New Zealand is treated as a substantive law by Queensland courts applying choice of law rules.

Clause 6 provides that if a Queensland court exercises a discretion under a limitation law of another jurisdiction, it is to exercise that discretion in a manner comparable to the way in which the courts of that jurisdiction would exercise the discretion.

Clause 7 provides for the making of regulations under the Act by the Governor-in-Council.

Clause 8 provides for the amendments to the *Limitation of Actions Act 1974* listed in the Schedule.

SCHEDULE

AMENDMENTS OF LIMITATION OF ACTION ACT 1974

Clauses 1—8 These clauses amend the Limitation of Actions Act in minor respects to reflect current drafting practices such as—

- altering definitions to accord with current drafting practices and consistent use of terms in Queensland legislation;
- omitting provisions which are addressed by the *Acts Interpretation Act 1954*;
- replacing words and phrases with plain English;
- replacing words and phrases to ensure greater consistency with words and phrases already appearing in the Act;
- renumbering sections where appropriate.

The explanation for the amendments is self-evident. However the following explanations are made in respect of these clauses—

Clause 4 omits s. 10A(5) which was inserted by the *Limitation of Actions Amendment Act 1993*. The new s. 43A which characterises all

limitation laws of Queensland to be substantive laws includes the objective which was achieved by the 1993 amendment and therefore s. 10A(5) is no longer necessary.

Clause 8 is a corollary of proposed sections 4 and 5 of the Choice of Law (Limitation Periods) Act. This section characterises limitation laws of Queensland as part of the substantive law of this State so that, when the law of Queensland is applied in another jurisdiction as the law governing the proceedings, Queensland limitation laws will also be applied.