

Queensland



LIMITATION OF ACTIONS AMENDMENT BILL 1993

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TABLE OF PROVISIONS

Section		Page
1	Short title	4
2	Amended Act	4
3	Insertion of new s.10A	4
	10A Actions to recover tax	4
4	Insertion of new Part 5	5
	PART 5—TRANSITIONAL PROVISIONS	
44	Application of s.10A	5
45	Expiry of Part	6

1993

A BILL

FOR

An Act to amend the *Limitation of Actions Act 1974*

The Parliament of Queensland enacts—	1
Short title	2
<i>Clause 1.</i> This Act may be cited as the <i>Limitation of Actions Amendment Act 1993</i> .	3 4
Amended Act	5
<i>Clause 2.</i> The <i>Limitation of Actions Act 1974</i> is amended as set out in this Act.	6 7
Insertion of new s.10A	8
<i>Clause 3.</i> After section 10—	9
<i>insert—</i>	10
‘Actions to recover tax	11
‘10A.(1) Despite section 10(1)(d) or (5), an action to recover an amount paid as tax that is recoverable because of the invalidity of an Act or a provision of an Act must be started within 1 year after the day of payment.	12 13 14
‘(2) Subsection (1) does not apply to the recovery of an amount that would, assuming the Act or provision had been valid, have nevertheless represented an overpayment of tax.	15 16 17
‘(3) The period of limitation prescribed by subsection (1) cannot be extended and, if an action for the recovery of an amount is not brought within the period, the right to recover the amount ends.	18 19 20
‘(4) Despite section 7, if this section and another Act are inconsistent, this section prevails over the other Act to the extent of the inconsistency.	21 22
‘(5) The period of limitation prescribed by this section is part of the substantive law of the State.	23 24
‘(6) In this section—	25
“invalid” Act or provision of an Act includes an Act or provision of an Act that would be invalid apart from section 9 of the <i>Acts Interpretation</i>	26 27

<i>Act 1954</i> (Act to be interpreted not to exceed Parliament’s legislative power);	1 2
“ pay ” a tax means pay the tax voluntarily or under compulsion (whether or not the tax is paid under a mistake of law or fact), and includes recover the tax by legal proceeding;	3 4 5
“ tax ” means—	6
(a) a tax, fee, duty, levy, charge or other impost under, or purportedly under, an Act; or	7 8
(b) a penalty in relation to a tax, fee, duty, levy, charge or other impost under, or purportedly under, an Act.’.	9 10
Insertion of new Part 5	11
<i>Clause 4.</i> After section 43—	12
<i>insert—</i>	13
‘PART 5—TRANSITIONAL PROVISIONS	14
‘Application of s.10A	15
‘44.(1) Section 10A (Actions to recover tax) applies to an amount paid within 6 months before the commencement of the section.	16 17
<i>Example for subsection (1)—</i>	18
1. If an amount was paid 5 months before the commencement of the section, the payer has 7 months to start recovery action.	19 20
‘(2) Section 10A applies to an amount paid more than 6 months before, but not more than 6 years before, the commencement of the section in accordance with subsection (3).	21 22 23
‘(3) Section 10A applies to the amount as if the reference in section 10A(1) to 1 year after the day of payment were a reference to—	24 25
(a) the limitation period that would have applied if the section had not been enacted; or	26 27
(b) 6 months after the commencement of the section;	28
whichever ends first.	29

Examples for subsections (2) and (3)—

1. If an amount was paid 5 years and 6 months before the commencement of the section, the payer has 6 months to start recovery action.

2. If an amount was paid 5 years and 9 months before the commencement of the section, the payer has 3 months to start recovery action.

‘Expiry of Part

‘45. This Part expires 12 months after it commences.’.