

Queensland



**CHOICE OF LAW
(LIMITATION PERIODS)
BILL 1995**

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CHOICE OF LAW (LIMITATION PERIODS) BILL 1995

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AMENDMENT OF LIMITATION OF ACTIONS ACT 1974

1995

A BILL

FOR

An Act about limitation periods for choice of law purposes

The Parliament of Queensland enacts—	1
Short title	2
1. This Act may be cited as the <i>Choice of Law (Limitation Periods) Act 1995</i> .	3 4
Commencement	5
2. This Act commences on a day to be fixed by proclamation.	6
Application	7
3.(1) This Act applies to a cause of action that arose before the commencement of this Act but does not apply to a proceeding started before the commencement of this Act.	8 9 10
(2) This Act does not apply to New Zealand until it is declared under a regulation to apply.	11 12
(3) If—	13
(a) the substantive law of New Zealand is to govern a claim before a court of the State; and	14 15
(b) a proceeding on the claim is started before the declaration takes effect;	16 17
this Act does not apply to the proceeding.	18
Definitions	19
4. In this Act—	20
“ court ” includes arbitrator.	21
“ limitation law ” means a law that provides for the limitation or exclusion of any liability or the barring of a right of action for a claim by	22 23

Choice of Law (Limitation Periods)

reference to the time when a proceeding on, or the arbitration of, the claim is started.	1 2
“relevant place” means another State, a Territory or New Zealand.	3
Characterisation of limitation laws	4
5. If the substantive law of a relevant place is to govern a claim before a court of the State, a limitation law of the relevant place is to be regarded as part of that substantive law and applied accordingly by the court.	5 6 7
Exercise of discretion under limitation law	8
6. If a court of the State exercises a discretion conferred under a limitation law of a relevant place, the discretion, as far as practicable, is to be exercised in the way in which it is exercised in comparable cases by the courts of the relevant place.	9 10 11 12
Regulations	13
7. The Governor in Council may make regulations under this Act.	14
Amendment of Limitation of Actions Act 1974	15
8. The schedule amends the <i>Limitation of Actions Act 1974</i> .	16 17

SCHEDULE	1
AMENDMENT OF LIMITATION OF ACTIONS ACT 1974	2 3
section 8	4
1. Section 5(1), definitions “personal estate” and “personal property”, and “trust” and “trustee”—	5 6
<i>omit.</i>	7
2. Section 5(1)—	8
<i>insert—</i>	9
‘ “personal estate” does not include chattels real.	10
“personal property” does not include chattels real.	11
“trust” has the meaning given by the <i>Trusts Act 1973</i> .	12
“trustee” has the meaning given by the <i>Trusts Act 1973</i> .’.	13
3. Section 7, ‘This Act does not apply’—	14
<i>omit, insert—</i>	15
‘Subject to section 43A, this Act does not apply’.	16
4. Section 10A(5)—	17
<i>omit.</i>	18
5. Section 10A(6)—	19
<i>renumber</i> as section 10A(5).	20

SCHEDULE (continued)

6. Section 30(c) and (d)—	1
<i>omit, insert—</i>	2
‘(c) a fact is not within the means of knowledge of a person at a particular time if, but only if—	3
(i) the person does not know the fact at that time; and	4
(ii) as far as the fact is able to be found out by the person—the person has taken all reasonable steps to find out the fact before that time.’.	5
	6
	7
	8
7. Section 30—	9
<i>insert—</i>	10
‘(2) In this section—	11
“appropriate advice” , in relation to facts, means the advice of competent persons qualified in their respective fields to advise on the medical, legal and other aspects of the facts.’.	12
	13
	14
8. Part 4, after section 43—	15
<i>insert—</i>	16
‘Characterisation of limitation laws	17
‘43A.(1) In this section—	18
“limitation law” means a law (including, but not limited to, this Act) that provides for the limitation or exclusion of any liability or the barring of a right of action for a claim by reference to the time when a proceeding on, or the arbitration of, the claim is started.	19
	20
	21
	22
‘(2) A limitation law of the State is to be regarded as part of the substantive law of the State.	23
	24
‘(3) This section applies to a cause of action that arose before the commencement of this section but does not apply to a proceeding started before the commencement of this section.’.	25
	26
	27