

# **LIMITATION OF ACTIONS AMENDMENT BILL 1993**

## **EXPLANATORY NOTE**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The *Limitation of Actions Amendment Bill 1993* will limit the period within which action may be brought to recover monies paid under an invalid enactment to 12 months from the date of the relevant payment. The 12 month limitation will not apply to the recovery of an amount that would, had the enactment been valid, have been correctly described as an overpayment.

#### **Reasons for the Bill**

The *Limitation of Actions Act 1974* currently limits the period within which action may be brought regarding monies recoverable under an enactment to 6 years from the date the cause of action arose. The Act, however, draws no distinction between a cause of action arising from the invalidity of an Act under which monies were paid and other circumstances.

#### **Estimated Cost for Government Implementation**

There will be no cost for Government.

#### **Consultation**

None.

**NOTES ON PROVISIONS**

*Clause 1* sets out the short title of the Bill.

*Clause 2* provides for amendment of the *Limitation of Actions Act 1974*.

*Clause 3* inserts section 10A which limits the period within which an action may be brought to recover an amount paid as tax under an invalid enactment to 12 months from the date of the relevant payment. The provision applies where the tax was paid voluntarily or under compulsion, whether or not paid under a mistake of law or fact, and includes recovery of the fee by legal proceeding.

The 12 month limitation does not apply to the recovery of an amount that would, had the enactment been valid, have been correctly described as an overpayment.

The period of limitation, which is part of the substantive law of Queensland, cannot be extended. The right to recover an amount because of the invalidity of an Act ends at the expiration of the 12 month limitation period.

This section prevails to the extent of inconsistency with another Act.

“Tax” is defined as including a penalty in relation to a tax.

An invalid Act or provision includes an Act or provision which would be invalid apart from section 9 of the *Acts Interpretation Act 1954*.

*Clause 4* contains transitional provisions. Where monies were paid within 6 months before commencement, the limitation period is 1 year after the date of payment. Where monies were paid more than 6 months, but not more than 6 years, prior to commencement, the limitation period is that which would have applied had the section not been enacted, or 6 months from commencement, whichever expires first.