

**LIMITATION OF ACTIONS (RECOVERY OF IMPOSTS)
AMENDMENT ACT 1993 No. 96**

NEW SOUTH WALES



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**LIMITATION OF ACTIONS (RECOVERY OF IMPOSTS)
AMENDMENT ACT 1993 No. 96**

NEW SOUTH WALES



Act No. 96, 1993

An Act to amend the Limitation of Actions (Recovery of Imposts) Act 1963 in relation to the recovery of certain taxes, fees, charges and other imposts. [Assented to 30 November 1993]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Limitation of Actions (Recovery of Imposts) Amendment Act 1993.

Commencement

2. This Act commences on a day to be appointed by proclamation.

**Amendment of Limitation of Actions (Recovery of Imposts) Act 1963
No. 21**

3. The Limitation of Actions (Recovery of Imposts) Act 1963 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title:

After “imposts;”, insert “to provide that certain taxes, fees, charges and other impostes are not recoverable in certain circumstances;”.

(2) Section 1 (**Short title**):

Omit “Limitation of Actions (Recovery of Imposts) Act 1963”, insert instead “Recovery of Imposts Act 1963”.

(3) After section 1, insert:

Definitions

1A. In this Act:

“**invalidity**” of taxation legislation includes invalidity of a portion of the legislation or of an application of the legislation;

“**pay**” a tax includes recover the tax by legal proceedings;

“**proceedings**” includes proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief;

“**tax**” includes a fee, charge or other impost;

SCHEDULE 1—AMENDMENTS—*continued*

“taxation legislation” means:

- (a) an Act imposing or relating to a tax; or
- (b) a provision of such an Act; or
- (c) a regulation under such an Act; or
- (d) a provision of such a regulation.

(4) Section 2 (**Limitation on time for the bringing of proceedings to recover taxes**):

- (a) From section 2, omit “action or proceeding” wherever occurring, insert instead “proceedings”.
- (b) From section 2, omit “, fee, charge or other impost” wherever occurring.
- (c) After section 2 (2), insert:

(3) Without affecting the generality of this section, and for the avoidance of doubt, it is declared that this section applies to proceedings for the recovery of money (paid by way of tax or purported tax) on the ground of, or on grounds that include, the invalidity of taxation legislation.

(4) This section does not apply to money that is not recoverable because of section 3.

(5) Sections 3–7:

After section 2, insert:

Certain taxes not recoverable following non-legislative changes of the law

3. (1) In this section, **“non-legislative change of the law”** means a change of the law or of legal principles, or a change in what is generally perceived to be the state of the law or of legal principles, but does not include a change made by legislation.

(2) Money paid by way of tax or purported tax is not recoverable on any of the grounds referred to in subsection (3), if:

- (a) the ground came into existence because of a non-legislative change of the law; and
- (b) the money was paid before the change.

SCHEDULE 1—AMENDMENTS—*continued*

(3) The grounds are:

- (a) the ground of invalidity of any taxation legislation; or
- (b) the ground of mistake (whether of law or of fact) as to the validity or invalidity of any taxation legislation; or
- (c) any other restitutionary ground relating to the validity or invalidity of any taxation legislation.

(4) Subsection (2) does not apply to proceedings for the recovery of money that, assuming the legislation concerned had been valid, would have represented an overpayment of a tax, if the legislation provides for the refund of the money.

Passing on of tax

4. (1) Proceedings referred to in section 2 or 3 (4) to recover an amount paid are however maintainable only to the extent that the person bringing the proceedings (“**the claimant**”) satisfies the court that the claimant has not charged to or recovered from, and will not charge to or recover from, any other person any amount in respect of the whole or any part of the amount paid. This applies whether or not any such amount has been itemised or otherwise separately identified in any invoice or other documentation.

(2) A reference in this section to the claimant extends to a predecessor, successor or assignee of the claimant.

(3) This section has effect despite anything in section 2 or 3, or in any other Act.

Ending of right of recovery

5. If because of this Act money paid by way of tax or purported tax ceases to be or is not recoverable, the right to recover the money is extinguished.

Characterisation of this Act

6. The provisions of this Act are to be regarded as part of the substantive law of the State.

Application

7. (1) This Act applies to money paid whether voluntarily or under compulsion, and applies whether or not the payment was made under protest.

SCHEDULE 1—AMENDMENTS—*continued*

(2) This Act has effect despite the provisions of any other Act.

(3) The amendments made to this Act by the Limitation of Actions (Recovery of Imposts) Amendment Act 1993 apply to money paid, and proceedings commenced, whether before or after the commencement of that Act.

(4) Sections 1A and 2 (1)–(3) of this Act as amended by the Limitation of Actions (Recovery of Imposts) Amendment Act 1993 have effect for all purposes, and are taken always to have had effect for all purposes, as from the commencement of this Act.

*[Minister's second reading speech made in—
Legislative Assembly on 17 November 1993
Legislative Council on 19 November 1993]*