

Act 1993 No. 94

CHOICE OF LAW (LIMITATION PERIODS) BILL 1993

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Limitation (Amendment) Bill 1993 is cognate with this Bill.

The High Court, in *McKain v. R. W Miller & Company (South Australia) Pty. Limited* (1991) 174 C.L.R. 1, decided that, according to the general rules as to choice of law, limitations 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.

The object 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 New South Wales court as the law governing the proceedings, the limitation laws of that place will also be applied.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 defines “court” and “limitation law” for the purposes of the proposed Act.

Clause 4 provides that the proposed Act applies to causes of action that arose before the commencement of the proposed Act but not to proceedings instituted before that commencement.

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

Clause 6 provides that if a New South Wales 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.

Choice of Law (Limitation Periods) 1993 [Act 1993 No. 94]

Clause 7 provides that the proposed Act will not apply in relation to New Zealand until it is proclaimed to apply in relation to that country, and modifies the transitional provisions accordingly.

Clause 8 is a standard provision requiring the Minister to review the operation of the Act after 5 years.
