

Recovery of Imposts Act 1963 No 21

[1963-21]



New South Wales

Status Information

Currency of version

Current version for 1 January 1996 to date (accessed 23 July 2024 at 13:02)

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Limitation of Actions (Recovery of Imposts) Act 1963

Authorisation

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Recovery of Imposts Act 1963 No 21



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An Act relating to the time within which actions may be brought against the Crown and certain other persons for the recovery of certain taxes, fees, charges and other impost; to provide that certain taxes, fees, charges and other impost are not recoverable in certain circumstances; and for purposes connected therewith.

1 Name of Act

This Act may be cited as the *Recovery of Imposts Act 1963*.

1A Definitions

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.

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.

2 Limitation on time for the bringing of proceedings to recover taxes

- (1) No proceedings shall be brought to recover from the Crown or the Government or the State of New South Wales or any Minister of the Crown, or from any corporation, officer or person or out of any fund to whom or which it was paid, the amount or any part of the amount paid by way of tax or purported tax and recoverable on

restitutionary grounds (including but not limited to mistake of law or fact):

- (a) in the case of a payment made before the commencement of this Act, after the expiration of the time within which such proceedings but for the enactment of this Act might have been brought or the expiration of twelve months after the date of the commencement of this Act, whichever period first expires, or
 - (b) in the case of a payment made subsequent to the commencement of this Act, after the expiration of twelve months after the date of payment.
- (2) Subsection (1) does not apply to any proceedings brought pursuant to any specific provisions of any Act:
- (a) providing for the mode of challenging the validity or for the recovery of the whole or any part of any tax actually paid, and
 - (b) specifying a different period within which such proceedings must be brought.
- (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.

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

- (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.
- (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.

4 Passing on of tax

- (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.

5 Ending of right of recovery

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.

6 Characterisation of this Act

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

7 Application

- (1) This Act applies to money paid whether voluntarily or under compulsion, and applies whether or not the payment was made under protest, and applies whether or not the payment was made under the authority or purported authority of any Act.
- (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.
- (5) The amendments made to this Act by Schedule 6 to the *State Revenue Legislation Further Amendment Act 1995*:
 - (a) apply to money paid, and proceedings commenced, whether before or after the

commencement of the amendments, and

- (b) have effect for all purposes, and are taken always to have effect for all purposes, as from the commencement of this Act.