



LIMITATION OF ACTIONS (MISTAKE OF LAW OR FACT) AMENDMENT ACT 1993

No. 39 of 1993

SUMMARY OF PROVISIONS

1. **Short title**
2. **Commencement**
3. **Substitution of s. 38**
 38. **Limitation on actions for recovery of money**
 - 38A. **Limitation to be part of substantive law**



ANNO QUADRAGESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1993

No. 39 of 1993

An Act to amend the Limitation of Actions Act 1936.

[Assented to 20 May 1993]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Limitation of Actions (Mistake of Law or Fact) Amendment Act 1993*.

(2) The *Limitation of Actions Act 1936* is referred to in this Act as “the principal Act”.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Substitution of s. 38

3. Section 38 of the principal Act is repealed and the following sections are substituted:

Limitation on actions for recovery of money

38. (1) Subject to subsection (2), an action for the recovery of money paid under a mistake (either of law or of fact) or otherwise based on restitutionary grounds must be commenced—

- (a) if the cause of action arose on or after the commencement of this section—within 6 years after the cause of action arose; or
- (b) if the cause of action arose before the commencement of this section—within the limitation period that would have been applicable if this section had not been enacted or 6 years after the commencement of this section (whichever expires first).

(2) If money paid by way of a tax or purported tax is recoverable because of the invalidity of the tax, an action for the recovery of that money must (whether the payment was made voluntarily or under compulsion) be commenced—

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- (a) if the payment was made after the commencement of this section or within six months before its commencement—within 12 months after the date of the payment; or
- (b) if the payment was made more than six months before the commencement of this section—within the limitation period that would have been applicable if this section had not been enacted or six months after the commencement of this section (whichever expires first);

(but this subsection does not apply to the recovery of an amount that would, assuming that the tax or purported tax had been valid, have nevertheless represented an overpayment of tax).

(3) The period of limitation prescribed by subsection (2) cannot be extended, and if the action is not brought within that period, the right to recover the money is extinguished.

(4) In this section—

“tax” includes a statutory business franchise or licence fee, or other statutory fee or charge.

(5) In the case of an inconsistency between this section and the provisions of any other Act, the other Act prevails to the extent of the inconsistency.

Limitation to be part of substantive law

38A. A limitation of action imposed by this Act is to be regarded as part of the substantive law of the State.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor