



ANNO VICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1975

No. 21 of 1975

An Act to amend the Limitation of Actions Act, 1936-1972.

[Assented to 27th March, 1975]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Limitation of Actions Act Amendment Act, 1975". Short titles.

(2) The Limitation of Actions Act, 1936-1972, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Limitation of Actions Act, 1936-1975".

2. Sections 47 and 48 of the principal Act are repealed and the following sections and heading are enacted and inserted in their place:—

Repeal of ss. 47 and 48 of principal Act and enactment of sections in their place—

47. (1) Where any Act, regulation, rule or by-law limits the time within which an action to which this section applies may be brought to a period of less than twelve months from the time the cause of action arises, then, notwithstanding that limitation, that action may be brought at any time within twelve months from the time the cause of action arises.

Extension of certain periods of limitation.

(2) This section applies to all actions except—

- (a) a criminal action;
- (b) an action to try the validity of an election or of title to an office;
- (c) an action to try the validity of an assessment, rate or loan made by or to a local government body;

and

- (d) any other action to the nature or purpose of which the limitation is, in the opinion of the court, essential.

General power
to extend
periods of
limitation.

48. (1) Subject to this section, where an Act, regulation, rule or by-law prescribes or limits the time for—

(a) instituting an action;

(b) doing any act, or taking any step in an action;

or

(c) doing any act or taking any step with a view to instituting an action,

a court may extend the time so prescribed or limited to such an extent, and upon such terms (if any) as the justice of the case may require.

(2) A court may exercise the powers conferred by this section in respect of any action that—

(a) the court has jurisdiction to entertain;

or

(b) the court would, if the action were not out of time, have jurisdiction to entertain.

(3) This section does not—

(a) apply to criminal proceedings;

or

(b) empower a court to extend a limitation of time prescribed by this Act unless it is satisfied—

(i) that facts material to the plaintiff's case were not ascertained by him until some point of time occurring within twelve months before the the expiration of the period of limitation or occurring after the expiration of that period and that the action was instituted within twelve months after the ascertainment of those facts by the plaintiff;

or

(ii) that the plaintiff's failure to institute the action within the period of the limitation resulted from representations or conduct of the defendant, or a person whom the plaintiff reasonably believed to be acting on behalf of the defendant, and was reasonable in view of those representations or that conduct and any other relevant circumstances,

and that in all the circumstances of the case it is just to grant the extension of time.

(4) Where an extension of time is sought pursuant to this section in respect of the commencement of an action, the action may be instituted in the normal manner, but the process by which it is instituted must be endorsed with a statement to the effect that the plaintiff seeks an extension of time pursuant to this section.

(5) Proceedings under this section may be determined by the court at any time before or after the close of pleadings.

(6) This section does not derogate from any other provision under which a court may extend or abridge time prescribed or limited by an Act, regulation, rule or by-law.

49. Nothing in section 47 or 48 of this Act affects any rule of law or equity under which a period of limitation affecting a right to bring an action may be extended, or an action may be brought notwithstanding the expiration of any such period of limitation.

Other rules of law or equity to be unaffected.

Dispensation with Requirement of Notice before Action

50. Where any provision of an Act, regulation, rule or by-law requires a person to give notice of his intention to bring an action, or of any claim that he intends to prosecute in an action, before the action is instituted in a court, the court may, if the justice of the case so requires, at any time before or after the close of pleadings, dispense with that requirement.

Dispensation with requirement of notice before action.

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

M. L. OLIPHANT, Governor