

WESTERN AUSTRALIA

**LIMITATION AMENDMENT
ACT 1997**

No. 7 of 1997

AN ACT to amend the *Limitation Act 1935* in relation to proceedings for the recovery of taxes, fees, charges or other imposts.

[Assented to 17 June 1997.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Limitation Amendment Act 1997*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Section 37A repealed and sections 37A, 37B and 37C substituted

3. Section 37A of the *Limitation Act 1935** is repealed and the following sections are substituted —

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Limitation on proceeding for recovery of tax

37A. (1) Subject to subsection (2), a proceeding to recover, or in relation to the recovery of, money paid by way of tax or purported tax under a mistake (either of law or fact) must be commenced —

- (a) within 12 months after the date of payment; or
- (b) in the case of a proceeding under another Act that provides for the refund or recovery of the money within a longer period, within the longer period.

(2) Despite anything to the contrary in another Act, if money paid by way of tax or purported tax is recoverable because of the invalidity of an Act or provision of an Act, a proceeding to recover, or in relation to the recovery of, that money must be commenced within 12 months after the date of that payment.

(3) Subsection (2) does not apply to a proceeding for the recovery of money that, assuming that the Act or provision of an Act imposing or purporting to impose the tax had been valid, would nevertheless have represented an

overpayment of tax, if the Act provides for the refund or recovery of the money within a period longer than 12 months after the date of the payment.

(4) An order cannot be made under this or any other Act enabling or permitting a proceeding to which subsection (2) applies to be commenced after the expiry of the period referred to in that subsection.

(5) This section, as substituted by the *Limitation Amendment Act 1997*, and sections 37B and 37C apply to and in relation to payments —

- (a) made before, on or after the commencement of that Act, other than payments in respect of which a proceeding has been brought before that commencement; and
- (b) whether made —
 - (i) voluntarily or under compulsion; or
 - (ii) under protest or not.

(6) In this section and in sections 37B and 37C —

“**proceeding**” includes —

- (a) action and suit; and
- (b) seeking the grant of —
 - (i) any relief or remedy in the nature of *certiorari*, prohibition, mandamus or *quo warranto*; or
 - (ii) a declaration of right or an injunction;

“**tax**” includes fee, charge or other impost.

s. 3**Limited right to recover tax**

37B. (1) This section applies in respect of a proceeding by a person (a “**claimant**”) to recover, or in relation to the recovery of, any money paid by way of tax or purported tax.

(2) Any judgment by a court in favour of a claimant is to be for only that part of the amount claimed which the court is satisfied —

- (a) has not been charged directly to or recovered directly from another person or, if it has been so charged or recovered, has been refunded to the other person;
- (b) will not be charged directly to or recovered directly from another person; and
- (c) has not been incorporated into the price of or charge for any property or services.

(3) The onus of satisfying the court as to the matters in subsection (2) is on the claimant.

Limited operation of certain court orders

37C. (1) This section applies when the effect of an order of a court (other than a judgment in accordance with section 37B (2)) is to oblige a taxing authority to refund any money paid by way of tax or purported tax.

(2) A taxing authority shall refund only that part of a tax or purported tax which the taxing authority is satisfied —

- (a) has not been charged directly to or recovered directly from another person or, if it has been so charged or recovered, has been refunded to the other person;

- (b) will not be charged directly to or recovered directly from another person; and
- (c) has not been incorporated into the price of or charge for any property or services.

(3) The onus of satisfying a taxing authority as to the matters in subsection (2) is on the person to whom the refund is to be made.

(4) In this section —

“**taxing authority**” means person who or which under an Act is responsible for the assessment or collection of any tax.

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[* *Reprinted as approved 5 May 1983.*
For subsequent amendments, see 1995 Index to Legislation of Western Australia, Table 1, p. 127.]