

Western Australia

Limitation Act 1935

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Part 2 — Repeal

Limitation Act 1935

An Act to consolidate and amend the law relating to the limitation of time for commencing actions and suits.

1. Short title

This Act may be cited as the *Limitation Act 1935* and shall come into force on a day to be fixed by proclamation ¹.

[2. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

3. Interpretation

In this Act unless inconsistent with the context or subject matter —

Action means a civil proceeding commenced, in the Supreme Court by writ or in such other manner as may be prescribed by Rules of Court, or in any inferior court in the manner prescribed by or under the Act conferring jurisdiction on such court.

Land includes messuages and all corporeal hereditaments whatsoever, and any share, estate, or interest in them or any of them, whether the same is a freehold or chattel interest, and whether freehold or held according to any other tenure.

Person includes a body corporate, and a class of persons as well as an individual.

The person through whom another person is said to claim, means any person by, through, or under, or by the act of whom, the person so claiming became entitled in any capacity to the estate or interest claimed.

Rent includes all annuities and periodical sums of money charged upon or payable out of any land.

[Section 3 amended by No. 59 of 2004 s. 141.]

4. No land or rent to be recovered but within 12 years after the right of action accrued

No person shall make an entry or distress, or bring an action to recover any land or rent, but within 12 years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within 12 years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.

5. When the right shall be deemed to have accrued

In the construction of this Act, the right to make an entry or distress, or bring an action to recover land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say: —

- (a) When the person claiming such land or rent, or some person through whom he claims, has, in respect of the estate or interest claimed, been in possession or in receipt of the profits of such land, or in receipt of such rent, and while entitled thereto has been dispossessed, or has discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received.
- (b) When the person claiming such land or on rent claims the estate or interest of some deceased person who has continued in such possession or receipt in respect of the same estate or interest until the time of his death, and

has been the last person entitled to such estate or interest who has been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death.

- (c) When the person claiming such land or rent on claims in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument has been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument.
- (d) When the estate or interest claimed has been an estate or interest in reversion or remainder, or other future estate or interest, and no person has obtained the possession or receipt of the profits of such land, or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.
- (e) When the person claiming such land or rent, or the person through whom he claims, has become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

For the purposes of this section, the right to make an entry, or bring an action to recover any land, has not and shall not be deemed to have first accrued to any person in any case, whether or not such person has been in possession or receipt of the rents and profits of such land, until such land is in the actual possession of some person not entitled to such possession, and

any land not in the actual possession of any person shall be deemed to be in the possession of the person entitled to such possession.

6. Where advantage of forfeiture is not taken by remainderman, he shall have a new right when his estate comes into possession

Provided always that when any right to make an entry or distress or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition has first accrued in respect of any estate or interest in reversion or remainder, and the land or rent has not been recovered by virtue of such right, the right to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

7. Provision for case of future estates

A right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time at which the same shall have become an estate or interest in possession, by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land or rent, or some person through whom he claims, shall at any time previously to the creation of the estate or estates which shall have determined, have been in the possession or receipt of the profits of such land, or in receipt of such rent:

Provided that if the person last entitled to any particular estate on which any future estate or interest was expectant shall not have been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such

action shall be brought, by any person becoming entitled in possession to a future estate or interest, but within 12 years next after the time when the right to make an entry or distress, or to bring an action for the recovery of such land or rent, shall have first accrued to the person whose interest shall have so determined, or within 6 years next after the time when the estate of the person becoming entitled in possession shall have become vested in possession, whichever of those 2 periods shall be the longer.

Provided also that if the right of any such person to make such entry or distress, or to bring any such action, shall have been barred under this Act, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or settlement, executed or taking effect after the time when a right to make an entry or distress, or to bring an action for the recovery of such land or rent, shall have first accrued to the owner of the particular estate whose interest shall have so determined as aforesaid, shall make any such entry or distress, or bring any such action to recover such land or rent.

8. An administrator to claim as if he obtained the estate without interval after the death of deceased

For the purposes of this Act an administrator claiming the estate or interest of the deceased person of whose property he is appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

9. In the case of a tenant at will, the right shall be deemed to have accrued at the end of one year

When any person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first

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accrued, either at the determination of such tenancy or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined.

Provided always that no mortgagor or *cestui que* trust shall be deemed to be a tenant at will, within the meaning of this section, to his mortgagee or trustee.

10. No person after a tenancy from year to year, to have any right but from the end of the first year or last payment of rent

When any person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy has been received (whichever last happens).

11. Where rent amounting to \$2 reserved by a lease has been wrongfully received, no right to accrue on determination of lease

When any person is in possession or in receipt of the profits of any land, or in receipt of any rent, by virtue of a lease in writing, by which a rent amounting to the yearly sum of \$2 or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent subject to such lease, or of the person through whom he claims, to make an entry or distress or to bring an action after the determination of such lease, shall be deemed to have first

accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

[Section 11 amended by No. 113 of 1965 s. 8.]

12. A mere entry not to be deemed possession

No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon.

13. No right to be preserved by continual claim

No continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action.

14. Possession of one coparcener etc., not to be the possession of the others

When any one or more of several persons entitled to any land or rent as coparceners, joint tenants, or tenants in common, have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.

15. Acknowledgment in writing given to the person entitled or his agent, to be equivalent to possession or receipt of rent

When any acknowledgment of the title of the person entitled to any land or rent has been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment has

been given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment has been given at the time of giving the same, and the right of such last-mentioned person, or any person claiming through him, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given.

16. In cases of infancy, etc., 6 years to be allowed from the termination of the disability or previous death

If at the time at which the right of any person to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned (that is to say) infancy, idiocy, lunacy, or unsoundness of mind, then such person, or the person claiming through him, may, notwithstanding the period of 12 years, or 6 years (as the case may be) hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or rent, at any time within 6 years next after the time at which the person to whom such right shall first have accrued shall have ceased to be under such disability, or shall have died (whichever of those 2 events shall have first happened).

[Section 16 amended by No. 28 of 2003 s. 120(2).]

17. No time to be allowed for absence beyond seas

The time within which any such entry may be made, or any such action may be brought as aforesaid, shall not in any case be extended or enlarged by reason of the absence beyond the seas during all or any part of that time of the person having the right to make such entry, or to bring such action, or of any person through whom he claims.

18. 30 years utmost allowance for disabilities

No entry, distress, or action shall be made or brought by any person who at the time at which his right to make any entry or distress, or to bring an action to recover any land or rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within 30 years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such 30 years, or although the term of 6 years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

19. No further time to be allowed for a succession of disabilities

When any person is under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress or to bring an action to recover any land or rent has first accrued, and he dies without having ceased to be under such disability, no time to make an entry or distress or to bring an action to recover such land or rent beyond the period of 12 years next after the right of such person to make an entry or distress or to bring an action to recover such land or rent has first accrued, or the said period of 6 years next after the time at which such person has died, shall be allowed by reason of any disability of any other person.

20. When the right to an estate in possession is barred the right of the same person to future estates also barred

When the right of any person to make an entry or distress or bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession has been barred by the determination of the period hereinbefore limited which is applicable in such case, and such person has at any time during the said period been entitled to any other estate, interest, right, or possibility, in reversion, remainder, or otherwise, in or to the same land or rent, no entry, distress, or

action shall be made or brought by such person, or any person claiming through him, to recover such land or rent, in respect of such other estate, interest, right, or possibility, unless in the meantime such land or rent has been recovered by some person entitled to an estate, interest, or right which has been limited or taken effect after or in defeasance or such estate or interest in possession.

21. Where tenant in tail is barred, remaindermen whom he might have barred shall not recover

When the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same has been barred by reason of the same not having been made or brought within the period hereinbefore limited, which is applicable in such case, no such entry, distress, or action shall be made or brought by any person claiming any estate, interest, or right which such tenant in tail might lawfully have barred.

22. Possession adverse to a tenant in tail, shall run on against the remaindermen whom he might have barred

When a tenant in tail of any land or rent, entitled to recover the same, has died before the expiration of the period hereinbefore limited, which is applicable in such case, for making an entry or distress or bringing an action to recover such land or rent, no person claiming any estate, interest, or right which such tenant in tail might lawfully have barred, shall make an entry or distress or bring an action to recover such land or rent but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress or brought such action.

23. Possession under an assurance by a tenant in tail

When a tenant in tail of any land or rent shall have made an assurance thereof which shall not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person shall by virtue of such assurance at the time of the

execution thereof, or at any time afterwards, be in possession or receipt of the profits of such land, or in receipt of such rent, and the same person, or any other person whatsoever (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail) shall continue to be in such possession or receipt for the period of 12 years next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail, or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then, at the expiration of such period of 12 years, such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right, to take effect after or in defeasance of such estate tail.

24. No suit in equity to be brought after the time when the plaintiff might have brought an action at law

No person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which, by virtue of the provisions hereinbefore contained, he might have made an entry or distress or brought an action to recover the same respectively if he had been entitled at law to such estate, interest, or right in or to the same as he claims therein in equity.

25. In cases of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser

When any land or rent is vested in a trustee upon any express trust, the right of the *cestui que* trust, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which such land or rent has been conveyed to a purchaser for a valuable consideration, and

shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

26. Time for recovering charge and arrears of interest not to be enlarged by express trust for raising same

No action, suit, or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, at law or in equity, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable, and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust.

27. In cases of fraud no time shall run whilst the fraud remains concealed

In every case of a concealed fraud, the right of any person to bring a suit in equity to recover any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud is, or with reasonable diligence might have been, first known or discovered: Provided that nothing in this section contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, on account of fraud, against any *bona fide* purchaser for valuable consideration who has not assisted in the commission of such fraud, and who at the time when he made the purchase did not know and had no reason to believe that any such fraud had been committed.

28. Saving the jurisdiction of equity on the ground of acquiescence or otherwise

Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of a court of equity in refusing relief on

the ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this Act.

29. Mortgagor to be barred at end of 12 years from the time when the mortgagee took possession or from the last written acknowledgment

When a mortgagee shall have obtained the possession or receipt of the profits of any land, or the receipt of any rent comprised in his mortgage, the mortgagor or any person claiming through him, shall not bring any action or suit to redeem the mortgage, but within 12 years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption shall have been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee or the person claiming through him.

In such case no such action or suit shall be brought, but within 12 years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one was given; and when there shall be more than one mortgagor or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons:

Provided that where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent, by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as

against the person or persons entitled to any other undivided or divided part of the money or land or rent:

Provided also that where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

30. At the end of the period of limitation the right of the party out of possession to be extinguished

At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period, shall be extinguished.

31. Receipt of rent to be deemed receipt of profits

The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purposes of this Act.

32. Money charged upon land and legacies to be deemed satisfied at the end of 12 years if no interest paid nor acknowledgment given

- (1) No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at

law or in equity, or any legacy, but within 12 years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same; unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit or proceeding shall be brought but within 12 years after such payment or acknowledgment or the last of such payments or acknowledgments (if more than one) was made or given.

- (2) This section extends to an action or suit on a covenant by a mortgagor in a mortgage deed, or on a collateral bond by the mortgagor securing the mortgage debt; and to an action on a covenant in a deed to secure the payment of a rent charge.

33. Claims to estate of intestates

Subject to, and except as enacted by section 47, no action or suit or other proceeding shall be brought to recover the estate, or any share of the estate of any person dying intestate from the legal representative of such intestate, but within 12 years next after the present right to receive the same has accrued to some person capable of giving a discharge for or release of the same; unless in the meantime some part of such estate or share, or some interest in respect thereof has been accounted for or paid, or some acknowledgment of the right thereto has been given in writing signed by the person accountable for the same or his agent to the person entitled thereto or his agent; and in such case no such action or suit shall be brought but within 12 years next after such accounting, payment, or acknowledgment, or the last of such accountings, payments, or acknowledgments (if more than one) was made or given.

34. No arrears of rent or interest to be recovered for more than 6 years

No arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action or suit, but within 6 years next after the same respectively have become due, or next after an acknowledgment of the same in writing has been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent:

Provided nevertheless that where any prior mortgagee or other incumbrancer has been in possession of any land, or in receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of 6 years.

Provided also, that this section is subject to section 38(1)(d) and (e).

35. Mortgagees may bring actions to recover land within 12 years after last payment of principal or interest

It shall and may be lawful for any person entitled to or claiming under any mortgage of land (being land within the definition contained in section 3) to make an entry or bring an action or suit to recover such land at any time within 12 years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than 12 years may have elapsed since the time at which the right to make such entry or bring such action or suit shall have first accrued, anything herein notwithstanding.

36. No title by adverse possession against Crown

Notwithstanding any law or statute law now or heretofore in force, the right, title, or interest of the Crown to or in any land shall not be, and shall be deemed not to have been, in any way affected by reason of any possession of such land adverse to the Crown.

37. Actions on penal Statutes

- (1) All actions, suits, and other proceedings for any forfeiture upon any statute penal whereby the forfeiture or benefit is limited to His Majesty, or His Majesty, his heirs and successors, shall be commenced within 2 years after the offence committed.
- (2) All actions, suits, and other proceedings for any forfeiture upon any statute penal whereby the forfeiture or benefit is limited to His Majesty, or His Majesty, his heirs and successors, and to any person who prosecutes in that behalf, shall be commenced by any such person within one year after the offence committed, and in default thereof may be commenced by His Majesty, his heirs and successors at any time within 2 years after that year ended.
- (3) All actions, suits, and other proceedings for any forfeiture upon any statute penal whereby the forfeiture or benefit is limited to any person who shall prosecute in that behalf, shall be commenced by such person within one year after the offence committed.
- (4) Any action, suit, or other proceeding brought after such times respectively shall be void and of no effect.

37A. Limitation on proceeding for recovery of tax

- (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

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- (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.

[Section 37A inserted by No. 7 of 1997 s. 3.]

37B. Limited right to recover tax

- (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.

[Section 37B inserted by No. 7 of 1997 s. 3.]

37C. Limited operation of certain court orders

- (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.

[Section 37C inserted by No. 7 of 1997 s. 3.]

38. Limitation of time for commencing other actions and suits

- (1) Subject to the preceding sections of this Act and as hereinafter provided, actions, suits, or other proceedings as herein set out shall and may be commenced within the time herein expressed after the cause of such actions, suits, or other proceedings respectively: —
- (a)
 - (i) Actions for penalties, damages, or sums given by any enactment to the party grieved;
 - (ii) Actions for slander, when the words are actionable per se:
2 years.
 - (b) Actions for trespass to the person, menace, assault, battery, wounding, or imprisonment:
4 years.
 - (c)
 - (i) Actions of debt upon any award where the submission is not by specialty;

- (ii) Actions of account or for not accounting, and suits for such accounts, as concern the trade of merchandise between merchant and merchant, their factors and servants;
- (iii) Actions of account other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants;
- (iv) Actions in the nature of actions for trespass *quare clausum fregit*, trespass to goods, detinue, or trover;
- (v) All other actions founded on any simple contract, including a contract implied in law;
- (vi) All other actions founded on tort;
- (vii) All other actions in the nature of actions on the case:

6 years.

- (d) Actions of debt for rent upon a covenant in an indenture of demise:

12 years.

- (e)
 - (i) Subject to sections 4 and 32, and to paragraph (d) of this subsection, actions of covenant or of debt upon any bond or other specialty; and
 - (ii) actions in the nature of actions of debt or *scire facias* upon any recognisance:

20 years.

Provided that, subject to the first proviso to section 34, no arrears of interest in respect of any sum of money, whether payable under a covenant or otherwise, or any damages in respect of such arrears, shall be recovered by any action, suit, or other proceeding, but within 6 years next after the same respectively became due, or next after an acknowledgment of the same in writing has been given to the person entitled thereto,

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or his agent, signed by the person chargeable or his agent duly authorised.

- (2) In actions or suits falling within paragraphs (ii) and (iii) of subsection (1)(c) no claim in respect of a matter which arose more than 6 years before the commencement of such action or suit shall be free from the restriction imposed by such subsection by reason only of some other matter of claim comprised in the same account having arisen within 6 years before the commencement of such action or suit.
- (3) In this section the word *actions* means such actions as are in the nature of actions at common law, but in reference to this section contained in the succeeding sections of this Act, the word “action” shall be construed as including “actions” or “actions and suits” or “actions, suits, and other proceedings” where any of such meanings is necessary in order to give a complete reference to the matters set out in subsection (1).
- (4) This section shall not apply to any action, suit, or other proceeding the time for commencing which is limited by the preceding sections of this Act.

38A. Extended limitation period in certain cases

- (1) In this section —
latent injury means a disease or injury of such a nature that, at the time it is suffered by a person, that person does not know and could not reasonably be expected to know that he has suffered the disease or injury;
the amending Act means the *Acts Amendment (Asbestos Related Diseases) Act 1983*.
- (2) Where the period of limitation within which an action, suit, or other proceeding may be brought would, but for this section, be fixed by section 38(1)(c) of this Act and —
 - (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos;

- (b) the person who suffered the latent injury had knowledge of the relevant facts before 1 January 1984; and
- (c) the period of limitation that would be applicable thereto had the amending Act not come into operation had expired before 1 January 1984,

that action, suit, or other proceeding may be commenced within the period of 3 years after the coming into operation of the amending Act.

- (3) Where in an action, suit, or other proceeding to which subsection (2) applies it is proved that —
 - (a) the person who suffered the latent injury had knowledge of the relevant facts before 1 January 1984; and
 - (b) the period referred to in paragraph (c) of that subsection had expired before 1 January 1984 and before the action, suit, or other proceeding was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

- (4) Where the period of limitation within which an action, suit, or other proceeding may be brought would, but for this section, be fixed by section 38(1)(c) of this Act and —
 - (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos;
 - (b) the person who suffered the latent injury had knowledge of the relevant facts before 1 January 1984; and
 - (c) the period of limitation that would be applicable thereto had the amending Act not come into operation had not expired before 1 January 1984,

that action, suit, or other proceeding may be commenced within the period referred to in paragraph (c) of this subsection or, if that period expires less than 3 years after the coming into

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operation of the amending Act, may be commenced within the period of 3 years after the coming into operation of that Act.

- (5) Where in an action, suit or other proceeding to which subsection (4) applies it is proved that —
- (a) the person who suffered the latent injury had knowledge of the relevant facts before 1 January 1984; and
 - (b) the period referred to in paragraph (c) of that subsection had expired before the action, suit, or other proceeding was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

- (6) Where the period of limitation within which an action, suit, or other proceeding may be brought is fixed by section 38(1)(c) and —
- (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and
 - (b) the person who suffered the latent injury did not have knowledge of the relevant facts before 1 January 1984,

the period of limitation so fixed shall run not from the time provided by section 38 but from the time when that person has knowledge of the relevant facts.

- (7) For the purposes of this section a person has knowledge of the relevant facts in relation to a cause of action when he has knowledge —
- (a) that the injury in question was significant;
 - (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute the cause of action;
 - (c) of the identity of the defendant; and

- (d) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant,

and knowledge that any acts or omissions did or did not, as a matter of law, give rise to a cause of action is irrelevant.

- (8) For the purposes of this section an injury is significant if the person whose knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.
- (8a) For purposes of this section, an injury —
 - (a) that is an injury within the meaning of the *Workers' Compensation and Injury Management Act 1981*; and
 - (b) in respect of which proceedings in which damages are sought have not been instituted before 4 p.m. on 30 June 1993,

is not to be treated as being significant unless either the parties to proposed proceedings have agreed, or a medical panel as described in section 36(1) of that Act has determined, that the degree of the disability assessed as prescribed in section 93D(3) of that Act, is 30% or more.

- (9) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire —
 - (a) from facts observable or ascertainable by him; or
 - (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek,

but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert

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advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

- (10) Unless the context otherwise requires, a reference, however expressed, in this Act or in any other Act or law to the time from which a period of limitation runs shall, where the period of limitation is one to which subsection (6) applies, be read as if it were a reference to the time from which it is provided by that subsection that the limitation period shall run.

[Section 38A inserted by No. 84 of 1983 s. 4; amended by No. 48 of 1993 s. 44; No. 42 of 2004 s. 164 and 174.]

38B. Revival

An action, suit, or other proceeding may be commenced in accordance with section 38A of this Act notwithstanding that the period of limitation applicable before the coming into operation of the *Acts Amendment (Asbestos Related Diseases) Act 1983* in respect of the action, suit or other proceeding may have expired before the coming into operation of that Act.

[Section 38B inserted by No. 84 of 1983 s. 4.]

39. Except absence beyond seas

No person entitled to any action with respect to which the period of limitation within which the same may be brought, is fixed by section 38, shall be entitled to any time within which to commence such action beyond the period so fixed, by reason only of such person being beyond the seas at the time such cause of action accrued; or in the cases in which imprisonment was a disability by reason of such person being imprisoned at the time when the cause of action accrued.

40. Persons under disability allowed time from removal of disability

If any person entitled to any such action as is referred to in section 38(1) was at the time of the cause of action accrued within the age of 18 years or insane, then such person may

commence the same within such time as is before limited after being of full age or sane as if that was the time at which the cause of action accrued.

[Section 40 amended by No. 46 of 1972 s. 6(2).]

41. Extension of time where person liable is beyond the seas

If any person against whom there is any such cause of action as is referred to in section 38(1) was at the time the cause of action accrued beyond the seas, the party entitled to such action may commence the same within such time as is before limited after the return of such person from beyond the seas as if that was the time at which the cause of action accrued.

42. Meaning of expression “beyond the seas”

No part of the Commonwealth of Australia, or of any Territory of the Commonwealth, or Territory governed by the Commonwealth under a mandate, shall be deemed to be beyond the seas within the meaning of that expression in this Act.

43. No extension of time against a joint debtor not beyond the seas

When any such cause of action as is referred to in section 38(1) has accrued against 2 or more joint debtors, the person having such cause of action shall not be entitled to any additional time within which to sue one or more of such joint debtors who was or were not beyond the seas by reason only that some one or more of such joint debtors was or were at such time beyond the seas; and such person so entitled shall not be barred from commencing against one or more of such last-mentioned joint debtors after his or their return from beyond the seas by reason only that judgment has already been recovered against one or more of such first-mentioned joint debtors.

44. Effect of acknowledgment, etc., preserved except in certain cases

- (1) Except as expressly provided in this Act, nothing in section 38 contained shall take away or lessen the effect of any acknowledgment or promise, or of any acknowledgment by part payment or satisfaction on account of principal or interest due, and except as aforesaid any such acknowledgment or promise shall have the same effect as if this Act had not been passed.
- (2) No indorsement or memorandum of any part payment or satisfaction written or made upon any bill of exchange, cheque, or promissory note by or on behalf of the person to whom such part payment or satisfaction is made, shall be deemed sufficient proof of such payment or satisfaction to take the case out of the operation of section 38(1).
- (3) In actions in the nature of actions founded upon simple contract, no acknowledgment or promise by words shall be deemed sufficient evidence of any new or continuing contract whereby to take any case out of the operation of section 38, or to deprive any party of the benefit thereof, unless such acknowledgment or promise is made or contained by or in some writing signed by the party chargeable, or by his agent duly authorised; and where there are 2 or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of section 38 so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person.
- (4) In actions of debt for rent upon an indenture of demise, in actions of covenant or debt upon any bond or other specialty, and in actions of debt or *scire facias* upon any recognisance, if any acknowledgment has been made either by some writing signed by the party chargeable or his agent duly authorised, or by part payment or satisfaction, the person entitled to such

action may commence his action for the money remaining unpaid, and so acknowledged within the time prescribed by section 38 after such acknowledgment, or in case the person entitled to such action at the time of such acknowledgment is under disability as aforesaid, or the party making such acknowledgment is then beyond the seas, then within the prescribed time after such disability has ceased or such party has returned from beyond the seas (as the case may be).

- (5) Where there are 2 or more co-contractors or co-debtors, whether bound or liable jointly only or jointly and severally, or executors or administrators of any contractor, no such co-contractor or co-debtor, executor, or administrator shall lose the benefit of section 38 so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money by any other or others of them.

45. Judgment may be recovered against some co-defendants

In actions against any 2 or more defendants, whether co-contractors or co-debtors or not, if it appears that the plaintiff, though barred as to one or more of such defendants is not barred as to any other or others of them, judgment may be given for the plaintiff as to the defendant or defendants against whom he is entitled and for the other defendant or defendants against the plaintiff.

46. Limitation to apply to counter-claim and set-off

The provisions of this Act shall apply to any counter-claim or set-off alleged by the defendant in all cases, and to the like extent, and for the same purpose in, to, or for which they respectively would apply if the defendant had instituted an action against the plaintiff or plaintiffs in respect of the same matter.

47. Trustees may plead Statute of Limitations in certain cases

- (1) In any action or other proceeding against a trustee or any person claiming through him, or in reference to any trust, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was a party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee or previously received by the trustee and converted to his own use, the following provisions shall apply: —
 - (a) All rights and privileges conferred by this Act or any statute of limitations shall be enjoyed in the like manner and to the like extent as would have been the case if the trustee or person claiming through him had not been a trustee or person claiming through him.
 - (b) If the action or other proceeding is brought to recover money or other property and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him (otherwise than as a trustee or person claiming through a trustee) in an action of debt for money had and received; but so nevertheless that the statute or bar by lapse of time shall not begin to run against any beneficiary until the interest of such beneficiary is an interest in possession.
- (2) No beneficiary as against whom there would be a good defence by virtue of this section shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or proceeding and this section had been pleaded.
- (3) For the purposes of this section the expression *trustee* includes an executor or administrator, who for such purposes is included in the term trustee, and includes a trustee whose trust arises by construction or implication of law as well as an express trustee,

and the provisions of this section relating to a trustee shall apply as well to several joint trustees.

- (4) This section shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing statute.

[Section 47 amended by No. 28 of 2003 s. 120(3).]

Actions Against Public Authorities

47A. Protection of persons acting in execution of statutory or other public duty

- (1) Notwithstanding the foregoing provisions of this Act but subject to the provisions of subsection (2) and (3), no action shall be brought against any person (excluding the Crown) for any act done in pursuance or execution or intended execution of any Act, or of any public duty or authority, or in respect of any neglect or default in the execution of the Act, duty or authority, unless —

- (a) the prospective plaintiff gives to the prospective defendant, as soon as practicable after the cause of action accrues, notice in writing giving reasonable information of the circumstances upon which the proposed action will be based and his name and address and that of his solicitor or agent, if any; and
- (b) the action is commenced before the expiration of one year from the date on which the cause of action accrued,

and for the purposes of this section, where the act, neglect, or default is a continuing one, no cause of action in respect of the act, neglect, or default accrues until the act, neglect or default ceases but the notice required by paragraph (a) may be given and an action may thereafter be brought while the act, neglect or default continues.

- (2) A person may consent in writing to the bringing of an action against him at any time before the expiration of 6 years from the

date on which the cause of action accrued whether or not the notice as required by subsection (1) has been given.

- (3)
 - (a) Notwithstanding the foregoing provisions of this section application may be made to the Court which would but for the provisions of this section have jurisdiction to hear the action, for leave to bring an action at any time before the expiration of 6 years from the date on which the cause of action accrued, whether or not notice as required by subsection (1) has been given to the prospective defendant.
 - (b) Where the Court considers that the failure to give the required notice or the delay in bringing the action as the case may be, was occasioned by mistake or by any other reasonable cause or that the prospective defendant is not materially prejudiced in his defence or otherwise by the failure or delay, the Court may if it thinks it is just to do so, grant leave to bring the action, subject to such conditions as it thinks it is just to impose.
 - (c) Before an application is made under the provisions of paragraph (a), the party intending to make the application shall give notice in writing of the proposed application and the grounds on which it is to be made to the prospective defendant, at least 14 days before the application is made.
- (4)
 - (a) In this section *person* includes a body corporate, Crown agency or instrumentality of the Crown created by an Act or an official or person nominated under an Act as a defendant on behalf of the Crown.
 - (b) This section is to be construed so as not to affect the provisions of the *Crown Suits Act 1947*.
- (5) Where an action is one to which this section applies and —
 - (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and

- (b) the person who suffered the latent injury had the knowledge referred to in section 38A of this Act before 1 January 1984,

the period limited by this section for the doing of any thing in relation to that action shall run not from the time otherwise provided by this section but from the time of the coming into operation of the amending Act.

- (6) Where in an action to which subsection (5) applies it is proved that —

- (a) the person who suffered the latent injury had the knowledge referred to in section 38A of this Act before 1 January 1984; and
- (b) the period of 6 years applicable under subsection (3)(a) of this section as in force before the coming into operation of the amending Act had expired before the action was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

- (7) Where an action is one to which this section applies and —

- (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and
- (b) the person who suffered the latent injury did not have the knowledge referred to in section 38A before 1 January 1984,

the period limited by this section for the doing of any thing in relation to that action shall run not from the time otherwise provided by this section but from the time when that person has the knowledge referred to in section 38A.

- (8) After the coming into operation of the amending Act —

- (a) a notice may be given;

- (b) an action may be commenced; or
- (c) consent may be given, or leave may be granted, to bring an action,

in accordance with subsection (5) or (7) of this section notwithstanding that the period of limitation applicable before the coming into operation of the amending Act in respect thereof had expired before the coming into operation of that Act.

- (9) In subsections (5), (6), (7), and (8) —

latent injury has the same meaning as is given to that expression by section 38A of this Act;

the amending Act means the *Acts Amendment (Asbestos Related Diseases) Act 1983*.

[Section 47A inserted by No. 73 of 1954 s. 4; amended by No. 84 of 1983 s. 5.]

48. Crown not affected, except as expressly provided

Except as therein expressly provided, the preceding provisions of this Act do not bind or affect the Crown.

48A. Various provisions repealed

[(1) Omitted under the Reprints Act 1984 s. 7(4)(e).]

- (2) The provisions of any Act which enact that in an action to which section 47A applies,
- (a) the action is to be commenced within a particular time; or
 - (b) notice of action is to be given within a particular time or otherwise,

are repealed.

[Section 48A inserted by No. 73 of 1954 s. 8.]

49. Exception of cases provided for by other Acts

Except as provided in section 47A, nothing in this Act shall apply to any action, suit, or other proceeding the time for commencing which is limited by any enactment specially limiting the time for commencing any action, suit, or other proceeding thereunder.

[Section 49 amended by No. 73 of 1954 s. 6.]

[First and Second Schedules omitted under the Reprints Act 1984 s. 7(4)(e)-(f).]

Notes

^{1a} The *Limitation Act 1935* was repealed by the *Limitation Legislation Amendment and Repeal Act 2005* s. 4(1) but its provisions continue to apply to certain causes of action (see s. 4(2) and (3)).

¹ This is a compilation of the *Limitation Act 1935* and includes the amendments made by the other written laws referred to in the following table. This table also contains information about any previous reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Limitation Act 1935</i>	35 of 1935	7 Jan 1936	14 Apr 1936 (see s. 1 and <i>Gazette</i> 9 Apr 1936 p. 527)
<i>Limitation Act Amendment Act 1954</i>	73 of 1954	14 Jan 1955	1 Mar 1955 (see s. 2 and <i>Gazette</i> 18 Feb 1955 p. 343)
Reprint of the <i>Limitation Act 1935</i> approved 10 Oct 1969 (includes amendments listed above)			
<i>Age of Majority Act 1972</i> s. 6(2)	46 of 1972	18 Sep 1972	1 Nov 1972 (see s. 2 and <i>Gazette</i> 13 Oct 1972 p. 4069)
<i>Limitation Act Amendment Act 1978</i>	45 of 1978	29 Aug 1978	29 Aug 1978
Reprint of the <i>Limitation Act 1935</i> approved 5 May 1983 (includes amendments listed above)			
<i>Acts Amendment (Asbestos Related Diseases) Act 1983</i> Pt. II	84 of 1983	22 Dec 1983	19 Jan 1984 (see s. 2)
<i>Workers' Compensation and Rehabilitation Amendment Act 1993</i> s. 44	48 of 1993	20 Dec 1993	24 Dec 1993 (see s. 2(2) and <i>Gazette</i> 24 Dec 1993 p. 6795)
<i>Limitation Amendment Act 1997</i>	7 of 1997	17 Jun 1997	17 Jun 1997 (see s. 2)
Reprint 3: The <i>Limitation Act 1935</i> as at 14 Mar 2003 (includes amendments listed above)			
<i>Acts Amendment (Equality of Status) Act 2003</i> s. 120	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Workers' Compensation Reform Act 2004</i> s. 164 and 174	42 of 2004	9 Nov 2004	s. 174: 4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131); s. 164: 14 Nov 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131 and 17 Jun 2005 p. 2657);

Short title	Number and year	Assent	Commencement
			Para (b) of proclamation published 31 Dec 2004 p. 7131 revoked (see <i>Gazette</i> 17 Jun 2005 p. 2657)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Limitation Legislation Amendment and Repeal Act 2005</i> Pt. 2 ²	20 of 2005	15 Nov 2005	15 Nov 2005 (see s. 2)

² The *Limitation Legislation Amendment and Repeal Act 2005* Pt. 2 reads as follows:

“

Part 2 — Repeal

4. *Limitation Act 1935* repealed and savings provisions

- (1) The *Limitation Act 1935* is repealed.
- (2) The *Limitation Act 1935* continues to apply, despite its repeal and the enactment of the *Limitation Act 2005*, to causes of action that accrued before commencement day.
- (3) Subsection (2) is subject to the *Limitation Act 2005* sections 6 and 7.
- (4) The *Limitation Act 1935* applies, despite its repeal and the enactment of the *Limitation Act 2005* (the “**new Act**”), to a post-commencement action, as defined in section 8(2) of the new Act, to which section 15 of the new Act does not apply because of section 8(2) of the new Act.
- (5) A reference in a written law to the *Limitation Act 2005* may, where the context so requires, be read as if it were a reference to the *Limitation Act 1935* in relation to a cause of action —
 - (a) that accrued before commencement day; or
 - (b) of a kind mentioned in subsection (4).

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