

SA Law Reform Commission

Presentation

Revised Discussion Paper on Prescription Periods

**Part B: Review of 3-year general
prescription period**

ELEMENTS DEALT WITH IN TOPIC

BACKGROUND AND CHALLENGES

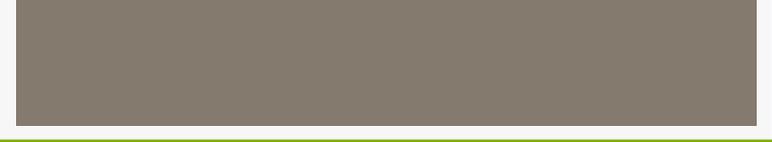
Discussion Paper 126

The question of increasing the general prescription period from three years to five years was raised in the Commission's previous Discussion Paper on Prescription Periods

Revised Discussion Paper 147

The Commission conducts a reconsideration of the question based on the impact of the following pertinent factors:

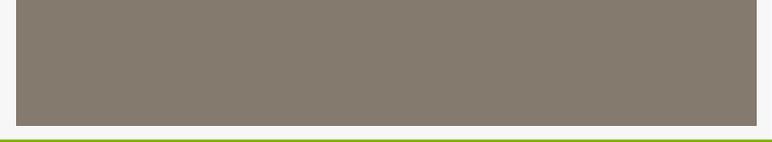
- Modern trend towards shorter general periods
- Core value of a prescription period
- Impact of prescription in other regimes



ELEMENTS DEALT WITH IN TOPIC

FINDINGS (1)

- Evaluation of the three identified factors (modern trend towards shorter general periods, core value of a prescription period and impact of prescription in other regimes)
- Question of prevailing socio-economic conditions



ELEMENTS DEALT WITH IN TOPIC

FINDINGS (2)

- Additional factors requiring consideration
 - Challenges experienced by creditors in attempting to recover debt

PRELIMINARY PROPOSALS FOR LAW REFORM

Increase of 3-year general period to four years

Provisions in Prescription Bill	Discussion
<p>15. Periods of prescription</p> <p>(1) The periods of prescription of debts are the following:</p> <p>(d) save where an Act of Parliament, in accordance with sections 12(2) and (3) or Part B, provides otherwise, four years in respect of any other debt.</p>	<p>Purpose:</p> <ul style="list-style-type: none">• Acknowledgment that in certain circumstances, an increase in the general prescription period may be warranted

PRELIMINARY PROPOSALS FOR LAW REFORM

Additional provisions unrelated to review of general period

Provisions in Prescription Bill

Discussion

15. Periods of prescription

(2) Subject to subsection (3) and section 34(1) of the National Nuclear Regulator Act, 1999 (Act No. 47 of 1999), the cut-off date beyond which debts are no longer capable of enforcement, regardless of factors preventing the exercise of a right, including the delayed commencement of prescription, the suspension of prescription or the interruption of prescription, is-

(a) forty years from the due date of debt, in the case of debts with a thirty-year prescription period;

(b) twelve years from the date a minor reaches the age of majority, in the case where a creditor is a minor; and

(c) twenty years from the due date of debt, in the case of other debts.

Purpose:

- Insertion of long-stop provision, to prevent exposure to indefinite threat of litigation, counter to prescription's objective of legal certainty and finality.

PRELIMINARY PROPOSALS FOR LAW REFORM

Additional provisions unrelated to review of general period

Provisions in Prescription Bill	Discussion
<p>15. Periods of prescription</p> <p>(3) Subsection (2) does not apply-</p> <p>(a) to debts arising from the alleged commission of offences referred to in section 16(2)(c) of this Act; or</p> <p>(b) to debts arising from the contracting of occupational diseases provided for in any workers compensation law, including the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973) and the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993).</p>	<p>Purpose:</p> <ul style="list-style-type: none">• Debts covered by these provisions-<ul style="list-style-type: none">○ are based on the acquiring of knowledge, over which a creditor may have no control, to the extent that same cannot even be imputed on them○ are based on the delayed onset of diseases, and thus the delayed acquiring of knowledge, over which a creditor has no control, to the extent that a deeming date is not even possible