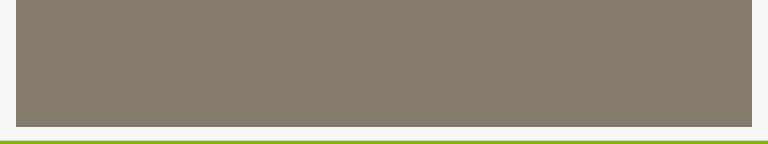


SA Law Reform Commission

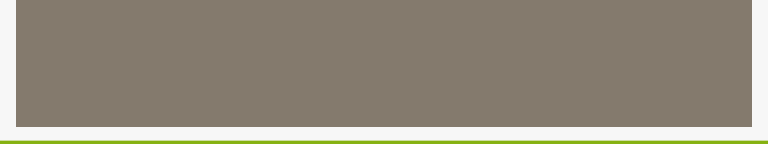
Presentation

Revised Discussion Paper on Prescription Periods

Introduction



Any conversation about prescription must, of necessity, proceed on the basis that it is **inherently limiting of rights**, in direct collision with the section 34 constitutional right of access to courts



It is a well established principle, however, that it constitutes a justifiable limitation, in keeping with the section 36 constitutional limitation of rights provision in that it is a-

- Necessary & utilitarian instrument of justice meant to serve the **public interest**, for it is in the public interest that rights should be enforced expeditiously & diligently to prevent disturbance of the peace



PRIMARY OBJECTIVES

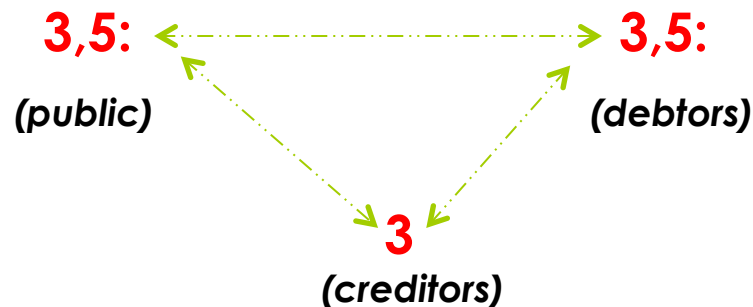
- The achievement of **legal certainty & finality**
- The **expeditious & diligent** enforcement of rights



SECONDARY OBJECTIVE

- The protection of interests of the **creditor** in instances where he is **unable to timeously assert a right**

The tension created by this **balancing of interests** between the **public**, the rights of **debtors** and the rights of **creditors**, so that both **justice and equity** are substantially equally served can be expressed by way of the following ratio:





AIM OF INVESTIGATION

- To complete the earlier work of the Commission into the harmonisation of existing laws providing for different “*limitation provisions*” in relation to enactments that had not been dealt with by the time that ILPACOS was passed in 2002; and
- To review certain aspects of the laws of prescription in instances where its rules-
 - fail to accommodate the challenges and needs of a particular society;
 - fail to operate in accordance with well-established legal principles; and
 - fail to operate in line with constitutional values, including the right of access to courts

BIRD'S EYE VIEW OF TOPICS DEALT WITH

Prescription Act/Common law/Special prescription provisions		Provisions contained in other Acts of Parliament	
Prescription of debts 		Special time limits 	
• Principle of extinction	• Special provisions	• Notice ↓	• Limitation ↓
• General prescription period	○ Other enactments	○ ILPACOS	○ Tax Acts
• Principle of delay	▪ COIDA	○ Other enactments	○ Expropriation Acts
○ Constitutionality	▪ RAF Act		○ Finance Acts
○ Scope extension	▪ NNR Act		○ DTI legislation
▪ Inability to access the courts	▪ A of Dams Act		○ Claims legislation
▪ ADR referrals	▪ M Shipping Act		

STRUCTURE OF PAPER

Part A: Prohibiting the recovery of prescribed debt



debtor protection

Part B: Review of 3-year general prescription period

Part C: Review of principle of delay

Part D: Inability to access the courts



creditor protections

Part E: Alternative Dispute Resolution

Part F: Special time limits





ELEMENTS DEALT WITH IN EACH TOPIC

Part A: Prohibiting the recovery of prescribed debt

Background
Current law (previous regime)
Gaps in the law/Challenges
Law reform proposals

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

Background
Current law (previous regime)
Gaps in the law/Challenges
Law reform proposals

Etcetera