

Limitation Bill

Government Bill

Explanatory note

General policy statement

Overview

Introduction

This Bill replaces the Limitation Act 1950 (the **1950 Act**). The new Act will encourage claimants to make claims without undue delay, and protect defendants from the unjust pursuit of stale claims. It will also be clearer and more comprehensive.

Background

Current law

The 1950 Act contains the general rules for determining the limitation periods for civil claims. The most common period is 6 years, and applies to claims founded on contract or tort, claims for an account, and claims in respect of a breach of trust. The current periods are subject to extension in a range of circumstances, for example, if the claimant is under 20 years of age, is “of unsound mind”, or is because of fraud or mistake unable with reasonable diligence to discover that a claim exists.

There are difficulties in the substance and drafting of the 1950 Act. It is largely based on the 1936 fifth report of the English Law Re-

vision Committee, *Statutes of Limitation* (Cmnd 5334). That report reviewed an English statute of 1623 and made recommendations reflected in the Limitation Act 1939 (UK) (the **1939 Act**). The 1950 Act, which followed closely the terms of the 1939 Act, is incomplete, misleading, and inaccessible. Judges have suggested it is not fit for purpose and requires a complete legislative overhaul. The courts have made piecemeal attempts to cure the difficulties. The overall result has been a lack of harmony.

Law Commission reports in 1988, 2000, and 2007

The 1950 Act has been the subject of 3 Law Commission reports. Two have recommended that it be replaced with a new Act.

The 1988 report *Limitation Defences in Civil Proceedings* (NZLC R6, 1988) recommended that the 1950 Act be replaced with a new Limitation Defences Act of wide application.

The 2000 report *Tidying the Limitation Act* (NZLC R61, 2000) noted that general reform had not proceeded, and that the problems of the existing law had worsened since 1988. It therefore confined its recommendations to urgently needed changes expressed as proposed amendments to the 1950 Act.

The 2007 report *Limitation Defences in Civil Claims: Update Report for the Law Commission* (NZLC MP16, 2007) recommended that the 1950 Act be replaced with a new Act that would apply to specified claims and help to make limitation law more accessible.

Consultation on exposure draft Bill

An exposure draft Bill based on Law Commission recommendations was published for comment in December 2007.

Submissions on the exposure draft raised significant issues. The Law Commission responded by convening a working group of key submitters and stakeholders to review the exposure draft and identify and address technical issues.

The working group's review resulted in the proposed new rules being restructured, refined, and made simpler and clearer. This Bill embodies the Law Commission's recommendations based on this further work. Money claims are generally dealt with in one Part of the Bill, and certain specified non-money claims separately in another. General provisions cover minority, incapacity, acknowledgement or

part-payment, and fraud. The court will have a discretion to provide relief in child sexual abuse claims, and a discretion to extend limitation periods in cases of incapacity (for example, incapacity arising at or towards the end of a limitation period). The current law is both simplified and clarified in this Bill.

Summary of key measures

The Bill will—

- provide clearer, more comprehensive law on general civil limitation defences:
- balance fairly the rights of claimants to have access to justice and the rights of defendants not to be disadvantaged by stale claims:
- make some substantive improvements to the law on general civil limitation defences.

The Bill implements the following key Law Commission recommendations:

- repeal and replace the 1950 Act:
- have a general civil limitation defence to money claims (widely defined, with specific inclusions, for example, claims for monetary relief for a breach of the New Zealand Bill of Rights Act 1990—not covered by the 1950 Act: *Sugrue (P F) Ltd v Attorney-General* [2004] 1 NZLR 207 (CA)), and with specific exclusions, for example, claims for contribution from another tortfeasor or joint obligor):
- provide general civil limitation defences to certain other claims, including claims in respect of land or goods:
- make the start date of the primary limitation period for most claims the date of the act or omission on which the claim is based (rather than the date of accrual of the relevant cause of action which, as shown for example by *Thom v Davys Burton* [2008] NZFLR 1032 (SC), is a date that is sometimes difficult to identify), but also provide special start dates for certain claims:
- retain, for almost all claims, the current primary limitation period of 6 years:

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- provide exceptions or modifications to limitation periods and start dates for cases involving minority, incapacity, acknowledgement or part-payment, and fraud (including, for cases of incapacity, giving the court or tribunal a discretion to extend relevant periods):
 - introduce, for money claims and certain other claims (for most of which, under current law, time runs even if they are not reasonably discoverable: *Trustees Executors Ltd v Murray* [2007] 3 NZLR 721 (SC)), a 3-year late knowledge period that—
 - applies if the claim is made after its primary limitation period and the claimant has late knowledge of the claim (because, at the close of the start date of the claim’s primary limitation period, the claimant neither knew, nor ought reasonably to have known, specified key facts that the claimant must know in order to make the claim); and
 - starts on the date when the claimant gained, or ought reasonably to have gained, knowledge of those specified key facts (the claim’s late knowledge date):
 - prevent liability for an indeterminate time by introducing a defence to a claim made within its late knowledge period but after a longstop period (of 15 years after the date of the act or omission on which the claim is based):
 - give the court or tribunal a discretion, like that in section 33 of the Limitation Act 1980 (UK), to order that monetary relief may be granted in respect of a claim of sexual abuse of a minor even though a general limitation defence has been or could be established against the claim:
 - give the court or tribunal a discretion to order that relief may be granted in respect of a claim on a judgment or to enforce an arbitral award even though a general limitation defence has been or could be established against the claim:
 - give the court or tribunal a discretion to order that relief may be granted in respect of an ancillary claim when relief may be granted for the original claim but a general limitation defence has been or could be established against the ancillary claim:
 - clarify, simplify, and re-enact the current rules about claims for land.

Other specific limitation periods, other limitation defences, or other arrangements are prescribed in approximately 30 other Acts, and these other arrangements will continue to prevail in the event of any conflict.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. The new Act is intended to come into force on **1 July 2010**.

Part 1

Preliminary provisions

Clause 3 states the Bill's purpose—to encourage claimants to make claims for monetary or other relief without undue delay by providing defendants with defences to stale claims.

Clause 4 defines certain terms used in the Bill. The terms defined include claim, claimant, defendant, late knowledge period, longstop period, Part 3 period, primary period, and start date.

Clause 5 defines, for certain claims only, the term date of the act or omission on which the claim is based.

Clause 6 defines the term date on which the claim is filed for both—

- a claim made in a proceeding commenced in a specified court or tribunal; and
- a claim the dispute relating to which is referred to arbitration.

Clause 7 ensures that the new Act will bind the Crown.

Clause 8 preserves any equitable or other jurisdiction to refuse relief.

Clause 9 identifies the claims affected by the defences prescribed by the Bill. It also ensures that those defences are subject to the exceptions and modifications set out in the Bill. The claims affected by the Bill include those based on an act or omission after **30 June 2010** and made in a civil proceeding in a Disputes Tribunal. The exceptions and modifications set out in the Bill include—

- special start dates for specified claims (*see clauses 15 and 36*); and
- exceptions or modifications to periods and start dates in cases of minority, incapacity, acknowledgment or part payment, fraud, or breach of trust (*see clauses 42 to 47*).

Part 2

Defence to money claims

Clause 10(1) prescribes a defence to a money claim (as defined in *clause 11*) if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based (the claim's **primary period**).

However, *clause 10(3)* applies to the claim instead of *clause 10(1)* (whether or not a defence to the claim has been raised or established under *clause 10(1)*) if—

- the claimant has late knowledge of the claim, and so the claim has a late knowledge date (*see clause 13*); and
- the claim is made after its primary period.

It is a defence to a claim to which *clause 10(3)* applies if the defendant proves that the date on which the claim is filed is at least—

- 3 years after the late knowledge date (the claim's **late knowledge period**); or
- 15 years after the date of the act or omission on which the claim is based (the claim's **longstop period**).

Application of a limitation defence will often be decided apart from, and before, trial of a claim. “The appropriate procedure, where a defendant considers that he or she has a good limitation defence, is either to plead the defence and seek trial of the defence as a preliminary issue [(for example, by order under High Court Rule 10.15)] or, in a clear case, to apply to strike out the plaintiff's claim on the grounds that it is frivolous, vexatious and an abuse of process – *see Murray v Morel & Co Ltd* [2006] 2 NZLR 366 at [59] (CA). In any strike out application, the onus is on the defendant to show that [relief in respect of] the claim is statute-barred. Evidence can be tendered by both parties by affidavit.” *See Crown Health Financing Agency v P and B and Ors* [2008] NZCA 362 at [63] per Glazebrook J.

Clause 11(1) defines money claim as a claim for monetary relief at common law, in equity, or under an enactment. A claim for monetary relief thus covers many categories of claims more specifically described in the 1950 Act (for example, claims for money secured by a mortgage (including a charge or an encumbrance), and claims

to recover, or to recover damages in respect of, arrears of rent—section 19 of the 1950 Act). However, a claim for monetary relief—

- includes a claim specified in *clause 11(2)* (for example, a claim for monetary relief for a breach of the New Zealand Bill of Rights Act 1990); but
- does not include a claim specified in *clause 11(3)* (for example, a claim for damages in respect of any trespass or injury to Māori customary land).

Claims for damages under the Human Rights Act 1993 or the Privacy Act 1993 are not money claims, because the claims to which the Bill will apply (*see clause 9*) do not include claims made in proceedings in the Human Rights Review Tribunal. The special complaints procedures, and preconditions to commencement of proceedings for damages, under those Acts, make it inappropriate to superimpose on those claims a general civil limitation defence. Any necessary or desirable limitation defences to those claims are best prescribed by special provisions in those Acts.

Clause 12 ensures that *clause 10* does not apply to damages under section 16A of the Judicature Act 1908 (which section on 1 January 1989 replaced the Chancery Amendment Act 1858 (UK) (21 and 22 Vict, c 27) (“Lord Cairns’ Act”) as in force in New Zealand).

Clause 13(1) defines a claim’s late knowledge date as the date (after the close of the start date of the claim’s primary period) on which the claimant gained knowledge (or, if earlier, the date on which the claimant ought reasonably to have gained knowledge) of specified key facts that the claimant must know in order to make the claim.

Clause 13(2) provides that a claimant does not have late knowledge of a claim unless the claimant proves that, at the close of the start date of the claim’s primary period, the claimant neither knew, nor ought reasonably to have known, all of those specified key facts.

Clause 13(3) makes it clear that the claimant’s absence of actual or constructive knowledge may be attributable to a mistake of fact or to a mistake of law (other than a mistake of law as to the Bill’s effect).

Clause 14 ensures the primary period for a claim for defamation is 2 years not 6 years. This re-enacts the current law (section 4(6A) of the 1950 Act). This Bill does not re-enact, however, the current discretion to permit relief on a defamation claim made within 6 years from the date on which the cause of action accrued (section 4(6B) of the

1950 Act). The late knowledge provisions in this Bill do, however, apply to a money claim that is a claim for defamation.

Clause 15 specifies special start dates for various money claims. The special start date for a claim under section 301 of the Companies Act 1993 (which, in a liquidation, empowers the court to require persons to repay money or return property), for example, is the date on which the liquidator of the company or overseas company was appointed. When time should begin to run for claims under corresponding earlier provisions in the Companies Act 1955 was discussed in *Re Maney and Sons De Luxe Service Station Limited, Maney v Cowan* [1969] NZLR 116 (CA).

Clause 16 gives the court or tribunal a discretion, like that in section 33 of the Limitation Act 1980 (UK), to order that monetary relief may be granted in respect of a claim of sexual abuse of a minor even though a general limitation defence has been or could be established against the claim. The application for the order may be made before or after the court or tribunal has decided whether the defendant has established the defence. In determining whether to make an order under *clause 16*, the court or tribunal must take into account the matters specified in *clause 16(4)(a) to (g)*, and any other matters it considers relevant.

Part 3

Defences to other claims

Claims in respect of land

Claims in respect of land are of minor significance for limitation law purposes because the Land Transfer Act 1952 overrides the 1950 Act (and will also override this Bill), and because nearly all land in New Zealand is under the Land Transfer Act 1952. *Clauses 17 to 26* nevertheless re-enact in more modern form the existing rules in sections 6 to 10, 13, and 16 to 18 of the 1950 Act. Section 11 of the 1950 Act is not brought forward because relief in respect of leases is in practice able to be determined satisfactorily under subpart 6 of Part 4 of the Property Law Act 2007. Sections 12 and 15 of the 1950 Act are not brought forward because they appear to have no continued operation in New Zealand. Claims to recover, or to recover damages in respect of, arrears of rent (section 19 of the 1950 Act) are, under *clauses 10 and 11*, simply money claims. The existing rules in respect of Māori

customary land have been brought forward, but, for users' convenience, gathered into one provision: *clause 26*.

*Claims in respect of personal property,
accounts, wills, contribution, and judgments or
awards*

Clauses 27 and 28 re-enact and clarify current rules (in section 5 of the 1950 Act) on—

- claims to recover goods (other than goods held on trust: *see clauses 27(3) and 29*); and
- extinguishment of the title of the owner of converted or wrongfully detained goods in cases of successive conversions or wrongful detentions of goods.

Clause 29 combines and re-enacts, with adjustment, current rules in sections 21(2) and 22 of the 1950 Act on claims made by or on behalf of a beneficiary to recover personal property held on trust. The limitation period for these claims is 6 years, but the start date differs depending on the type of trust property concerned. The adjustment is that *clause 29(2)* applies to claims of this kind a late knowledge period and a longstop period.

Clause 30 combines and re-enacts, with adjustment, current rules in sections 2(7)(a) and 4(2) of the 1950 Act on claims for an account. The limitation period for these claims is 6 years after the date the matter arose in respect of which the account is sought. The adjustment is that *clause 30(2)* applies to claims of this kind a late knowledge period and a longstop period.

Clause 31 re-enacts, with adjustment, current rules in section 4(6) of the 1950 Act. Those rules relate to a will in respect of which probate has been granted or in respect of which letters of administration with the will annexed have been granted. They prescribe a limitation defence for a claim seeking to have the will declared or adjudicated to be invalid on the ground of the will-maker's lack of testamentary capacity, or on the ground of undue influence. The adjustment is that the limitation period for these claims is halved from 12 years to 6 years after the date of the grant of probate or letters of administration.

Clause 32 relates to claims for contribution. It applies only to a claim—

- under section 17 of the Law Reform Act 1936 by a tortfeasor (**A**) liable in tort to another person (**B**) in respect of damage, and for contribution from another tortfeasor (**C**) who is, or would if sued in time by B have been, liable in tort to B (whether jointly with A or otherwise) in respect of that damage; or
- by a person (**A**) liable otherwise than in tort to another person (**B**) in respect of a matter, and for contribution from a third person (**C**) who is, or would if sued in time by B have been, liable (otherwise than in tort) to B (whether jointly with A or otherwise) in a coordinate way in respect of that matter).

Clause 32(3) states when, for these purposes, C is liable to B “in a coordinate way”.

The limitation period for the 2 narrowly defined classes of contribution claims to which *clause 32* applies is 2 years after the date on which A’s liability to B is quantified by an agreement, award, or judgment. By contrast, section 14 of the 1950 Act provides for a special start date for every claim “for a sum of money by way of contribution or indemnity, however the right to contribution or indemnity arises”. The special start date is a deemed date of accrual of the claim “at the first point of time when everything has happened which would have to be proved to enable judgment to be obtained for a sum of money in respect of the claim”. Under the Bill, however, claims for contribution or indemnity that are claims to which *clause 32* does not apply are simply money claims under *clauses 10 and 11*.

Clause 33 prescribes a defence to claims on a judgment. It re-enacts, with clarifications and adjustments, section 2(7)(b), and the first portion of section 4(4), of the 1950 Act. A judgment, for these purposes, includes both an arbitral award entered as a judgment, and a judgment obtained in a foreign country. However, *clause 33* does not apply to enforcement of the judgment using enforcement processes in rules of court or other laws. Nor does it apply to bankruptcy or liquidation proceedings based wholly or in part on the judgment. One adjustment is that the limitation period is halved from 12 to 6 years after the date on which the judgment became enforceable in the country in which it was obtained. (A similar 6-year period applies under section 24(1) of the Limitation Act 1980 (UK).) Another adjustment is that

the court or tribunal is given a discretion to order that relief may be granted in respect of the claim as if no limitation defence applies to it. However, the order must be applied for before the court or tribunal has decided whether the defence is established against the claim.

Clause 34 relates to claims to enforce an arbitral award that is enforceable by action in New Zealand. It re-enacts, with clarifications and adjustments, section 4(1)(c) of the 1950 Act. The limitation period is, as under the current law, 6 years, but it runs not from the date on which the cause of action accrued, but instead from the date on which the award first became enforceable by action in New Zealand. *Clause 34* does not apply to entry of an arbitral award as a judgment. Nor does it apply to enforcement of a judgment that is an arbitral award entered as a judgment. Another adjustment is that the court or tribunal is given a discretion to order that relief may be granted in respect of the claim as if no limitation defence applies to it. However, the order must be applied for before the court or tribunal has decided whether the defence is established against the claim.

Claims under contracts statutes

Clause 35 prescribes a defence (which has no counterpart under current law) to a claim for relief (other than any form of monetary relief or declaratory relief) under specified contracts statutes. An example is a claim for an order under the Contracts (Privity) Act 1982 varying or discharging a contract for the benefit of a third party. The limitation period is 6 years after the date of the act or omission on which the claim is based. Claims of this kind have a late knowledge period and a longstop period.

Special start dates

Clause 36 specifies special start dates for various claims that are not money claims. The special start date for a claim in respect of a beneficiary's future interest in a trust, for example, is the date on which the beneficiary's interest in the trust becomes an absolute and immediate interest. The proviso to section 21(2) of the 1950 Act is to similar effect.

Part 4

General provisions

Arbitrations, special defences, and contracting out

Clause 37, which re-enacts section 29 of the 1950 Act, indicates how limitation enactments (including the Bill) apply to arbitrations.

Clause 38 explains how the new Act may be displaced, modified, or supplemented by special limitation defences, or by other provisions with a similar purpose, in other enactments.

Clause 39 enables contracting out of defences under the Bill.

Pleading, and effect of establishing, defences

Clause 40 makes it clear that the Bill does not excuse a defendant from complying with a rule of court (*see*, for example, High Court Rules 4.20(1) and 5.48(4), and *see also* High Court Rule 29.3(6)–(8)) requiring the defendant to plead a defence under the Bill before establishing it.

Clause 41, which has no counterpart in the 1950 Act, makes clear what effect a defence established under the Bill against a claim has if no order under *clause 16, 33(4), 34(3), or 48* applies to the claim. Relief sought by the claim must not be granted, but the establishment of the defence generally does not extinguish, as against the defendant or any other person, any entitlement, interest, right, or title of the claimant on which the claim is based. The underlying liability to the claimant may thus affect the parties' positions (for example, in any setting off of liabilities) even though relief sought by the claim is statute-barred. *Clause 41* is, however, overridden by the extinguishment of title in goods and land provided for in *clauses 25 and 28* (*see clauses 25(2) and 28(3)*).

Exceptions or modifications to periods and start dates

Clauses 42 to 47 provide for exceptions or modifications to periods and start dates.

Clause 42 relates to minority. If, at the close of the start date of a claim's primary period, longstop period, or Part 3 period the claimant was younger than 18 years old, the period does not start to run until the day after the date on which the claimant becomes 18 years of

age. By contrast, current law (section 2(2) of the 1950 Act) deems an infant (that is, under section 4(2) of the Age of Majority Act 1970, a person younger than 20 years old) to be under a disability. This makes available, under section 24 of the 1950 Act, extensions of the relevant limitation period in case of disability. These extensions start when the claimant ceases to be under disability (becomes 20 years of age) or (if earlier) when the claimant dies, and are either—

- a new start date for the limitation period ordinarily applicable (if the claim is one in respect of the death of, or bodily injury to, a person, or the claim is one made by an aggrieved party and is to recover a penalty, forfeiture, or sum by way of a penalty or forfeiture and recoverable by virtue of an enactment); or
- a special, replacement 6-year limitation period (if the claim is one of any other kind).

Clauses 43 and 44 relate to incapacity. *Clause 43* applies to a claimant who proves either or both of the following:

- that the claimant was incapacitated at the close of the start date of a claim's primary period, longstop period, or Part 3 period;
- that the claimant became incapacitated during a claim's primary period, longstop period, or Part 3 period.

Clause 43 gives the court or tribunal a discretion, in respect of a claimant to whom the clause applies, and if it thinks it just to do so after taking into account the matters in *clause 43(3)* and any other relevant matters, to order that a claim's primary period, longstop period, or Part 3 period is extended to the close of a date stated in the order. For the current law on extensions for claimants "under a disability", see the discussion of section 24 of the 1950 Act in the analysis of *clause 42*.

Clause 44 defines, for the purposes of *clause 43*, terms including incapacitated. That term is given a meaning similar to the meaning given to incapacitated person by High Court Rule 4.29 (which identifies a person required to have a litigation guardian as his or her representative in a proceeding unless the court otherwise orders). However, in *clause 44*, the causes of a claimant's or personal representative's incapacity or inability may be or include not only temporary or permanent physical, intellectual, or mental impairment, but also lawful or unlawful detention, and consequences of war, another similar emergency, or a state of emergency declared under the Civil

Defence Emergency Management Act 2002. An intellectual or mental impairment is required to be clinically recognisable, whether or not it is or includes a disability or disorder recognised for the purposes of compulsory assessment and treatment.

Clause 45 relates to the effect of an acknowledgement or part payment. It re-enacts, with adjustments, provisions like those in sections 25 to 27 of the 1950 Act. It applies if the claimant proves that, after the start date of a claim's primary period, longstop period, or Part 3 period, the defendant—

- acknowledged to the claimant (sections 25 to 27 of the 1950 Act do not require acknowledgments to be made “to the claimant”) in writing a liability to, or the right or title of, the claimant; or
- made a payment to the claimant in respect of a liability to, or the right or title of, the claimant.

The effect is that the claimant is deemed for the purposes of the Bill to have a fresh claim on the day after the date, or the latest of the dates, on which an acknowledgement or part payment was given or made.

Clause 46 relates to fraud. As defined by *clause 4*, fraud includes both dishonest or fraudulent concealment, and fraudulent breach of trust. The current law (sections 21(1)(a) and 28 of the 1950 Act) provides for exceptions or modifications to limitation periods in cases of fraud. *Clause 46* similarly ensures that a claim's longstop period or Part 3 period does not apply if, because of fraud by or on behalf of the defendant, at the close of the start date of that period the claimant neither knew nor ought reasonably to have known all or any of specified key facts that the claimant must know in order to make the claim. In a case of this kind, the claim remains susceptible to a defence if it is made after the applicable late knowledge period or, if it has no late knowledge period, after the 3-year period prescribed by *clause 46(2)*. That period begins on the day after the date on which the claimant gained knowledge or, if earlier, the date on which the claimant ought reasonably to have gained knowledge, of all of those specified key facts.

Clause 47 relates to claims to recover trust property possessed or converted by a trustee. It re-enacts, with adjustment, the exception in section 21(1)(b) of the 1950 Act. *Clause 47* similarly ensures that

a claim's longstop period or Part 3 period does not apply if the claim is one by a beneficiary of a trust to recover from the trustee either or both of the following:

- trust property in the trustee's possession;
- the proceeds of trust property previously received by the trustee and converted to the trustee's use.

In a case of this kind, the claim remains susceptible to a defence if it is made after the applicable late knowledge period or, if it has no late knowledge period, after the 3-year period prescribed by *clause 47(2)*. That period begins on the day after the date on which the claimant gained knowledge or, if earlier, the date on which the claimant ought reasonably to have gained knowledge, of the trustee's breach of the trust.

Ancillary claims

Clause 48 relates to ancillary claims. As defined by *clause 4*, an ancillary claim means a claim that relates to, or is connected with, the act or omission on which another claim (the **original claim**) is based, and is—

- a claim that arises from, or results in, the addition of 1 or more parties to the original claim; or
- a counterclaim; or
- a claim by way of set-off; or
- a claim that is added to, or substituted for, the original claim; or
- a claim made by way of a third party, fourth party, or subsequent party procedure (*see*, for example, subpart 4 of Part 4 of the High Court Rules).

Clause 48 applies if relief may be granted in respect of the original claim, but cannot be granted in respect of the ancillary claim. It gives the court or tribunal a discretion to order that relief may be granted in respect of the ancillary claim as if no limitation defence applies to it. However, the order must be applied for before the court or tribunal has decided whether the defendant has established a limitation defence against the ancillary claim.

Interest in respect of judgment debts

Clause 49 re-enacts the current prohibition (in the second portion of section 4(4) of the 1950 Act) on recovery of interest in respect of a judgment debt after 6 years from the date on which the interest became due.

Purchasers, deceased estates, and trust beneficiaries

Clause 50 re-enacts the current protection (in section 28(d) and (e) of the 1950 Act) of the title of bona fide purchasers for value.

Clause 51 relates to the application of the Bill to a person who is the executor, administrator, or trustee of, and is making or defending a claim on behalf of, the estate of an individual who has died.

Clause 52 re-enacts the current prohibition (in section 21(3) of the 1950 Act) on a beneficiary of a trust (A) deriving indirectly (that is, from a judgment or order obtained by any other beneficiary of the trust, (B)) any greater or other benefit than A could have obtained if—

- A had made himself, herself, or itself a claim that is the same in substance as the claim made by B; and
- the Bill had been pleaded in defence to the claim made by A.

Application of limitation law of foreign countries

Clauses 53 and 54 relate to the application, in a New Zealand proceeding or arbitration, of the limitation law of a foreign country. They re-enact, with adjustments, provisions like those in Part 2A of the 1950 Act, which was inserted in 1996 and has counterparts in New South Wales and in the United Kingdom.

Clause 53 applies to any foreign country (and so not only to a foreign country specified in or under section 28B of the 1950 Act). It ensures that the limitation law of the foreign country is characterised as part of the substantive law of that country, and must be applied accordingly in the New Zealand proceeding or arbitration. A New Zealand court, tribunal, or arbitrator exercising a discretion under the limitation law of the foreign country must, so far as practicable, exercise it in the manner in which it is exercised in that country. *Clause 53(4)*

and (5) are new, clarifying provisions based on section 1(1)(b) and (2) of the Foreign Limitation Periods Act 1984 (UK).

Clause 54 is a new public policy exception to the application of *clause 53*. The exception, which does not apply to any limitation law of Australia, is based on section 2(1) and (2) of the Foreign Limitation Periods Act 1984 (UK). A conflict with public policy exists for the purposes of *clause 54* when, and in so far as, the application of *clause 53* would cause undue hardship to a person who is, or might be made, a party to the New Zealand proceeding or arbitration.

Repeal, consequential amendments, and saving

Clause 55 repeals the 1950 Act.

Clause 56 makes consequential amendments to the enactments specified in the *Schedule*.

Clause 57 requires a claim based on an act or omission before **1 July 2010**, unless the parties agree otherwise, to be dealt with as if the Bill had not been enacted.

Regulatory impact statement

Executive summary

The 1950 Act contains limitation periods for civil claims. The periods are designed to achieve a fair and clear balance between the interests of people seeking a legal remedy and those of people being pursued by stale claims. Limitation periods are intended to encourage claimants to start proceedings without undue delay as evidence becomes incomplete or unreliable with age, which is prejudicial to the public interest in the proper administration of justice.

The 1950 Act has been the subject of 3 Law Commission reports (in 1988, 2000, and 2007). The Law Commission has recommended that it be replaced with a new Act. The courts have also called strongly for legislative change. Problems identified are that the current law is unfair, uncertain, and outdated. Some important terms in the 1950 Act are undefined.

A new Act will make some substantive improvements to the rules and improve the clarity and accessibility of limitation law.

Adequacy statement

Crown Law has reviewed this Regulatory Impact Statement and considers it to be adequate according to the adequacy criteria.

Status quo and problem

The 1950 Act contains the general rules for determining the limitation periods for civil claims. A claimant must commence proceedings within the statutory limitation period otherwise the defendant can argue that the claim is out of time and should be dismissed. The most common period is 6 years with certain extensions. Other statutes prescribe limitation periods for specific types of proceedings and these prevail.

Limitation periods are designed to achieve a fair and clear balance between the conflicting interests of those people who wish to procure a remedy and those of people who may be pursued by stale claims. Evidence deteriorates with time, presenting a risk to the judicial process. Limitation periods encourage claimants to pursue claims diligently. They also give security against being held to account for ancient obligations, and the ability to plan for the future with some certainty. This enhances commercial activity in such areas as insurance, and security of title where property is transferred.

The limitation rules need to be clearly and comprehensively expressed in contemporary language that is readily understood, in order to provide justice and certainty for plaintiffs and defendants. The rules need to provide clear guidance.

There are difficulties in the substance and drafting of the 1950 Act. It has been the subject of sustained criticism from the judiciary as being not fit for purpose. The Law Commission has published 3 reports recommending reform. It has concluded that the current Act is incomplete, misleading, and inaccessible. The Law Commission has recommended the repeal and replacement of the Act. Some important concepts, such as “accrual” and “disability”, are not defined in the 1950 Act. This has contributed to uncertainty and lack of clarity.

Objectives

The objectives of reform are to—

- enact a new Act that provides clearer, more comprehensive law on general civil limitation defences, and is more accessible for people:
- balance fairly the interests of claimants to have access to justice, and the interests of defendants not to be disadvantaged by stale claims:
- make some substantive improvements to the law on general civil limitation defences.

Alternative options

Status quo

Maintaining the status quo will not address the problems identified with the 1950 Act by both the Law Commission and the judiciary. It would also fail to address the policy objective of a modern, comprehensive, and accessible limitation statute.

Amendment of 1950 Act

The option put forward by the Law Commission in 2000 was to modernise the 1950 Act by making some urgently needed amendments to it. This approach was rejected in the Law Commission's 2007 report, which recommended that the 1950 Act be repealed and replaced by a new Act that would apply to specified claims, and help to make limitation law more accessible.

Preferred option

The preferred option is to implement the Law Commission's recommendation in 1988 and 2007 to replace the 1950 Act with a new Act that balances fairly the interests of claimants to have access to justice and the interests of defendants to be protected from stale claims. The new Act will encourage claims to be brought without undue delay, and will be clearer and more comprehensive. The main proposals are to—

- repeal and replace the 1950 Act:
- provide for a start date for claims replacing the concept of accrual (with special start dates for some claims):

- retain the current 6-year limitation period for most claims:
- provide for exceptions or modifications to the general limitation period in cases of minority, incapacity, acknowledgement or part-payment, and fraud:
- provide for a 3-year “late knowledge period”, replacing “reasonable discoverability”:
- provide a “long-stop” final limitation period of 15 years in most instances:
- provide the court with a discretion to grant relief from limitation periods in certain circumstances:
- clarify and simplify the current rules for land claims.

Costs

Government: The main cost to the Government will be the costs associated with the legislative process to replace the existing law (the 1950 Act).

Industry and society: There are costs arising out of the need for business (especially lawyers) to develop familiarity with the requirements of new legislation. Otherwise there no direct costs to either industry or society associated with the proposals.

Benefits

Government

Government as litigant: Government will benefit from greater clarity in this area in the same manner as other litigants. The introduction of a 6-year limitation period for certain public law compensation claims will provide certainty and will encourage claimants to take action diligently.

Government as administrator of the courts: There may also be costs savings if courts are able to dispose more efficiently of claims where limitation is an issue. There may be some reduction in cases if plaintiffs and defendants are more readily able to determine how the limitation defence affects their claim. It is not possible to estimate these savings as there is no information about the number of cases where limitation is presently an issue and no means of quantifying the potential impact on litigation decisions.

Industry

Businesses may, from time to time, find themselves as involved in litigation in a civil case, whether as plaintiff or defendant. Greater certainty about limitation periods assists plaintiffs to determine whether their claims are likely to be subject to that defence. For respondents, the introduction of the ultimate (longstop) period of 15 years will reduce costs by allowing an improved assessment of when their liability is likely to end. It will also allow appropriate insurance cover to be taken. Currently, the courts may apply a reasonable discoverability test without a longstop, which means defendants do not know when their potential liability ceases.

In 1988, the Insurance Council commented to the Law Commission that (while they would prefer a 10-year longstop) the introduction of some real certainty by introducing a 15 year-longstop should have the effect of reducing premiums or at least postponing increases in premiums: *Limitation Defences in Civil Proceedings* (NZLC R6, 1988), para 302.

Society

Greater certainty and clarity has advantages for all potential litigants. The proposal will reduce the costs, and risks of injustice, that are associated with litigation and are caused by the use of stale evidence to determine disputes. It will also encourage claimants to act diligently, consequently protecting the quality of the evidence, and reducing the potential for injustices to occur. The proposed late knowledge period will remove the current unfairness to plaintiffs around latent damage.

Implementation review

Primary legislation only is required to implement the proposal. There are no specific plans to evaluate the new Act. It will come into force for events occurring after commencement and hence the impact will be gradual. The Ministry of Justice will monitor general feedback from the public, lawyers, and the judiciary, as and when it is received after the new Act comes into force.

Consultation

Stakeholder consultation

The Law Commission consulted widely during its reviews of the 1950 Act, and consulted publicly on an exposure draft Limitation Bill. The Commission also convened a working group of submitters, and the draft Bill largely reflects the recommendations of that group.

Government departments and other entities

The Ministry of Justice and the Treasury have been consulted on the Cabinet paper and the Bill. The Department of Prime Minister and Cabinet was informed about the Cabinet paper.

The Ministries of Social Development, Economic Development, Culture and Heritage, and Transport, Te Puni Kōkiri, the Departments of Building and Housing, Internal Affairs, Labour, and Inland Revenue, and the New Zealand Customs Service, Land Information New Zealand, and the Public Trust have been consulted on the Bill.

The Law Commission has been consulted on the drafting of the Bill. The Human Rights Commission, and the Offices of the Privacy Commissioner and Health and Disability Commissioner, have been consulted on the Bill.

Hon Chris Finlayson

Limitation Bill

Government Bill

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Limitation Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Limitation Act **2009**.

2 Commencement

This Act comes into force on **1 July 2010**.

Part 1 Preliminary provisions

3 Purpose of this Act

5

The purpose of this Act is to encourage claimants to make claims for monetary or other relief without undue delay by providing defendants with defences to stale claims.

4 Interpretation

In this Act, unless the context otherwise requires,— 10

ancillary claim means a claim that relates to, or is connected with, the act or omission on which another claim (the **original claim**) is based, and is—

- (a) a claim that arises from, or results in, the addition of 1 or more parties to the original claim; or 15
- (b) a counterclaim; or
- (c) a claim by way of set-off; or
- (d) a claim that is added to, or substituted for, the original claim; or
- (e) a claim made by way of a third party, fourth party, or subsequent party procedure 20

arbitration has the meaning given to it by **section 37(1)**

civil penalty means a sum that is recoverable under an enactment and is, or is by way of, a forfeiture or a penalty, but does not include the following to which a person is liable on conviction for an offence: 25

- (a) a fine;
- (b) an amount of compensation, reparation, or restitution

civil proceeding means a proceeding that is neither a criminal proceeding nor a disciplinary proceeding 30

claim means a claim (whether original or ancillary)—

- (a) that may be made in a court or tribunal (other than in a criminal or disciplinary proceeding); or
- (b) the dispute relating to which may be referred to arbitration 35

claim to recover land includes a claim to exercise a right to enter into possession of the land

claimant means the person on whose behalf a claim is made (whether by that person or another person), but does not include an individual (in **section 51** called the **deceased**) who has died 5

country includes a state, territory, province, or other part of a country

date of the act or omission on which the claim is based, for a claim of a kind specified in a paragraph of **section 5(1)**, has the meaning given to it by that paragraph 10

date on which the claim is filed has the meaning given to it by **section 6**

defendant means a person against whom a claim is made

Disputes Tribunal means a Disputes Tribunal established under section 4 of the Disputes Tribunals Act 1988 15

foreign country means a country other than New Zealand

fraud includes—

- (a) dishonest or fraudulent concealment; and
- (b) fraudulent breach of trust 20

goods means any tangible personal property (for example, computer software) other than money

land—

- (a) includes an interest under a lease of real property; but
- (b) does not include an easement or a *profit à prendre* 25

late knowledge period has the meaning given to it by **section 10(3)(a)**

limitation enactments has the meaning given to it by **section 37(1)**

limitation law means— 30

- (a) a law that limits or excludes liability or bars a right to bring proceedings or to have a matter determined by arbitration by reference to the time when proceedings or an arbitration in respect of the matter are commenced; or 35
- (b) a law that provides that proceedings in respect of a matter may be commenced within an indefinite period

longstop period has the meaning given to it by **section 10(3)(b)**

make means to bring a claim by—

- (a) making it in a proceeding commenced in a court or tribunal in accordance with rules of court or other laws relating to the claim; or
- (b) referring the dispute relating to the claim to arbitration

Maori customary land means Maori customary land within the meaning of Te Ture Whenua Maori Act 1993

money means currency that is or has been authorised as a medium of exchange by the law of New Zealand or of any other country

money claim has the meaning given to it by **section 11**

mortgage includes a charge or an encumbrance

Part 3 period, for a claim that is not a money claim, means the period prescribed for the claim by **Part 3**

personal property—

- (a) includes goods; but
- (b) does not include money or an interest under a lease of real property

primary period has the meaning given to it by **section 10(1)**

specified court or tribunal means—

- (a) the High Court, a District Court, a Family Court, or a Disputes Tribunal; or
- (b) the Employment Court, the Environment Court, or the Maori Land Court

start date, in relation to a period prescribed by this Act for a claim, means the date—adjusted in accordance with all relevant exceptions and modifications (if any) set out in this Act—on or after which the period starts.

Compare: 1950 No 65 ss 2(1), (5), (6), 4(5), 7A, 28A, 30

5 Date of act or omission on which claim is based defined for certain claims

- (1) For a claim of a kind specified in one of the following paragraphs, the **date of the act or omission on which the claim is based** means the date specified in that paragraph:

-
- (a) a claim based on an obligation not enforceable until a demand is made—the date on which the defendant defaulted after demand was made; and
- (b) a claim in respect of an infringement after publication of the complete specification and before sealing of a patent sealed under the Patents Act 1953—the date on which the patent was sealed; and 5
- (c) a claim in respect of an infringement (of a registered design or trade mark) in **subsection (2)**—the date on which the infringement was committed or occurred. 10
- (2) **Subsection (1)(c)** applies to—
- (a) an infringement of a design registered under the Designs Act 1953 and in respect of which proceedings may be taken in accordance with the proviso to section 7(5) or the proviso to section 21(2) of that Act because the infringement was committed on or after the date on which the certificate of registration is issued; and 15
- (b) an infringement of a registered trade mark (as defined in section 5(1) of the Trade Marks Act 2002) and in respect of which proceedings may be brought in accordance with section 100(a) or (b) of that Act because the infringement occurred on or after the date specified in whichever of those paragraphs applies. 20
- 6 Date on which claim is filed defined**
- (1) For a claim made in a proceeding commenced in a specified court or tribunal, the **date on which the claim is filed** means the date on which a statement of claim, or any other initiating document, that contains the claim, is filed in, or lodged with, the specified court or tribunal in accordance with rules of court or other laws relating to the claim. 25 30
- (2) For a claim the dispute relating to which is referred to arbitration, the **date on which the claim is filed** means the date on which the request for the dispute to be referred to arbitration (as defined in **subsection (3)**) was, by or on behalf of a party to the arbitration,— 35
- (a) personally served on the defendant; or
- (b) left at the usual or last known place of residence in New Zealand of the defendant; or

- (c) sent by registered post to the defendant's usual or last known place of residence in New Zealand; or
- (d) served on the defendant in accordance with any other applicable law providing for the means of service of the notice; or 5
- (e) served on the defendant by a means provided for in the arbitration agreement.
- (3) **Request for the dispute to be referred to arbitration**, in **subsection (2)**, and for a dispute relating to a claim, means a written notice that— 10
- (a) requires the other party to appoint, or to agree on the appointment of, an arbitrator for the arbitration of the dispute; or
- (b) if the arbitration agreement requires the arbitrator to be a person named or designated in the agreement, requires the other party to submit the dispute, for arbitration, to the person so named or designated. 15
- 7 Act binds Crown**
This Act binds the Crown.
Compare: 1950 No 65 ss 32, 33(1) 20
- 8 Act does not affect jurisdiction to refuse relief**
Nothing in this Act limits or affects any equitable or other jurisdiction to refuse relief, whether on the ground of acquiescence or delay, or on any other ground.
Compare: 1950 No 65 s 31 25
- 9 Defences: application, exceptions, and modifications**
Every defence prescribed by this Act—
- (a) applies only to a claim— 30
- (i) based on an act or omission after **30 June 2010**; and
- (ii) made in a civil proceeding in a specified court or tribunal; and
- (b) is subject to the exceptions and modifications set out in this Act.

Part 2

Defence to money claims

10 Defence to money claim filed after applicable period

- (1) It is a defence to a money claim if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based (the claim's **primary period**). 5
- (2) However, **subsection (3)** applies to a money claim instead of **subsection (1)** (whether or not a defence to the claim has been raised or established under **subsection (1)**) if— 10
- (a) the claimant has late knowledge of the claim, and so the claim has a late knowledge date (*see* **section 13**); and
- (b) the claim is made after its primary period.
- (3) It is a defence to a money claim to which this subsection applies if the defendant proves that the date on which the claim is filed is at least— 15
- (a) 3 years after the late knowledge date (the claim's **late knowledge period**); or
- (b) 15 years after the date of the act or omission on which the claim is based (the claim's **longstop period**). 20

11 Money claim defined

- (1) **Money claim** means a claim for monetary relief at common law, in equity, or under an enactment.
- (2) A claim for monetary relief includes a claim— 25
- (a) for money secured by a mortgage; or
- (b) for, or for arrears of, or for damages in respect of arrears of, interest in respect of a judgment debt; or
- (c) for monetary relief for a breach of the New Zealand Bill of Rights Act 1990; or
- (d) to have imposed, or recover, a civil penalty; or 30
- (e) to enforce a surety's or other person's obligations under, or to obtain through forfeiture, a bond or recognisance (for example, a bail bond).
- (3) A claim for monetary relief does not include a claim—
- (a) for damages in respect of any trespass or injury to Maori customary land (*see* **section 26**); or 35

- (b) for contribution from another tortfeasor or joint obligor (*see* **section 32**); or
- (c) on a judgment, or to enforce an arbitral award (*see* **sections 33 and 34**); or
- (d) under the Criminal Proceeds Recovery Act 2009 or sections 142A to 142Q of the Sentencing Act 2002; or 5
- (e) under the Terrorism Suppression Act 2002.

12 Damages as well as, or in substitution for, injunction or specific performance

Nothing in **section 10** applies to damages under section 16A of the Judicature Act 1908. 10

13 Late knowledge date (when claimant has late knowledge defined)

- (1) A claim's **late knowledge date** is the date (after the close of the start date of the claim's primary period) on which the claimant gained knowledge (or, if earlier, the date on which the claimant ought reasonably to have gained knowledge) of all of the following facts: 15
- (a) the fact that the act or omission on which the claim is based had occurred: 20
 - (b) the fact that the act or omission on which the claim is based was attributable (wholly or in part) to, or involved, the defendant:
 - (c) if the defendant's liability or alleged liability is dependent on the claimant suffering damage or loss, the fact that the claimant had suffered damage or loss: 25
 - (d) if the defendant's liability or alleged liability is dependent on the act or omission on which the claim is based having been induced by fraud or, as the case may be, by a mistaken belief, the fact that the act or omission on which the claim is based is one that was induced by fraud or, as the case may be, by a mistaken belief. 30
- (2) A claimant does not have late knowledge of a claim unless the claimant proves that, at the close of the start date of the claim's primary period, the claimant neither knew, nor ought reasonably to have known, all of the facts specified in **subsection (1)(a) to (d)**. 35

- (3) The fact that a claimant did not know (or had not gained knowledge), nor ought reasonably to have known (or to have gained knowledge), of a particular fact may be attributable to a mistake of fact or law (other than a mistake of law as to the effect of this Act). 5

14 Defamation claims: primary period 2 years not 6 years

For a claim for defamation, “6 years” in **section 10(1)** must be read as “2 years”.

Compare: 1950 No 65 s 4(6A), (6B)

15 Special start dates for various money claims 10

- (1) For the purposes of **section 10(1) and (3)(b)**, the primary and longstop periods of a claim specified in one of the following paragraphs have the start date specified in that paragraph:

- (a) a claim for, or for arrears of, or for damages in respect of arrears of, interest or rent—the date on which the interest, rent, or arrears became payable: 15
- (b) a claim for conversion or wrongful detention made in respect of goods that have been the subject of 1 or more earlier instances of conversion or wrongful detention, and made by a person referred to in **section 28** as the original claimant—the date of the original or first conversion or (as the case requires) wrongful detention: 20
- (c) a claim to recover a principal sum of money secured by a mortgage over property that is or includes a future interest, or a life insurance policy, that has not matured or been determined—the date on which the interest or policy matures or is determined: 25
- (d) a claim in respect of a beneficiary’s future interest in a trust—the date on which the beneficiary’s interest in the trust becomes an absolute and immediate interest: 30
- (e) a claim to, or for a share or interest in, the personal estate (whether under a will or on an intestacy) of an individual who has died—the date on which the right to receive the share or interest accrued: 35
- (f) a claim for cancellation of an irregular transaction and for an order under section 207 of the Insolvency Act 2006—the date on which the assignee of the bankrupt,

- or appointee of the estate of the deceased debtor, was appointed:
- (g) a claim under section 213 of the Insolvency Act 2006—the date on which the assignee of the bankrupt was appointed: 5
 - (h) a claim under section 301 of the Companies Act 1993—the date on which the liquidator of the company or overseas company was appointed:
 - (i) a claim under section 54 of the Corporations (Investigation and Management) Act 1989 or section 138 of the Reserve Bank of New Zealand Act 1989—the date on which the corporation or bank was declared to be subject to statutory management. 10
- (2) When section 301 of the Companies Act 1993 applies, in accordance with section 55 of the Corporations (Investigation and Management) Act 1989 or section 139 of the Reserve Bank of New Zealand Act 1989, to a corporation or a registered bank subject to statutory management, the date in **subsection (1)(h)** must be read as the date on which the corporation or bank was declared to be subject to statutory management. 15 20

Compare: 1950 No 65 ss 2(7)(c), 4(4), 5(1), 19, 20(3), proviso to 21(2), 22

16 Discretion to allow relief for claim of sexual abuse of minor

- (1) This section applies to a claim— 25
 - (a) in respect of sexual abuse that occurred when the claimant was aged under 18 years; and
 - (b) made in a proceeding commenced in a specified court or tribunal; and
 - (c) against which the defendant could establish, or has established, a defence under this Part. 30
- (2) The specified court or tribunal may, if it thinks it just to do so on an application made to it for the purpose, order that monetary relief may be granted in respect of the claim as if no defence under this Part applies to it. 35
- (3) The application for the order may be made before or after the court or tribunal has decided whether the defendant has established a defence under this Part against the claim.

- (4) In determining whether to make an order under this section, the specified court or tribunal must take into account—
- (a) any hardship that would be caused,—
 - (i) if the order were made, to a person who is, or is represented by, the defendant; and 5
 - (ii) if the order were not made, to the claimant; and
 - (b) the length of, and reasons for, the delay on the part of the claimant; and
 - (c) any effects or likely effects of the delay on—
 - (i) the defendant’s ability to defend the claim; and 10
 - (ii) the cogency of the evidence offered, or likely to be offered, by the claimant or the defendant; and
 - (d) the defendant’s conduct on and after the date of the act or omission on which the claim is based, including the extent to which the defendant responded to requests for information or inspection that were reasonably made by or on behalf of the claimant in order to discover facts that were, or might be, relevant to the claim; and 15
 - (e) the extent to which prompt and reasonable steps were taken by or on behalf of the claimant to make the claim after the claimant became aware that the claimant was entitled to do so; and 20
 - (f) any steps taken by or on behalf of the claimant to obtain relevant medical, legal, or other expert advice, and the nature of any relevant expert advice received by or on behalf of the claimant; and 25
 - (g) the strength of the claimant’s case; and
 - (h) any other matters it considers relevant.

Compare: Limitation Act 1980 s 33 (UK)

Part 3 30

Defences to other claims

Claims in respect of land

17 How Act applies to land

- (1) This Act applies to land, including Crown land, land subject to the Land Transfer Act 1952, and land registered under the Deeds Registration Act 1908. 35

- (2) However, no provision in **Parts 2 and 3**, except **section 26**, applies to Maori customary land.
- (3) In the event of any inconsistency between this Act and the Land Act 1948, the Land Transfer Act 1952 or, as the case may be, section 51 of the Public Works Act 1981, that Act or section prevails. 5
- Compare: 1950 No 65 s 6(2)

18 Crown owned minerals unaffected

Nothing in this Act affects any property or title in, right to, or ownership of, any Crown owned minerals (as defined in section 2(1) of the Crown Minerals Act 1991). 10

Compare: 1950 No 65 s 6(3)

19 Claim to recover land (based on adverse possession)

- (1) It is a defence to a claim to recover land if the defendant proves that the date on which the claim is filed is at least— 15
- (a) 60 years after the date on which the claim accrued to the claimant or to some other person through whom the claimant claims, if the claimant is, or is a person claiming through, the Crown; and
- (b) 12 years after the date on which the claim accrued to the claimant or to some other person through whom the claimant claims, if the claimant is not, and is not a person claiming through, the Crown. 20
- (2) No claim to recover land accrues under this Act unless and until the land is in the possession (in this section called **adverse possession**) of a person in whose favour the period in **subsection (1)(a) or (b)** can run. 25
- (3) For the purposes of this section, 1 or more joint tenants or tenants in common of any land can take adverse possession of the land as against the other tenant or tenants. 30
- Compare: 1950 No 65 ss 7, 13

20 When claims accrue: current interests in land

- (1) A claim to recover land is deemed to have accrued on the date of the discontinuance or dispossession if the claimant, or a person through whom the claimant claims,— 35

- (a) has been in possession of the land; and
 - (b) has, while entitled to the land, discontinued possession, or been dispossessed, of the land.
- (2) A claim to recover land is deemed to have accrued on the date of the deceased's death if the land is (whether under a will or on an intestacy) land of an individual who has died (the **deceased**), and the deceased was—
- (a) in possession of the land on the date he or she died; or
 - (b) in the case of a rentcharge created by will or taking effect on the deceased's death, in possession of the land charged, and was the last person entitled to the land to be in possession of that land.

Compare: 1950 No 65 s 8

21 When claims accrue: future interests in land

- (1) A claim to recover land is, unless this section provides otherwise, deemed to have accrued on the date on which the estate or interest claimed fell into possession (by the determination of the preceding estate or interest or otherwise) if—
- (a) that estate or interest was one in reversion or remainder, or some other future estate or interest; and
 - (b) no person has taken possession of the land by virtue of that estate or interest.
- (2) If the person entitled to the preceding estate or interest was not in possession of the land on the date of the determination of that estate or interest, no relief may be granted in respect of a claim made by the person entitled to the succeeding estate or interest—
- (a) after 60 years from the date on which the claim accrued to the Crown if the Crown is entitled to the succeeding estate or interest; or
 - (b) in any other case, after whichever expires last of the following periods:
 - (i) 12 years from the date on which the claim accrued to the person entitled to the preceding estate or interest;
 - (ii) 6 years from the date on which the claim accrued to the person entitled to the succeeding estate or interest.

- (3) **Subsections (1) and (2)** apply if the preceding estate or interest is a leasehold interest if, and only if, that estate or interest is determinable with life or lives, or with the end of a determinable life interest.
- (4) If a person (A) is entitled to an estate or interest in land in possession and, while so entitled, is also entitled to a future estate or interest in that land, and this Act prevents relief from being granted in respect of A's claim to recover the estate or interest in possession, no relief may be granted in respect of a claim made by A, or by any person claiming through A, in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

Compare: 1950 No 65 s 9

- 22 When claims accrue: land held on trust** 15
- (1) This Act applies to equitable interests in land, including interests in the proceeds of the sale of land held on trust for sale, in the same way as it applies to legal estates.
- (2) Accordingly a claim to recover the land is, for the purposes only of this Act, deemed to accrue to a person entitled in possession to an equitable interest of that kind in the same way and circumstances and on the same date as it would accrue if the person's interest were a legal estate in the land. 20
- (3) If land is held by a trustee (including one who is also tenant for life) on trust, including a trust for sale, and the period in **section 19(1)(a) or (b)** for the trustee to make a claim to recover the land has expired, the estate of the trustee is extinguished only if, and when, the claim to recover the land of every person entitled to a beneficial interest in the land or in the proceeds of sale has accrued and may be the subject of a defence under **section 19**. 25 30
- (4) If land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale, not being a person solely and absolutely entitled to the land or the proceeds, no claim to recover the land is for the purposes of this Act deemed to accrue during that possession to a person in whom the land is vested as tenant for life, person 35

having the powers of a tenant for life, or trustee, or to any person entitled to a beneficial interest in the land or the proceeds.

Compare: 1950 No 65 s 10

23 Restriction on redemption of mortgaged land

- (1) This section applies to a mortgage of land— 5
- (a) only if none of that land is subject to the Land Transfer Act 1952; and
 - (b) only if, and after, the mortgagee has been in possession of all or any of that land for 12 years.
- (2) After the mortgage has become one to which this section applies, no court or tribunal may grant relief in respect of a claim— 10
- (a) to redeem the land of which the mortgagee has been in possession for at least 12 years; and
 - (b) made by, or by a person claiming through, the mortgagor. 15
- (3) This section overrides anything to the contrary in section 97 of the Property Law Act 2007 or in any other enactment. 15
- Compare: 1950 No 65 s 16

24 No claims preserved by formal entry or continual claim 20

For the purposes of this Act, no person is deemed to have been in possession of land by reason only of having made a formal entry on that land, and no continual or other claim upon or near land preserves a claim to recover that land.

Compare: 1950 No 65 s 17

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25 Extinguishment of owner's title after specified period

- (1) A person's title to land is extinguished if the period in **section 19(1)(a) or (b)** ends before the person makes a claim to recover the land.
- (2) This section overrides **section 41**. 30
- Compare: 1950 No 65 s 18

26 Claims relating to Maori customary land

- (1) It is a defence to a claim to recover Maori customary land if the defendant—

- (a) is, or is a person claiming through, the Crown; and
 (b) proves that the date on which the claim is filed is at least 12 years after the date on which the claim accrued to the claimant or to some other person through whom the claimant claims. 5
- (2) It is a defence to a claim for damages or an injunction in respect of any trespass or injury to Maori customary land if the defendant—
 (a) is, or is a person claiming through, the Crown; and
 (b) proves that the date on which the claim is filed is at least 6 years after the date on which the claim accrued. 10
- (3) For the purposes of this section, the date on which the claim accrued is the date, after **30 June 2010**, on which the wrong occurred.
- (4) Nothing in this Act limits or affects section 344 of Te Ture Whenua Maori Act 1993, or any jurisdiction—
 (a) to investigate and ascertain title to Maori customary land, or to determine whether any parcel of land has the status of Maori customary land; and
 (b) that is conferred on the Maori Land Court or the Maori Appellate Court by any provision of Te Ture Whenua Maori Act 1993 or of any other Act. 15 20
- (5) This section is the only provision of **Parts 2 and 3** that applies to Maori customary land. 25
 Compare: 1950 No 65 ss 6(1), (1A), (2), 7A

*Claims in respect of personal property,
 accounts, wills, contribution, and judgments or
 awards*

- 27 Claim to recover goods** 30
- (1) It is a defence to a claim to recover goods if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based.
- (2) Despite **subsection (1)**, the 6 years start on the date of the original or first conversion or (as the case requires) wrongful detention if the claim to recover goods— 35

- (a) is a claim for further conversion or wrongful detention (and so is made in respect of goods that have been the subject of 1 or more earlier instances of conversion or wrongful detention); and
- (b) is made by a person referred to in **section 28** as the original claimant. 5
- (3) This section does not apply to a claim made by or on behalf of a beneficiary to recover goods held on trust (*see* **section 29**).
Compare: 1950 No 65 s 5(1), (2)
- 28 Extinguishment of title of owner of converted goods** 10
- (1) This section applies to goods if—
- (a) a claim (the **original claim**) accrues to a person (the **original claimant**) in respect of the conversion or wrongful detention of the goods; and
- (b) before the original claimant (whether by making the original claim or taking other steps) recovers possession of the goods, a further conversion or wrongful detention of the goods occurs. 15
- (2) The original claimant's title to the goods is extinguished if the period for the original claim ends before the original claimant makes the original claim. 20
- (3) This section overrides **section 41**.
- (4) However, this section does not limit or affect—
- (a) section 26(1) of the Sale of Goods Act 1908 (which ensures that, if goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen reverts in the person who was the owner of the goods, or that person's personal representative); or 25
- (b) monetary relief in respect of a claim for conversion or wrongful detention when the granting of that relief is not prevented by **section 41(a)**. 30
- Compare: 1950 No 65 s 5(2), (3)
- 29 Claim to recover personal property held on trust**
- (1) It is a defence to a claim made by or on behalf of a beneficiary to recover personal property held on trust if the defen- 35

dant proves that the date on which the claim is filed is at least 6 years after,—

- (a) if the claim is to recover personal property in the estate of an individual who has died, or an interest or share in property of that kind, the date on which the claimant's right to receive the interest or share in the property accrued; and 5
 - (b) if the claim is to recover personal property otherwise held on trust, the date on which the cause of action accrued. 10
- (2) A claim to which **subsection (1)** applies has both a late knowledge period and a longstop period, and **sections 10(3)(a) and (b) and 13** apply to it,—
- (a) as if it were a money claim; and
 - (b) as if the period in **subsection (1)** were its primary period. 15

Compare: 1950 No 65 ss 21(2), 22

30 Claim for account

- (1) It is a defence to a claim for an account if the defendant proves that the date on which the claim is filed is at least 6 years after the date the matter arose in respect of which the account is sought. 20
- (2) A claim to which **subsection (1)** applies has both a late knowledge period and a longstop period, and **sections 10(3)(a) and (b) and 13** apply to it,— 25
 - (a) as if it were a money claim; and
 - (b) as if the period in **subsection (1)** were its primary period.

Compare: 1950 No 65 ss 2(7)(a), 4(2)

31 Claim to have will declared invalid on specified grounds 30

- (1) This section applies to a will in respect of which probate has been granted or in respect of which letters of administration with the will annexed have been granted.
- (2) It is a defence to a claim seeking to have the will declared or adjudicated to be invalid on the ground of the will-maker's lack of testamentary capacity, or on the ground of undue influence, if the defendant proves that the date on which the claim 35

is filed is at least 6 years after the date of the grant of probate or letters of administration.

Compare: 1950 No 65 s 4(6)

32 Claim for contribution from another tortfeasor or joint obligor

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(1) This section applies to a claim under section 17 of the Law Reform Act 1936—

(a) by a tortfeasor (**A**) liable in tort to another person (**B**) in respect of damage; and

(b) for contribution from another tortfeasor (**C**) who is, or would if sued in time by B have been, liable in tort to B (whether jointly with A or otherwise) in respect of that damage. 10

(2) This section also applies to a claim—

(a) made by a person (**A**) who is liable (otherwise than in tort) to another person (**B**) in respect of a matter; and 15

(b) for contribution from a third person (**C**) who is, or would if sued in time by B have been, liable (otherwise than in tort) to B (whether jointly with A or otherwise) in a coordinate way in respect of that matter. 20

(3) C is liable to B in a coordinate way for the purposes of **subsection (2)(b)** if, and only if,—

(a) a common obligation underlies C's liability to B and A's liability to B; and

(b) payment or other discharge of C's liability to B would have the effect of relieving A, in whole or in part, from A's liability to B. 25

(4) It is a defence to A's claim for contribution from C if C proves that the date on which the claim is filed is at least 2 years after the date on which A's liability to B is quantified by an agreement, award, or judgment. 30

Compare: 1950 No 65 s 14; Limitation Act 1980 s 30 (UK)

33 Claim on judgment

(1) It is a defence to a claim on a judgment if the defendant proves that the date on which the claim is filed is at least 6 years after the date on which the judgment became enforceable in the country in which it was obtained. 35

- (2) **Judgment**, in this section, includes a judgment that is—
- (a) an arbitral award entered as a judgment; or
 - (b) a judgment obtained in a foreign country.
- (3) Nothing in this section applies to the following:
- (a) enforcement of the judgment using enforcement processes in rules of court or other laws: 5
 - (b) an application—
 - (i) for a debtor to be adjudicated bankrupt, or to put a company into liquidation; and
 - (ii) based wholly or in part on the judgment. 10
- (4) If a defence under this section has been or could be established against a claim on a judgment the specified court or tribunal may, if it thinks it just to do so on an application made to it for the purpose, order that relief may be granted in respect of the claim as if no defence under this Part applies to it. 15
- (5) The application for the order must be made before the specified court or tribunal has decided whether the defendant has established a defence under this Part against the claim on a judgment. 20
- Compare: 1950 No 65 ss 2(7)(b), 4(4); Limitation Act 1980 s 24(1) (UK) 20

34 Claim to enforce arbitral award

- (1) It is a defence to a claim to enforce an arbitral award that is enforceable by action in New Zealand if the defendant proves that the date on which the claim is filed is at least 6 years after the date on which the award became enforceable by action in New Zealand. 25
- (2) Nothing in this section applies to the following:
- (a) entry of an arbitral award as a judgment:
 - (b) enforcement of a judgment that is an arbitral award entered as a judgment. 30
- (3) If a defence under this section has been or could be established against a claim to enforce an arbitral award the specified court or tribunal may, if it thinks it just to do so on an application made to it for the purpose, order that relief may be granted in respect of the claim as if no defence under this Part applies to it. 35

- (4) The application for the order must be made before the specified court or tribunal has decided whether the defendant has established a defence under this Part against the claim to enforce an arbitral award.
- Compare: 1950 No 65 ss 2(1), 4(1)(c) 5

Claims under contracts statutes

35 Claim for non-monetary and non-declaratory relief

- (1) This section applies to a claim for relief (other than any form of monetary relief or declaratory relief) under all or any of the following Acts: 10
- (a) Contracts (Privity) Act 1982:
 - (b) Contractual Mistakes Act 1977:
 - (c) Contractual Remedies Act 1979:
 - (d) Frustrated Contracts Act 1944:
 - (e) Illegal Contracts Act 1970: 15
 - (f) Minors' Contracts Act 1969.
- (2) It is a defence to the claim if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based.
- (3) The claim has both a late knowledge period and a longstop period, and **sections 10(3)(a) and (b), and 13** apply to it,— 20
- (a) as if it were a money claim; and
 - (b) as if the period in **subsection (2)** were its primary period.

Special start dates

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36 Special start dates for various other claims

- (1) For the purposes of **sections 27 to 30**, a period for a claim specified in one of the following paragraphs has the start date specified in that paragraph:
- (a) a claim in respect of a beneficiary's future interest in a trust—the date on which the beneficiary's interest in the trust becomes an absolute and immediate interest: 30
 - (b) a claim for cancellation of an irregular transaction and for an order under section 207 of the Insolvency Act 2006—the date on which the assignee of the bankrupt, 35

- or appointee of the estate of the deceased debtor, was appointed:
- (c) a claim under section 301 of the Companies Act 1993—the date on which the liquidator of the company or overseas company was appointed: 5
- (d) a claim under section 54 of the Corporations (Investigation and Management) Act 1989 or section 138 of the Reserve Bank of New Zealand Act 1989—the date on which the corporation or bank was declared to be subject to statutory management. 10
- (2) When section 301 of the Companies Act 1993 applies, in accordance with section 55 of the Corporations (Investigation and Management) Act 1989 or section 139 of the Reserve Bank of New Zealand Act 1989, to a corporation or a registered bank subject to statutory management, the date in **subsection (1)(c)** must be read as the date on which the corporation or bank was declared to be subject to statutory management. 15
- Compare: 1950 No 65 s 5(1), proviso to s 21(2)

Part 4 20

General provisions

Arbitrations, special defences, and contracting out

- 37 Application of limitation enactments to arbitrations**
- (1) **Arbitration** means an arbitration under an arbitration agreement or under an enactment, and **limitation enactments** means this Act and any other enactment relating to the limitation of claims. 25
- (2) Limitation enactments apply to claims made in arbitrations as they apply to claims made in a proceeding commenced in a specified court or tribunal. 30
- (3) An arbitration must, for the purposes of a limitation enactment, be treated as being commenced in the same manner as provided in Article 21 of Schedule 1 of the Arbitration Act 1996.
- (4) If the High Court orders that an award be set aside, it may also order that the period between the commencement of the arbitration and the date of the setting aside order must be excluded 35

in computing the time prescribed by a limitation enactment for the commencement of proceedings (including arbitration) with respect to the dispute referred.

Compare: 1950 No 65 s 29

- 38 Other enactments may displace or affect defences** 5
- (1) A defence under **Part 2 or 3** does not apply to a claim if an enactment other than this Act—
- (a) prescribes for the claim a limitation period or any other kind of limitation defence; or
- (b) provides for the determination or fixing of the time before which, or period within which, the claim must be made. 10
- (2) However, this section does not limit or affect the operation of enactments other than this Act that—
- (a) do what is specified in **subsection (1)** but apply to a claim not instead of, but as well as, this Act; or
- (b) alter, extend, limit, or prevent this Act's application or operation. 15
- Compare: 1950 No 65 s 33(1)
- 39 Contracting out of defences** 20
- No provision of this Act makes ineffective, or prevents the enforcement of, an agreement that conflicts or is inconsistent with, or that modifies or prevents some or all of the operation or effects of, a defence under this Act.
- Pleading, and effect of establishing, defences* 25
- 40 Defendant not excused from pleading defence**
- No provision of this Act excuses the defendant from complying with a rule of court or other law requiring the defendant to plead a defence under this Act before trying to establish it.
- 41 Established defence bars relief, not underlying right** 30
- If the defendant establishes a defence under this Act against a claim, and no order under **section 16, 33(4), 34(3), or 48** applies to the claim,—

- (a) a court or tribunal must not grant the relief sought by the claim; but
- (b) the establishment by the defendant of the defence does not extinguish, as against the defendant or any other person, any entitlement, interest, right, or title of the claimant on which the claim is based. 5

Exceptions or modifications to periods and start dates

42 Minority

If the claimant proves that, at the close of the start date of a claim's primary period, longstop period, or **Part 3** period the claimant was younger than 18 years old, the period does not start to run until the day after the date on which the claimant becomes 18 years of age. 10

43 Incapacity

- (1) This section applies to a claimant who proves either or both of the following: 15
 - (a) that the claimant was incapacitated at the close of the start date of a claim's primary period, longstop period, or **Part 3** period: 20
 - (b) that the claimant became incapacitated during a claim's primary period, longstop period, or **Part 3** period.
- (2) If this section applies to a claimant, the specified court or tribunal may, if it thinks it just to do so on an application made to it (before or after the end of the period) for the purpose, order that a claim's primary period, longstop period, or **Part 3** period is extended to the close of a date stated in the order. 25
- (3) In determining whether to make an order under this section, the specified court or tribunal must take into account—
 - (a) whether, while the claimant was incapacitated, a litigation guardian or other authorised representative managed the claimant's affairs with respect to the act or omission on which the claim is based; and 30
 - (b) any steps taken by the litigation guardian or other authorised representative to manage those affairs; and 35
 - (c) any effects or likely effects of the delay on—

- (i) the defendant’s ability to defend the claim; and
- (ii) the cogency of the evidence offered, or likely to be offered, by the claimant or the defendant; and
- (d) the defendant’s conduct on and after the date of the act or omission on which the claim is based, including the extent to which the defendant responded to requests for information or inspection that were reasonably made by or on behalf of the claimant in order to discover facts that were, or might be, relevant to the claim; and
- (e) the extent to which prompt and reasonable steps were taken by or on behalf of the claimant to make the claim after the claimant became aware that the claimant was entitled to do so; and
- (f) any steps taken by or on behalf of the claimant to obtain relevant medical, legal, or other expert advice, and the nature of any relevant expert advice received by or on behalf of the claimant; and
- (g) the strength of the claimant’s case; and
- (h) any other matters it considers relevant.

44 Incapacitated and related terms defined 20

In **section 43** and this section,—

incapacitated means that a claimant or a personal representative is not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings with respect to the act or omission on which the claim is based, or is unable to give sufficient instructions to issue, defend, or compromise proceedings of that kind, because of all or any of the following: 25

- (a) temporary or permanent physical, intellectual, or mental impairment: 30
- (b) lawful or unlawful detention:
- (c) a situation that is, or circumstances that arise from, war, another similar emergency, or a state of emergency declared under the Civil Defence Emergency Management Act 2002 35

intellectual or mental impairment means a clinically recognisable intellectual or mental impairment, whether or not it is or includes—

- (a) an intellectual disability as defined in section 7 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or 5
- (b) a mental disorder as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992

personal representative means an executor, administrator, or trustee of the estate of an individual who has died. 10

45 Acknowledgement or part payment

- (1) This section applies if the claimant proves that, after the start date of a claim's primary period, longstop period, or **Part 3** period, the defendant— 15
 - (a) acknowledged to the claimant in writing a liability to, or the right or title of, the claimant; or
 - (b) made a payment to the claimant in respect of a liability to, or the right or title of, the claimant.
- (2) If this section applies, the claimant is deemed for the purposes 20 only of this Act to have a fresh claim on the day after the date, or the latest of the dates, on which an acknowledgement or part payment was given or made.
- (3) An acknowledgement or part payment of the kind specified in **subsection (1)**— 25
 - (a) is binding on the defendant's successors; and
 - (b) may be given or made by the defendant or an agent of the defendant and to the claimant or an agent of the claimant.
- (4) Payment or part payment of interest by the defendant must be 30 treated for the purposes of this section as an acknowledgement by the defendant to the claimant in writing of the defendant's liability to pay the claimant both that interest and the principal in respect of which it is paid.

Compare: 1950 No 65 ss 25–27

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46 Fraud

- (1) A claim's longstop period or **Part 3** period does not apply to the claim if the claimant proves that, because of fraud by or on behalf of the defendant, at the close of the start date of that period the claimant neither knew nor ought reasonably to have known all or any of the following facts: 5
- (a) the fact that the act or omission on which the claim is based had occurred:
 - (b) the fact that the act or omission on which the claim is based was attributable (wholly or in part) to, or involved, the defendant: 10
 - (c) if the defendant's liability or alleged liability is dependent on the claimant suffering damage or loss, the fact that the claimant had suffered damage or loss:
 - (d) if the defendant's liability or alleged liability is dependent on the act or omission on which the claim is based having been induced by fraud or, as the case may be, by a mistaken belief, the fact that the act or omission on which the claim is based is one that was induced by fraud or, as the case may be, by a mistaken belief. 20
- (2) It is a defence to a claim whose **Part 3** period is disapplied by **subsection (1)**, and that does not have a late knowledge period, if the defendant proves that the date on which the claim is filed is at least 3 years after the date on which the claimant gained knowledge (or, if earlier, the date on which the claimant ought reasonably to have gained knowledge) of all of the facts specified in **subsection (1)(a) to (d)**. 25
- (3) **Sections 42 to 45** apply to the 3-year period prescribed for a claim by **subsection (2)** of this section as if that period were a **Part 3** period. 30

Compare: 1950 No 65 ss 21(1)(a), 28

47 Trust property possessed or converted by trustee

- (1) A claim's longstop period or **Part 3** period does not apply to the claim if it is one by a beneficiary of a trust to recover from the trustee either or both of the following: 35
- (a) trust property in the trustee's possession:
 - (b) the proceeds of trust property previously received by the trustee and converted to the trustee's use.

- (2) It is a defence to a claim whose **Part 3** period is disapplied by **subsection (1)**, and that does not have a late knowledge period, if the defendant proves that the date on which the claim is filed is at least 3 years after the date on which the claimant gained knowledge (or, if earlier, the date on which the claimant ought reasonably to have gained knowledge) of the trustee's breach of the trust. 5
- (3) **Sections 42 to 45** apply to the 3-year period prescribed for a claim by **subsection (2)** of this section as if that period were a **Part 3** period. 10
Compare: 1950 No 65 s 21(1)(b)

Ancillary claims

48 Discretion to allow relief for ancillary claim when allowed for original claim

- (1) This section applies to an ancillary claim made in a proceeding commenced in a specified court or tribunal if, and only if,— 15
- (a) relief may be granted in respect of the original claim, because no defence under **Part 2 or 3** has been or could be established against it, or because of an order under **section 16, 33(4), or 34(3)**; but 20
- (b) relief cannot be granted in respect of the ancillary claim because a defence under **Part 2 or 3** has been or could be established against it, and because no order under **section 16, 33(4), or 34(3)** allows a court or tribunal to grant monetary relief in respect of it. 25
- (2) The specified court or tribunal may, if it thinks it just to do so on an application made to it for the purpose, order that relief may be granted in respect of the ancillary claim as if no defence under **Part 2 or 3** applies to it.
- (3) The application for the order must be made before the specified court or tribunal has decided whether the defendant has established a defence under **Part 2 or 3** against the ancillary claim. 30

*Interest in respect of judgment debts***49 Recovery restricted to 6 years from date interest due**

No arrears of interest in respect of a judgment debt may be recovered after 6 years from the date on which the interest became due.

5

Compare: 1950 No 65 s 4(4); Limitation Act 1980 s 24(2) (UK)

*Purchasers, deceased estates, and trust beneficiaries***50 Protection of title of bona fide purchasers for value**

No provision of this Act operates, or may be applied, to the detriment of the title of a bona fide purchaser for value.

10

Compare: 1950 No 65 s 28(d), (e)

51 Personal representative making or defending claim on behalf of deceased's estate

(1) **Personal representative**, in this section and for an individual who has died (the **deceased**), means a person who is the executor, administrator, or trustee of, and is making or defending a claim on behalf of, the deceased's estate.

15

(2) A personal representative may take advantage of 1 or more exceptions or modifications set out in this Act that would have been available to the deceased, except that a period that under **section 42** does not start to run because of the claimant's minority is treated as starting at the time of the deceased's death.

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(3) A personal representative may take advantage of any late knowledge period that the deceased could have sought to use had he or she not died and, if the personal representative does so, **section 13** applies as if facts that the claimant knew, or ought to have known, include any facts that the personal representative gained knowledge of, or ought to have gained knowledge of, after the time of the deceased's death.

25

30

(4) **Section 43** applies to any incapacity of the personal representative after the time of the deceased's death in the same way as it applies to any incapacity of the deceased before that time.

52 Trust beneficiaries cannot derive benefit indirectly

No beneficiary of a trust (**A**) as against whom there would under this Act be an effective defence may derive any greater or other benefit from a judgment or order obtained by any other beneficiary of the trust (**B**) than A could have obtained if— 5

- (a) A had made himself, herself, or itself a claim that is the same in substance as the claim made by B; and
- (b) this Act had been pleaded in defence to the claim made by A.

Compare: 1950 No 65 s 21(3) 10

Application of limitation law of foreign countries

53 How limitation law of foreign countries applied in proceedings and arbitrations

- (1) This section applies to a proceeding before a New Zealand court or tribunal, or to an arbitration, whenever the substantive law of a foreign country is to be applied in that proceeding or arbitration. 15
- (2) The limitation law of that foreign country is part of the substantive law of that country and must be applied accordingly in that proceeding or arbitration. 20
- (3) A New Zealand court or tribunal or arbitrator exercising, under **subsection (2)**, a discretion under the limitation law of a foreign country must, so far as practicable, exercise it in the manner in which it is exercised in that foreign country. 25
- (4) If, under **subsection (2)**, the limitation law of a foreign country must be applied in a proceeding or arbitration, the limitation law of New Zealand (other than this section) must not be applied in that proceeding or arbitration.
- (5) **Subsection (4)** does not apply in so far as the matter being determined in that proceeding or arbitration is one in the determination of which both the law of New Zealand and the law of a foreign country fall to be taken into account. 30

Compare: 1950 No 65 ss 28B, 28C; Choice of Law (Limitation Periods) Act 1993 ss 5, 6 (NSW); Foreign Limitation Periods Act 1984 s 1(1)(b), (2) (UK) 35

-
- 54 Public policy exception for limitation law of foreign countries other than Australia**
- (1) **Section 53** does not apply to the extent that its application would conflict (whether under **subsection (2)** or otherwise) with public policy. 5
- (2) A conflict with public policy exists for the purposes of **subsection (1)** when, and in so far as, the application of **section 53** would cause undue hardship to a person who is, or might be made, a party to the proceeding or arbitration.
- (3) Nothing in this section applies in respect of any limitation law that is, or has been, in force in Australia. 10
 Compare: Foreign Limitation Periods Act 1984 s 2(1), (2) (UK)
- Repeal, consequential amendments, and saving*
- 55 Limitation Act 1950 repealed**
 The Limitation Act 1950 (1950 No 65) is repealed. 15
- 56 Consequential amendments**
 The enactments specified in the **Schedule** are amended in the manner indicated in that schedule.
- 57 Claims based on acts or omissions before 1 July 2010**
 A claim based on an act or omission before **1 July 2010** must, unless the parties agree otherwise, be dealt with as if this Act had not been enacted. 20
-

Schedule

s 56

Consequential amendments

Arbitration Act 1996 (1996 No 99)

Item relating to the Limitation Act 1950 in Schedule 4: omit.

Building Act 2004 (2004 No 72)

5

Section 393(1): omit “provisions of the Limitation Act 1950 apply” and substitute “**Limitation Act 2009** applies”.

Section 393(2): omit “civil proceedings relating to building work may not be brought” and substitute “no relief may be granted in respect of civil proceedings relating to building work if those proceedings are brought”. 10

Child Support Act 1991 (1991 No 142)

Section 203: repeal and substitute:

“203 No limitation of action to recover financial support

No relief in respect of a claim for recovery of financial support is barred or otherwise affected by the following: 15

“(a) the **Limitation Act 2009**:

“(b) any other enactment that prescribes a limitation period or other limitation defence.

“Compare: 1976 No 65 s 406”.

20

Civil Aviation Act 1990 (1990 No 98)

Section 91I(5): repeal and substitute:

“(5) Subsections (1) to (4) and the provisions of Article 35 of the Montreal Convention and Article 29 of the amended Convention have effect as if references in those provisions to an action included references to an arbitration. 25

“(6) **Subsections (7) and (8)** (which determine the time at which an arbitration is deemed to have commenced) apply for the purposes of **subsection (5)**.

“(7) An arbitration (whether under an enactment or under an arbitration agreement) must be treated as being commenced in the same manner as provided in Article 21 of Schedule 1 of the Arbitration Act 1996. 30

Civil Aviation Act 1990 (1990 No 98)—*continued*

“(8) If the High Court orders that an award be set aside, it may also order that the period between the commencement of the arbitration and the date of the setting aside order must be excluded in computing the time prescribed by this section for the commencement of proceedings (including arbitration) with respect to the dispute referred. 5

“(9) **Subsections (6) to (8)** do not limit or affect **section 37 of the Limitation Act 2009**.”

Construction Contracts Act 2002 (2002 No 46)

Section 71(1): repeal and substitute: 10

“(1) The **Limitation Act 2009** applies to adjudications as it applies to claims (as defined in **section 4** of that Act).”

Contractual Remedies Act 1979 (1979 No 11)

Section 15(f): repeal.

Crown Proceedings Act 1950 (1950 No 54)

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Section 4: repeal and substitute:

“4 Limitation of actions by or against the Crown

This Act is subject to the **Limitation Act 2009**, and to any other enactment that—

“(a) limits the time before which, or provides for the determination or fixing of the time before which, or period within which, proceedings may be brought by or against the Crown; or 20

“(b) prescribes a limitation period or other limitation defence for proceedings by or against the Crown. 25

“Compare: 1908 No 34 s 37”.

Customs and Excise Act 1996 (1996 No 27)

Insert before section 275:

“274A No limitation of claims by Crown to recover duties or interest on duties, or on forfeiture proceedings, under this Act 5

No relief in respect of a claim by the Crown to recover any tax or duty, or interest on any tax or duty, or in respect of any forfeiture proceedings, under this Act, is barred or otherwise affected by the following:

“(a) the **Limitation Act 2009**: 10

“(b) any other enactment that prescribes a limitation period or other limitation defence.

“Compare: 1950 No 65 proviso to s 32”.

Item relating to the Limitation Act 1950 in Schedule 5: omit.

Defamation Act 1992 (1992 No 105) 15

Section 55: repeal.

Disputes Tribunals Act 1988 (1988 No 110)

Section 10(5): repeal and substitute:

“(5) The **Limitation Act 2009** prescribes defences in respect of claims based on an act or omission after **30 June 2010**.” 20

Government Roading Powers Act 1989 (1989 No 75)

Section 54(9): omit “Limitation Act 1950” and substitute “**Limitation Act 2009**”.

Land Act 1948 (1948 No 64)

Section 172(2): omit “Notwithstanding any statute of limitation, no” 25
and substitute “No”.

Section 172: add:

“(3) Subsection (2) applies despite any enactment that prescribes a limitation period or other limitation defence.”

Land Transfer Act 1952 (1952 No 52)

Section 112(1): repeal and substitute:

- “(1) The High Court may make an order directing a registered mortgage to be discharged if, on an application for the purpose made to it by the registered proprietor of an estate or interest in land subject to the mortgage, it is satisfied—
- 5
- “(a) that the granting of relief in respect of a claim by the mortgagee for payment of the money secured by the mortgage would be prevented by the raising and establishment of a limitation period or other limitation defence under the **Limitation Act 2009** or any other enactment; and
- 10
- “(b) that, but for section 64, the granting of relief to the mortgagee in respect of the mortgaged land would be likewise prevented.
- 15
- “(1A) **Subsection (1)** overrides section 64.
- “(1B) On production of a copy of the order, the Registrar must enter a memorandum of it in the register.
- “(1C) The registered mortgage must be treated as having been discharged when the memorandum of the order is entered in the register under **subsection (1B)**.”
- 20

Section 197: omit “Limitation Act 1950 or any other statute of limitation” and substitute “**Limitation Act 2009** or any other enactment that prescribes a limitation period or other limitation defence”.

Section 199(3): omit “under the Limitation Act 1950”. 25

Item relating to the Limitation Act 1950 in Schedule 8: omit.

Law Reform Act 1936 (1936 No 31)

Section 3(3A): omit “the date when the cause of action arose” and substitute “the start date of the claim’s primary period (as specified in **section 10(1)** of, and adjusted in accordance with all relevant exceptions and modifications (if any) set out in, the **Limitation Act 2009**)”.

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Local Government (Rating) Act 2002 (2002 No 6)

Section 66(2): omit “Section 20 of the Limitation Act 1950” and substitute “The **Limitation Act 2009**”. 35

Local Government (Rating) Act 2002 (2002 No 6)—*continued*

Section 105(2): omit “section 20 of the Limitation Act 1950” and substitute “the **Limitation Act 2009**”.

Patents Act 1953 (1953 No 64)

Section 20(5): repeal.

Section 85(3): repeal and substitute:

“(3) Nothing in this section enables a person to obtain any relief the granting of which is prevented by the **Limitation Act 2009**, and nothing in **section 38** of that Act excludes the operation of that Act in any case where proceedings may be barred under this section.”

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Prisoners’ and Victims’ Claims Act 2005 (2005 No 74)

Section 63(2)(b): omit “Limitation Act 1950” and substitute “**Limitation Act 2009**”.

Heading above section 73: repeal.

Section 73: repeal.

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Property Law Act 2007 (2007 No 91)

Section 52(5)(b): add “in order to avoid a limitation defence applying to a claim made in the proceedings”.

Section 296(4): omit “Limitation Act 1950, an action may be brought at any time” and substitute “**Limitation Act 2009**, a claim may be made at any time, and relief may be granted in respect of a claim made at any time.”

20

Item relating to the Limitation Act 1950 in Schedule 7: omit.

Protected Objects Act 1975 (1975 No 41)

Section 10E(5): omit “Limitation Act 1950” and substitute “**Limitation Act 2009**”.

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Public Trust Act 2001 (2001 No 100)

Heading to section 117: omit “**Limitation Act 1950**” and substitute “**Limitation Act 2009**”.

Public Trust Act 2001 (2001 No 100)—*continued*

Section 117: omit “Limitation Act 1950” and substitute “**Limitation Act 2009**”.

Public Works Act 1981 (1981 No 35)

Section 51(1): omit “Notwithstanding any statute of limitation, no” and substitute “No”. 5

Section 51: insert after subsection (1):

“(1A) Subsection (1) applies despite any enactment that prescribes a limitation period or other limitation defence.”

Securities Act 1978 (1978 No 103)

Section 37(7): repeal. 10

Section 37A(8): repeal.

Sharemilking Agreements Act 1937 (1937 No 37)

Section 3(4): omit “Limitation Act 1950” and substitute “**Limitation Act 2009**”.

Social Security Act 1964 (1964 No 136)

15

Section 86A(1A): omit “Limitation Act 1950” and substitute “**Limitation Act 2009**”.

Summary Proceedings Act 1957 (1957 No 87)

Item relating to the Limitation Act 1950 in Schedule 4: omit.

Tax Administration Act 1994 (1994 No 166)

20

Section 163: repeal and substitute:

“163 No limitation of action to recover tax

No relief in respect of a claim for recovery of tax is barred or otherwise affected by the following:

“(a) the **Limitation Act 2009**: 25

“(b) any other enactment that prescribes a limitation period or other limitation defence.

“Compare: 1976 No 65 s 406”.

Te Ture Whenua Maori Act 1993 (1993 No 4)

Section 344: omit and substitute:

“344 Co-owners of Maori land not bound by Limitation Act 2009 or other limitation enactments

“(1) Time does not run, and must not be treated as having run, 5
against a co-owner of Maori land who neglects or has at any
time neglected to exercise that co-owner’s right of entering
upon and using the common property while it remains in the
occupation of another co-owner or someone claiming through
or under that co-owner. 10

“(2) This section overrides the **Limitation Act 2009** and all other
enactments that impose on claims a limitation period or other
limitation defence.

“Compare: 1953 No 94 s 458”.

Sections 360 and 361: repeal. 15

Trustee Act 1956 (1956 No 61)

Item relating to the Limitation Act 1950 in Schedule 2: omit.

Weathertight Homes Resolution Services Act 2006 (2006 No 84)

Heading to section 37: omit “**Limitation Act 1950**” and substitute
“**Limitation Act 2009**”. 20

Section 37(1): omit “Limitation Act 1950” and substitute “**Limita-
tion Act 2009**”.