

Limitation Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Limitation Bill and recommends that it be passed with the amendments shown.

Introduction

This bill would repeal and replace the Limitation Act 1950. The bill is intended to implement the Law Commission's recommendation to replace the current Act with a modern regime. This new regime would encourage claimants to make claims without undue delay, and protect defendants from the unjust pursuit of stale claims. The extensive changes proposed include the following:

- clarifying the claims affected by limitation provisions
- clarifying the commencement of limitation periods and the exceptions from and modifications to them
- addressing the unfairness that under the current law a limitation period may end before a claimant knows something is wrong.

This commentary covers the major amendments that we recommend as a result of our consideration of the bill.

Commencement

It is no longer feasible for the bill to commence on 1 July 2010. We therefore recommend amendments to the bill to ensure that it comes into force on 1 January 2011.

Interpretation

Civil proceeding

For consistency, we recommend a number of amendments to the bill to insert “civil” before “proceeding”. The term “civil proceeding” is defined in clause 4 of the bill as introduced, but is used only in clause 9—elsewhere in the bill the term “proceeding” is used for brevity.

Disputes Tribunal

We recommend extending the definition of “Disputes Tribunal” to include a Motor Vehicle Disputes Tribunal when it is exercising the jurisdiction of a Disputes Tribunal under section 39 or 47 of the Consumer Guarantees Act 1993 or (after clause 15A of the Motor Vehicle Sales Amendment Bill commences) section 9 of the Contractual Remedies Act 1979. Under the Motor Vehicle Sales Act 2003, a Motor Vehicle Disputes Tribunal can determine claims under the Sale of Goods Act 1908, the Fair Trading Act 1986, and the Consumer Guarantees Act. We consider that claims before a Motor Vehicle Disputes Tribunal when it is exercising the jurisdiction of a Disputes Tribunal should also be subject to the new limitation regime.

Trust and trustee

The bill as introduced does not define the terms “trust” and “trustee”. We consider that it would be useful for these terms to be defined and recommend inserting the definitions from the existing Act into clause 4. We recommend definitions by reference to the Trustee Act 1956, which would specifically include implied and constructive trusts.

Date on which claim is filed defined

Clause 6 defines “date on which the claim is filed” for claims made in proceedings commenced in a court or tribunal, and for claims where the related dispute is referred to arbitration. We recommend amending clause 6(3)(b) so that the definition of a “request for the dispute to be referred to arbitration” includes a notice requiring submission of the dispute to an arbitrator appointed by a third person under the arbitration agreement, if the agreement requires the arbitrator to be appointed in that way. We consider that, as introduced, clause 6(3)(b) does not cover clearly an arbitration agreement that uses this method of appointment.

Act may be applied by analogy to equitable claims

The bill as introduced provides for the inclusion in the new limitation regime of claims for monetary relief in equity and some other equitable claims. We recommend inserting new clause 8A to make it clear that the court would not be prevented from applying, by analogy, statutory limitation provisions to an equitable claim for which no limitation defence is set out in the bill. This amendment is based on section 4(9) of the existing Act.

Defences: application, exceptions, and modifications

Clause 9 specifies that the claims affected by the defences prescribed in the bill are claims that are both based on an act or omission after 30 June 2010 and made in a civil proceeding in a specified court or tribunal. While the term “specified court or tribunal” is defined in clause 4, the definition does not include an arbitral tribunal. We recommend amending this date to 31 December 2010. We also recommend amending clause 9(a)(ii) to include a reference to claims made in arbitrations and to clause 37, which indicates how all limitation enactments would apply to arbitrations. Specifically, clause 37 would ensure that all limitation enactments, including the bill, applied to claims made in arbitrations, in the same way as to claims made in civil proceedings in a specified court or tribunal.

Defence to money claim filed after applicable period

Changing the longstop period

We heard divergent views as to whether the 15-year longstop period defined in clause 10(3)(b) should be reduced to align it with the 10-year period prescribed in the Building Act 2004. We note that the Law Commission, in three separate reports in 1988, 2000, and 2007, wavered between these two periods in its recommendations. However, in its final report in 2007 the commission concluded that a 15-year longstop period struck the appropriate balance between justice for claimants and certainty for defendants.¹

The main explanation given for retaining the shorter ten-year longstop limitation period for defective building claims was the complexity caused by multiple parties and fading memories. Labour members believe these issues are similar for many other causes of action and see no good reason for a shorter longstop limitation period for building cases. We believe that it is more appropriate for the same longstop period to apply to all policy areas for which longstop periods apply.

Money claim defined

Clause 11 of the bill as introduced defines a money claim as a claim for monetary relief at common law, in equity, or under any enactment. This definition includes a claim for monetary relief in respect of a breach of the New Zealand Bill of Rights Act 1990.

Concern was raised that the bill would apply a limitation period to claims for monetary relief for a breach of the New Zealand Bill of Rights Act. It was argued that such claims, if time-barred, should be subject to a discretion, similar to the discretion to allow relief to be granted for time-barred claims of sexual abuse of a minor, which is set out in clause 16 of the bill as introduced. We note that the inclusion of New Zealand Bill of Rights Act money claims in the new limitation regime is consistent both with recommendations made by the Law Commission and with international human rights law. We consider that it is important that a reasonable limitation period apply to New Zealand Bill of Rights Act money claims, as defendants need

¹ Law Commission, *Limitation Defences in Civil Cases: Update Report for the Law Commission*, NZLC Miscellaneous Paper 16, 2007.

to be certain whether their actions, practices, or decisions might be challengeable. We do not recommend giving the courts or tribunals a discretion to allow monetary relief to be granted in respect of a time-barred claim for a breach of the New Zealand Bill of Rights Act.

Late knowledge date: key facts and causes

Clauses 13 and 46 of the bill as introduced specify that a claimant has late knowledge of a claim when they have gained knowledge, or ought reasonably to have gained knowledge, of certain facts. Clause 13(1) specifies those key facts the knowledge of which is necessary to make the claim. We recommend inserting new clause 13(1)(ca) to include as a key fact the fact that the claimant did not consent to the underlying act or omission, if the defendant's liability or alleged liability depends upon the claimant not consenting to the act or omission on which the claim is based. For similar reasons we recommend inserting clause 46(1)(ca).

Clause 13(3) makes it clear that a claimant's absence of actual or constructive knowledge of the specified key facts might be attributable to a mistake of fact or law. We recommend amending clause 13(3) to further specify that a fraud might also be a reason that the claimant did not know, or could not reasonably have known, of the key facts necessary to make a claim.

We recommend a similar amendment to clause 46, which relates to fraud and provides that a claim's longstop or Part 3 limitation period does not apply to the claim if the claimant proves that because of fraud on behalf of the defendant, they did not know or could not reasonably know of the key facts necessary to make the claim. Where a claim does not have a longstop period and its Part 3 limitation period is disapplied, clause 46(2) would impose a three-year period from when the claimant gained, or ought reasonably to have gained, knowledge of those key facts. We also recommend inserting new clause 46(2A) to clarify why a claimant may not have actual or constructive knowledge of key facts.

Defamation claims

As introduced clause 14 provides that while the primary limitation period for defamation claims for monetary relief is two years, the

late knowledge period set out in clause 10(3)(a) would apply to a money claim for defamation. We heard concern that there might be anomalies between the application of the new late knowledge period and the shortened primary period in respect of a money claim for defamation. To remedy this we recommend amending clause 14 to shorten the late knowledge period for a money claim for defamation from three to two years.

Special start dates for various money claims

We recommend amending clause 15(1)(d) so, as in section 21(2) of the existing Act, the start date for a money claim in respect of a beneficiary's future interest in the trust would be the date on which the beneficiary's interest "falls into possession". We note that this terminology is recognised in case law. As introduced clause 15(1)(d) provides that the start date is the date on which the beneficiary's interest in the trust becomes "absolute and immediate".

We recommend that the bill provide a special start date for a money claim in respect of a beneficiary's discretionary interest in a trust. We recommend inserting new clause 15(1)(da), which would ensure that the start date of a money claim of this kind would be the date on which the beneficiary first became entitled to trust income or property because of the trustees' discretion being exercised in the beneficiary's favour. The bill as introduced does not specify a special start date for a money claim in respect of a beneficiary's discretionary interest in a trust. A discretionary beneficiary has no interest in the trust until the trustee exercises their discretion in favour of the beneficiary. Until this occurs, a beneficiary has no interest able to be damaged by a breach of a trust. While a discretionary beneficiary can, at any time, compel the proper administration of a trust, time should not run against them for a money claim in respect of a discretionary interest until the trustee has exercised their discretion in the beneficiary's favour.

For similar reasons, clause 36(1) should be amended. Clause 36 sets out special start dates for various claims, including claims in respect of future or discretionary interests in trusts that are not money claims.

Discretion to allow relief for claim of sexual abuse of minor

Clause 16 would give the court or tribunal the discretion to allow monetary relief to be granted in respect of a claim of sexual abuse of a minor, even when a limitation defence had been or could be established against the claim. We recommend amending clause 16 to cover claims of non-sexual abuse of a minor as these may have the same long-term effects as sexual abuse. This amendment is consistent with practice in the United Kingdom and many Australian jurisdictions, where the courts are given the discretion to disregard limitation defences in personal injury claims, which include all forms of abuse.

We further recommend amending clause 16(1) to limit the discretion to cases where abuse has occurred in a family setting or where it has been carried out by a person who was at any time a parent, step-parent, or guardian of the minor, or a close relative or close associate of the parent, step-parent, or guardian of the minor. New clause 16(1A) and 16(1B) would recognise the influence that the closest relatives and their associates can exercise on a claimant's decision whether to disclose the abuse, which often occurs in family settings, and whether and when to pursue a claim. Such influence could create delays that made available a limitation defence, which could, but for the discretion provided in clause 16, prevent relief from being granted.

Clause 16 sets out the matters that the court or tribunal would have to consider in determining whether to exercise the discretion to allow relief to be granted in respect of a time-barred claim; one of the matters to be taken into account is the strength of the claimant's case. We recommend deleting this requirement, clause 16(4)(g), as a limitation defence should apply when the statutory time period has ended, regardless of the strength of the claim. For similar reasons we recommend deleting clause 43(3)(g). Where a claimant was or had been incapacitated clause 43 would give the court or tribunal the discretion to extend the limitation periods if it was just to do so having regard to certain specified matters; one of the matters to be taken into account is the strength of the claimant's case.

In the light of our proposed amendment to clause 16(1), we note that the remaining requirements in clause 16(4) would need amending. We recommend that clause 16(4) be deleted and the requirements

be moved to new clause 16A, and that they consistently reflect our proposed amendments to clause 16(1).

Discretion to allow relief for claims of gradual process, disease, or infection

We note that the bill's six-year primary limitation period for money claims would include personal injury claims, to which the late knowledge requirements and the 15-year longstop period would also apply. We heard concern that the proposed longstop period could impose an unreasonable restriction on a person's ability to obtain relief in respect of a latent personal injury caused by gradual process, disease, or infection, because the injury might conceivably develop without causing discernible or recognisable symptoms within 15 years. There was particular concern about the consequences of the new longstop period for latent personal injuries that are not personal injuries covered by accident compensation (or eligible for any kinds of entitlement), and any other latent personal injury claim the making of which, or relief in respect of which, is not barred by the Accident Compensation Act 2001.

To assist our consideration on this issue we sought advice on how other jurisdictions deal with limitation periods for injuries caused by gradual process, disease, or infection. In the United Kingdom and some states in Australia the courts are given the discretion to disregard limitation defences in personal injury claims. We were advised that these jurisdictions define personal injury to include a disease or impairment of a person's physical or mental condition, and therefore personal injuries caused by gradual process, diseases, or infections would be covered by these discretions.

We appreciate that to give the courts a general discretion for claims for personal injuries caused by gradual process, disease, or infection (when the Accident Compensation Act does not prevent the making of, or the granting on relief in respect of, the claims) could create uncertainty and increase some insurance and record-keeping costs for defendants. However, we consider that in the interests of justice it would be appropriate to give the courts a discretion to allow monetary relief to be granted for a claim in relation to personal injury caused by gradual process, disease, or infection (when the Accident Compensation Act does not stop the claim being made or relief being

granted). In applying this discretion the courts would have the flexibility to take into account the individual merits of a particular case and to balance the interests of all parties involved. We accordingly recommend inserting new clause 16(1C) to give the courts this discretion.

Claims to recover converted or wrongfully detained goods

As introduced clause 27 provides that a six-year limitation period applies for claims to recover goods that have been wrongfully detained or converted. We recommend amending clause 27(1) to clarify that this period would apply only to conversion and detinue claims to recover goods that have been wrongfully detained or converted.

Claims to enforce judgments or arbitral awards by action, and for entry of arbitral awards as judgments

Clauses 33 and 34 relate to claims to enforce judgments and arbitral awards by commencing civil proceedings. English case law since the bill was introduced reveals some uncertainty about what defences apply to what claims. One cause of the uncertainty is that arbitral awards can be enforced by being entered as judgments. We therefore recommend amendments to clauses 33 and 34 to

- make clearer the claims to which they apply, and how they relate to each other and to other enforcement processes
- ensure that, if an arbitral award is entered as a judgment, the limitation period for a claim to enforce that judgment by action would start when the award became enforceable by action, not when the award was entered as a judgment
- introduce a limitation defence to a claim for entry of an arbitral award as a judgment if the claim was filed at least six years after the date on which the award became enforceable by action in New Zealand.

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

Clause 51 relates to a personal representative who is an executor, administrator, or trustee of, and is making or defending a claim on

behalf of, the estate of a person who has died. We recommend a new clause 51(5) to make it clear that the personal representative could take advantage of any discretion in clause 16, 33, 34, or 48 that the deceased could have sought to use had he or she not died.

Claim for account

Clause 30 provides that the limitation period for claims for an account is six years after the date the matter arose for which the account is sought. We recommend amending clause 30(1) so that it expressly applies to a claim for an account, regardless of the legal basis for the claim. This recognises that claims for account will often be made with other claims. For example, a claim for account could be made in conjunction with an equitable claim for compensation based on a breach of a fiduciary duty.

Actions based on acts or omissions before Act commences

Actions to which longstop period of limitation applies

We heard suggestions that the bill should apply to claims in respect of situations that had already arisen, regardless of when the underlying act or omission giving rise to the claim occurred.

Clause 57 of the bill provides that claims based on an act or omission that took place before the 1 July 2010 commencement date of the new regime would continue to be dealt with under the existing Act, unless the parties agreed otherwise. To include a provision as suggested would mean that the new limitation regime would apply to old claims and therefore it would adjust parties' existing rights retrospectively. It is usual practice that new legislation should not apply retrospectively.

However, we note that the application of the reasonable discoverability doctrine could result in the continued application of the existing Act well after the bill had been enacted. This test applies to certain cases where a statutory limitation period ends before the claimant knows, or ought reasonably to have known, the key facts necessary to bring an action (for example, the fact that damage has occurred). Where the reasonable discoverability test has been applied, the limitation period does not start to run until the claimant gains knowledge

or, if earlier, the time when the claimant ought reasonably to have gained knowledge, of those key facts. However because for most claims there is no longstop period, most defendants have no certainty over when their potential liability will end and therefore their liability could continue indefinitely.

To remove the uncertainty currently facing most potential defendants and to balance more appropriately the interests of claimants and defendants in respect of claims where the reasonable discoverability test applies now, or may apply in the future, we recommend inserting new clause 60 to amend the existing Act by inserting new sections 23A to 23D.

New section 23A identifies the actions to which the new longstop period would apply but would not limit or affect the classes or existing actions to which reasonable discoverability applies now or may apply in the future.

However, if the doctrine of reasonable discoverability applies to an action specified in new section 23A and defers the start date of the action's primary limitation period, new section 23B would provide that the action must not be brought (that is, the defendant would have a longstop period of limitation defence if the action is brought) after the second of the following:

- five years after the commencement of the new Act (on 1 July 2010 in the bill as introduced. We recommend amending this date to 1 January 2011)
- 15 years after the date (on the facts) of the act or omission on which the claim is based.

Discretion to allow relief for action of abuse of infant

To alleviate any potential unfairness that might result from the new longstop period, we recommend inserting new section 23C and 23D to ensure the discretion in relation to claims for sexual abuse of minors, set out in clause 16 and 16A, should also apply to claims under the existing Act that would be subject to the new longstop defence. We note that our recommended new section 23C(1)(c) makes it clear that the new discretion would not revive any claims that were already statute barred when the proposed amendments to the existing Act came into force.

Discretion to allow relief for claims of gradual process, disease, or infection

We recommend inserting new section 23C(4) into the existing Act which, like our proposed new clause 16(1C), would give the court a discretion to allow relief to be granted in respect of an action for a bodily injury caused by a gradual process, disease, or infection (when the Accident Compensation Act did not prevent the action, or relief in respect of that action being granted). This amendment is consistent with applying the discretion relating to claims of abuse of minors to actions of abuse of infants under the existing Act.

Appendix

Committee process

The Limitation Bill was referred to us on 4 August 2009. The closing date for submissions was 4 September 2009. We received and considered 13 submissions from interested groups and individuals. We heard seven submissions.

We received advice from the Ministry of Justice.

Committee membership

Chester Borrows (Chairperson)

Jacinda Ardern

Kanwaljit Singh Bakshi

Simon Bridges

Dr Kennedy Graham

Hon Nathan Guy (until 10 February 2010)

Hekia Parata (from 10 February 2010)

Hon David Parker

Lynne Pillay

Paul Quinn

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Christopher Finlayson

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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 ~~4 July 2010~~ **January 2011**.

Part 1

5

Preliminary provisions

3 Purpose of this Act

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.

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4 Interpretation

In this Act, unless the context otherwise requires,—

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—

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- (a) a claim that arises from, or results in, the addition of 1 or more parties to the original claim; or
- (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; or
 - (f) any other claim that is ancillary to the original claim 5
- 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: 10
- (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
- claim** means a claim (whether original or ancillary)— 15
- (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
- claim to recover land** includes a claim to exercise a right to enter into possession of the land 20
- 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 25
- 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 30
- 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— 35
- (a) a Disputes Tribunal established under section 4 of the Disputes Tribunals Act 1988; or

- (b) a Motor Vehicle Disputes Tribunal exercising under section 89(1)(b)(iii) or (iv) of the Motor Vehicle Sales Act 2003 a Disputes Tribunal's jurisdiction under—
- (i) section 39 or 47 of the Consumer Guarantees Act 1993; or 5
- (ii) section 9 of the Contractual Remedies Act 1979
- foreign country** means a country other than New Zealand
- fraud** includes—
- (a) dishonest or fraudulent concealment; and
- (b) fraudulent breach of trust 10
- 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* 15
- 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— 20
- (a) a law that limits or excludes liability or bars a right to bring civil proceedings or to have a matter determined by arbitration by reference to the time when civil proceedings or an arbitration in respect of the matter are commenced; or 25
- (b) a law that provides that civil 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— 30
- (a) making it in a civil 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 35

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 5

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 10

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 15
- (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 20

trust and **trustee** have the same meanings respectively as in the Trustee Act 1956 as for the time being extended by any other enactment.

Compare: 1950 No 65 ss 2(1), (5), (6), 4(5), 7A, 28A, 30 25

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: 30

- (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 35

- (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.
- (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 5 10
- (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. 15

6 Date on which claim is filed defined

- (1) For a claim made in a civil 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. 20
- (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,— 25
- (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 30
- (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 35
- (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—
- (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, or appointed by a third party under, the agreement, requires the other party to submit the dispute, for arbitration, to the person so named ~~or~~, designated, or appointed.
- 5
- 10
- 7 **Act binds the Crown**
This Act binds the Crown.
Compare: 1950 No 65 ss 32, 33(1)
- 8 **Act does not affect jurisdiction to refuse relief** 15
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
- 8A** **Act may be applied by analogy to equitable claims** 20
Nothing in this Act prevents it from being applied by analogy to a claim in equity to which no defence prescribed by this Act applies.
Compare: 1950 No 65 s 4(9)
- 9 **Defences: application, exceptions, and modifications** 25
Every defence prescribed by this Act—
- (a) applies only to a claim—
 - (i) based on an act or omission after **30 June 2010**~~31 December 2010~~; and
 - (ii) made in a civil proceeding in a specified court or tribunal, or in an arbitration (see **section 37**); and
 - (b) is subject to the exceptions and modifications set out in this Act.
- 30

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

- (ab) for an account if, and only insofar as, the claim seeks relief that is not monetary relief (see **section 30**); or
- (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 5
- (d) under the Criminal Proceeds (Recovery) Act 2009 or sections 142A to 142Q of the Sentencing Act 2002; or
- (e) under the Terrorism Suppression Act 2002.

12 Damages as well as, or in substitution for, injunction or specific performance 10
 Nothing in **section 10** applies to damages under section 16A of the Judicature Act 1908.

13 Late knowledge date (when claimant has late knowledge defined) 15

- (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: 20
 - (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: 25
 - (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:
 - (ca) if the defendant’s liability or alleged liability is dependent on the claimant not having consented to the act or omission on which the claim is based, the fact that the claimant did not consent to that act or omission: 30
 - (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 35

on which the claim is based is one that was induced by fraud or, as the case may be, by a mistaken belief.

- (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)**. 5
- (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 causes that are or include fraud or a mistake of fact or law (other than a mistake of law as to the effect of this Act). 10

Compare: 1950 No 65 s 4(6B), (7)

14 Defamation claims: primary period and late knowledge period each 2 years not 6 years 15

For a claim for defamation, "6 years" in **section 10(1)** and "3 years" in **section 10(3)(a)** must each be read as "2 years".

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

15 Special start dates for various money claims

- (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: 20
- (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: 25
- (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: 30
- (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: 35

- (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~~ falls into possession:
- (da) a claim in respect of a beneficiary's discretionary interest in a trust—the date on which the beneficiary first becomes entitled to trust income or property because of the trustees' discretion being exercised in the beneficiary's favour: 5
- (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: 10
- (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: 15
- (g) a claim under section 213 of the Insolvency Act 2006—the date on which the assignee of the bankrupt was appointed: 20
- (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. 25
- (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. 30
35

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 or of gradual process, disease, or infection injury**
- (1) This section applies to a claim—
- (a) ~~in respect of sexual abuse that occurred when the claimant was aged under 18 years~~ of a kind specified in **subsection (1A) or (1C)**; and
 - (b) made in a civil proceeding commenced in a specified court or tribunal; and
 - (c) against which the defendant could establish, or has established, a defence under this Part.
- (1A) **Subsection (1)(a)** applies to a claim in respect of abuse of the claimant (A) when he or she was aged under 18 years, and that is wholly or partly sexual abuse of A by any 1 or more persons, or is wholly non-sexual abuse of A by 1 or more persons who are or include—
- (a) a person who is, or has at any time been, a parent, step-parent, or legal guardian of A (B); or
 - (b) a person who is, or has at any time been, a close relative or close associate of B (C).
- (1B) **Abuse**, in the expressions “sexual abuse” and “non-sexual abuse” in **subsection (1A)**, means physical abuse, psychological abuse, or a combination of both.
- (1C) **Subsection (1)(a)** also applies to a claim in respect of a personal injury—
- (a) of the claimant (A) when he or she was of any age; and
 - (b) caused by a gradual process, disease, or infection.
- (1D) **Personal injury**, in **subsection (1C)**, means any physical, mental, or physical and mental injury (even if it causes the death), of the claimant.
- (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.
- (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
 - (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 5
- (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 10
- (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
- (g) the strength of the claimant’s case; and 25
- (h) any other matters it considers relevant.

Compare: Limitation Act 1969 s 50E(2) (NSW); Limitation of Actions Act 1958 s 27I(2) (Vic); Limitation Act 1980 s 33 (UK)

16A Matters to be taken into account under section 16

In determining whether to make an order under **section 16**, the specified court or tribunal must take into account— 30

- (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
 - (ii) if the order were not made, to A; and 35
- (b) the length of, and reasons for, the delay on A’s part; and
- (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 A 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 A in order to discover facts that were, or might be, relevant to the claim; and 5
- (e) the extent to which prompt and reasonable steps were taken by or on behalf of A to make the claim after A became aware that A was entitled to do so; and 10
- (f) any steps taken by or on behalf of A to obtain relevant medical, legal, or other expert advice, and the nature of any relevant expert advice received by or on behalf of A; and 15
- (g) any other matters it considers relevant.

Part 3

Defences to other claims

Claims in respect of land

- 17 How Act applies to land** 20
- (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.
- (2) However, no provision in **Parts 2 and 3**, except **section 26**, applies to Maori customary land. 25
- (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. 30
- 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). 35
- 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—
- (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 5
 - (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. 10
- (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. 15
- (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.
- Compare: 1950 No 65 ss 7, 13

20 When claims accrue: current interests in land 20

- (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,—
- (a) has been in possession of the land; and
 - (b) has, while entitled to the land, discontinued possession, or been dispossessed, of the land. 25
- (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— 30
- (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. 35
- 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— 5
- (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— 10
- (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 15
 - (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: 20
 - (ii) 6 years from the date on which the claim accrued to the person entitled to the succeeding estate or interest. 25
- (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. 30 35

Compare: 1950 No 65 s 9

22 When claims accrue: land held on trust

- (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. 5
- (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**. 10 15
- (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 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. 20 25
- Compare: 1950 No 65 s 10

23 Restriction on redemption of mortgaged land

- (1) This section applies to a mortgage of land—
- (a) only if none of that land is subject to the Land Transfer Act 1952; and 30
- (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— 35
- (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.
- (3) This section overrides anything to the contrary in section 97 of the Property Law Act 2007 or in any other enactment.
Compare: 1950 No 65 s 16 5
- 24 No claims preserved by formal entry or continual claim**
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. 10
Compare: 1950 No 65 s 17
- 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. 15
- (2) This section overrides **section 41**.
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— 20
- (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. 25
- (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. 30
- (3) For the purposes of this section, the date on which the claim accrued is the date, after ~~30 June 2010~~ **31 December 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 5
 - (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.
- (5) This section is the only provision of **Parts 2 and 3** that applies to Maori customary land. 10
 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 converted or wrongly detained goods** 15
- (1) It is a defence to a conversion or detinue 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 conversion or detinue claim to recover goods—
- (a) is a ~~claim for~~ further conversion or wrongful detention claim ~~(and so is that is, one~~ made in respect of goods that have been the subject of 1 or more earlier instances of conversion or wrongful detention); and 25
 - (b) is made by a person referred to in **section 28** as the original claimant.
- (3) This section does not apply to a conversion or detinue claim made by or on behalf of a beneficiary to recover goods held on trust (*see* **section 29**). 30
 Compare: 1950 No 65 s 5(1), (2)

28 Extinguishment of title of owner of converted goods

- (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. 5
- (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. 10
- (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 15
 - (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)**. 20

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 defendant proves that the date on which the claim is filed is at least 6 years after,— 25
- (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 30
 - (b) if the claim is to recover personal property otherwise held on trust, the date on which the cause of action accrued.
- (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,— 35
- (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 21(2), 22

30 Claim for account

- (1) It is a defence to a claim for an account (whether at common law, in equity, or under an enactment) 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. 5

- (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,— 10

- (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 2(7)(a), 4(2), (9)

31 Claim to have will declared invalid on specified grounds

- (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. 20

- (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 is filed is at least 6 years after the date of the grant of probate or letters of administration. 25

Compare: 1950 No 65 s 4(6)

32 Claim for contribution from another tortfeasor or joint obligor

- (1) This section applies to a claim under section 17 of the Law Reform Act 1936— 30

- (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 35

(whether jointly with A or otherwise) in respect of that damage.

- (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 5
 - (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.
- (3) C is liable to B in a coordinate way for the purposes of **sub-section (2)(b)** if, and only if,— 10
- (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. 15
- (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. 20

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

33 Claim on to enforce judgment by action

- (1) It is a defence to a claim on to enforce a judgment by action (that is, by a civil action or proceeding to enforce the judgment by action and commenced or started in a specified court or tribunal) 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 (by action or otherwise) in the country in which it was obtained. 25
- (2) **Judgment**, in this section, includes a judgment that is— 30
- (a) an arbitral award entered as a judgment; or
 - (b) a judgment obtained in a foreign country.
- (2A) A judgment that is an arbitral award entered as a judgment is treated as having become enforceable in the country in which it was obtained on the date on which the award became enforceable by action in New Zealand. 35
- (3) Nothing in this section applies to the following:

- (a) enforcement of the judgment using enforcement processes in rules of court or other laws:
- (b) an application—
- (i) for a debtor to be adjudicated bankrupt, or to put a company into liquidation; and 5
- (ii) based wholly or in part on the judgment.
- (4) If a defence under this section has been or could be established against a claim ~~on~~ to enforce a judgment by action 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. 10
- (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. 15

Compare: 1950 No 65 ss 2(7)(b), 4(4); Limitation Act 1980 s 24(1) (UK)

34 Claim to enforce arbitral award by action or for entry of arbitral award as judgment

- (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. 20
- (2) ~~Nothing in this section applies to the following:~~ 25
- (a) ~~entry of an arbitral award as a judgment;~~
- (b) ~~enforcement of a judgment that is an arbitral award entered as a judgment.~~
- (1) This section applies to a claim—
- (a) to enforce by action (that is, by a civil action or proceeding to enforce the award by action and commenced or started in a specified court or tribunal) an arbitral award that is enforceable by action in New Zealand; or 30
- (b) for entry of an arbitral award as a judgment of a specified court or tribunal. 35
- (1A) Nothing in this section applies to enforcement of a judgment that is an arbitral award entered as a judgment.

- (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 on which the award became enforceable by action in New Zealand.
- (3) If a defence under this section has been or could be established against ~~a claim to enforce an arbitral award~~ the claim 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. 5 10
- (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~~. 15
- Compare: 1950 No 65 ss 2(1), 4(1)(c)

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: 20
- (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: 25
 - (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 30 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 (2)** were its primary period.

*Special start dates***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: 5
- (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~~ falls into possession: 5
- (ab) a claim in respect of a beneficiary's discretionary interest in a trust—the date on which the beneficiary first becomes entitled to trust income or property because of the trustees' discretion being exercised in the beneficiary's favour: 10
- (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, or appointee of the estate of the deceased debtor, was appointed: 15
- (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: 20
- (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. 25
- (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. 30

Compare: 1950 No 65 s 5(1), proviso to s 21(2) 35

Part 4 General provisions

Arbitrations, special defences, and contracting out

- 37 Application of limitation enactments to arbitrations** 5
- (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.
- (2) Limitation enactments apply to claims made in arbitrations as they apply to claims made in a civil proceeding commenced in a specified court or tribunal. 10
- (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. 15
- (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 in computing the time prescribed by a limitation enactment for the commencement of civil proceedings (including arbitration) with respect to the dispute referred. 20
- Compare: 1950 No 65 s 29
- 38 Other enactments may displace or affect defences**
- (1) A defence under **Part 2 or 3** does not apply to a claim if an enactment other than this Act— 25
- (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. 30
- (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. 35
- Compare: 1950 No 65 s 33(1)

39 Contracting out of defences

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.

5

*Pleading, and effect of establishing, defences***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.

10

41 Established defence bars relief, not underlying right

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

15

(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.

20

*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.

25

43 Incapacity

(1) This section applies to a claimant who proves either or both of the following:

30

(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:

- (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. 5
- (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 10
- (b) any steps taken by the litigation guardian or other authorised representative to manage those affairs; and 15
- (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 20 25
- (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 30
- ~~(g) the strength of the claimant's case; and~~
- (h) any other matters it considers relevant. 35

44 Incapacitated and related terms defined

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: 5

- (a) temporary or permanent physical, intellectual, or mental impairment: 10
- (b) lawful or unlawful detention: 10
- (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

intellectual or mental impairment means a clinically recognisable intellectual or mental impairment, whether or not it is or includes— 15

- (a) an intellectual disability as defined in section 7 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or 20
- (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. 25

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—
 - (a) acknowledged to the claimant in writing a liability to, or the right or title of, the claimant; or 30
 - (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 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. 35

- (3) An acknowledgement or part payment of the kind specified in **subsection (1)**—
- (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. 5
- (4) Payment or part payment of interest by the defendant must be 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. 10

Compare: 1950 No 65 ss 25–27

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:
- (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
 - (ca) if the defendant’s liability or alleged liability is dependent on the claimant not having consented to the act or omission on which the claim is based, the fact that the claimant did not consent to that act or omission: 30
 - (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. 35
- (2) It is a defence to a claim whose **Part 3** period is disappled 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)**. 5

(2A) 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 causes that are or include fraud or a mistake of fact or law (other than a mistake of law as to the effect of this Act). 10

(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.

Compare: 1950 No 65 ss 4(6B), (7), 21(1)(a), 28

47 **Trust property possessed or converted by trustee** 15

(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:

(a) trust property, the proceeds of trust property, or both in the trustee's possession: 20

(b) trust property, the proceeds of trust property, or both 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 disappplied 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. 25 30

(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.

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 civil proceeding commenced in a specified court or tribunal if, and only if,— 5
- (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 10
- (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. 15
- (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. 20

*Interest in respect of judgment debts***49 Recovery restricted to 6 years from date interest due** 25

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.

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

Purchasers, deceased estates, and trust beneficiaries 30**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.

Compare: 1950 No 65 s 28(d), (e) 35

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. 5
- (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. 10
- (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. 15
- (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. 20
- (5) A personal representative may take advantage of any discretion in **section 16, 33, 34, or 48** that the deceased could have sought to use had he or she not died. 25

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— 30
- (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. 35

Compare: 1950 No 65 s 21(3)

Application of limitation law of foreign countries

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

- (1) This section applies to a civil 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. 5
- (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. 10
- (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. 15
- (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. 20

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) 25

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. 30
- (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. 35

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:—
 (a) immediately after it is amended by **sections 59 and 60**; and 5
 (b) subject to the saving in **section 57**.
- 56 Consequential amendments**
 The enactments specified in the **Schedule** are amended in the manner indicated in that schedule.
- 57 ~~Claims~~ Actions based on acts or omissions before ~~1 July 2010~~ 1 January 2011** 10
 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.
 (1) This section applies to an action, cause of action, or right of action— 15
 (a) based on an act or omission before **1 January 2011**; and
 (b) to which the Limitation Act 1950 applied immediately before its repeal. 20
 (2) The action, cause of action, or right of action must, despite the repeal of the Limitation Act 1950 and unless the parties agree otherwise, be dealt with or continue to be dealt with in accordance with the Limitation Act 1950 as in force at the time of its repeal. 25
 (3) Nothing in this section prevents any provision of the Limitation Act 1950 as in force at the time of its repeal from being applied, after **31 December 2010**, and by analogy, to any claim for equitable relief—
 (a) based on an act or omission before **1 January 2011**; and 30
 (b) to which the Limitation Act 1950 immediately before its repeal did not apply directly.

*Amendments relating to actions based on acts
or omissions before 1 January 2011*

- 58** Amendments to Limitation Act 1950
Sections 59 and 60 amend the Limitation Act 1950.
- 59** New section 2A inserted 5
The following section is inserted after section 2:
- 2A** Act continues to apply despite its repeal to actions based on acts or omissions before 1 January 2011
- (1)** This section applies to an action, cause of action, or right of action— 10
(a) based on an act or omission before 1 January 2011;
and
(b) to which this Act applied immediately before its repeal by section 55 of the Limitation Act 2009.
- (2)** Section 57 of the Limitation Act 2009 requires the action, cause of action, or right of action, despite the repeal of this Act and unless the parties agree otherwise, to be dealt with or continue to be dealt with under this Act as in force at the time of its repeal. 15
- (3)** Nothing in section 57 of the Limitation Act 2009 prevents any provision of this Act as in force at the time of its repeal from being applied, after 31 December 2010, and by analogy, to any claim for equitable relief— 20
(a) based on an act or omission before 1 January 2011;
and 25
(b) to which this Act immediately before its repeal did not apply directly.
- (4)** Nothing in this Act as in force at the time of its repeal applies to an action, cause of action, or right of action based on an act or omission after 31 December 2010.” 30
- 60** New heading and sections 23A to 23D
The following heading and sections are inserted above the heading to Part 2:

*“Longstop period of limitation***“23A Actions to which longstop period of limitation applies**

“(1) Section 23B applies to an action based on an act or omission before **1 January 2011** and to which this Act applied immediately before its repeal by **section 55** of the **Limitation Act 2009** so long as that action is neither—

“(a) an action to which section 7(1) or 21(1)(a) or (b) applies; nor

“(b) an action commenced before **1 January 2011**.

“(2) Sections 23B to 23D also apply, in accordance with section 29, to arbitrations.

“23B Longstop period of limitation

“(1) No action to which this section applies may be brought after the last to end of the following periods:

“(a) 5 years ending on the close of **30 June 2015**;

“(b) 15 years after the date of the act or omission on which the action is based.

“(2) That period of limitation applies to the action in addition to every other period of limitation that applies to the action.

“(3) This section is, in accordance with section 3, subject to Part 2, which provides for the extension of that period of limitation in the case of disability, acknowledgment, part payment, fraud, and mistake.

“Compare: 1986 No 5 ss 80(5), 82(2); 1991 No 150 s 91; 2004 No 72 s 393

“23C Discretion to allow relief for action of abuse of infant or of gradual process, disease, or infection injury

“(1) This section applies to an action—

“(a) of a kind specified in **subsection (2) or (4)**; and

“(b) that the defendant could establish, or has established, is an action to which the longstop period of limitation in **section 23B** applies; and

“(c) that is not an action that, at the close of **31 December 2010**,—

“(i) was otherwise barred because of an applicable period of limitation; and

“(ii) had not been revived by an acknowledgement.

- “(2) **Subsection (1)(a)** applies to an action in respect of abuse of the plaintiff (A) when he or she was under a disability because he or she was an infant, and that is wholly or partly sexual abuse of A by any 1 or more persons, or is wholly non-sexual abuse of A by 1 or more persons who are or include— 5
- “(a) a person who is, or has at any time been, a parent, step-parent, or legal guardian of A (B); or
- “(b) a person who is, or has at any time been, a close relative or close associate of B (C).
- “(3) **Abuse**, in the expressions ‘sexual abuse’ and ‘non-sexual abuse’ in **subsection (2)**, means physical abuse, psychological abuse, or a combination of both. 10
- “(4) **Subsection (1)(a)** also applies to an action in respect of a personal injury—
- “(a) of the plaintiff (A) when he or she was of any age; and 15
- “(b) caused by a gradual process, disease, or infection.
- “(5) **Personal injury**, in **subsection (4)**, means any physical, mental, or physical and mental injury (even if it causes the death), of the plaintiff.
- “(6) The court 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 action as if the longstop period of limitation in **section 23B** does not apply to it. 20
- “(7) The application for the order may be made before or after the court has decided whether the defendant has established that the longstop period of limitation in **section 23B** applies to the action. 25
- “Compare: Limitation Act 1969 s 50E(2) (NSW); Limitation of Actions Act 1958 s 27I(2) (Vic); Limitation Act 1980 s 33 (UK)”
- “**23D Matters to be taken into account under section 23C** 30
- In determining whether to make an order under **section 23C**, the court 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 35
- “(ii) if the order were not made, to A; and
- “(b) the length of, and reasons for, the delay on A’s part; and
- “(c) any effects or likely effects of the delay on—

-
- “(i) the defendant’s ability to defend the action; and
 - “(ii) the cogency of the evidence offered, or likely to be offered, by A or the defendant; and
 - “(d) the defendant’s conduct on and after the date of the act or omission on which the action 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 A in order to discover facts that were, or might be, relevant to the action; and 5
 - “(e) the extent to which prompt and reasonable steps were taken by or on behalf of A to bring the action after A became aware that A was entitled to do so; and 10
 - “(f) any steps taken by or on behalf of A to obtain relevant medical, legal, or other expert advice, and the nature of any relevant expert advice received by or on behalf of A; and 15
 - “(g) any other matters it considers relevant.”
-

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)

Section 393(1): omit “provisions of the Limitation Act 1950 apply” 5
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 re-
spect of civil proceedings relating to building work if those proceed-
ings 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”.

Civil Aviation Act 1990 (1990 No 98)

20

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 Conven-
tion 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 arbi-
tration agreement) must be treated as being commenced in the 30
same manner as provided in Article 21 of Schedule 1 of the
Arbitration Act 1996.

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 civil 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)

15

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, civil proceedings may be brought by or against the Crown; or 20

“(b) prescribes a limitation period or other limitation defence for civil 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** **December 2010**.” 20

Government Roothing Powers Act 1989 (1989 No 75)

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

Land Act 1948 (1948 No 64) 25

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

Section 172: add:

“(3) Subsection (2) applies despite any enactment that prescribes a limitation period or other limitation defence.” 30

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**”. 30

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**”.

Motor Vehicle Sales Act 2003 (2003 No 12)

Section 89: add:

“(5) The **Limitation Act 2010** prescribes defences in respect of claims based on an act or omission after **31 December 2010**.” 5

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.” 10

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

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

Heading above section 73: repeal.

Section 73: repeal.

Property Law Act 2007 (2007 No 91)

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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.” 25

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**”.

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

5

Public Works Act 1981 (1981 No 35)

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

Section 51: insert after subsection (1):

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

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Securities Act 1978 (1978 No 103)

Section 37(7): repeal.

Section 37A(8): repeal.

Sharemilking Agreements Act 1937 (1937 No 37)

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

Social Security Act 1964 (1964 No 136)

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

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Summary Proceedings Act 1957 (1957 No 87)

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

Tariff Act 1988 (1988 No 155)

Section 12(2): omit “period of limitation established by any Act, any cause of action that is subject to subsection (1) of this section shall” and substitute “limitation period or other limitation defence prescribed by an enactment, any claim that is subject to subsection (1) must”.

25

Tax Administration Act 1994 (1994 No 166)

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: 5

“(a) the **Limitation Act 2009**:

“(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)

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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, 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. 15

“(2) This section overrides the **Limitation Act 2009** and all other enactments that impose on claims a limitation period or other limitation defence. 20

“Compare: 1953 No 94 s 458”.

Sections 360 and 361: repeal.

Trustee Act 1956 (1956 No 61)

25

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**”.

Section 37(1): omit “Limitation Act 1950” and substitute “**Limitation Act 2009**”. 30

Limitation Bill

Legislative history

2 June 2009
4 August 2009

Introduction (Bill 33-1)
First reading and referral to Justice and Electoral
Committee
