

REGULATORY IMPACT STATEMENT – LIMITATION BILL

EXECUTIVE SUMMARY

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

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 Problems identified are that the current law is unfair, uncertain and outdated.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

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

ADEQUACY STATEMENT

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

STATUS QUO AND PROBLEM

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

Limitation periods are designed to achieve a fair and clear balance between the conflicting interests of those people who wish to procure a remedy and those who may be pursued by stale claims. Evidence deteriorates with time presenting a risk to the judicial process. Limitation periods encourage claimants to pursue claims diligently. They also give security against being held to account for

ancient obligations and the ability to plan for the future with some certainty. This enhances commercial activity in such areas as insurance and security of title where property is transferred.

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

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

OBJECTIVES

The objectives of reform are:

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

ALTERNATIVE OPTIONS

Status Quo

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

Amendment of 1950 Act

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

PREFERRED OPTION

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

The main proposals are to:

- repeal and replace the 1950 Act;
- provide for a start date for claims replacing the concept of accrual (with special start dates for some claims);
- retain the current 6 year limitation period for most claims;
- provide for exceptions or modifications to the general limitation period in cases of minority, incapacity, acknowledgement or part-payment, and fraud;
- provide for a 3 year "late knowledge period", replacing "reasonable discoverability";
- provide a "long-stop" final limitation period of 15 years in most instances;
- provide the court with a discretion to grant relief from limitation periods in certain circumstances;
- clarify and simplify the current rules for land claims.

COSTS

Government: The main cost to government will be the costs associated with the legislative process to replace the existing Limitations Act 1950.

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

BENEFITS

Government:

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

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

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

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

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

IMPLEMENTATION AND REVIEW

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

CONSULTATION

Stakeholder Consultation

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

Government Departments/Agencies

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

The Ministries of Social Development, Economic Development, Culture and Heritage, Transport, Te Puni Kōkiri; the Departments of Building and Housing,

Internal Affairs, Labour, Inland Revenue; and the New Zealand Customs Service, Land Information New Zealand, and the Public Trust have been consulted on the Bill.

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