

Limitation Defences in Civil Cases:
Update Report for the Law Commission

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Introduction

1. The Law Commission reported on limitation defences to civil proceedings in its reports NZLC R6 (1988)¹ and NZLC R61 (2000)². There are important differences between these two reports. Since 2000 there have been some developments of interest in other jurisdictions. The purpose of this report is to make recommendations for the enactment of a new limitation defences act taking account of the recommendations made in NZLC R6 and in NZLC R61 and of later developments.

An overview – limitation periods

2. As will be seen and as is set out in Appendix 2, it will be recommended that:
 - The new act will apply to specified claims or causes of action. The range of claims for which a limitation period is prescribed will be set out in the legislation.
 - Generally the start date of a limitation period will be the date of the act or omission on which the claim is based (but there are exceptions).
 - The primary limitation period will generally be six years (but in certain cases will be one or two years).
 - The start date for an extension to the limitation period will generally be the date the plaintiff first acquires knowledge of relevant matters (but there are exceptions).
 - There will be no extension of time for some claims.
 - The start date for the ultimate limitation period will generally be the date of the act or omission on which the claim is based (but there are exceptions).
 - The ultimate limitation period will be 15 years (with one exception).

¹ The Law Commission *Limitation Defences in Civil Proceedings* (NZLC R6, Wellington, 1988).

² The Law Commission *Tidying the Limitation Act* (NZLC R61, Wellington, 2000).

- Unless the new act applies a limitation period to a claim or another act prescribes a limitation period, there will be no limitation period for that claim.
- There will no limitation period for bringing an action upon a domestic judgment or award, or for recovery of land (with two exceptions).
- The primary period for bringing a personal claim for equitable damages or compensation will be six years; otherwise the act will not apply to equitable remedies.

General matters – special interests and special treatment

3. *Unwarranted distortion of general principles.* A general limitation period or other provision should not be distorted by a wish to accommodate special interests. Any special interests or cases of difficulty should be openly provided for as explicit exceptions so that general rules are not compromised for ordinary litigants in ordinary cases not affected by those special interests.³
4. It should not be embarrassing to acknowledge there are special cases which do not readily fit into a general limitation regime. At present, for example, there are special periods for bodily injury and for defamation claims, both of which can be justified on the grounds that run-of-the-mill claims of these types can usually be brought soon after the event, and that it is in the interests of insurers (who are frequently involved) that these claims be brought promptly.⁴ As well there are the special periods for actions upon a deed and for recovery of land. Outside the Limitation Act 1950, special provision has now been made for building claims.⁵

³ One example is the case of claims in respect of building work where a special maximum time limit of ten years has been enacted: Building Act 2004, s 393. This special provision does not affect the time limit for bringing a contractual or negligence claim not concerned with building work. Another example is the special provision in the Limitation Act 1950 (ss 6(1A) and 7A) introduced by Te Ture Whenua Maori Act 1993 concerning certain claims in respect of Maori customary land – these do not affect the time periods for other claims for recovery of land.

⁴ However some personal injury claims, such as for deafness or arising from asbestos use, can, in the absence of special legislation extending the time for bringing a claim, become time barred before the plaintiff is able to bring a claim.

⁵ Building Act 2004, s 393.

5. Special provision may involve a specially defined start date, a special period of limitation, special consequences on the expiry of the limitation period in some cases, and special provision regarding an ultimate period, any of which may cut across general rules which are unable to accommodate a special case.

General matters concerning limitation defences

6. Limitation law is statutory.⁶ A statutory limitation defence to a civil proceeding is a time bar which a defendant may raise as a defence to a claim. A time bar prevents a plaintiff from bringing an otherwise valid claim and denies a plaintiff access to justice. In imposing and fixing a limitation period it is important to remember:
 - The time limit is an interference with the strict legal rights of a claimant barred from bringing an otherwise valid claim.
 - The time limit should be no more than is appropriate in the circumstances.
 - The imposition of a time limit should not alter the substantive law.
7. Limitation defences have been justified on various grounds including:
 - Plaintiffs who sleep on their rights should be barred from proceeding.
 - The injustice and prejudice to a defendant called on to defend a claim long after the event, more especially when evidence has disappeared and witnesses are no longer sure in their recollection.
 - Protecting defendants from stale or ancient claims.
 - Avoiding prejudice to defendants from having claims hanging over them – at some point a defendant should be able to move on.
 - Encouraging plaintiffs to bring claims promptly.
 - In the property context, quieting titles (in the sense of barring a title based claim to property after a certain period so that title cannot be challenged after that period).

⁶ All precisely fixed time bars are statutory. The Court has an equitable jurisdiction to deny certain claims for delay under special doctrines.

General matters – radical or conservative reform?

8. NZLC R61 advanced grounds for balancing fairness to plaintiffs against fairness to defendants.⁷ These need not be repeated again.
9. NZLC R61 noted that the “root and branch” approach of NZLC R6 had not found favour.⁸ NZLC R28⁹ recommended changes to the Limitation Act 1950 to deal with four matters, namely:
 - “Undiscovered” claims, that is those cases where time expires before a plaintiff can bring any claim.¹⁰
 - Claims for exemplary damages for personal injury.¹¹
 - Equitable claims.¹²
 - Third party claims.¹³

To these may be added:

- A claim for public law compensation.¹⁴

These matters seem to be the main drivers for reforming a limitation act in New Zealand, apart from modernising the statute.

10. NZLC R6 had considered a wider range of issues, but among those considered were equitable claims and “undiscovered” claims.
11. In broad terms NZLC R61 recommended keeping the basic structure of the Limitation Act 1950 with introduction of a “discovery” extension with an ultimate

⁷ NZLC R61, above n 2, paras 3 and 4.

⁸ NZLC R61, above n 2, para 2.

⁹ The Law Commission *Aspects of Damages: the Award of Interest on Money Claims* (NZLC R28, Wellington, 1994).

¹⁰ NZLC R61, above n 2, paras 8 - 14.

¹¹ NZLC R61, above n 2, paras 19 – 22.

¹² NZLC R61, above n 2, paras 23 – 26.

¹³ NZLC R61, above n 2, para 27.

¹⁴ *PF Sugrue Ltd V Attorney-General* [2004] 1 NZLR 207 (CA).

period of 10 years,¹⁵ widening coverage to “any other civil claim” and introducing a time limit for claims for contribution or indemnity.

12. In addition to the matters referred to in paragraph 5 above, NZLC R61 also noted¹⁶ that a limitation act should:
- Fix a certain cut-off date which enables a defendant to know where they stand.
 - Be as comprehensive as possible.
13. NZLC R6 had recognised that special policy factors may justify departure from a general limitation regime, and on consideration¹⁷ did not recommend a change to the present position, namely that the Limitation Act 1950 does not apply to a limitation period prescribed by another enactment.¹⁸ NZLC R61 did not recommend change in this respect. It is recommended that a new limitation act should not attempt to include all statutory civil time periods within a single piece of legislation, and that a provision corresponding to the present section 33 be retained.¹⁹

Developments elsewhere – a “discovery” start date in all cases?

14. In some Canadian jurisdictions the start date for bringing a claim is the date the claim was discovered.²⁰ The United Kingdom Law Commission has recommended for England that the start date be the date of knowledge of the

¹⁵ In harmony with the (now) Building Act 2004, s 393.

¹⁶ NZLC R61, above n 2, paras 4 - 7.

¹⁷ Although concerned about uniformity, NZLC R6 recognised there may be special policy factors which justify departure from a general limitation regime: NZLC R6, above n 1, para 367.

¹⁸ Limitation Act 1950, s 33.

¹⁹ Apart from the effort involved, the exercise would not serve a useful purpose if Parliament, remaining constitutionally free to enact limitation periods in future, continued the practice of enacting special provisions in later legislation. There could then be no guarantee that every limitation period would continue to be controlled by a single piece of legislation. Moreover there are sound reasons why Parliament should be free to consider the appropriate length and other incidents of a limitation period whenever it considers legislation.

²⁰ Limitations Act s15 (Ontario); Limitations Act 2000 s3(1)(b) (Alberta); Limitation Act 1996 s3 (British Columbia)

claimant.²¹ In each instance time runs from the start date but there is a final cut off date calculated from either the date the cause of action accrues or the date of the act or omission on which the claim is based. As a matter of logic, if a start date based on discovery or knowledge can always override a start date without a knowledge element, there is no point in having the latter unless something turns on the difference.

15. NZLC R6 recommended against a “date of knowledge” start date on the ground that it is uncertain and discretionary.²² NZLC R6 considered there should be an onus on a plaintiff seeking an extension and asserting lack of knowledge.²³ There is of course no such onus if a claim is brought within a time computed from a start date fixed without a knowledge element.²⁴ NZLC R61 considered the same issue and recommended against it on the same grounds that it would be uncertain and discretionary and that it would essentially be open-ended.²⁵ The difference (referred to at the end of paragraph 14) is that a plaintiff bringing a claim within a fixed period from a fixed start date does not have to grapple with “discovery” or “knowledge” issues, unlike a plaintiff relying on a “discovery” or “knowledge” extension.
16. Both NZLC R6 and NZLC R61 recommended against a “discovery” or “knowledge” primary start date. Despite overseas moves in that direction, without further consultation within New Zealand, the recommendations of NZLC R6 and NZLC R61 should not be departed from in this respect.

Coverage – the range of claims potentially included within a limitation regime

17. The range of claims that remain after leaving out those for which a limitation period is prescribed by another enactment includes civil claims brought:

²¹ UK Law Commission *Limitation of Actions* (Law Com no 270, London, 2001) paras 3.5 to 3.7.

²² NZLC R6, above n 1, para 168.

²³ NZLC R6, above n 1, paras 167 and 181.

²⁴ Just as obviously there is no issue as to onus when there is a “discovery” or “knowledge” start date, when the plaintiff knows of the claim immediately and brings it within time.

²⁵ NZLC R61, above n 2, paras 10.

1 Generally outside the scope of any statute (although there may be a mixture of statute and non-statute law).

- For breach of contract and other contractual relief.
- For damages, injunction or other relief for any tort or civil wrong.
- For penalties.
- For account.
- For recovery of specific property, chattels or land.
- For breach of trust.
- For probate and administration.
- For the extraordinary remedies (not included within the Limitation Act 1950).
- For restitution (not included within the Limitation Act 1950).
- For public law compensation (not included within the Limitation Act 1950).

2 Under a statute.

- For a “sum recoverable” under a statute.
- For relief under any statute but not being for a “sum recoverable”²⁶ (not included within the Limitation Act 1950²⁷).

Coverage – restricted scope of Limitation Act 1950

18. *Limitation Act 1950 applies to non-statutory causes of action except in one case.*

The Limitation Act 1950 does not apply by default to every type of civil proceeding. In that sense it is not comprehensive. There are classes of civil proceeding which have no express statutory time limit.²⁸ Moreover the Limitation Act 1950 does not apply if another enactment²⁹ prescribes a limitation

²⁶ This includes judicial review, declaration, applications under the Property Law Act 1952, applications under the Companies Act 1993, applications under Family Law legislation, simply to mention a few.

²⁷ Since a statute is a “specialty”, it may be arguable that that the limitation period which applies to a deed also applies to a statute.

²⁸ In particular, applications for statutory relief, and for probate, declaration and judicial review.

²⁹ There are numerous examples. Lists have been collected from time to time – see, for example, *The Laws of New Zealand* (LexisNexis Butterworths, Wellington, 1993-) Limitation of Civil Proceedings, and Appendix to NZLC R6, above n 1. Parliament has on

period.³⁰ The Limitation Act 1950 by and large is focussed on civil claims not based on any statutory provision – claims in contract, tort, account, recovery of land, for breach of trust and other civil claims within the jurisdiction of the Courts.³¹

Coverage – “all civil claims”

19. NZLC R6, like NZLC R61, recommended that a new limitation act apply to “all civil claims”, including equitable claims.³² NZLC R6 recommended a number of exceptions to “all civil claims”, but NZLC R61 did not.³³
20. A new limitation act applying to all civil claims – other than those brought under enactments which prescribe a limitation period (and if the recommendation of NZLC R6 were to be followed, other than those NZLC R6 recommended be excepted from the new act³⁴) – would bring within the new act any claim brought under an enactment which does not prescribe a limitation period.³⁵
21. Apart from the exercise of self help remedies, enforcement of judgments, declaratory relief, judicial review, equitable relief and admiralty,³⁶ NZLC R6 did not consider in detail what other general kinds of civil claim would be brought within a new limitation act applying to “all civil claims”, but nevertheless so recommended. The reason given by NZLC R6 for this recommendation was that a new statute should be as comprehensive as possible.³⁷ However

many occasions imposed special periods, for example, more recently in building construction cases: Building Act 2004, s 393.

³⁰ The Limitation Act 1950 does not apply to periods prescribed by another enactment: s 33.

³¹ Exceptionally, the Limitation Act 1950 applies to any claim to recover any penalty or forfeiture, or to recover any sum recoverable, in both cases by “by virtue of any enactment”: ss 4(1)(d) and (5).

³² NZLC R61, above n 2, para 23.

³³ NZLC R6, above n 1, draft bill, clause 3(2). Both reports accepted that a new Act would not apply to limitation periods prescribed by other enactments, although NZLC R6 recommended amendments to limitation provisions in other enactments.

³⁴ NZLC R6 recognised four cases not within the scope of the Limitation Act 1950 that should continue to remain outside the scope of a new act, and that one case within its scope be excluded: NZLC R6, above n 1, draft bill, clause 3 (pages 153 and 153).

³⁵ Limitation Act 1950, s 4(1)(d) applies to a sum recoverable by virtue of any enactment.

³⁶ NZLC R6, above n 1, paras 310 - 339.

³⁷ NZLC R6, above n 1, para 311.

comprehensiveness per se should not be achieved at the expense of potential uncertainty, injustice or anomaly.

22. NZLC R61 gave a different reason related to equitable remedies. Essentially NZLC R61 was concerned to bring within a new limitation act claims for equitable remedies presently excluded by section 4(9) of the Limitation Act 1950.³⁸ Like NZLC R6, NZLC R61 did not consider the range of claims that would be brought within a new limitation act applying to all civil claims (other than those for which another enactment prescribes a limitation period).
23. Without (i) a detailed consideration of all statutory and non-statutory claims that might be brought; and (ii) any reasons why no limitation period has been prescribed for each possible statutory claim, there is a significant risk that limitation periods will be applied to inappropriate cases.

Coverage – the range of further civil claims that might be subjected to a time limit

24. NZLC R6 recognised that “there are undoubtedly situations where it may be unnecessary or undesirable to have any limitation period or where the period may be of a different length than that which we recommend generally...”³⁹ For example it has probably been assumed a limitation act would not apply to proceedings in the Family Court.⁴⁰

Apart from claims for a declaration (which NZLC R6 accepted be excluded from any limitation regime) and for equitable remedies (which will be discussed separately) there are other civil statutory claims which do not call for any period of time limitation, at least for the reasons referred to in paragraph 7 above. In some of these cases it is practically impossible to formulate an appropriate start

³⁸ NZLC R61, above n 2, paras 23 - 26. This may have been an underlying influence on NZLC R6 – see para 355.

³⁹ NZLC R6, above n 1, para 311: The report did not elaborate on the situations it may have had in mind.

⁴⁰ UK Law Com no 270, draft bill, clause 33 specifically excludes family proceedings from the draft. The draft bill otherwise applies to “a civil claim” specially defined with the intention of excluding “administrative” applications to the Court: UK Law Commission, above n 21.

date, and if there is no appropriate start date there cannot be a general limitation period commencing from a start date.

Coverage – statutory claims for relief

25. By statute the Court may grant relief in cases of encroachment, landlocked land,⁴¹ building on the wrong land by mistake, and in respect of caveats lodged under the Land Transfer Act 1952.⁴² No doubt there are others.

26. In these cases there is no cause of action in the conventional sense, that is a claim based on an event which entitles a plaintiff as of right to a judgment for debt, damages, or for recovery or restitution of property. A plaintiff seeks relief from a set of circumstances sometimes not of the plaintiff's or defendant's making. It is not always practicable to identify an act or omission which is the basis of the claim, nor is it always sensible to insist that the problem be resolved when "discovered". The problem often emerges gradually, so that it is difficult to pinpoint a time when anyone was really in a position to consider making a claim.

27. Sometimes, as with landlocked land or encroachment, the problem emerges unexpectedly; sometimes the problem is known but immediate parties in amicable relations do nothing about it and a "problem" arises when someone else decides it is in their interests to try to enforce strict legal rights. Discoverability is not always an appropriate start date in this kind of case. There is no compelling reason to bring claims of this type within a limitation regime at all when to do so would frustrate the purpose of these remedies by preventing the Court from making orders in cases that call for the relief authorised by statute. It is unrealistic

⁴¹ It is noted that under the present section 129B(2) of the Property Law Act 1952, a landlocked land application may be made "at any time". This may have been intended to indicate that although a claim has been made, a further claim may be made if circumstances change. It is consistent with the view that it was not intended that a claim might be time barred.

⁴² Property Law Act 1952, ss 129 (encroachment), 129A (mistake as to boundaries), and 129B (landlocked land). In some of these cases an application for relief is usually made when one party or another has chosen to make an issue of something which has not bothered neighbours for years, and yet some relief is usually called for. The events which created the situation in the first place may have some relevance in determining what relief (if any) is appropriate, but are too remote as "the act or omission on which the claim is based" if the remedy is to be useful where it is most wanted.

to place these types of claim in the same category as claims for breach of contract or for damages for an injury. Although they may originate in events occurring long ago, they are not “stale” in the same sense as a known claim not proceeded with promptly. Claims of this type cannot be comfortably included within a limitation regime.

Coverage – claims for an equitable remedy (special remedies, personal and proprietary remedies)

28. Equitable claims for relief (i) in the nature of enforcement of equitable proprietary obligations,⁴³ including specific performance⁴⁴ and injunction; (ii) setting aside unconscionable transactions;⁴⁵ (iii) for rectification of documents; (iv) to cancel documents that ought to be delivered up for cancellation; and (v) by appointment of a receiver, tend to be made when a problem emerges or when some past act or omission on which the claim is based finally comes into focus.
29. The remedy of rectification of documents enables the Court, even at a late stage in the course of a long term contract, to do justice. There is no obvious justification for imposing a strict time bar for an application for this remedy. Likewise for cancellation of documents or for the appointment of a receiver.
30. The modern remedy of injunction is now extremely flexible but is discretionary. In relation to declaratory proceedings (also discretionary), NZLC R6 said that “the

⁴³ The enforcement of recognised equitable property rights.

⁴⁴ The UK Law Commission recommended that no limitation period should apply to the remedy of specific performance “where under the present law delay is not a bar to specific performance”: above n 21, para 4.268. In the draft bill (clause 34) the time bars do not apply to a claim for specific performance if the claimant is in possession of the property; otherwise this is tantamount to recommending that there be no time bar for the remedy of specific performance. The reason given for the recommendation is that in equity a contract to transfer a legal interest is as good as a transfer of the legal interest (although liable to be defeated by someone with a better equitable title or a bona fide purchaser for value). The Law Commission also accepted that if an equitable property right can be enforced by specific performance, there is no reason on time grounds why the Court cannot award damages in lieu if on discretionary grounds specific performance is not ordered, although it could have been. The situation is different where specific performance cannot be granted at all.

⁴⁵ The remedies of cancellation and delivery up of documents improperly procured, setting aside transactions of the ground of undue influence and non-contractual mistake. The Contractual Mistakes Act 1977 and the Contractual Remedies Act 1979 have established statutory rules for relief against certain kinds of contractual mistake and for cancellation in

Courts can be relied on to resist attempts by litigants to use “declaratory relief as a back door” means of achieving relief that would otherwise be subject to a limitation defence...” The same consideration applies to the remedy of equitable injunction.

31. Equitable property rights (such as the rights of a purchaser under a contract for the sale of land, or of a beneficiary under a trust) are recognised in equity as rights which can be lost on time grounds only if a relevant doctrine⁴⁶ is applied in the circumstances of the case. Although a vendor may have failed to perform or to complete performance of a contract many years earlier, since time is not of the essence in equity, the mere passage of time alone does not destroy the equitable property right.⁴⁷ Applying a strict time limit to an equitable remedy in these circumstances will make a significant change to the substantive law,⁴⁸ something to be avoided. Property rights recognised and enforceable in equity will vanish at midnight when the time bar strikes. Like some of the statutory claims earlier referred to, these claims are usually not stale in the sense that there has been delay in bringing a known claim. Sometimes there is reason for delay, including a defendant unfairly leading a plaintiff to believe proceedings would not be necessary. There can be uncertainty about identifying a particular date of

place of rescission in equity. There are no time limits for seeking relief under these Acts, although in practice any application would be made promptly.

⁴⁶ Laches or **acquiescence**.

⁴⁷ The recent case of *Eastern Services Ltd v No 68 Ltd* [2006] 3 NZLR 335 (SC) illustrates how an equitable property right can survive and be enforced by an order to transfer an outstanding legal title notwithstanding some 26 years' delay in seeking specific performance. When did the cause of action accrue? What would have been the date of the act or omission on which the claim is based? Would it be the date when the defendant refused to agree to transfer the right of way? If specific performance could not be granted, the equitable property right would have disappeared. In principle an equitable property right could not survive a strict time bar for bringing an enforcement proceeding. There may be an issue in Canada whether a purchaser of land has an equitable property right following dicta in the Supreme Court of Canada (*Semelhago v Paramadevan* (1996) 136 DLR (4th) 1) which implies a contract for the sale of land creates personal but not property rights. See Chambers “The Importance of Specific Performance” in Degeling and Edelman (Eds) *Equity in Commercial Law* (Lawbook Co, Pymont, NSW, 2005) 442 - 448.

⁴⁸ The position at present is simply that if it is possible to enforce personal obligations in order to perfect an equitable property right, the Court will grant the appropriate equitable remedy unless there are discretionary considerations to the contrary. For some, who tend to regard equity as defunct, property rights classified as equitable may be seen in a better light as “imperfect legal property rights” rather than “equitable rights” whose continued existence and/or perfection depends on the availability of a special remedy, currently classified as an equitable remedy, but which could be renamed. Language should not disguise the reality of the need for an effective remedy to uphold imperfect legal property rights without any strict time constraint.

occurrence of an act or omission on which the claim is based, or when a cause of action accrued. It is recommended that this not change, and that equitable remedies generally continue to be excluded from a limitation regime.⁴⁹ It is recommended that a provision corresponding to section 4(9) of the Limitation Act 1950 be retained, but subject to the recommendation in the next paragraph.

32. Where there are no proprietary issues, a purely personal claim for equitable compensation or damages, probably already barred by analogy by section 4(9) of the Limitation Act 1950,⁵⁰ should be expressly barred by the standard limitation period. It is recommended that the new act expressly apply to a personal claim for equitable damages or compensation.⁵¹ This expression is preferable to describing it as a claim for breach of fiduciary duty not being a breach of trust.

Coverage – other civil claims

33. *Sexual and other abuse claims.* NZLC R6 did not consider this matter but NZLC R61 did and recommended a postponement of the start date by extending the scope of the present disability extension.⁵² The Court has also developed a special non-discretionary liberal “discovery” rule enabling sexual abuse cases to be brought many years after the event. The Court has decided that the cause of action does not accrue until the plaintiff has linked the damage (usually

⁴⁹ If the obligation can be performed, but the Court decides not to grant specific relief on discretionary grounds, the Court has power to award damages as a substitute for the performance the Court withholds; this power is not subject to any limitation period and this should not change. This is also the view of the UK Law Commission: above 21, paras 4.273. On the other hand if the equitable property right cannot be enforced (where for example the defendant can no longer transfer a legal title or the rights of a bona fide purchaser defeat the equitable claim), the plaintiff will have to sue for damages within the normal limitation period.

⁵⁰ *Cia de Seguros Imperio v Heath* [2001] 1 WLR 112 (CA); see *S v G* [1995] 3 NZLR 681(CA) at 689. A breach of duty by a fiduciary is not necessarily a breach of fiduciary duty (*S v Attorney-General* [2003] 3 NZLR 450 (CA), 77], although this is still under debate in some quarters – JD Heydon “Are the Duties of Company Directors to Exercise Care and Skill Fiduciary?” in Degeling and Edelman (Eds) *Equity in Commercial Law* (Lawbook Co, Pymont, NSW, 2005) 185 - 257, and especially pages 210 and 213 - 226.

⁵¹ The Limitation Act 1950 barred specific equitable claims for account, breach of trust and for equitable causes of action for recovery of possession of land. Significantly, the first two are personal claims not proprietary claims, although there may also be a concurrent equitable proprietary claim running alongside, such as tracing specific property.

⁵² NZLC R61, above n 2, paras 20 - 22.

psychological) to acts of abuse.⁵³ If the primary start date is the date of the act or omission on which the claim is based, it will not matter when the cause of action accrues.

34. At present a claim pleaded as a “breach of fiduciary duty” is barred by analogy with the time limits in the Limitation Act 1950,⁵⁴ or may be barred because the allegations establish no more than breach of a non-fiduciary duty of care.⁵⁵ Issues have arisen in the past and may arise again concerning the scope of a cause of action for abuse. Special provision for abuse claims would have the advantage of ensuring that the precise cause of action pleaded by the plaintiff does not matter, and would provide a more certain limitation regime for such claims.

35. NZLC R61 recommended a special disability provision applicable to abuse cases, although not confined to them. This would provide that a plaintiff is under a disability if the plaintiff is unable, by reason of some or all of the matters on which an action is founded, to make reasonable judgments in respect of matters relating to the bringing of such action.⁵⁶ The recommendation differs from the approach taken by the Court of Appeal in *W v Attorney-General*⁵⁷ which had concentrated on whether the plaintiff should reasonably have linked psychological damage to the acts of abuse.⁵⁸ It does not appear to be settled that there is a defined and special psychological incapacity suffered by victims of abuse.⁵⁹ Nor is it clear what material would be relevant to determine whether a plaintiff, presumably not under any other disability, was or was not at some earlier point of time capable of making a reasonable judgment. The enquiry is one into a subjective state of mind, a non-objective phenomenon, to which there is likely to be no right answer in all except in very extreme cases.

⁵³ *W v Attorney-General* [1999] 2 NZLR 709 (CA), following earlier cases.

⁵⁴ Limitation Act 1950, s 4(9).

⁵⁵ *S v Attorney-General* [2003] 3 NZLR 450 (CA), paras 75 - 80.

⁵⁶ NZLC R61, above n 2, para 22. This could apply to any plaintiff claiming to be traumatised by something such as financial collapse allegedly caused by the plaintiff.

⁵⁷ *W v Attorney-General*, above n 53.

⁵⁸ Thomas J had said obiter that a person is under a disability if for a clearly established psychological reason the person is disabled from instructing a solicitor and commencing as proceeding. *W v Attorney-General*, above n 53, paras 90 - 91.

36. The plaintiff would be subjected to intensive scrutiny on the issue, no doubt focussing on the plaintiff's reasons for not bringing a claim at an earlier stage, taking up time and expense. Issues to be balanced include certainty that a limitation period has expired, and fairness to a plaintiff who in a practical sense may not have been able to appreciate both a link between the abuse and psychological injury, and to overcome a psychological barrier to taking legal action in time. Any proposal to allow a discretionary extension of time will come back to the same issues as before, together with the question of prejudice to the defendant after a long lapse of time.⁶⁰ With some hesitation it is recommended that no special provision be made to introduce a special disability provision or a special knowledge of linkage provision in cases of abuse. The fifteen year ultimate period will be absolute and final in this respect.
37. It is recommended that abuse claims be specially provided for (simply to ensure the limitation rules are clear). It is recommended that the primary period, the same as for bodily injury, be two years which will run from the date of the act or omission on which the claim is based, and that the knowledge period will apply up to the end of the fifteen year ultimate period. If either (or both) the minority disability period and the incapacity disability period apply, time will be extended in accordance with the recommendations pertaining to them. There will be no other ground for extending the primary or the ultimate periods.
38. *Judicial review.* NZLC R6 recommended that claims for judicial review be excluded from a new limitation act. In principle the same should apply to the remedies of mandamus, certiorari and prohibition, and to the public law remedy of injunction. They should not be included.

⁵⁹ UK Law Commission, above n 21, para 3.125.

⁶⁰ The UK Law Commission, above n 21, recommended both that the ultimate or longstop period not apply to personal injury claims (para 3.107) and recommended an open ended discretionary extension of time limit for all personal injury claims, including sexual abuse personal claims (para 3.169). The factors to be balanced in exercising this discretion is the hardship to the plaintiff and the hardship to the defendant, but a detailed list of matters that may be taken into account was recommended.

39. *Public law compensation.* A public law claim for compensation is not a claim for a “sum recoverable” under an enactment.⁶¹ There should be a time limit for this claim.
40. *Probate and administration.* There is no reason to require an application for probate or administration to be made within any period.
41. *Domestic judgment.* NZLC R6 recommended⁶² that there be no period for bringing an action upon a domestic judgment. This should be adopted. The historical reasons why a limitation period came to be applied to judgments are explored by Lord Lloyd of Berwick in *Lowsley v Forbes* [1998] 3 All ER 897 (HL) – the reason no longer exists. It is accepted that issuing execution upon a judgment is not the commencement of an action upon a judgment.⁶³
42. The further recommendation in NZLC R6 that the time for enforcement of a judgment without leave of the Court be reduced should not be adopted. This matter is controlled by Rules of Court and is best left to the Courts for any control over the enforcement of judgments.
43. *Foreign judgments.* The time limit for registration of foreign judgments in New Zealand is controlled by other legislation. Once registered, the judgment has effect as if it were a judgment of the High Court. An action may also be brought in New Zealand upon a foreign judgment – at common law a foreign judgment is treated as a simple contract debt,⁶⁴ so that at present the simple contract time limit applies. It is recommended that the limitation regime apply to a claim upon a foreign judgment.
44. *Arbitration awards.* One method of enforcement of arbitration awards in New Zealand (whether the award was made in New Zealand or elsewhere) is by application to the High Court. No time limit is prescribed.⁶⁵ An award may also

⁶¹ *PF Sugrue Ltd v Attorney General*, above n 14.

⁶² NZLC R6, above n 1, para 329.

⁶³ *WT Lamb v Ryder* [1948] 2 All ER 402 (CA). See also NZLC R6, above n 1, para 328.

⁶⁴ *Grant v Easton* (1883) 13 QBD 302 (CA); *Berliner Industriebank Akt v Jost* [1971] 2 All ER 171, affirmed [1971] 2 All ER 1513 (CA).

⁶⁵ Arbitration Act 1996, First Schedule, Article 35(1); and High Court Rules, Rule 896(1)(b).

be enforced by action.⁶⁶ Given that there are strict time limits for challenging or appealing against an award, once those periods have expired an award becomes, like a final judgment, a matter of record that is practically unimpeachable. Unless there is some international obligation to the contrary, it is recommended that there be no limitation period for a domestic award, but that the limitation period for a foreign award be the same as for a foreign judgment, six years.

45. *Rent and interest.* It is recommended that a claim for rent or arrears of rent, and for interest or arrears of interest be barred at the expiration of six years computed from the date when the rent or interest became payable. This does not change the law.

Drafting – focus on claims included

46. As a matter of drafting, the choice is between applying the act to “all civil claims” but identifying exceptions, or applying the act to particular classes of proceeding.
47. Paragraph 9 refers to the four main areas then of concern to NZLC R61. Public law compensation may be added. Each of these can be accommodated by drafting a clause to cover what is intended. Taking the opposite approach, without first checking each statute and each possible cause of action, risks bringing into the limitation regime civil proceedings that should not be there. It is preferable to avoid barring proceedings by inadvertent drafting (which will defeat otherwise proper claims or give rise to unnecessary and time wasting arguments) and to tolerate some claims that arguably should have been brought at an earlier time and which may be defeated by delay in any case. They can be legislated for as needed. Apart from the instances referred to in paragraph 9 there is no evidence that any further class of claim ought to be brought into a limitation regime.
48. The complexities⁶⁷ acknowledged in NZLC R6 and the acknowledgement that there are undoubtedly situations requiring different treatment⁶⁸ are a warning

⁶⁶ High Court Rules, Rule 896(1)(a).

⁶⁷ NZLC R6, above n 1, para 128: “...the new balance is complex and not able to be stated in a single rule.”

against over-simplification. Care must be taken to avoid injustice, uncertainty and results that conflict with the policies behind a limitation act by down-playing issues that arise in particular cases and in cases that have not been specifically considered for inclusion within a limitation regime.

Coverage of new limitation act

49. It is recommended that a new act identify the civil proceedings to which it applies⁶⁹ rather than undertake the attempt to identify the civil proceedings to which it does not apply. The claims to which a new act applies will be:

- contract (including deed)
- tort or civil wrong
- conversion and detinue
- penalties
- account
- recovery of land
- restitution
- public law compensation
- breach of trust
- personal claim for equitable damages or compensation (not being a breach of trust to which any other provision of the act applies)
- sum recoverable under any statute, whether by way of debt or liquidated or unliquidated damages or otherwise

⁶⁸ NZLC R6, above n 1, para 311. Cooke P made a similar observation in *Askin v Knox* [1989] 1 NZLR 248 (CA) at 256: “There is ground for treating negligence in building and building control as a special subject with its own problems... in the context of ... a more general limitation act”.

⁶⁹ The UK Law Commission, above n 21, para 1.13, recommended that a core limitation period apply without qualification to tort claims (except personal injury and conversion claims), contract claims, restitutionary claims, breach of trust and related claims, claims on a judgment or arbitration award, and claims on a statute. However the draft bill applies a limitation period to “a civil claim” defined as a claim seeking “a remedy for a wrong”, “restitution”, or “the enforcement of a right”: draft bill, clause 1(1). This definition intentionally excludes applications of an administrative nature such as an application for the appointment of a trustee.

- to set aside a grant of administration on the ground of want of capacity or undue influence
- rent
- interest
- contribution
- claim upon a foreign judgment
- claim upon a foreign award.

Start date

50. The start date (the date from which time starts to run) must be precise and certain to minimise difficulty calculating time. It should be objectively ascertainable.
51. A defendant hoping to be protected from outstanding claims would expect time to run from the date of the last act or omission under the control of the defendant. A plaintiff would expect time to start from the date when the plaintiff is both legally entitled to commence a proceeding (the date of accrual) and is also aware of the facts which entitle the plaintiff to commence a proceeding.
52. The Limitation Act 1950 formulates the start date for different causes of action in different ways. The Table in the Appendix 1 sets these out. Its most common formula is “the date on which the cause of action accrues”. It is the date the plaintiff becomes eligible (in the sense of becoming legally entitled) to commence a proceeding,⁷⁰ whether or not the plaintiff is aware of the facts.⁷¹ This date is not necessarily the date the defendant commits a wrongful act or omission, but it may be much later than the date of that event.⁷²

⁷⁰ A proceeding commenced before a cause of action accrues will be struck out as premature. Formerly a cause of action under section 320(1) of the Companies Act 1955 did not accrue until the commencement of a winding up, although the events may have occurred many years earlier. Some claims may not be able to be commenced until a bar to proceeding is removed, but the bar does stop time from running.

⁷¹ Thus time runs against a plaintiff, although the plaintiff may be entirely ignorant of facts which entitle that plaintiff to commence a claim.

⁷² Negligence and nuisance are two torts where the cause of action does not accrue until damage occurs, possibly many years after the date of the defendant’s act of omission.

53. However the date of “accrual” is not the only start date in the Limitation Act 1950, as the Table in Appendix 1 shows. The start date for certain causes of action could not be fitted by the Limitation Act 1950 into the formula of the date of “accrual”. One implication is that it might not be possible to find a start date formula which is universally appropriate. Another consequence is that discussion about the start date has in more recent times been focussed on causes of action where at present the start date is the date of “accrual”, and less consideration has been given to other causes of action which have always had other start dates dependent solely on the occurrence of a defined event.

Start date reform – “Accrual”

54. A cause of action “accrues” when there is both a plaintiff capable of suing and a defendant who can be sued.⁷³ Until then time cannot run at all. On the other hand where a start date is defined simply as the date of some event, time runs from that date regardless.
55. NZLC R61 recommended a simple modification to the expression “the date the cause of action accrues”, that it be the date when “all facts necessary to establish the claim are in existence whether or not their existence is known to the plaintiff”.⁷⁴ The intention of this redefinition, was to identify a start date in terms that are as certain and objectively ascertainable as possible. The further intention was to remove any issues of uncertainty of the meaning of the expression arising from recent cases in the New Zealand Court of Appeal.⁷⁵ Otherwise it did not alter the meaning of this expression.
56. NZLC R61 would have retained the specially defined start dates at present in the Limitation Act 1950, as well as modifying the definition of the expression “accrues”.
57. NZLC R6’s recommended universal start date is “the date of the act or omission on which the claim is based” rather than the date the cause of action accrues. This

⁷³ *The Laws of New Zealand* (LexisNexis Butterworths, Wellington, 1993-) Limitation of Civil Proceedings, paras 20 and 23. Felons were at one time legally incapable of suing or defending in a civil case, so that time could not run against a felon, nor in favour of a felon.

⁷⁴ NZLC R61, above n 2, para 14.

recommendation took account of six special cases by providing a special definition of “act or omission by the defendant”. It did not, however, cover all of the specially defined cases in the Limitation Act 1950.

Possible primary start dates

58. *Date plaintiff is entitled to bring claim (regardless of plaintiff’s awareness of facts).* This is the present position for many common claims. As the date the plaintiff is entitled to bring a claim is not necessarily identical to the date of the events on which liability is based, there is scope for confusion.⁷⁶ However the date the plaintiff becomes entitled to bring a claim is relatively certain.
59. *Date of act or omission on which claim based.* NZLC R6 recommended a universal start date – the date of the act or omission on which the claim is based. This a sound start date for most claims based on a definite breach of contract or of some other legal or equitable obligation where something happened on a precise date that matters. It is sound in most cases where at present the start date is the date the cause of action accrues.
60. The start date recommended in NZLC R6 may be adopted for all cases which at present are covered by the date the cause of action accrues. Except for the torts of negligence and nuisance, this reform will not alter in substance the time within which a claim in contract or tort is to be brought. For negligence and nuisance time will run from the date of the defendant’s act or omission, not from the date damage occurs.⁷⁷

⁷⁵ NZLC R61, above n 2, para 14.

⁷⁶ The causes of action in tort for negligence and nuisance do not accrue until damage occurs; the plaintiff is not entitled to start a claim until damage occurs.

⁷⁷ The UK Law Commission, above n 21, recommended the use of the expression “the date the cause of action accrued” modified by omitting the damage requirement for claims in negligence and nuisance. In the cases of negligence and nuisance the start date is “the date of occurrence of the act or omission which gives rise to the cause of action”: draft bill, clauses 3(1) and (2).

Start date – a universal start date?

61. NZLC R6 recommended six modifications to the start date prescribed as “the date of the act or omission on which the claim is based”.⁷⁸ In effect NZLC R6 recognised that its recommended general start date does not fit all cases.
62. The formula recommended by NZLC R6 is not sound for all civil claims. Some claims for relief are not necessarily based on any act or omission, although sometimes they may appear to be. Although an act or omission may be involved, the essence of some claims is the seeking of relief from circumstances that have arisen or emerged. The relief is not sought because an act or omission has caused loss, but because an omission, often a continuing omission, calls for relief. Claims in this category have been referred to in paragraph 25 and following. It is also unsound for claims which have had specially defined start dates in the Limitation Act 1950.
63. In the Table in Appendix 1 to this report, it will be seen that the start date for some causes of action under the Limitation Act 1950 is not the date on which the cause of action "accrued", nor is it the date when the defendant's conduct occurred.⁷⁹
64. Special start dates will be needed for not only an action to set aside a will for want of capacity, but for claims to personal estate of a deceased person, for interest and rent, contribution and for set-off and counterclaim. Relating a start date to a particular cause of action is less confusing than attempting to mould the definition of “the date of the act or omission on which the claim is based” to cover matters it does not accurately cover at all. It is recommended that special start dates be

⁷⁸ NZLC R6, above n 1, draft bill, clause 20.

⁷⁹ A particular example is a cause of action to set aside a will for want of testamentary capacity, or for undue influence. The "date of act or omission on which the claim is based" is the date when a will is executed by a testator without capacity or the date when the undue influence was exercised (if a precise date can be fixed). A will might not be submitted for probate or proved for over 15 years after it was executed. If the start date for bringing a claim to set aside a proved will is the date of execution in the case of the want of capacity, or the date undue influence was exercised, under the present proposals the claim could be barred by a 15 year ultimate period before it could be brought. The start date for this claim at present is the date of the grant of probate or letters of administration, and should be retained. (There is a related issue about discoverability).

specified when the expression “the date of the act or omission on which the claim is based” is not appropriate. For some particular cases see Appendix 2 and paragraphs 93 and 94.

65. The recommended start dates are set out in Appendix 2. The recommended start date, period and other details are arranged in groups in Appendix 3.

Standard or primary limitation periods – length of periods

66. There are three different periods in the Limitation Act 1950; these are set out in the Table in Appendix 1.

67. NZLC R61 did not propose any change to the present standard periods on the ground that change was likely to be contentious and lead to delay in making other reforms and that in any case there is no necessarily correct answer. NZLC R6 recommended a single period of three years in all cases.

68. As stated earlier there are sound reasons⁸⁰ why Parliament should be free to consider the appropriate length and other incidents of a limitation period whenever legislation is under consideration, rather than be permanently bound by periods set in a general limitation act.

69. If it is accepted that special factors are relevant when fixing the length of a limitation period,⁸¹ it follows that in principle a limitation act may have different periods for different classes of case.

70. Apart from the Limitation Act 1950 itself, the six year period has commonly been adopted in many, but by no means all, statutes. In this respect six years has become generally accepted, although it is not universal.

⁸⁰ Although concerned about uniformity, NZLC R6, above n 1, para 367 recognised there may be special policy factors which justify departure from a general limitation regime.

⁸¹ See NZLC R6, above n 1, para 367.

Common causes of action brought in the ordinary jurisdiction of the Courts

71. The basic common law or equitable claims include claims in debt, contract,⁸² tort, account, non-fraudulent breach of trust and claims for rent or interest. An action for a sum recoverable by virtue of an enactment can be considered alongside these. At present the time for bringing these actions is six years.
72. The matters which lie in the background and which can influence thinking on the length of the period for these claims include:
- For ordinary citizen plaintiffs unaccustomed to legal proceedings, adequate time to find out whether to consult a lawyer, to find a competent lawyer,⁸³ to assemble resources and to make a properly informed decision whether a claim is worth bringing.
 - For business defendants, the ability to make appropriate provision in the balance sheet for possible claims.
 - For business defendants a period after which records can be disposed of.
 - For business defendants any period for which insurance cover can be obtained and preserved after an event.
 - For insurers limiting the duration of exposure to risk.
 - For government and local authorities, (whose taxpayers or ratepayers change from year to year) fairness to later taxpayers or ratepayers who may be called on to fund compensation for events of earlier years.
73. The current six year period has not been criticised on the ground that it is too short, except where time expires before a claim can be brought. The cases where time expires before a plaintiff is aware a claim can be brought can be dealt with by providing for a special time extension in such cases. An alternative (not recommended) would be to fix a much longer absolute and final period. NZLC

⁸² “Contract” includes claims upon implied obligations such as an obligation upon a foreign judgment, and some claims classified as quasi-contractual but now classified for some purposes as restitutionary.

⁸³ Sometimes an anxious time consuming and unsettling experience in itself.

R6 thoroughly considered periods elsewhere⁸⁴, trends, and particular arguments for and against change and then recommended a three year period.

74. Where, as now, the primary period is absolutely final, the period may be longer in order to reduce the occasions when a plaintiff does not discover that a claim should be brought until after the time for bringing the claim has expired. A longer period also allows for negotiations or for out of court dispute resolution procedures to be undertaken without the risk of a claim becoming time barred.⁸⁵ If the basic period can be extended from the date when the plaintiff first discovers a claim can be brought, the primary period need not be quite so long. However the six year period has come to be accepted and is the period in many, although not all, other statutes.
75. NZLC R61 did not recommend changing the basic six year period.
76. At this time there is no reason to increase the period, and no compelling reason to reduce it. It is recommended that the basic standard primary period continue to be six years.
77. There are two issues regarding the action for an account. A claim for account, which essentially is an investigation into items of account between two parties, should not be unduly restricted in point of time. Those seeking an account over a number of years are seeking the assistance of the Court to deal with a particular set of problems, and an unduly short period which cuts across the period of an account can operate unfairly. The period for account should be retained at six years even if other periods are reduced. The start date should be related to items in the accounting period; the present date when the matter arose in respect of which an account is claimed is satisfactory.

⁸⁴ NZLC R6, above n 1, para 143 - 157.

⁸⁵ NZLC R6, above n 1, para 278 recommended an extension of time to accommodate attempted alternative dispute resolution, but not to accommodate negotiation.

Deeds

78. NZLC R6 did not discuss this period. A twelve year period for a cause of action upon a deed now seems anomalous. The start date at present is the date the cause of action accrues. The original reason for the longer period may have been supportable when issues as to title to deeds or unregistered land could arise many years after a deed of conveyance had been executed. A vendor, who turned out to be in breach at the time of conveyance, could then be sued on a covenant for title for up to twelve years, although after twelve years it would be expected that other provisions of the limitation act would have barred any competing claim. Outside deeds system conveyancing, there is no apparent reason in 2007 why a plaintiff whose cause of action arises upon a deed should have more than the usual amount of time to start a claim. If there is an extension of time when a plaintiff does not become aware of the right to bring a claim, any reason for the twelve year period largely disappears. The primary period should then be the same as for contract, six years.

Breach of trust

79. NZLC R6 recommended that the standard limitation period apply to breach of trust. NZLC R61 recommended no change. It is therefore recommended that the period for breach of trust be six years from the date of the act or omission on which the claim is based, with a knowledge period and the ultimate period of 15 years.
80. NZLC R6 recommended that the policy underlying section 21(1) of the Limitation Act 1950 should be continued.⁸⁶ It is recommended that claims for fraudulent breach of trust and for conversion of trust property against trustees should not be subject to any ultimate period limitation defence.

⁸⁶ NZLC R6, above n 1, para 306.

Shorter periods – contribution claims

81. At present no specific period is set expressly by the Limitation Act 1950, but the date the cause of action accrues is specified. If the right to contribution arises under a contract, the contract time limit will apply. If the right to contribution is statutory, the time limit for a sum recoverable by virtue of an enactment will apply. Both periods are currently six years. NZLC R61 recommended that the period be two years.
82. A party (usually a defendant or third party) who wishes to seek contribution from someone else will inevitably have first become involved as a defendant or prospective defendant to actual or prospective litigation. Such a contribution claimant, upon becoming involved, would normally be in a position to explore at once whether a claim for contribution can be made. A contribution claimant can now however wait until the amount of the primary claim has been finally quantified before commencing a claim against a contribution defendant or contribution third or fourth party. Given that a contribution claimant will be fully informed about the primary claim, and should at the same time properly investigate the grounds for claiming contribution against the contribution defendant, there seems to be no justification for allowing more than one year for bringing such a claim after final quantification of the primary claim. To allow up to six years, as at present, can mean that if the plaintiff does not sue until near the end of a six year period, a contribution claimant can wait for up to a further six years before bringing a proceeding. The result is that the contribution defendant may not face legal action for something like twelve years or double the basic period from after the original event.⁸⁷
83. Such delay, if sanctioned by a limitation act, undermines the policies protective of defendants. This consideration supports a shorter period than normal for claims

⁸⁷ This paragraph assumes that the party claiming contribution has been sued, where the party claiming contribution or identity will not be sued, (as for example under an ordinary insurance policy for accidental no fault loss) the normal contract or other period should apply.

for contribution. A shorter period would also ensure that when such claims are brought, they can be dealt with closer to the time of the relevant events.

84. It is recommended that the period for bringing a claim for contribution be one year, but that that a modified knowledge time extension and ultimate period will apply.⁸⁸

Personal injuries (bodily injury)

85. Conventional personal injury claims in New Zealand have largely disappeared. Injured persons are normally covered by the Accident Compensation (ACC) legislation.⁸⁹ (The time for bringing a fatal accident claim is fixed by the Deaths by Accident Compensation Act 1952, not by the Limitation Act 1950). However there are some personal injury claims not covered by ACC⁹⁰ and claims for exemplary damages may be brought for personal injury.⁹¹ It is possible that a claim for damages for personal injury could be brought in New Zealand for an accident occurring overseas not covered by ACC.
86. A claim for damages for personal injury is normally a claim in tort. But the Limitation Act 1950 fixed a special period of two years for claims for “bodily injury”.⁹² This covers all claims for bodily injury, whether brought in contract, tort or as a breach of fiduciary duty.
87. Certainly for a conventional personal injury claim arising from an accident, a period of two years is satisfactory. A plaintiff normally knows of the injury and

⁸⁸ An ultimate period must be modified in the case of contribution claims. When a plaintiff’s primary claim against a contribution claimant is not started until close to the expiration of the ultimate period, the contribution claimant may be barred by the ultimate period from bringing a contribution claim before the contribution claimant can bring a claim against a contribution defendant. In that case there should be a limited extension to the ultimate period to enable the claim for contribution to be brought. The extension should be as of right rather than discretionary.

⁸⁹ Currently the Injury Prevention, Rehabilitation and Compensation Act 2001.

⁹⁰ Injury Prevention Rehabilitation and Compensation Act 2001, s 317(5), and cases outside cover under s 8 and ss 20, 21 or 22.

⁹¹ Injury Prevention Rehabilitation and Compensation Act 2001 s 319(1)

⁹² With, however, the possibility of an extension of time for up to six years. Limitation Act 1950, s 4(7).

its cause and can take proceedings if necessary in that time. At present, time can be extended for up to six years. The cases on extension of time under section 4(7) of the Limitation Act 1950 display a wide range of reasons why a claim has not been brought in time but nevertheless should be allowed to proceed.⁹³ These cases support the view that an absolute time limit of two years is sometimes too short especially when an injury turns out to be more serious than first thought. Sometimes claims have not been permitted to proceed.⁹⁴

88. The proposed knowledge period does not cover exactly all of situations covered by the present section 4(7) of the Limitation Act 1950. It will provide a non-discretionary extension of time up to the end of the ultimate period. By comparison the knowledge period will disadvantage defendants. At present, for the benefit of a defendant, “that the intended defendant was not materially prejudiced in his defence or otherwise by the delay” is a ground for declining to extend time. Prejudice to the defendant is not relevant in the proposed knowledge period, and opens a door to claims in which the defendant may have lost important evidence.
89. There are two other matters. The first is whether a two year period should apply rather than a standard period of six years. As the cases on section 4(7) of the Limitation Act 1950 show, there are acceptable reasons why a claim has not been brought within the two year period, but on the other hand there are acceptable reasons for declining to grant an extension of time beyond the two year period. When someone suffers a bodily injury outside the scope of the ACC legislation, it would be expected a claim would be brought promptly and not left for up to six

⁹³ Apart from a solicitor’s failure to get around to issuing proceedings in time, acceptable reasons for exercising the discretion have included ignorance of the right to bring a claim, the plaintiff being misled by the defendant’s doctor as to seriousness of injuries, where it was reasonable in the circumstances for plaintiff not to proceed earlier, where the wrong defendant was sued in time, where the plaintiff was not mentally normal after an accident although not under a disability, plaintiff’s depressed mental condition, and to accommodate amendments to the statement of claim after the initial two year period had expired. Section 4(7) as amended applies to any mistake of fact or mistake of law other than the statute limiting time for commencement of proceedings.

⁹⁴ In other cases the discretion has been exercised against the intending plaintiff, usually because of unexplained or undue delay or because evidence is no longer available.

years. It is recommended that the time limit for a claim for bodily injury be two years and that the right to apply for an extension for up to six years be dropped.

90. The second is whether the start date for bringing a claim for bodily injury should run from the date when the plaintiff discovers that a bodily injury is attributable to the act of another.⁹⁵ The proposed general start date for all claims will change the law. The date the plaintiff discovers that the injury is attributable to the act of another will be relevant neither to the knowledge period,⁹⁶ not to the primary start date.

Defamation claims

91. The Defamation Act 1992 inserted as sections 4(6A) and (6B) of the Limitation Act 1950 special provision for defamation claims. At that time Parliament considered that defamation claims should have the shorter limitation period of two years, but with the possibility of extension for up to six years on grounds which are similar to those for bodily injury in section 4(7) of the Limitation Act 1950. The Commission hesitates to recommend any change to a special limitation regime for defamation claims when it has been considered by Parliament comparatively recently. There are special reasons why defamation claims should be brought more promptly than other claims in tort. It is particularly undesirable to have a defamation claim hanging over a defendant (perhaps by way of threat) for longer than is necessary.⁹⁷ The time for bringing a claim for defamation starts from the time of publication. If there has been no republication of the defamation (which would start time running again) a plaintiff who is genuinely affected by a defamation should be able to bring a claim within the present time limits. It is not recommended that there should be any change to the present substantive provisions, apart from changing the start to the date of the act or omission on which the claim is based. It is recommended that any knowledge period does not apply to a defamation claim.

⁹⁵ *GD Searle & Co Ltd v Gunn* [1996] 2 NZLR 129 (CA).

⁹⁶ See para 137.

⁹⁷ The period for bringing a defamation claim in England is now one year, (Limitation Act 1980 (UK), s 4A) but this period may be disapplied (Limitation Act 1980 (UK), s 32A).

Action to recover penalty or forfeiture

92. The present period for an action to recover any penalty or forfeiture is two years from the date on which the cause of action accrued. This period may be extended under the present Act where the cause of action has been concealed by the fraud of the defendant. Apart from that there is no possibility of extending the time for bringing such a claim. It is recommended that there should be no change to the present provision found in section 4(5) of the Limitation Act 1950. In particular there is no reason why any knowledge period should apply to claims of this nature.

Action in respect of a will alleged to be invalid for want of testamentary capacity or undue influence

93. The present period of twelve years can be reduced to a standard period of six years. However, the start date should be the date of granting of probate or letters of administration; (a date such as the date of the act or omission on which the claim is based is not suitable if taken to be the date the will is executed. A will might not be submitted to probate for over 15 years after execution so that a claim could be absolutely barred by a 15 year ultimate period if time ran from the date of execution. A period of six years from that date is reasonable. A shorter period is likely to cause difficulty in practice because the circumstances in which a will has been signed, and the circumstances of an undue influence, may not readily emerge for some time after the date of the original grant. A six year period should apply even if a shorter general primary period is adopted.

Claim to personal estate of deceased

94. The present period of twelve years can be reduced to a standard period of six years, but with a knowledge period. The present section 22 of the Limitation Act 1950 applies to claims against an executor or administrator, and to a person who

has been wrongly paid personal estate of the deceased.⁹⁸ The drafting will have to accommodate this class of claim. The start date for the claim should be defined as the date on which the beneficiary acquired the right to the share is appropriate.

Conversion and wrongful detention (detinue)

95. NZLC R6 recognised a number of problems and considered possible solutions to balance the relative interests of the owner (whose chattels have been converted or detained) and innocent purchasers of the chattels. Without a limitation act the owner always retains title to the chattels (unless title passes under some other statutory or common law rule and independently of any limitation act). So long as the owner's title is unaffected by any of the relevant statutory or common law rules as to title, the owner as plaintiff is entitled to recover possession (or damages instead of possession).
96. A limitation act also bars the plaintiff's claim to recover possession after the period expires. Unless the limitation act bars the title of the owner as plaintiff at the same time, the legal situation is that the owner has title to a chattel in the possession of the current possessor (who may be entirely innocent) but the owner is time barred from recovering possession by taking legal action. Nevertheless, if the owner were to obtain possession of the chattel by other (possibly extra legal) means, or even by sheer accident, the claim of the current possessor would be met by the owner's unbarred title.⁹⁹ It is anomalous that an owner with title, barred from taking proceedings to recover possession, can rely on the title if possession is otherwise regained.
97. The solution to this unsatisfactory situation found in the Limitation Act 1950 is to extinguish the title of the owner at the same time as the owner is barred from bringing a claim for recovery of the chattel.¹⁰⁰ It is recommended, contrary to the

⁹⁸ *Re Diplock* [1948] 2 All ER 318 (CA).

⁹⁹ *Miller v Dell* [1891] 1 QB 468, cited for this proposition in Anthony Dugdale (ed) *Clerk and Lindsell on Torts* (19ed, Sweet & Maxwell, London, 2006) **para 33-29**.

¹⁰⁰ Limitation Act 1950, s 5(2).

recommendation in NZLC R6, that the present provision that title is extinguished when the claim of the plaintiff is barred be re-enacted.

98. Further, it is recommended that the extension of time provisions apply to extend time for recovery of possession of a chattel from the original converter or wrongful detainer, or any person coming into possession of the chattels otherwise than as or through a bona fide purchaser for value (thereby extending the time before title is extinguished as against those persons). The title of the owner will not be extinguished as against those persons until the end of the extension period. An innocent purchaser for value can plead the time bar once six years has passed after the first conversion or wrongful detention and there will be no extension as against that person.
99. NZLC R6 recommended the retention of the present provision which starts time running from the date of the first conversion or wrongful detention of a chattel.¹⁰¹ NZLC also recommended that section 26(1) of the Sale of Goods Act 1908 be repealed.¹⁰² These recommendations should be adopted.
100. *Damages for conversion or wrongful detention.* However the time for a plaintiff to bring a claim for damages for conversion or wrongful detention which occurs within six years of the date of the original conversion should be extended by the knowledge period. Although the title of the owner may have been extinguished after six years, there is no reason why time extensions should bar a claim for damages as against the original wrongdoer or any other person liable for any subsequent conversion or wrongful detention within the primary six year period if a knowledge period applies. In reality there is likely to have been some form of concealment of the plaintiff's right to bring proceedings against the wrongdoer during that six year period. It is recommended that a claim for damages against a tortious wrongdoer should not be barred when the plaintiff lacks the required

¹⁰¹ NZLC R6, above n 1, para 234(c).

¹⁰² NZLC R6, above n 1, para 234(b).

knowledge during the period before title is extinguished,¹⁰³ but acquires that knowledge later.

Recovery of Land

101. The Limitation Act 1950 does not generally apply to Maori customary land except to the limited extent by now provided by sections 6(1A) and 7A – both introduced in 1993 by Te Ture Whenua Maori Act 1993. This should be re-enacted as those provisions were framed specifically for Maori customary land. The Limitation Act 1950 is subject to other legislation in so far as it is inconsistent with anything in those enactments.¹⁰⁴ This should not change.
102. Most land in New Zealand has been brought under the Land Transfer Act 1952, and the present Limitation Act 1950 is subject to the Land Transfer Act 1952.¹⁰⁵ Although a generally prescribed limitation period for recovery of land will apply to a claim for recovery of land under the Land Transfer Act 1952 (including a claim to an unregistered interest in land), a claim for recovery of land against a registered proprietor is barred by sections 62, 63 and 64 of the Land Transfer Act 1952.¹⁰⁶ A registered proprietor can bring a claim for recovery of land without limitation of time by virtue of a registered proprietor's indefeasible title.¹⁰⁷
103. A generally prescribed limitation period for recovery of land will also apply to land commonly referred to as deeds system land or deeds land,¹⁰⁸ and sometimes as unregistered land.
104. NZLC R6 recommended that there be no time limit for bringing an action for recovery of land when the person entitled to possession has been dispossessed in circumstances amounting to trespass.¹⁰⁹ The point was to bring claims for

¹⁰³ Compare Limitation Act 1980 (UK), s 4.

¹⁰⁴ Limitation Act 1950, s 6(2).

¹⁰⁵ Limitation Act 1950, s 6(2); for more detail see footnote 54.

¹⁰⁶ There are the exceptions provided for in ss 62 and 63 of the Land Transfer Act 1952.

¹⁰⁷ Although not express this is implied by s 64 of the Land Transfer Act 1952.

¹⁰⁸ NZLC R6 refers to this as the system of “common law possessory title” in which title is not absolute but is relative: above n 1.

¹⁰⁹ NZLC R6, above n 1, para 362.

recovery of land within the standard limitation period, but as an exception to allow a person entitled to possession but dispossessed by trespass an unlimited time for bringing a claim. In effect, coupled with the recommendation that “adverse possession” of deeds land be abolished,¹¹⁰ the title of a person entitled to possession could not be defeated by time. NZLC R61 did not recommend any change.

105. The thrust of the recommendation in NZLC R6 can be accepted for the reasons given in NZLC R6, paragraphs 361 and 362, which essentially apply to deeds land. As drafted,¹¹¹ the exception (permitting an unlimited time for claims) applies to claims for possession of land under the Land Transfer Act 1952 by a person claiming possession by virtue of an unregistered interest or by a person claiming possession against a registered proprietor of land under one of the express exceptions to indefeasibility in sections 62 and 63 of the Land Transfer Act 1952 (including the general exception “except in the case of fraud”).¹¹² It is recommended that an unlimited time for bringing a claim for recovery of land apply to deeds land, and not to land under the Land Transfer Act 1952.
106. The exception drafted by NZLC R6 does not cover the case of a person who discontinues possession (rather than one who is dispossessed by another’s trespass).¹¹³ In this respect the exception is more appropriately framed in terms of allowing claims without limit of time by “the person entitled to possession as against a trespasser or any other person in possession without any legal or equitable title binding on the plaintiff”.

¹¹⁰ NZLC R6, above n 1, para 363.

¹¹¹ NZLC R6, above n 1, draft bill, clause 3(2)(d).

¹¹² The Limitation Act 1950 is subject to the Land Transfer Act 1952 “so far as it is inconsistent with anything contained [in it]”. There is no inconsistency in applying the time limits of a general limitation act to claims for recovery of land under the Land Transfer Act 1952, except where the Land Transfer Act 1952 bars any claim.

¹¹³ There are other issues. Some claims would also be barred which do not necessarily involve any trespass by the defendant – the case where possession has lawfully been taken by a defendant (so that there is no trespass) but the possession has continued in breach of agreement without rent being paid; the case where after a tenancy at will has been determined the tenant remains in occupation not paying rent; and the case where land has been abandoned by the owner and another has taken possession without committing any trespass.

107. It is recommended that the standard time limit of six years apply to all claims for recovery of land except a claim for recovery of land that has not been brought under the Land Transfer Act 1952 by the person entitled to possession as against a trespasser or any other person in possession without any legal or equitable title binding on the plaintiff.

Recovery of Land: consequential issue – barred claims under the Land Transfer Act 1952

108. *Time bar for claim for recovery of land under the Land Transfer Act 1952 against an occupier (not a registered proprietor) by a person entitled to possession of Land Transfer land.* In New Zealand there is some scope for contests to arise between competing holders of unregistered interests in land brought under the Land Transfer Act 1952. No contest would arise if the registered proprietor were persuaded to intervene and assert title. The recommendation that the standard time limit apply to such claims raises the issue whether the act should not only bar the claim but bar the right to recover the land when time expires. To provide complete protection to a defendant (including a registered proprietor threatened under an exception to indefeasibility) it is recommended that where a claim for recovery of land which has been brought under the Land Transfer Act 1952 is barred, all right and title to the land is extinguished.

Recovery of land: consequential issue – long possession of deeds land

109. Under the Limitation Act 1950 a person who takes possession of land obtains a good possessory title after 12 years (or after 60 years in the case of Crown land) and the title of the previous owner is extinguished.¹¹⁴ That person can then, on the basis of the possessory title, apply for and get a registered title under the Land Transfer Act 1952.¹¹⁵

If these claims were to be barred, a plaintiff who owns land would not be able to bring a proceeding to recover possession once time had expired.

¹¹⁴ Limitation Act 1950, s 18.

¹¹⁵ By applying to bring the land under the Land Transfer Act 1952 (Part 2) and satisfying the Registrar-General that the applicant has a good possessory title. NZLC R6 proposed an amendment to the Land Transfer Act 1952 which would have allowed the Registrar-General

110. By this process an owner of registered land who also occupies a small strip of adjoining deeds land may obtain a possessory title to the deeds strip and then apply for a registered Land Transfer title to the deeds strip. In this way the original parcel of registered land and the deeds strip may be amalgamated in title. This has occurred, for example, where a river bed has shifted to expose land not included in any Land Transfer title,¹¹⁶ or where as a result of an old survey error it is found that a small parcel of land has not been included in any title under the Land Transfer Act 1952.
111. Following on from the recommendation that there be no time limit for bringing a claim for recovery of deeds land, provision should be made, at the same as the new Act comes into force, to enable the occupier of deeds land to apply for a title on a similar basis as title can be obtained under the provisions of the Land Transfer Amendment Act 1963 (prescriptive title) on the basis of possession for a period of years. This should be enacted, probably as an amendment to the Land Transfer Amendment Act 1963.
112. At the time a new Act comes into force there are likely to be some maturing possessory title claims to deeds land. As well there are likely to be matured claims, which should be dealt with by continuing to allow applications to be made to bring the land under the Land Transfer Act 1952. While no title can be acquired by a possession which commences after the date of commencement of the new act, it is recommended that matured claims ought to be recognised, and that any maturing claims be allowed to mature. This is a transitional matter. The transitional provisions of the act should provide that the old Act shall continue to apply to matured claims, to claims maturing at the time the act commences, and that any title extinguished before the act comes into force shall not be revived by the repeal of the Limitation Act 1950.

to continue to receive applications after the repeal of the Limitation Act 1950: NZLC R6, above n 1, draft bill, Part 5, Division 1, clause 34.

113. *Claims for damages.* Although a claim for recovery of land by the person entitled to possession of deeds land cannot be extinguished if the recommendations are followed, nevertheless claims for damages for mesne profits, use and occupation and trespass should be six years.

114. *Summary of recommendations for recovery of land.*

- Retention of provisions corresponding with sections 6(1), 6(1A) and 7A of the Limitation Act 1950 for Maori customary land.
- Retention of provision that makes limitation act subject to the Land Transfer Act 1952; the Land Act 1948, section 344; Te Ture Whenua Maori Act 1993; and the Public Works Act 1981, section 51, so far as is inconsistent with anything contained in those enactments.
- Standard limitation period to apply to actions for recovery of land.
- As an exception no time limit for a claim for recovery of land that has not been brought under the Land Transfer Act 1952 by the person entitled to possession as against a trespasser or any other person in possession without any legal or equitable title binding on the plaintiff.
- Abolish acquisition of title by adverse possession of land not brought under the Land Transfer Act 1952.
- Where a claim by a person for recovery of land which has been brought under the Land Transfer Act 1952 is barred, all right and title of that person to the land is extinguished.
- Enable an occupier of deeds land to apply for title under Land Transfer Act 1952 after expiration of a prescribed period of continuous occupation. The period should correspond to the period prescribed by Land Transfer Amendment Act 1963.
- The limitation period for a claim for damages for mesne profits, use and occupation and trespass should be six years.

¹¹⁶ Usually because it was the practice of the Land Transfer Office not to issue a certificate of title for land covered by water, although under the *ad medium filum* rule the prior deeds title included the land under water to the midline of the stream.

Knowledge period

115. NZLC R6 recommended an extension of time for bringing a proceeding when the plaintiff shows absence of knowledge and later gained knowledge of the occurrence of the act or omission on which the claim is based, the identity of the person to whom that act or omission was attributable, of the harm and that the harm was significant.¹¹⁷ NZLC R61 recommended a provision somewhat more circumscribed in scope.¹¹⁸ These recommendations deal with the case where, as can occur at present, the limitation period expires before the plaintiff knows enough to consider bringing a claim. The principle of these recommendations should be adopted; the extension is non-discretionary, unlike the discretionary extensions which may be granted under sections 4(6B) and (7) of the Limitation Act 1950 for defamation and bodily injury.

Knowledge period and ultimate period

116. The knowledge period is alternative to the primary period. The purpose of the period is to give time to a plaintiff who does not know enough in order to bring a claim before the primary limitation period has expired. First seen as a problem since 1963 in personal injury cases, it is also been seen as a problem in other negligence cases where the knowledge that an injury or loss has occurred does not emerge until the limitation period has expired. Another aspect of the same problem arises where a plaintiff is barred from seeking damages for breach of contract because the injury or loss occurs after the limitation period has expired. To avoid this, where possible, plaintiffs try to frame a claim as a claim for negligence (where time starts when damages occurs) rather than for breach of contract (where time starts when the breach of contract occurs regardless of when the injury or loss occurs). It is recommended that an alternative knowledge period be prescribed to start from the date the plaintiff first acquires relevant “knowledge”, but subject to an ultimate period.

¹¹⁷ NZLC R6, above n 1, para 180; draft bill, clause 6.

¹¹⁸ NZLC R61, above n 2, para 28.

Ultimate period

117. It is recommended that there be an ultimate period. When the ultimate period expires, a claim to which it applies is finally barred unless the fraud or concealment period applies. (There should be a limited exception to the ultimate period in the case of contribution.)

Knowledge

118. What constitutes the knowledge a plaintiff must have to start time running under a knowledge period? When NZLC R6 reported in 1988, it recommended that a plaintiff must gain knowledge:

- Of the occurrence of the act or omission on which the claim is based
- Of the identity of the person to whom the act or omission was wholly or partly attributable, whether as principal, agent, employee, or otherwise
- Of the harm suffered as a result of the act or omission
- That the harm was significant.

119. NZLC R61 recommended an amendment to Limitation Act 1950 by adding a new section 28A, under which the plaintiff must know:

- That the injury, loss or damage has occurred
- That the injury, loss or damage was attributable to the defendant.

NZLC R61 said however in paragraph 11 that it recommended time should not run where the plaintiff establishes that the plaintiff was unaware of the facts on which the claim is based and that the facts were not reasonably discoverable.

120. In Ontario¹¹⁹ the requirement is that a plaintiff discover:

¹¹⁹ Limitations Act 2002, s 5(1).

- That the injury, loss or damage had occurred
- That the injury, loss or damage was that of the person against who the claim is made
- That having regard to the nature of the injury, loss or damage, a proceeding would an appropriate means to remedy it.

Note that in Ontario, the act or omission on which the claim is based is not mentioned as something the plaintiff need know.

121. The United Kingdom Law Commission¹²⁰ recommended that the requirement be that the plaintiff (claimant) have knowledge of:

- The facts which give rise to the cause of action
- The identity of the defendant
- Where injury, loss or damage has occurred or a benefit¹²¹ has been obtained, the fact that the injury, loss, damage or benefit is significant.

Knowledge whether the facts would as a matter of law give rise to a cause of action is disregarded. In respect of a failure to give correct advice as to the law, knowledge is also required of the fact that correct advice had not or may have not been given.

Note that this formulation does not refer to any linkage between or attribution of the harm to the facts which give rise to the cause of action.

122. One common element in all four is that the harm must be known, and that the harm be significant (in the case of Ontario, which does not use the word, the harm must be such that a proceeding is an appropriate means to remedy it). The focus on the harm reflects the fact that a plaintiff will not normally think about legal proceedings at all unless and until there is reason to think there is harm which can

¹²⁰ UK Law Commission, above n 21, para 3.22 and preceding.

¹²¹ Benefit is intended to cover a restitutionary claim to recover a benefit.

be compensated for. Investigation into the facts would normally be expected to follow, and that would lead to knowledge of the facts causing the harm.

123. However if the plaintiff does not bother to investigate when the harm is known, the plaintiff may continue to lack knowledge of the facts which caused the harm. Generally this would be unacceptable. A plaintiff should not be able to delay the start date by failing to find out the cause of the harm. However, there are also cases where the plaintiff cannot be expected to relate the harm to any causative event, or where the plaintiff may not recognise that any harm has been caused at all. There seems to be a need to include both a requirement that a plaintiff take reasonable steps to find out the cause of the harm, and an acknowledgment that a plaintiff must have recognised the harm and must have some idea of what caused it. This is a difficult area which requires more detailed thought.

124. Recently the House of Lords,¹²² reversing a unanimous Court of Appeal judgment, considered the difficulty of interpreting the extension provision in section 14A of the Limitation Act 1980 (UK). Section 14A (which is very detailed and complex) provides a period where time starts running from the date when the plaintiff had knowledge:

- Of the material facts about the damage; and
 - That the damage was attributable to the act or omission which is alleged to constitute negligence (on the interpretation of the House of Lords, these last words are merely descriptive of the act or omission in question); and
 - The identity of the defendant;
- but it excludes
- Knowledge that the act or omission of the defendant was negligent.

125. The plaintiff had suffered economic loss when a business investment started losing money. Initially the plaintiff may not have appreciated there were true losses. The plaintiff claimed his financial advisers gave him negligent investment advice which led him to make the bad investment. Time could not run from the

¹²² *Haward v Fawcetts* [2006] 3 All ER 497 (HL).

date the plaintiff found out that the advice he had been given was (allegedly) negligent (fourth bullet point above). Once the plaintiff knew he had made the investment, and given that he knew that he had invested on the advice of his advisers, time ran from the date when he found out the investment was a bad one.

126. The plaintiff did not know enough to be able to establish whether the advice had been careless or negligent. It was sufficient to bar the claim that the plaintiff knew all the facts; he knew he had been advised and that the investment was bad. With respect, there are issues concerning how much a plaintiff is required to know before time starts to run.

Content of knowledge – further consideration

127. What knowledge must a plaintiff have to start time running under a knowledge period? Broadly there are two magnetic poles of attraction.
128. *Knowledge of injury, loss or damage.* The contention is that time should not run until discovery of the injury, loss or damage (this has been the main driver behind English reforms since *Cartledge v Jopling*¹²³ in the personal injury field). Lack of knowledge of facts entitling a plaintiff to bring a claim (apart from injury, loss or damage) is not a ground for a knowledge based extension of time on this basis. The New Zealand cases on discovery of the damage are examples of this approach.
129. *Knowledge necessary to enable an action to be brought.* This is wider than knowledge of the injury, loss or damage. Since there is more to know, a knowledge based extension on this basis will favour the plaintiff. How much more is considered in *Haward v Fawcetts* [2006] 3 All ER 497 (HL), but in the context of specific legislation.
130. At the extreme, if a knowledge based period depends on the plaintiff knowing everything there is to be known about the facts entitling a plaintiff to bring a claim, then for practical purposes there might as well be no start date based simply

¹²³ *Cartledge v Jopling* [1963] AC 758.

on the occurrence of an event (whether known or unknown) from which time begins to run. The knowledge based extension will in every case override the "occurrence" start date.

131. As the case of *Haward v Fawcetts* shows, the current English legislation (Latent Damage Act 1986, section 11 – personal injuries, and sections 14A and 14B – non-personal injury negligence claims) is complex. What is required is "knowledge of the facts about the damage" and knowledge that the damage is "attributable" to an act or omission of a defendant. The decided English cases have had to deal with the degree or extent of knowledge which is required to trigger the relevant time extension provisions in this context.
132. *Haward v Fawcetts* gave a rather restrictive interpretation of the English provisions in sections 14A and 14B. Lord Scott (paragraph 54) and Lord Brown (paragraph 92) pointed out that on another reading of these same sections, time could be extended indefinitely.
133. The New Zealand Law Commission in NZLC R61 proposed that the start date under a knowledge period be the discovery of injury, loss or damage and that the injury, loss or damage was attributable to the defendant. Once damage has been discovered or is suspected, it seems reasonable to require a plaintiff to start investigating and that time should run from the time when the plaintiff should have started investigating – that is when the injury, loss or damage is discovered – rather than defer the start date until the plaintiff knows the whole story.
134. The English Law Commission recommendation is that knowledge of "the facts giving rise to the cause of action" is a sufficient description of the start date for the primary limitation period. (As well the identity of the defendant and the significance of the injury must also be known under this proposal.)
135. Once investigation starts, any attempt by a defendant to conceal relevant facts should be covered by the general extension for fraudulent or deliberate concealment.

136. If the lack of further knowledge (as to cause and responsibility) defers the start date, there is no incentive for a plaintiff to get on with it, and the whole point of having any time limit starts to be undermined.

Conclusion and recommendation

137. A knowledge period should be based on discovery (or knowledge) of the injury, loss or damage, and nothing more. Discovery of injury, loss or damage should trigger investigation, including investigation into cause and to the responsibility of the defendant. (There may be an issue concerning plaintiffs who require legal aid to investigate effectively). It is recommended that the knowledge required for the purposes of the knowledge period is knowledge of the injury loss or damage.
138. A general knowledge based extension, applying to all causes of action, will in effect mean that the occurrence and discovery of damage is likely to be the most significant triggering event in all cases, not just the torts of negligence and nuisance. This raises issues for simple breach of contract.

Contract claims and knowledge period

- 139 The start date under the Limitation Act 1950 is six years from the date the cause of action accrues. The cause of action accrues when the breach of contract occurs, whether or not any injury loss or damage is apparent at that time. Time may be extended where there has been fraudulent concealment of *the breach*. Apart from fraudulent concealment, time may expire before the plaintiff is aware that there are grounds for bringing a claim. NZLC R6 recommended that the proposed general extension for plaintiff's lack of knowledge apply to all but six excepted classes of civil claim. Contract claims were not given express consideration.
- 140 At present in England and in most Australian jurisdictions there is no provision for extending the time for bringing a claim in contract on the ground of lack of knowledge, or delayed discovery of injury, loss or damage.
- 141 The liability of a party to a contract depends on what the contract says, including what it says about time limits and restriction or extension of liability. The parties to a contract have the opportunity of addressing if they wish whether the time for

bringing any claim will be extended, for example, under a guarantee or special warranty.

- 142 There is the commercial question of how the balance sheet of a business can properly cope with potential contractual claims against the business. It is one thing to make provision for claims for a six year period; it is quite different if provision has to be made for claims for any further extended period. Insurers generally do not cover liability for supplying inferior goods or services,¹²⁴ so that the risk is not insurable. If a knowledge period is to apply to contract claims generally, the effect on balance sheet accountability of businesses will have to be considered in more detail.
- 143 There is also the question of whether the limitation regime for contracts should be significantly different from jurisdictions with which New Zealand has significant trading relations.

Conclusion and recommendation

- 144 These considerations point towards making no change to the present position, namely that the start date for bringing a claim in contract is the date of the breach, or, to the same effect, the date of the occurrence of the act or omission on which the claim is based, but without a knowledge period. It is recommended that there is no knowledge period for a contract claim.

Length of knowledge period

- 145 The length of the knowledge period should be a sufficient period from the time the plaintiff gains knowledge to allow a plaintiff to commence a claim. Given that there are likely to be issues concerning the precise date a plaintiff gained knowledge, a three year period is reasonable. However a plaintiff may be barred by the ultimate period before the full knowledge period has run its course. It is

¹²⁴ Insurers usually exclude liability for defective workmanship per se. Insurers will not accept responsibility for the quality of the work performed by an insured. Insurers will insure against consequential damage caused by any accidental act or omission of an insured.

recommended the period be three years from the date the knowledge of injury loss or damage is acquired.

Start date ultimate period

146 The start date should be objective and ascertainable. It is the last date of an event under the control of the defendant. It is recommended that the start date for the ultimate period be the date of the act or omission on which the claim is based

Length of ultimate period

147 NZLC R6 recommended an ultimate period of 15 years from the date of the act or omission on which the claim is based. NZLC R61 recommended 10 years from the date a cause of action accrues (regardless whether the plaintiff knows of the existence of all the facts necessary to establish the claim).¹²⁵ This was recommended on the grounds of consistency with the (now) Building Act 2004, section 393.¹²⁶ Since a cause of action in negligence or nuisance does not accrue until damage occurs, there could be a long interval, perhaps many more than ten years, between the date of the act or omission on which the claim is based and the damage which commences the start date of the ultimate period recommended by NZLC R61. Under that recommendation in negligence and nuisance the ultimate period could be very long indeed measured from the date of the act or omission on which the claim is based.

148 The ultimate period in Ontario is 10 years.¹²⁷ So too is the ultimate period recommended by the United Kingdom Law Commission in 2001.¹²⁸ There is no absolutely right answer. It is a matter of striking a balance between plaintiff and defendant. The length of the ultimate period is relevant to the ending of an outstanding knowledge period. The purpose of the knowledge period is to reduce

¹²⁵ NZLC R 61, above n 61, para 28.

¹²⁶ The reason for the 10 year period originally enacted in the Building Act 1991 has not been made public. The limitation provision was added by supplementary order paper with an ultimate period of 15 years after the bill was introduced. The period was reduced to 10 years when the bill was reported back for third reading.

¹²⁷ Limitations Act 2002, s15.

¹²⁸ UK Law Commission, above n 21.

the possibility that a plaintiff's claim will be barred before the claim can be brought, while the purpose of the ultimate period is to provide a final cut off date consistent with the purposes of a limitation act. A longer ultimate period is less likely to bar a plaintiff who has to rely on a knowledge period, than is a shorter ultimate period. However a longer period is likely to cause difficulty to an insured defendant. The insurance may run out and the insurer may not wish to take risks of old claims surfacing after a long period. An insurer may fail and insurance may not be obtainable from another insurer. A defendant may forget to renew insurance. Despite all this, the 15 years recommended by NZLC R6 is not unreasonable and is recommended. It is recommended the start date for the ultimate period be the date of the act or omission on which the claim is based. It is recommended the length of the ultimate period be 15 years.

Concealment and the ultimate limitation period

149 NZLC R6 recommended that the ultimate limitation period should not apply where there is fraudulent concealment on the part of the defendant. This recommendation is adopted. There are, however, drafting difficulties which have been brought to light by a succession of cases in the House of Lords culminating with the case of *Cave v Robinson Jarvis and Rolf* [2002] 2 All ER 641 HL. For the present the drafting recommendations made by NZLC R6 may be adopted. It is recommended the ultimate period not apply where there is fraudulent concealment by a defendant.

Other extension periods

150 Under the Limitation Act 1950 two periods apply in cases of disability. For an action for bodily injury and an action to recover a penalty the right of action is deemed to accrue when the disability ceases. The time period for the relevant cause of action starts when the disability ceases. In other cases an action may be brought before the expiration of six years from the date the disability ceases.¹²⁹

- 151 *Minority.* NZLC R6 recommended an extension of time which can be expressed as deferring the start date until the date the plaintiff attains majority.¹³⁰ NZLC R61 recommended no change to the present law, namely that time does not start running against a minor until majority, so that the cause of action does not accrue until the disability period has ended.
- 152 It is recommended the recommendation in NZLC R6 be adopted in the case of minority. It is recommended the start date be the date majority is attained
- 153 *Other disability.* NZLC R6 recommended considerable changes to the scope of the disability extension.¹³¹ NZLC R61 recommended no general change. This requires further thought before substantial changes are made. Change to the general scheme of the current provisions in the Limitation Act 1950 is not recommended.

Non-time bars to commencement of proceeding

- 154 There are some cases where there is a statutory or other bar to the commencement of a proceeding, although the cause of action is in all other respects complete. When time runs from the date of the act or omission on which the claim is based, the plaintiff cannot commence a proceeding if one of these bars applies and may not be able to start a proceeding before time expires.¹³² To deal with this situation it is recommended that where the plaintiff is barred by statute or rule of law from commencing a proceeding, the primary start date for commencing the proceeding will be the later of the date three years from the date the bar is removed, or the expiration of the primary limitation period. It is also recommended that where the bar continues to apply up to and beyond the date of the ultimate limitation period, the start date for the ultimate limitation period will be the date three years from the date the bar was removed (except in the case of the rule of law postponing the accrual of a cause of action for negligence or nuisance until damage occurs.

¹²⁹ Limitation Act 1950, ss 24(a) and (b). There are certain provisos.

¹³⁰ NZLC R6, above n 1, para 257.

¹³¹ NZLC R6, above n 1, para 258.

¹³² *Pacific Coilcoaters Ltd v Interpress Associates Ltd* [1998] 2 NZLR 19 (CA).

Under the recommendations made earlier, time runs from the date of the act or omission on which the claim is based, not from the date the cause of action accrues). It is recommended that (i) where a plaintiff is barred by statute or rule of law from commencing a proceeding, the primary start date will be the later of the date three years after the bar is removed, or the expiration of the primary limitation period, and (ii) where the bar is not removed until after the expiry of the ultimate period, the period is three years from the date the bar is removed (except in the case of the bar postponing the right to bring a proceeding in negligence and nuisance until after damage occurs).

Commencement and service of proceeding

155 NZLC R6 recommended the proceeding must be served within the limitation period.¹³³ The date of service of the proceeding is arbitrary. There may well be unexpected difficulties in serving a defendant or defendants. Difficulty could also be caused when one defendant is served in time but the other is not. The date the proceeding is filed is certain and there is no scope for confusion concerning when the proceeding was filed. It is recommended that, as with the Limitation Act 1950, the filing of a proceeding within time is sufficient. The new act should be drafted so that the limitation defence applies if the relevant proceeding is filed in Court before the limitation period expires. It is recommended that time runs until a proceeding is commenced by filing in Court.

Law Reform Act 1936

156 The time periods in section 3 of the Law Reform Act 1936 should be revised at the same time as the limitation periods in the Limitation Act 1950. Section 3 of the Law Reform Act 1936 provides that causes of action survive against or for the benefit of the estate of a deceased person. However, in doing so, sections 3(3) and (3A) specify time limits for a cause of action in tort which survives against the estate of a deceased person. The period provided in section 3(3) bars a claim unless the cause of action arose not earlier than two years before the deceased's

death, and that proceedings were taken within 12 months after the date of grant of administration. Notice of claim has to be given beforehand. Section 3(3) does not create any problem under the proposed reform.

- 157 Section 3(3A) also allows a plaintiff, on notice to the personal representative, to apply for leave to bring a proceeding at any time before the expiration of six years after the date when the cause of action arose. Section 3(3A) refers to the date when the cause of action arose. In the case of negligence and nuisance the claim could arise many years after the date of the act or omission on which the claim is based. Section 3(3A) Law Reform Act 1936 is a discretionary section and the requirement to seek an exercise of the discretion of the Court should not be changed. It is recommended that section 3(3A) be amended by substituting for the expression "when the cause of action arose", the expression "the act or omission on which the claim is based".

Deaths by Accident Compensation Act 1952

- 158 There is no need to change the limitation period of two years from the date of death in the Deaths by Accident Compensation Act 1952.

Counterclaim and set-off

- 159 Counterclaims and set-off were considered by NZLC R6, but not by NZLC 28. There is a detailed discussion in NZLC R6, paragraphs 413 to 433. NZLC R6 made a recommendation based on 1975 British Columbia legislation. But the British Columbia model has not been followed in Ontario in 2000, or by the United Kingdom Law Commission in 2001. In both of the latter, there is no special provision for counterclaim or set-off. The limitation start date in each case is fixed by the general rules. Under the Limitation Act 1950 a defendant who counterclaims or pleads set-off is deemed to have commenced the counterclaim or set-off at the same time as the commencement of the original claim. This in effect extends the time for bringing a counterclaim or set-off by suspending time as from

¹³³ NZLC R6, above n 1, para 174.

the date the claim is filed. This has the merit of avoiding a situation where, when two opposing claims are near the time limit, one may be barred by time but the other not.

- 160 When there is a knowledge period this becomes more complicated. A counterclaim may have been well and truly time barred, with all the circumstances known when a plaintiff begins a claim under the knowledge period. There does not seem to be an absolutely right answer that can be given in every case. A defendant to a knowledge period based claim may have decided not to pursue a set-off or counterclaim earlier for reasons of prudence or practicality. But when a knowledge period based claim is made, *ex hypothesi* outside the primary limitation period, it may be fair in the circumstances for the Court to consider whether as a matter of discretion the statute barred claim may be raised in answer or partial answer to the knowledge period claim. If a counterclaim has been well and truly time barred before the date of the act or omission on which the knowledge period is based and has nothing to do with the knowledge period claim, there should be no basis for any extension of time to accommodate the counterclaim. The overall justice is less clear when they overlap, particularly when the decision not to proceed with the counterclaim (that is the claim which would have been a counterclaim to the extension period claim) was influenced by the false assumption that no claim would be brought. It is recommended that there be discretion to allow an out of time counterclaim to be brought or set-off pleaded against a plaintiff bringing a claim under the knowledge period.

Limitation defence bars remedy not right

- 161 Neither NZLC R6 nor NZLC 28 recommended changing the general rule that a limitation defence bars a proceeding but does not bar the right. (The standard exceptions to this have been extinction of title for conversion/detinue and for land at the end of the limitation period. It is recommended that extinction of title continue to apply to conversion/detinue (see paragraph 99 and recommendation 26) and to some land claims. It is recommended that generally the limitation act bars the remedy, but not the right (except where extinction of title is provided for).

Acknowledgement and part payment

- 162 Resetting the start date where there is acknowledgement and part payment should be retained. It is recommended that the principle of existing provision for acknowledgment as part payment be retained.

Alternative dispute resolution or reference to Ombudsman

- 163 NZLC R6 recommended an extension of time when a dispute had been submitted to alternative dispute resolution or to an Ombudsman. The recommended extensions were (in effect) the various periods taken up by the alternative process (although the manner in which these periods were defined in the draft bill, clause 7(1) could give rise to difficulty in application and should be carefully reconsidered). NZLC 28 did not recommend any time extension in these circumstances. When the primary limitation period is quite short, there is probably some merit in allowing an extension in some of the circumstances covered by NZLC R6, draft bill, clause 7(1). When the period is longer, there is less, if any, justification for such an extension. Neither Ontario in 2000 nor the United Kingdom Law Commission in 2001 allow for an extension in these cases.
- 164 Parties who agree to alternative dispute resolution (and not mere negotiation) can be expected to include provision for a time extension in their formal dispute resolution agreement if the alternative dispute resolution fails. So far as arbitration or reference to an Ombudsman are concerned (where agreement is not necessary), a party facing time problems would have to seek an agreed extension of time, or simply commence a proceeding in order to stay within time. An alternative approach is not to provide for an extension of time, but instead to provide that if another process is started within time but fails, the plaintiff may commence a proceeding within six months of the termination of the alternative process, or within the primary period, whichever is the longer.
- 165 It is recommended that no special provision be made to extend time when an alternative dispute resolution procedure is invoked.

Contracting out

166 Neither NZLC R6 nor NZLC R29¹³⁴ recommended any change to the present position, namely that there is freedom to vary time limits. NZLC R6 recommended a clause (draft bill, clause 16) expressly dealing with agreements to vary. It is not recommended to prevent contracting out of a Limitation Act.

Recommendations as to coverage, primary start date, primary periods

1. A new limitation act should not attempt to include all statutory civil time periods within a single piece of legislation; and that a provision corresponding to the present section 33 of the Limitation Act 1950 be retained. (Paragraph 13)

Coverage

2. Equitable remedies generally should continue to be excluded from a limitation regime and that a provision corresponding to section 4(9) of the Limitation Act 1950 be retained, but subject to the recommendation in the next paragraph. (Paragraph 31)
3. The limitation regime will apply to a personal claim for equitable damages or compensation. (Paragraph 32)
4. It is recommended that abuse claims be specially provided for. It is recommended that the primary period will run from the date of the act or omission on which the claim is based, and that the knowledge period will apply up to the end of the fifteen year ultimate period. If either (or both) the minority disability period and the incapacity disability period apply, time will be extended in accordance with the recommendations pertaining to them. There will be no other ground for extending the primary or the ultimate periods. (Paragraph 37)
5. The limitation regime will apply to a public law claim for compensation. (Paragraph 39)

¹³⁴ The Law Commission *A New Property Law Act* (NZLC R29, Wellington, 1994).

6. The limitation regime will not apply to a domestic judgment. (Paragraph 41)
7. The time for enforcement of judgments is controlled by Rules of Court and is best left to the Courts for any control over enforcement of judgments. (Paragraph 42)
8. The limitation regime will apply to an action upon a foreign judgment. (Paragraph 43)
9. The limitation regime will not apply to a domestic arbitration award. (Paragraph 44)
10. Unless there is some international obligation to the contrary, the limitation regime will apply to a foreign arbitration award. (Paragraph 44)
11. The limitation regime will apply to a claim for rent or arrears of rent, and for interest or arrears of interest, computed from the date when the rent or interest became payable. (Paragraph 45)
12. A new act should specify the civil proceedings to which it applies rather than specify exclusions from the limitation regime in the limitation act. The claims to which a new act should apply are set out in paragraph 49 and repeated in Appendix 2.

Start dates

13. The primary start date should not be a “discovery” or “knowledge” primary start date. (Paragraph 16)
14. The date of the act or omission on which the claim is based should be the start date for all cases which at present are covered by the date the cause of action accrues. (Paragraph 60)
15. Special start dates should be specified when the expression “the date of the act or omission on which the claim is based” is not appropriate. (Paragraph 64)
16. The recommended start dates are set out in Appendix 2. (Paragraph 65)

Periods

17. The standard primary period should be six years from the primary start date. (Paragraph 76)
18. The period for account should be six years even if a shorter general period is adopted. The start date should be related to items in the accounting period. The present date when the matter arose in respect of which an account is claimed is satisfactory. (Paragraph 77)
19. The period for bringing a claim on a deed should be the standard period of six years. (Paragraph 78)
20. The period for bringing a claim for contribution should be one year, but a modified knowledge time extension and ultimate period should apply. (Paragraph 84)
21. The period for bringing a claim for bodily injury should be two years, and the right to apply for an extension for up to six years should be dropped; but the knowledge period should apply. (Paragraph 89)
22. There should be no change to the present limitation period for defamation, apart from changing the start date to the date the act or omission on which the claim is based. The knowledge period should not apply to a defamation claim. (Paragraph 91)
23. There should be no change to the limitation period for penalties recoverable under an enactment, apart from changing the start date to the date the act or omission on which the claim is based. The knowledge period should not apply to these claims. (Paragraph 92)
24. The period for a claim to set aside a will on the ground of want of capacity or undue influence should be six years and the start date should be the date of granting of probate or letters of administration. (Paragraph 93)
25. The period for bringing a claim to a share in the personal estate of a deceased person should be reduced a standard period of six years, but with a knowledge period. The present section 22 of the Limitation Act 1950 applies to claims against an executor or administrator, and to a person who has been wrongly paid

personal estate of the deceased. The drafting will have to accommodate this class of claim. The start date for the claim should be defined as the date on which the beneficiary acquired the right to the share. (Paragraph 94)

Conversion and detinue

26. It is recommended, contrary to the recommendation in NZLC R6, that the present provision that title is extinguished when the claim of the plaintiff is barred be re-enacted. (Paragraph 97)
27. It is recommended that the extension of time provisions apply to extend time for recovery of possession of a chattel from the original converter or wrongful detainer, or any person coming into possession of the chattels otherwise than as or through a bona fide purchaser for value, the title of the owner will not be extinguished as against those persons until the end of the extension period. It is recommended that an innocent purchaser for value can plead the time bar once six years has passed since the first conversion or wrongful detention and there should be no extension as against that person. (Paragraph 98)
28. The retention of the present provision which starts time running from the date of the first conversion or wrongful detention of a chattel is recommended. (Paragraph 99)
29. It is recommended that section 26(1) of the Sale of Goods Act 1908 be repealed. (Paragraph 99)
30. It is recommended that a claim for damages for conversion or detinue against the original converter or wrongful detainer, or any person coming into possession of the chattels otherwise than as or through a bona fide purchaser for value should not be barred when the plaintiff lacks the required knowledge during the period before title is extinguished as against one of those persons. (Paragraph 100)
31. Recovery of land (Paragraph 114)

- Retain provision that makes the limitation act subject to the Land Transfer Act 1952, the Land Act 1948, section 344 of Te Ture Whenua Maori Act 1993 and section 51 of the Public Works Act 1981, so far as is inconsistent with anything contained in those enactments.
- Retain provisions corresponding with sections 6(1), 6(1A) and 7A of the Limitation Act 1950 for Maori customary land.
- Six year limitation period should apply to actions for recovery of land with the following exception.
- No time limit for a claim for recovery of land that has not been brought under the Land Transfer Act 1952 by the person entitled to possession as against a trespasser or any other person in possession without any legal or equitable title binding on the plaintiff.
- Abolish acquisition of title by adverse possession of land not brought under Land Transfer Act 1952.
- Where a claim by a person for recovery of land which has been brought under the Land Transfer Act 1952 is barred, all right and title of that person to the land should be extinguished.
- Enable an occupier of deeds land to apply for title under the Land Transfer Act 1952 after expiration of a prescribed period of continuous occupation. The period should correspond to the period prescribed by Land Transfer Amendment Act 1963.
- The limitation period for a claim for damages for mesne profits, use and occupation and trespass should be six years, with no knowledge period.

Knowledge period and ultimate period

32. It is recommended that an alternative knowledge period be prescribed to start from the date the plaintiff first acquires relevant “knowledge”, but subject to an ultimate period. (paragraph 116,117)
33. It is recommended that the knowledge required for the purposes of the knowledge period is knowledge of the injury loss or damage. (paragraph 137)

34. It is recommended that there is no knowledge period for a contract claim. (paragraph 144)
35. It is recommended the period be three years from the date the knowledge of injury loss or damage is acquired.(paragraph 145)
36. It is recommended that the start date for the ultimate period be the date of the act or omission on which the claim is based. (paragraph 146)
37. It is recommended the start date for the ultimate period be the date of the act or omission on which the claim is based. It is recommended the length of the ultimate period be 15 years. (paragraph 148)
38. It is recommended the ultimate period not apply where there is fraudulent concealment by a defendant. (paragraph 149)

Other extension periods

39. It is recommended the start date be the date majority is attained in the case of minority. (paragraph 152)
40. Change to the general scheme of the current provisions for the disability extension is not recommended. (paragraph 153)

Non-time bars to commencement of proceeding.

41. It is recommended that (i) where the plaintiff is barred by statute or rule of law from commencing a proceeding, the primary start date will be the later of the date three years after the bar is removed, or the expiration of the primary limitation period, and (ii) where the bar is not removed until after the expiry of the ultimate period, the period is three years from the date the bar is removed (except in the case of the bar postponing the right to bring a proceeding in negligence and nuisance until after damage occurs). (paragraph 154)

Commencement and service of proceeding

42. It is recommended that time runs until a proceeding is commenced by filing in Court. (paragraph 155)

Law Reform Act 1936

43. A change to section 3(3A) Law Reform Act 1936 is recommended. (paragraph 157)

Counterclaim and set-off

44. It is recommended that there be discretion to allow an out of time counterclaim to be brought or set-off pleaded against a plaintiff bringing a claim under the knowledge period. (paragraph 160)

Limitation defence bars remedy not right.

45. It is recommended that generally the limitation act bars the remedy, but not the right (except where extinction of title is provided for). (paragraph 161)

Acknowledgement and part payment

46. It is recommended that the principle of existing provision for acknowledgment and part payment be retained. (paragraph 162)

47. It is recommended that no special provision be made when alternative dispute resolution is invoked. (paragraph 165)

Contracting out

47. It is not recommended to prevent contracting out of a Limitation Act. (paragraph 166)

Appendix 1

LIMITATION ACT 1950 PERIODS AND START DATES		
DESCRIPTION	PERIOD	START DATE
Contract	6 years	Date cause of action accrues
Tort	6 years	Date cause of action accrues
Enforcement of recognisance	6 years	Date cause of action accrues
Enforcement of award not by deed	6 years	Date cause of action accrues
Sum recoverable by virtue of enactment (not penalty or forfeiture)	6 years	Date cause of action accrues
Account	6 years	Bars matter arising more than six years before the commencement of the action
Deed	12 years (subject to shorter period where appropriate)	Date cause of action accrues
Judgment	12 years	Date judgment enforceable
Penalty or forfeiture	2 years	Date cause of action accrues
Action to set aside will, (probate or letters of administration granted) for want of testamentary capacity or undue influence	12 years	Date of grant
Defamation	2 years (up to 6 years extension)	Date cause of action accrues
Bodily injury to person	2 years (up to 6 years extension)	Date cause of action accrues
Seamen's wages	6 years	Date cause of action accrues
Conversion or wrongful detention of chattel	6 years	Date cause of action accrues, but from original conversion or detention
Recovery of Maori customary land against Crown	12 years	Date cause of action accrues
Action for damages or injunction for trespass or injury to Maori customary land against the Crown	6 years	Date cause of action accrues
Jurisdiction of Maori Land	no time limit	

Court to investigate Maori customary title		
Recovery of land: – Crown – Otherwise	60 years 12 years	Date cause of action accrues
Forfeiture or breach of condition	same as for recovery of land	Date the forfeiture incurred or the condition broken
Contribution or indemnity	no express time specified	Date when everything has happened which would have to be proved, etc
Disentailing	barred after 12 years; redundant	
Redemption after mortgagee in possession	12 years	Date cause of action accrues
Rent	6 years	Date when the arrears became due
Mortgage principal	12 years	Date when the right to receive the money occurred
Foreclosure action	12 years	
Arrears of interest on mortgage	6 years	
Fraudulent breach of trust	no limit	
Claim to personal estate of deceased person	12 years	Date when right to receive share or interest accrued
Arrears of interest on judgment debt	6 years	Date on which the interest became due

Appendix 2

PROPOSED LIMITATION PERIODS					
DESCRIPTION	PRIMARY START DATE	PRIMARY PERIOD	KNOWLEDGE PERIOD	START DATE ULTIMATE PERIOD	ULTIMATE PERIOD
Contract and deed	Act/omission date	6 years	none	none	none
Tort generally	Act/omission date	6 years	3 years	Act/omission date	15 years
Penalties	Act/omission date	2 years	None	None	None
Account	Matter arising	6 years	None	None	None
Conversion and detinue	Act/omission date	6 years; but see recommendation	3 years for damages claim	Act/omission date	15 years
Bodily injury (including exemplary damages)	Act/omission date	2 years	3 years	Act/omission date	15 years
Abuse claims	Act/omission date	2 years	3 years	Act/omission date	15 years
Defamation	Act/omission date	2 years	Special period up to 6 years	None	None
Recovery of land except claim against adverse occupier of deeds land	Act/omission date	6 years	3 years	Act/omission date	15 years
Recovery of deeds land from adverse occupier	None	None	None	None	None
Mesne profits use and occupation of land	Act/omission date	6 years	None	None	None
Maori customary land against Crown	Accrual	12 years	None	None	None
Trespass Maori customary land against Crown	Accrual	6 years	None	None	None
Restitution	Act/omission date	6 years	3 years	Act/omission date	15 years
Public law	Act/omission	6 years	3 years	Act/omission	15 years

compensation	date			date	
Breach of trust (non-fraudulent)	Act/omission date	6 years	3 years	Act/omission date	15 years
Breach of trust (fraudulent)	Act/omission date	6 years	3 years	None	None
Personal equitable damages claim	Act/omission date	6 years	3 years	Act/omission date	15 years
Sum recoverable under statute	Act/omission date	6 years	3 years	Act/omission date	15 years
Set aside administration, capacity undue influence	Date of grant	6 years	3 years	Date of grant	15 years
Rent	Date rent payable	6 years	None	None	None
Interest	Date interest payable	6 years	None	None	None
Contribution	Date amount fixed by judgment award or agreement	1 year	1 year	Act/omission date	15 years; plus extension when primary claim not fixed within 14 years from act/omission date
Judgment (domestic)	None	None	None	None	None
Foreign judgment	Date of judgment	6 years	None	None	None
Award (domestic)	None	None	None	None	None
Foreign award	Date of award	6 years	None	None	None
Claim to personal estate of deceased	Date of right to acquire share	6 years	3 years	Date of right to acquire share	15 years
Claim subject to bar preventing commencement of proceeding	Date bar removed	3 years	None	Date bar removed	3 years

Appendix 3

PROPOSED LIMITATION PERIODS – ARRANGED BY GROUP					
DESCRIPTION	PRIMARY START DATE	PRIMARY PERIOD	KNOWLEDGE PERIOD	START DATE ULTIMATE PERIOD	ULTIMATE PERIOD
Tort generally	Act/omission date	6 years	3 years	Act/omission date	15 years
Recovery of land except claim against adverse occupier deeds land	Act/omission date	6 years	3 years	Act/omission date	15 years
Restitution	Act/omission date	6 years	3 years	Act/omission date	15 years
Public law compensation	Act/omission date	6 years	3 years	Act/omission date	15 years
Breach of trust (non-fraudulent)	Act/omission date	6 years	3 years	Act/omission date	15 years
Personal equitable damages claim	Act/omission date	6 years	3 years	Act/omission date	15 years
Sum recoverable under statute	Act/omission date	6 years	3 years	Act/omission date	15 years
Conversion and detinue	Act/omission date	6 years; but see recommendation	3 years for damages	Act/omission date	15 years
Contract and deed	Act/omission date	6 years	None	None	None
Account	Matter arising	6 years	None	None	None
Rent	Date rent payable	6 years	None	None	None
Interest	Date interest payable	6 years	None	None	None
Foreign judgment	Date of judgment.	6 years	None	None	None
Foreign award	Date of award	6 years	None	None	None
Mesne profits, use occupation of land	Act/omission date	6 years	None	None	None
Set aside administration, capacity undue	Date of grant	6 years	3 years	Date of grant	15 years

influence					
Claim to personal estate of deceased	Date of right to acquire share	6 years	3 years	Date of right to acquire share	15 years
Penalties	Act/omission date	2 years	None	None	None
Bodily injury (including exemplary damages)	Act/omission date	2 years	3 years	Act/omission date	15 years
Abuse claims	Act/omission date	2 years	3 years	Act/omission date	15 years
Defamation	Act/omission date	2 years	Special period up to 6 years	None	None
Breach of trust (fraudulent)	Act/omission date	6 years	3 years	None	None
Maori customary land against Crown	Accrual	12 years	None	None	None
Trespass Maori customary land against Crown	Accrual	6 years	None	None	None
Recovery of deeds land from adverse occupier	None	None	None	None	None
Judgment (domestic)	None	None	None	None	None
Award (domestic)	None	None	None	None	None
Claim subject to bar preventing commencement of proceeding	Date bar removed	3 years	None	Date bar removed	3 years
Contribution	Date amount fixed by judgment award or agreement	1 year	1 year	Act/omission date	15 years; plus extension when primary claim not fixed within 14 years from act/omission date