

INSIGHT



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New Limitation Act for New Zealand

A bill to update and streamline New Zealand's outdated limitation law was unanimously passed by Parliament last week.

The Limitation Act 2010 will come into force on 1 January 2011. According to Attorney-General Christopher Finlayson, "The new Act makes the limitation rules clearer and easier to apply. It also introduces some important reforms to avoid the sometimes harsh consequences of the current Act".

As most in the industry know, limitation provides a defence to legal claims that are brought after a certain period of time. It balances the interests of claimants, who want to enforce their rights in law, and the interests of defendants to have claims against them brought in a timely fashion.

Under the Limitation Act 2010, the limitation period for most "money claims" will be 6 years after the act or omission on which the claim is based. After this time period has expired a defendant can raise a limitation defence against the claim. Under the current Limitation Act periods vary for different types of claim (although 6 years is usual for most civil claims).

A key reform introduced in the Act is a new 3 year late knowledge period.

Currently a limitation period may end before someone knows they have a claim. The Act gives a claimant at least 3 years from when they discover the claim to bring proceedings. To prevent indefinite liability for some defendants the Act also introduces a 15 year longstop defence. A defendant will be able to argue that a claim brought after 15 years is out of time even if the claimant was not aware of the claim earlier.

To prevent injustice, the Act gives the court discretion to grant relief in some particularly deserving cases, even if a limitation defence

would usually apply. One example where the court will have this discretion is in the case of the abuse of minors.

Interestingly, the 1950 Limitation Act will continue to apply to claims based on acts or omissions before the Act comes into force. But claims under the 1950 Act must be brought by the later of 15 years from the date of the act or omission, or 5 years after the new Act commences. This means that generally the old Act will be phased out after 15 years from the commencement of the new Act subject to rare exceptions. The judicial discretions will also apply in these cases.

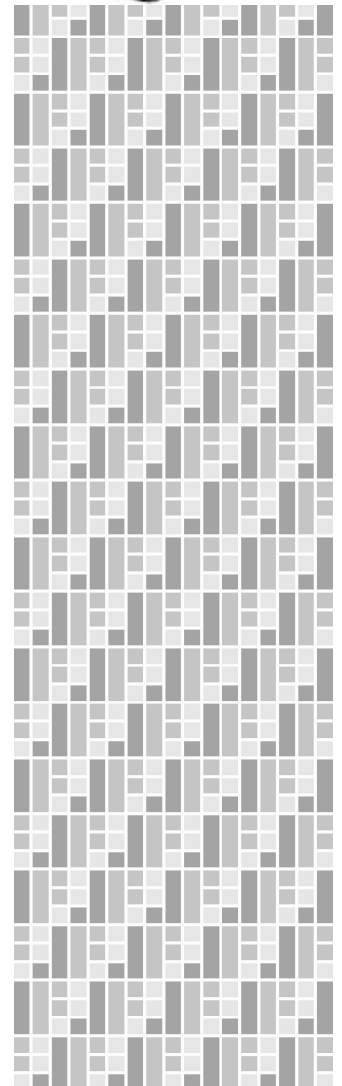
Whilst the intent behind the 2010 Act was to make limitation rules clearer, the writer doubts that this will be the case in practice. For the next 15 years, the two different Acts will both apply. This will inevitably lead to confusion. Furthermore, giving the courts a discretion to extend the limitation period will almost certainly complicate matters. So it may be that the new Act actually makes a complex area of law more difficult than it was previously. Time will tell.

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