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Guidance note for surveyors on the limitation of civil proceedings

SEPTEMBER 2024

Time limits within which a civil claim must be made are prescribed by statute in various ways. The period of time is often called a 'limitation period', following which the claim is said to be 'time barred'. This guidance note provides a summary of some common limitation periods.

LIMITATION ACT 2010

Limitation Period – 6 to 15 years

The Limitation Act 2010 (**the 2010 Act**) applies to money claims based on acts or omissions that occurred after 1 January 2011. A money claim is defined as a claim for monetary relief at common law, in equity, or under an enactment. This covers a typical contractual or negligence claim.

Under the 2010 Act, a claim must be brought within 6 years of the act or omission on which the claim is based (known as the primary period). [1] The primary period is not affected by whether a potential claimant knows about their right to bring the claim or not.

There is an exception to the primary period. If a claimant has late knowledge of a claim, they have an extra 3 years to bring a claim. This is called a late knowledge period and begins on the date the claimant gains knowledge of the relevant facts, or ought reasonably to have gained it.[2]

All claims will expire 15 years after the date of the act or omission. This is known as the long stop.[3]

Section 41 of the 2010 Act permits the parties to contract out of the 2010 Act and to vary the time period for bringing a proceeding, including reducing the limitation period.

LIMITATION ACT 1950

Limitation Period – 6 years

The Limitation Act 1950 (**1950 Act**) applies to acts or omissions that occurred on or before 31 December 2010. The limitation period for contractual or negligence claims is 6 years from the date the cause of action accrued.

The problem with the 1950 Act is it can be difficult to ascertain when the cause of action accrued. For example, with a negligence claim the limitation period runs from the date the damage occurred and not the act which causes the damage. Where the damage can be characterised as economic loss the damage is not sustained until the economic depreciation in value is actually recognised or ought to have been recognised by a reasonable person (reasonable discoverability).

THE BUILDING ACT 2004

Limitation Period – 10 year long stop

The Building Act 2004 long stop was, in part, a response to the issues associated with the reasonable discoverability of latent defects under the Limitation Act 1950.

The Building Act 2004 provides a shorter long stop period of 10 years for claims relating to building work. This applies from the date of the act or omission on which the claim is based (s 392(2)). Building work is defined in the Building Act as work for, or in connection with, the construction, alteration, demolition, or removal of a building and includes sitework and design.

There is an issue as to whether a cadastral survey satisfies the definition of 'building work' under the Building Act 2004. The *High Court in White v McCullough* [2018] NZHC 2806 considered that the preparation of survey plans for unit title purposes was not building work. This is consistent with another High Court decision which held that geotechnical reports are not building work.

[1] Section 11(1) of the 2010 Act
[2] Section 14 of the 2010 Act.
[3] Section 11(3) of the 2010 Act.

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The Supreme Court in *Beca Carter Hollings & Ferner Ltd v Wellington City Council* has now confirmed that contribution claims (discussed later in this guidance note) are not time-barred by the 10-year longstop provisions contained in the Building Act. So, defendant parties are now free to bring contribution claims against others any time up until two years from the date on which their liability is quantified by an agreement, award or judgment. This brings contribution claims arising out of 'building work' into line with contribution claims for non-building work.

THE FAIR TRADING ACT

Limitation Period – 3 years

The Fair Trading Act 1986 (**FTA**) prohibits misleading and deceptive conduct, unsubstantiated claims, false representations and certain unfair practices. The FTA has taken on a life of its own and is now used as a substitute for negligent misstatement. If a professional provides a report or written document that contains an error, claimants can bring a claim under the FTA on the basis that the error makes the document 'misleading'.

A claim under the FTA must be made at any time within three years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought to have been reasonably discovered.

It is possible to contract out of the FTA, but both parties must be in trade and the agreement needs to meet the requirements set out in s5D of the FTA.

CADASTRAL SURVEY ACT 2002

Limitation Period – none

If an error is found in a cadastral survey dataset affecting any title under the Land Transfer Act 2017 or any title or tenure under any other Act, the Surveyor-General, under s.52 of the Cadastral Survey Act 2002, may require the cadastral surveyor responsible for the error to undertake, or arrange to be undertaken, the work necessary to correct the error.

There is an absence of case law as to whether s.52 Cadastral Survey Act 2002 would enable a claimant to seek damages outside of the Limitation Act (and potentially Building Act) for losses resulting from an error. The Court of Appeal has held that the threshold for the Surveyor-General to exercise his power is very high and compelling reasons are required. This follows from the principle of indefeasibility, which normally can only be defeated by fraud.

EMPLOYMENT – PERSONAL GRIEVANCES

Limitation Period – 90 days

The Employment Relations Act 2000 provides a limitation of 90 days for employees to raise a personal grievance with their employer. The 90 days is calculated from either the day the action occurs or the date the employee becomes aware of the action.

CONTRIBUTION CLAIMS – S17 LAW REFORM ACT 1936

Limitation period – 2 years

Section 17 of the Law Reform Act 1936 deals with a situation where the acts or omissions of 2 or more parties give rise to loss or damage. It provides those parties (tortfeasors) with a statutory cause of action to claim a contribution from another tortfeasor who is liable for the same damage. This claim must be made within 2 years of quantification of the wrongdoer's liability by judgment, award or agreement.

This example highlights a common shared liability problem:

> P wants to build a house and engages an architect to draw up plans and supervise the project, and a builder to carry out the construction. Periodic inspections are made by the local authority (in the exercise of its statutory role) during the building process.
>
> Some years later, P notices cracks in the exterior walls and, on consulting an engineer, discovers that these are due to foundations that are inadequate because they do not make allowance for the filled site on which the house is built. P will need to strengthen the foundations to prevent the damage getting worse and seeks to recover the cost of carrying out that work from whomever was to blame.

In this situation it is entirely possible that the "blame" for the building failure rests to some extent with all the defendants. If the builder was careless, that should have been noticed by the architect who was paid to supervise construction, or, in the last resort, by the local authority when fulfilling its statutory obligation to carry out inspections of the work in progress. In that case, P would have a claim against the builder and the architect under their separate contracts with P, and a further claim against the local authority in tort.

If P chose to sue only one of the potential defendants, then that defendant could seek a contribution from one of the other tortfeasors. This can happen as a third-party claim within the proceeding, or it can resolve the claim with P first and then file a claim against the other tortfeasors seeking a contribution towards the amount it paid to P.

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