

24. Imposing time limits for enforcement

Imposing time limits on enforcement action for breaches of legislation involves two strong public interests: the prompt enforcement of legislation; and ensuring that someone who has committed an unlawful act does not escape punishment because their actions remained undetected for many years.

The passage of time may mean that a person finds it hard to defend themselves against a civil claim, a criminal charge, an infringement notice, or a pecuniary penalty. Key witnesses may be dead, documents may be lost, or witnesses memories may have faded. Also, often key forensic evidence has been destroyed.

In such cases, a delay in bringing proceedings may mean the defendant finds it hard to present a full defence or otherwise respond to allegations. This may compromise their right to a fair hearing. In the commercial context, financial and commercial implications exist for businesses or people who may be subject to the open-ended possibility of civil claims.

Limitation periods balance an individual's right to a fair hearing, the need for legal certainty in business and private life, entitlements to compensation and the public interest in seeing unlawful or otherwise wrongful conduct addressed.

Guidelines

24.1. Is the new or amended criminal offence subject to a limitation period?

The limitation periods in the Criminal Procedure Act 2011 should apply to all new criminal offences.

Section 25 of the Criminal Procedure Act 2011¹⁴² provides a standard set of time limits by which a criminal prosecution must be brought after an offence is committed. The limitation periods differ subject to the category of offence and the maximum penalty that can be imposed. The most serious offences (Category 4) have no limitation period.

Legislation should not provide for a different limitation period in respect of a new criminal offence.

The time in which an agency may issue an enforcement notice for an infringement offence is limited in practice by the requirements of s 21 of the Summary Proceedings Act¹⁴³ (which should apply to all new infringement offences). To comply with the reminder notice and court enforcement provisions in the Summary Proceedings Act, the initial infringement notice should be issued promptly and, in any event, within about 3.5 months of the date of the alleged offending.

¹⁴² <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3359962.html>

¹⁴³ <http://www.legislation.govt.nz/act/public/1957/0087/latest/DLM310743.html>

24.2. Are new civil proceedings subject to a limitation period?

The limitation periods in the Limitation Act 2010 should apply to all new civil proceedings.

The Limitation Act 2010¹⁴⁴ provides a generic set of time limits (and exceptions to those limits) that apply to civil claims. The Limitation Act sets limitation periods in respect of a variety of civil claims (such as money claims, land claims, and claims relating to wills or judgments of awards). Legal advisers should be consulted to establish whether or not the particular civil proceeding relied on falls within the Limitation Act.

The limitation periods in the Limitation Act will apply to those claims covered, unless another enactment expressly provides for another limitation period or otherwise sets a deadline by which a claim must be made. Strong policy reasons particular to the circumstances of the legislation must be present to justify a departure from the Limitation Act.

24.3. Are new pecuniary penalties subject to a limitation period?

As discussed in Chapter 23, further guidance on pecuniary penalties will follow pending the Government's response to the Law Commission's paper 'Civil Pecuniary Penalties'. In the interim, legal advisers and the Ministry of Justice should be contacted for further advice.

¹⁴⁴ <http://www.legislation.govt.nz/act/public/2010/0110/latest/DLM2033120.html>