LIMITATION

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The Limitation Act 2017 No 32 was certified and commenced on 19 December 2017 (GN No 910/2017; Gaz 203/2017).

Amending Legislation	Certified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021
Constitution (Amendment) (No 2) Act 2026 No 21	12 May 2026	s 5: 12 May 2026

[The next page is 640,601]

An Act to provide for time limits and for commencing civil proceedings, arbitrations and for related matters.

Enacted by the Parliament of Naoero as follows:
[cl am Act 21 of 2026 s 5, opn 12 May 2026]

PART 1 — PRELIMINARY

1 Short title

This Act may be cited as the *Limitation Act 2017*.

2 Commencement

This Act commences upon certification by the Speaker and came into effect on 19 December 2017.

3 Definitions

In this Act:

'after the lapse' means the day commencing after the last day of the limitation period;

'arbitral award' means the resolution or determination by an arbitrator of a difference or matter referred to arbitration under an arbitration provision;

'arbitration provision' means:

(a) a provision of an agreement to refer present or future differences to arbitration, whether an arbitrator is named in the agreement or not; or

(b) a provision of any written law requiring or permitting the determination of any matter by arbitration or relating to such an arbitration;

'award' a decision of an Arbitration, Mediation or other tribunal not being a court;

'cause of action' means the facts that enable a person in law to bring a proceeding against another person;

'claim' means a proceeding:

(a) that may be made in a court or tribunal other than in a criminal or disciplinary proceeding;

(b) that may be referred to arbitration; and

(c) a primary or ancillary relief is sought;

'claimant' means a person to whom the right to a cause of action for a claim for primary or ancillary relief vests;

'commence, commenced or commencement of proceeding' means the filing of a proceeding by way of a writ of summons, originating summons, originating motion or petition or any other mode of instituting proceeding in accordance with the rules of the Court or any other laws applicable to the claim;

'defamation' includes libel and slander;

'defendant' includes a respondent against whom a proceeding is commenced;

'future interest' means an estate in reversion or remainder or other vested or contingent interest in property which is yet to entitle immediate possession of the property;

'guardian' in relation to a person who is a minor when a cause of action accrues to the person means a person:

(a) who at law has responsibility for the long-term care, welfare and development of the minor before the minor reaches 18 years of age; and
(b) for whom it is practicable, having regard to the person's relationship with the minor to commence a proceeding on behalf of the minor;

'guardian' in relation to a person with a mental impairment means a person who:

(a) is either a guardian of a mentally impaired person or the administrator of a mentally impaired person's estate, or both; and
(b) has, under the guardianship order, or the administration order as is relevant to the case, the function of considering the appropriateness of commencing a proceeding on behalf of a person with mental impairment;

[Amendment to the Mental Health Act 1963 and put into effect by Law Revision and Consolidation]

'income' includes interest on a judgment and other interest, and includes rent, annuities and dividends, but does not include arrears of interest secured by a mortgage and lawfully treated as principal;

'land' includes:

(a) corporeal hereditaments and rent charges and any estate or interest in those things whether freehold or leasehold and whether at law or in equity; and
(b) the interest, pending sale of land including incorporeal hereditaments held on trust for sale, of a person having an interest in the proceeds of sale,

but otherwise does not include incorporeal hereditaments;

'limitation period', in relation to a claim, means the period after which a court proceeding shall not be commenced with respect to the claim;

'mental impairment' in relation to a person, means an impairment suffered by the person including an intellectual impairment, a psychiatric condition, an acquired brain injury or dementia which affects the person from making reasonable judgments in respect of matters relating to the person or the person's property;

'minor' means a person below the age of 18 years;

'mortgage' includes a charge or lien on real or personal property for securing money or money's worth but does not include a possessory lien on goods nor a binding effect on the property arising under court order to seize and sell or seize and deliver the property;

'mortgagee' includes a person claiming a mortgage through an original mortgagee;

'mortgagor' includes a person claiming property subject to a mortgage, through an original mortgagor;

'other law' means law of the Republic unless otherwise stated;

'personal injury' includes a disease, impairment of a person's physical condition, and mental impairment;

'personal representative' means a person who, for the time being, is an executor or an administrator of a deceased person's estate;

'plaintiff' means:
(a) a person commencing a proceeding; or
(b) a person acting on behalf of a person mentioned in paragraph (a);

'principal money', in relation to a mortgage, means all money secured by the mortgage, including arrears of interest lawfully treated as principal, but does not include other interest;

'proceedings' means:
(a) any civil proceeding in a court, whether the claim that is the subject of the proceeding or relief sought is under a written law, at common law, in equity or otherwise; or
(b) an arbitration under an arbitration provision;

'security instrument' includes mortgage, debenture, bill of sale, crop lien, hire purchase and other similar instruments;

'the day the cause of action accrued' means the day on which an event in law or fact occurred giving rise to a claim for primary or ancillary relief;

'rent' includes a rent service and a rent charge;

'rent charge' means an annuity or other periodical sum of money charged on or payable out of land, but does not include a rent service or interest on a mortgage of land; and

'tax' includes a fee, charge or other impost.

4 Objectives

The objectives of this Act are to:
(a) provide limitation periods for various different causes and classes of claims;
(b) encourage claims to be made without any undue delay;
(c) provide opportunity for persons against whom claims are made to defend a proceeding on the grounds of the claim being stale or statute barred;
(d) encourage resolution of disputes between parties in the earliest possible time to avoid greater complications caused due to late prosecution of civil claims; and
(e) resolve disputes when the evidence is still fresh and be preserved for trial.

[The next page is 640,801]

5 General limitation period

Subject to any limitation period provided for under this Act or any other law, no proceedings on any cause of action shall be commenced after a lapse of 6 years from the day the cause of action accrued.

6 Simple contract

A proceeding to enforce, rescind, vary or to claim damages founded on a simple contract shall not be commenced after a lapse of 6 years from the day the cause of action accrued.

7 Torts

(1) Subject to Section 8 no proceedings to claim damages for a cause of action for negligence, nuisance or breach of duty, whether the duty exists by virtue of a contract or of a provision made by or under any Act, shall be commenced, after a lapse of 6 years from the day the cause of action accrued.

(2) This Section does not apply to a cause of action against the Republic under Section 18.

8 Personal injury and fatal accidents

Subject to Part 4 of this Act, a proceeding to claim damages for personal injury or fatal accident shall not be commenced after a lapse of 3 years from the day the cause of action accrued.

9 Assault and battery etc to the person

A proceeding to claim damages for:

(a) trespass to the person;
(b) assault;
(c) battery; or
(d) unlawful confinement or imprisonment,

shall not be commenced after a lapse of 3 years from the day the cause of action accrued.

10 Contribution between tortfeasors

(1) A proceeding to claim contribution between tortfeasors shall not be commenced after a lapse of 2 years from the day the cause of action accrued.

(2) For the purposes of this Section, the day on which a cause of action accrues against a contributing tortfeasor shall be:

(a) where the tortfeasor sued is held liable in respect of that claim for damages by a judgment or order given in any civil proceedings or an award, the relevant day shall be the day on which the judgment or order is delivered or the day of the award; or

(b) where the tortfeasor admits liability in favour of one or more claimants

in respect of a claim for damages, the relevant day shall be the day on which the tortfeasor admitted the liability.

11 Defamation

(1) Subject to subsection (2), a proceeding to seek a declaration or claim for damages for a cause of action in defamation shall not be commenced after a lapse of 1 year from the day the cause of action accrued.

(2) A proceeding to claim for damages for defamation or enforcement of a judgment, order or award shall not be commenced or continued by or against a deceased person or personal representatives of the claimant.

(3) For the purposes of this Section, a cause of action in defamation accrues:
(a) on the day it is published; or
(b) where the claim is based on any subsequent publication or similar publication having the same or similar innuendo, on the day the subsequent publication is published.

(4) For the purposes of this Section, ***'publication'*** or ***'published'***, includes anything made known to a third person or public at large by communicating in writing, broadcasting, telecasting or electronic or digital form in a newspaper, magazine, pamphlet, letter, telegram, computer modem or program, poster, brochure, pamphlet, facebook, blogsites, social media, texts, images, sound or any combination of these.

12 Deeds

A proceeding to enforce, rescind, vary or to claim damages founded on a deed shall not be commenced after a lapse of 6 years from the day the cause of action accrued.

13 Recovery of land

(1) A proceeding to recover land shall not be commenced after a lapse of 20 years from the day the cause of action accrued.

(2) Notwithstanding subsection (1), a proceeding to recover land may be commenced at any time if it is commenced:
(a) by the Republic or a person claiming through the Republic; and
(b) on a cause of action which accrues to the Republic.

(3) For the purposes of this Act, no person is deemed to have been in possession of land by reason only of having made a formal entry on that land and no continual or other claim to recover that land.

(4) A person's claim to a title to land is extinguished if the period in subsection (1) ends before the person makes a claim to recover the land.

(5) A Court shall not grant a relief in any proceeding or appeal from the Naoero Lands Committee to the Supreme Court, which would result in a claim being barred under subsection (1).

[subs (5) am Act 21 of 2026 s 5, opn 12 May 2026]

14 Money secured on real or personal property

(1) A proceeding for a cause of action to claim principal sum of monies secured under a security instrument on real or personal property shall not be commenced after the lapse of 6 years from the day the cause of action accrued:

(a) to the principal, guarantor or assignee of secured debt;
(b) to the receiver of the secured property and the income or profits of the secured property;
(c) by way of the sale, lease or other disposition or realisation of the mortgaged property; or
(d) by way of any other remedy affecting the mortgaged property.

(2) For the purposes of this Section, a cause of action accrues from the day the security instrument deems a demand to have been made or where no demand is made, on the day of default irrespective of whether payments are subsequently made.

(3) Where a payment or part payment is made under subsection (2) upon receiving a demand, unless agreement is made to the contrary, a demand is deemed to have been made by the person in subsection (1) from the day of default under this Section.

(4) A proceeding for a claim for interest payable under a security instrument on real or personal property shall not be commenced or continued:
(a) after the lapse of 3 years from the day the cause of action accrued if no notice of default or claim is made and the creditor makes no attempt to enforce the security;
(b) in the case where a creditor was in possession of all or any of the property comprised in the security instrument securing the interest when the cause of action accrued, after the lapse of 12 months from the discontinuance of possession; or
(c) if the limitation period provided for under subsection (1) for an action between the same parties on the cause of action to recover the principal sum bearing the interest expires.

15 Foreclosure

A proceeding for a cause of action to foreclose the equity of redemption of real or personal property secured by a security instrument shall not be commenced after a lapse of 10 years from the day the cause of action accrued.

16 Redemption

A proceeding to redeem a real or personal property in the possession of a secured creditor shall not be commenced after a lapse of 10 years from:
(a) the most recent possession by the secured creditor of the property in respect of which the action is commenced; or
(b) the receipt by the secured creditor of the most recent payment of principal money or interest secured by security instrument from the person wishing to redeem the property.

17 Accounts — limitation period for the basis of the duty to account

A proceeding to claim or enforce a cause of action or the duty to account shall not be commenced after a lapse of 6 years from the day the account is deemed to have been made available.

18 Equitable actions

(1) Subject to subsection (3), a proceeding for a cause of action seeking equitable relief shall not be commenced:

(a) after a lapse of 6 years from the day the cause of action accrued; or
(b) where the cause of action was not known to the claimant, after a lapse of 2 years from the day the person seeking relief in equity had actual or constructive knowledge of such a cause of action.

(2) In this Section, ***'equitable action'*** means a proceeding:
(a) in which the relief sought is in equity; and
(b) for which had a limitation period not been provided for under subsection (1) or the limitation period would not be determined in equity by analogy to the limitation period for any other kind of proceeding.

(3) Notwithstanding subsection (1), no proceeding shall be commenced seeking equitable relief after the lapse of 12 years from the day the actual event or cause of action accrued.

(4) Nothing in this Act affects any equitable jurisdiction of any court to refuse relief on the ground of laches, acquiescence or otherwise.

19 Successive conversions and extinction of title of owner of converted goods

(1) A proceeding for a cause of action to claim or recover title of or damages for conversion of property shall not be commenced after a lapse of 6 years from the day the cause of action accrued.

(2) A proceeding for a cause of action for:
(a) conversion or wrongful detention of a chattel has accrued to any person; and
(b) before the person recovers possession of the property a further conversion takes place,

shall not be commenced in respect of the further conversion after a lapse of 6 years from the day when the cause of action accrued in respect of the original conversion or detention.

(3) Where a cause of action under this Section:
(a) has accrued to a person and the period prescribed for bringing that proceeding and for bringing any proceeding in respect of such further conversion has expired; and
(b) the person has not during that period recovered possession of the property,

the title of that person to the property shall be extinguished.

20 Debts repayable on demand

(1) A proceeding for a cause of action to claim a debt payable on demand shall not be commenced after a lapse of 6 years from the day the cause of action accrued.

(2) For the purposes of this Section, a cause of action accrues from the day earlier of the following:
(a) the demand for payment becomes effective irrespective of whether a demand is made or not; or
(b) where there is no provision for a demand, from the day the debt was payable or default made.

(3) A proceeding for a claim for interest payable as part of or as penalty in default on a claim for debt shall not be commenced or continued:

(a) after a lapse of 3 years from the day the cause of action accrued and the creditor took no steps to secure the payment of interest or penalty; or
(b) if the limitation period provided for under subsection (1) for a proceeding between the same parties on the cause of action to recover the debt bearing the interest has expired.

21 Tax mistakenly paid

(1) A proceeding to claim or recover money paid by way of tax or purported tax under a mistake of either of law or fact shall not be commenced after a lapse of 2 years from the payment or last of the partial payments.

(2) Subsection (1) does not apply if other law provides for a longer limitation period for commencing a proceeding under this Section.

(3) Notwithstanding subsections (1) and (2) and any other written law, where money paid by way of tax or purported tax is recoverable because of the invalidity of an Act or provision of other law, a proceeding to recover, or in relation to the recovery of that money, shall not be commenced after a lapse of 3 years from the day of payment or the last of the partial payments.

(4) Subsection (3) does not apply to a proceeding for the recovery of money that, assuming that other law or provision of other law imposing or purporting to impose the tax had been valid, would nevertheless have represented an overpayment of tax, if the Act provides for the refund or recovery of the money within a period longer than 3 years from the payment.

(5) An order cannot be made under this or other law enabling or permitting a proceeding to which subsection (3) applies to be commenced after the expiry 3 years from the day the cause of action accrues.

22 Judgment

(1) A proceeding to enforce a judgment shall not be commenced after a lapse of 6 years from the day on which the judgment became enforceable.

(2) Subject to any order made by a court, proceeding to enforce the recovery of arrears of interest in respect of any judgment debt shall not be commenced after a lapse of 6 years from the day on which the judgment became enforceable.

(3) A proceeding to register or enforce a foreign judgment shall not be commenced after a lapse of 2 years from the day on which the judgment was delivered by the court of the foreign country.

(4) For the purposes of this Section relating to or reference to ***'judgment'*** includes any decision of an arbitration, mediation or tribunal.

23 Recovery of rent

A proceeding for a cause of action to claim or recover arrears of rent, *profit-a-prendre*, damages or interests for the arrears of rent shall not be commenced after a lapse of 6 years from the day on which the first default in rental was made or continued.

24 Arbitration

An arbitration for a difference or matter under an arbitration provision shall not

be commenced where the limitation period that would apply under this Act to the bringing of a civil proceeding in a court for the resolution or determination of the difference or matter has expired.

25 Proceedings against the Republic

(1) A proceeding for a cause of action against the Republic, its servants or agents for any act done in pursuance or execution of any act or of any public duty or authority, or in respect of any neglect or default in the execution of any such act, duty or authority, shall not be commenced unless:
   (a) notice in writing of the cause of action is given;
   (b) where applicable, prior leave of Cabinet is obtained under the provisions of the *Republic Proceedings Act 1972*; and
   (c) the proceeding is commenced before the expiration of 3 years from the day on which the cause of action accrued.

(2) Notwithstanding subsection (1), an application may be made to the Supreme Court on notice to the Republic for leave to bring such a proceeding at any time before the expiration of 6 years from the day on which the cause of action accrued:
   (a) whether or not notice has been given under subsection (1); and
   (b) the Court may, if it thinks it is just to do so, grant leave accordingly, subject to such conditions it may deem just.

(3) No leave shall be granted by the Court where a proceeding has been commenced and no notice of the proceeding was served under subsection (1)(a) before the commencement of the proceeding.

(4) Where notice has to be given to the Republic under this Section, it shall be given to the Secretary for Cabinet and Secretary for Justice.

26 Trust property

(1) No period of limitation prescribed by the provisions of this Act shall apply to a proceeding by a beneficiary under a trust, being a proceeding:
   (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy to; or
   (b) to recover from the trustee, trust property or the proceeds in the possession of the trustee, or previously received by the trustee and converted to his or her use.

(2) Subject to subsection (1) and to the provisions of any other written law, a proceeding by a beneficiary to recover trust property or in respect of any breach of trust, not being a proceeding for which a period of limitation is prescribed by any other provision of this Act, shall not be commenced after the expiration of 12 years from the day the cause of action accrued.

(3) A right to commence proceeding shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until such interest crystallises.

(4) No beneficiary, as against whom there would be a good defence under the provisions of this Act, shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than the beneficiary would have obtained if the beneficiary had commenced the proceeding and the provisions of this Act had been pleaded in defence.

27 Limitation of actions claiming personal estate of a deceased person

(1) No proceeding in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be commenced after the expiration of 6 years from the day when the right to receive the share or interest accrued.

(2) No proceeding to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be commenced after the expiration of 6 years from the day on which the interest became due.

[The next page is 641,001]

PART 3 — POSTPONEMENT OF LIMITATION PERIOD

DIVISION 1 — FRAUD OR MISTAKE

28 Postponement of limitation period in case of fraud or mistake

(1) Subject to subsection (2), where a period of limitation for a cause of action is prescribed by this Act and the cause of action:
   (a) is based upon fraud; or
   (b) is for relief from the consequences of a mistake,

   the period of limitation shall not commence until the person seeking relief has actual or constructive knowledge of the fraud or mistake or could with reasonable diligence have discovered it.

(2) Nothing in this Section shall enable any proceeding to be commenced to recover or enforce any charge against or set aside any transaction affecting any property which:
   (a) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
   (b) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

DIVISION 2 — MENTAL IMPAIRMENT

29 Suspension of time while person with mental impairment is without guardian

(1) Subject to subsection (2), where:
   (a) a person is suffering from a mental impairment at any time after a cause of action accrues to the person; or
   (b) a person is being committed under the *Mental Health Act 1963*; and
   (c) during the time in which the person is suffering the mental impairment the person is without a guardian,

   the time during which the person is committed or without a guardian does not count in the reckoning of a limitation period for commencing a proceeding on any cause of action provided for under this Act.

(2) A proceeding on a cause of action by or on behalf of a person with mental impairment shall not be commenced after a lapse of 12 years from the day the cause of action accrued.

[Amendment to the Mental Health Act 1963 and put into effect by Law Revision and Consolidation]

DIVISION 3 — MINORS

30 Limitation periods applicable to persons under 15

(1) Where a person is under the age of 15 years when a cause of action accrues to the person, a proceeding on that cause of action shall not be commenced after a lapse of 6 years since the cause of action accrued.

(2) Subsection (1) shall not apply where a provision under this Act provides for a longer limitation period for commencing the proceeding.

31 Limitation periods applicable to persons between 15 and 18

Where a person is between the ages of 15 and 18 when a cause of action accrues to the person, a proceeding on that cause of action shall not be commenced if the person has reached 21 years of age and has not commenced a proceeding after attaining the age of 21 years.

32 Suspension of time while person under 18 is without guardian

(1) Subject to Section 33, where a person is under the age of 18 years when a cause of action accrues to the person and during any time after the accrual but before the person reaches the age of 18 years is without a guardian, the period during which the person is without a guardian shall not be counted in the reckoning of the limitation period for commencing a proceeding on the cause of action.

(2) Notwithstanding subsection (1), a proceeding on the cause of action shall not be commenced:
- (a) if the person has reached 21 years of age; or
- (b) where a longer limitation period for commencing the proceeding has expired.

33 Defendant in a close relationship with a minor when cause of action accrues

(1) Where:
- (a) a cause of action accrues to a minor person; and
- (b) during any day after the accrual but before the minor attains the age of 18 years, the person in paragraph (a) is in a close relationship with the minor,

a proceeding on that cause of action shall not be commenced if the minor has attained the age of 25 years.

(2) In subsection (1), ***'against the person'*** includes a person for whom a defendant is vicariously liable and ***'person in a close relationship'***, in relation to a minor, means:
- (a) a person who at law has responsibility for:
  - (i) the long-term care, welfare and development of the minor before he or she attains the age of 18 years; or
  - (ii) the day to day care, welfare and development of the minor before he or she attains the age of 18 years; or
- (b) a third person whose relationship with a person who has the care and welfare of the minor and the relationship is such that it is in the circumstances reasonable:
  - (i) for the minor or the person in whose care and welfare the minor is not to commence a proceeding against the third person; or
  - (ii) for the person who has the care and welfare of the minor not to divulge the conduct or events in respect of which a cause of action against the third person would be founded.

[The next page is 641,201]

PART 4 — EXTENSION OF TIME BY THE COURT

DIVISION 1 — WHEN COURT MAY EXTEND TIME

34 Court may extend time to commence proceedings for personal injury or death

(1) Where the limitation period provided for under this Act has expired, a person may apply to the Supreme Court for leave to commence a proceeding for damages relating to personal injury or death.

(2) The Supreme Court may extend the time under this Section where the Court is satisfied that when the limitation period expired the person to whom the cause of action accrued had:
  (a) no actual or constructive knowledge of the physical cause of the injury or death;
  (b) knowledge of the physical cause of the death or injury but was not:
    (i) aware that the injury or death was attributable to the conduct of a person; or
    (ii) after reasonable enquiry, had not been able to establish that person's identity; or
  (c) no actual or constructive knowledge of a subsisting cause of action in law.

(3) The Supreme Court may extend the time to commence a proceeding for personal injury or death up to 2 years from the time a person to whom the cause of action accrues became aware, or ought reasonably to have become aware:
  (a) of the physical cause of the death or injury;
  (b) that the death or injury was attributable to the conduct of a person and the identity of such person; and
  (c) after reasonable inquiry is able to ascertain a cause of action in law.

(4) In this Section, ***'person to whom the cause of action accrues'*** includes in the case of:
  (a) a person who is under 18 years of age, either that person or a guardian of that person;
  (b) a person with a mental impairment, either that person or a guardian of that person; and
  (c) a proceeding for the death of the person, the personal representative or beneficiary.

(5) In this Section, to ***'ascertain a cause of action'*** requires a person to:
  (a) know the material facts relating to the cause of action;
  (b) know the facts of decisive character; and
  (c) seek appropriate legal advice.

[Amendment to the Mental Health Act 1963 and put into effect by Law Revision and Consolidation]

35 Meaning of 'material facts relating to a cause of action'

In this Part, any reference to material facts relating to a cause of action means a reference to any one or more of the following:

(a) the fact that personal injury resulted from the negligence, nuisance or breach of duty constituting that cause of action;
(b) the nature or extent of the personal injury resulting from that negligence, nuisance or breach of duty; or
(c) the fact that the personal injury so resulting were attributable to that negligence, nuisance or breach of duty, or the extent to which personal injury was so attributable.

36 Meaning of 'facts of a decisive character'

For the purposes of this Part, ***'facts of a decisive character'*** are material facts which a reasonable person, knowing those facts and having obtained appropriate advice within the meaning of Section 37 would have regarded an action to have a reasonable prospect of succeeding and resulting in the award of damages.

37 Meaning of 'appropriate advice'

For the purposes of this Part, ***'appropriate advice'***, in relation to any fact or circumstance means the advice of a competent person qualified, to advise on the medical, legal or other aspect of that fact or circumstance as the case may be.

38 Court may extend time to commence proceeding by person under 18 when cause of action accrues, with guardian

(1) Where a person, who was under 18 years of age and had a guardian when a cause of action accrued, such person may apply to Court for leave to commence a proceeding after the expiry of the limitation period under this Act.

(2) Subject to subsection (3), the Court may extend the time under subsection (1) provided the person makes an application on or before the person attains the age of 25 years.

(3) The Court shall not extend time unless satisfied that:
(a) it was unreasonable for a guardian of that person to commence the proceeding within the limitation period for the cause of action; or
(b) the guardian wilfully failed to commence the proceeding within the limitation period for the proceeding.

39 Court may extend time to commence a proceeding by a person with a mental impairment when cause of action accrues, with guardian

(1) Where a person had a mental impairment and a guardian when a cause of action accrued, the person with the mental impairment may apply to the Court for leave to commence a proceeding after the limitation period under this Act has expired.

(2) Subject to subsection (3), on an application the Court may extend the time under subsection (1) provided that the application is made prior to the expiry of 12 years from the day the cause of action accrued.

(3) The Court shall not extend time unless satisfied that:
(a) it was unreasonable for a guardian of that person to commence the proceeding within the limitation period for the cause of action; or

(b) the guardian wilfully failed to commence the proceeding within the limitation period for the cause of action.

[Amendment to the Mental Health Act 1963 and put into effect by Law Revision and Consolidation]

40 Persons, both with under the age of 18 years and with mental impairment

Where:

(a) a person is under the 18 years of age when a cause of action accrues to the person;

(b) during any period after the time the person is suffering from mental impairment; and

(c) different limitation periods for commencing a proceeding on the cause of action are provided for under Sections 38 and 39,

the limitation period for commencing the proceeding is the longer of those limitation periods.

[Amendment to the Mental Health Act 1963 and put into effect by Law Revision and Consolidation]

41 No power to extend time in defamation actions

The Court shall not grant leave to commence a proceeding for defamation after the expiry of the limitation period under this Act or any other written law.

DIVISION 2 — PROCEDURE FOR EXTENSION OF TIME BY COURT

42 Application for leave to commence proceeding where the limitation period has expired

(1) An application for leave to commence a proceeding where the limitation period under this Act has expired and the Court has the jurisdiction to extend time, shall be:
   (a) made *ex-parte*;
   (b) by an originating motion; and
   (c) supported by such affidavits as necessary to establish the cause of action.

(2) The Court may grant leave to commence a proceeding *ex-parte* or require the applicant to serve the application to person or persons against whom the claim is sought to be made.

(3) Where a proceeding is already commenced, an application under subsection (1) shall:
   (a) not be made any time after the pleadings are deemed to be closed between the plaintiff and defendant; and
   (b) be made *inter-partes*.

(4) Where the Court grants leave to commence a proceeding *ex-parte*, the plaintiff shall serve a copy of the originating motion, affidavit and the order on each person against whom the proceeding is commenced or proposed to be commenced in accordance with the Rules of the Court within 21 days of the granting of leave, unless time for service is extended by the Court before the expiry of the 21 days.

(5) Where a person fails to comply with subsection (4), the proceeding shall abate.

43 Application to set aside leave to commence proceeding out of time

(1) A person, against whom leave to commence a proceeding after the expiry of the limitation period under this Act is granted, may make an application to set aside the order granting leave within 21 days of the service of the documents under Section 42.

(2) Where no application is made under subsection (1), the person against whom the proceeding is commenced shall not plead or rely upon a defence of limitation.

44 Matters for Court's consideration

In deciding an application under this Part, the Court shall have regard to:

(a) the length and reasons for the delay in commencing proceedings;

(b) whether the delay in commencing the proposed proceeding whatever the merit of the reasons for that delay, would unacceptably diminish the prospects of a fair trial of the proceeding;

(c) whether extending the time would significantly prejudice the person against whom the claim is made other than by reason only of the commencement of the proposed proceeding;

(d) the person against whom the claim is made on or after the day of the act or omission on which the claim is based, including the extent to which the defendant responded to requests for information or inspection that were reasonably made by or on behalf of the person against whom the claim is made in order to discover facts that were, or might be, relevant to the claim;

(e) the extent to which prompt and reasonable steps were taken by or on behalf of the person against whom the claim is made after the person against whom the claim is made became aware that the person against whom such claim is made was entitled to do so;

(f) any steps taken by or on behalf of the person against whom the claim is made to obtain relevant medical, legal, or other expert advice, and the nature of any relevant expert advice received by or on behalf of the person against whom the claim is made; and

(g) any other matters it considers relevant.

45 Burden of proof

(1) Where the Court has jurisdiction to extend time for commencement of proceeding under this Act, the applicant has the burden of proving that the Court should extend the relevant limitation period.

(2) Where a proceeding is already commenced, the defendant shall have the burden of proving that the proceeding is commenced after the lapse of the limitation period under this Act or any other law.

DIVISION 3 — EXTENSION OF TIME BY AGREEMENT

46 Agreement to extend or shorten limitation period

Nothing in this Act prohibits a person from agreeing to extend or shorten a limitation period provided for under this Act provided a provision in or condition of such agreement shall not:

(a) exclude the operation of Section 37, 38 or 39;

(b) extinguish a right or title in relation to land; or
(c) conflict or contradict with any other written law, treaty or Convention.

47 Limitation period extended by acknowledgement

Where a cause of action lies against a person and the person acknowledges the cause of action:
(a) after the limitation period provided for under this Act for the cause of action begins to run; but
(b) before that limitation period expires,
the time during which the limitation period runs before the acknowledgement is made does not count in the reckoning of the limitation period for a proceeding on the cause of action by a person having the benefit of the acknowledgement against a person bound by the acknowledgement.

48 Formal requirements for acknowledgement

For the purposes of Section 47, an acknowledgement is of no effect unless it is in writing and signed by the maker.

49 Who has benefit of acknowledgement

Where an acknowledgement is made, the acknowledgement is only for the benefit of the person to whom the cause of action accrues to.

50 Who is bound by acknowledgement

(1) A person is bound by an acknowledgement if the person:
(a) is a maker of the acknowledgement;
(b) in relation to the cause of action, a successor of a maker under a devolution from the maker occurring after the making of the acknowledgement; or
(c) at the time the acknowledgement was made, a personal representative of a deceased.

(2) If a maker of an acknowledgement of a cause of action in relation to a property is in possession of the property when the acknowledgement is made, the acknowledgement binds a person subsequently in possession of the property who claims through the maker of the acknowledgement.

51 Meaning of acknowledgement

For the purposes of this Act, a person acknowledges a cause of action where the person makes:
(a) acknowledgement to a person having the cause of action of the person's right or title, even though the acknowledgement does not disclose a promise to pay;
(b) to a person having the cause of action a payment in relation to the person's right or title and makes the payment in circumstances not inconsistent with an acknowledgement of that right or title; or
(c) to a person having a cause of action to foreclose the equity of redemption of secured property or to recover possession of secured property on

payment of principal or interest secured by the security instrument or a payment to the person otherwise in relation to the person's right or title to the security.

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52 Exempted court proceedings

This Act shall not apply to the following court proceedings and has no impact on when or if such court proceeding may be commenced:

(a) an appeal;
(b) a judicial review application;
(c) a criminal proceeding;
(d) a court proceeding to enforce a permanent order for an injunction or a restraining order; and
(e) a court proceeding to enforce an easement, restrictive covenant or *profit à prendre*.

53 Exempted claims

This Act shall not apply to a claim:

(a) that is subject to a limitation period established by an international Convention or Treaty and is adopted by the Republic by an Act;
(b) for which a limitation period is provided under any other written law;
(c) for possession of land, if the person entitled to possession has been dispossessed in circumstances amounting to trespass;
(d) for possession of land by a person who has a right to enter for breach of a condition subsequent, or a right to possession arising under possibility of reversionary interest of a determinable estate;
(e) in torts for damages relating to misconduct of a sexual nature:
    (i) if the misconduct occurred while the claimant was a minor; and
    (ii) whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period;
(f) in torts for damages relating to misconduct of a sexual nature including marital rape where the claimant was living in an intimate and personal relationship with, or was in a relationship of financial, emotional, physical or other dependency with a person who performed, contributed, consented or acquiesced to such conduct;
(g) for the arrears of:
    (i) a child support payable under a judgment or agreement after a lapse of 6 years from the day the child attains the age of 18; or
    (ii) any arrears of spousal support payable under a judgment or agreement after a lapse of 6 years from re-marrying or living in relationship of the spouse; or
(h) for fines or penalties imposed under the laws of the Republic.

54 Counterclaims and set-offs — commencement

(1) A counterclaim in a proceeding is for the purposes of this Act, a separate proceeding.
(2) Where a defendant in a proceeding makes a counterclaim against a plaintiff in the proceeding, the counterclaim is to be taken to have commenced as against the plaintiff when the defendant became a party to the proceeding.
(3) Where a defendant in the proceeding makes a counterclaim against a

plaintiff in the proceeding and then joins another person as a third party against the joinder of third party is to be taken to have commenced as against the other person when the other person is joined as a party to the proceeding.

(4) Where a counterclaim or third-party proceeding includes a set-off, contribution or indemnity, subsections (2) and (3) apply to such claim for set-off contribution or indemnity.

(5) A defendant shall not commence a proceeding for counterclaim, third party or set-off:

(a) where the time for commencing the proceeding has expired under the Act or any other law; or

(b) without the leave of the Court, where the time for commencement of such proceedings may be extended by the Court after the limitation period under this Act has expired.

55 Joint causes of action

If, were it not for this Act, 2 or more persons would have a cause of action jointly but, because of this Act, a proceeding on the cause of action cannot be commenced by one or more of them, a proceeding on the cause of action may nonetheless be commenced by any one of them and judgment may be given accordingly.

56 Joint liability

If, were it not for this Act, 2 or more persons would be liable on a cause of action jointly but, because of this Act, a proceeding on the cause of action cannot be commenced against one or more of them, a proceeding on the cause of action may nonetheless be commenced against any one of them and judgment may be given accordingly.

57 Proceeding not to revive

A proceeding cannot be commenced on or after a commencement day if the proceeding could not have been commenced immediately before the commencement day as a consequence of any other written law that is repealed.

58 Defendant not excused from pleading defence

(1) Where a proceeding is commenced and the defendant intends to rely upon a defence of limitation under this Act or any other written law, the defendant shall plead the defence before establishing it.

(2) Where in the defence, a defendant fails to:

(a) plead the defence of limitation; or

(b) amend the defence to plead the defence of limitation,

it shall be deemed that the defendant has waived the requirements of the limitation period and the claimant may proceed to proving the claim.

(3) Where on delivery of a judgment by a Court on a substantive matter and the defendant appeals, he or she shall not be permitted to adduce fresh evidence or amend pleading to rely upon a defence of limitation.

59 Application of Limitation Act of England

The applicable Limitation Act of England pursuant to Section 4 of the *Custom and Adopted Laws Act 1971* ceases to apply on the coming into effect of this Act.

60 Regulations

(1) The Cabinet may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to this Act.

(2) Without limiting subsection (1), the regulations may provide for:
   (a) limitation period for other causes of action;
   (b) excluding any stipulations of time under this Act for any cause of action; and
   (c) any other matters.

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