

7 September, 2000

## **MINISTER OF LABOUR**

### **REVIEW OF THE HEALTH AND SAFETY IN EMPLOYMENT ACT: LIMITATION PERIOD FOR LAYING CHARGES**

#### **Purpose**

1. This paper makes recommendations regarding the limitation period on taking prosecutions under the Health and Safety in Employment Act 1992 (HSE Act). This project is being undertaken as part of the HSE Act Review (refer 99/004522).
2. Prosecutions for alleged offences against the HSE Act are subject to the six month limitation period prescribed by section 14 of the Summary Proceedings Act 1957 (SP Act). As a result, some cases are not currently accommodated by the limitation period. This paper provides you with advice on resolving this issue.

#### **Introduction**

##### *The HSE Act and the Summary Proceedings Act 1957*

3. Under the HSE Act, employers and others have various obligations to ensure the health and safety of their employees, and people affected by work activity.
4. Failure to meet these obligations amounts to an offence against the HSE Act. The Occupational Safety and Health Service of the Department of Labour (OSH) initiates prosecutions in accordance with the summary proceedings process. As the HSE Act has no stated limitation period, section 14 of the SP Act applies, which states that charges must be laid within six months of the time when the matter of the information arose. The time when 'the matter of the information arose' is the time when the alleged offence took place.

##### *Fairness to defendants and victims*

5. The SP Act was enacted to deal with 'open and shut' cases without complex evidentiary issues such as proof of identity or opportunity. A six-month limitation period for such cases is appropriate, as it is necessary to keep these cases moving through the justice system as quickly as possible to prevent a backlog of uncomplicated cases. More importantly, judges have commented that it is in the

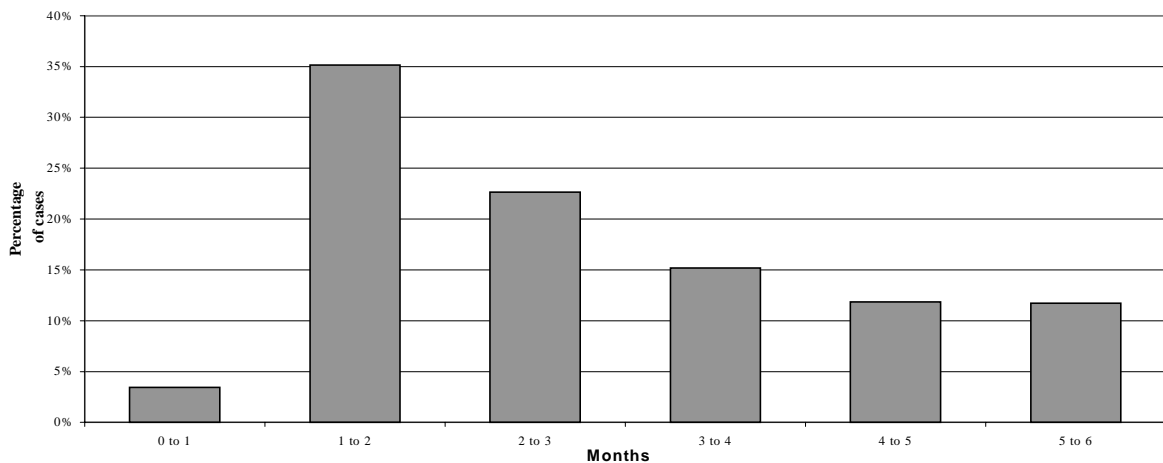
public interest, and in the interests of fairness to the defendant, to see that justice is done within a time period that is reasonable in the circumstances.<sup>1</sup>

*Comparative legislation*

6. Most criminal offences are not subject to section 14 of the SP Act. Instead, there are a variety of legislative provisions including a specified period from the time of the offence (ranging from twelve months to four years) or a specified period from the date of discovery (ranging from three months to six months). Importantly, two closely related pieces of legislation both allow for the reasonable discoverability test: the Hazardous Substances and New Organisms Act 1996 (HSNO Act) and the Resource Management Act 1991.
7. Similarly, overseas jurisdictions have a range of limitation periods in occupational health and safety cases. These range from periods of one to three years as well as from the date of discovery. This legislation is listed in Appendix One.

*Current prosecution activity*

**Number of months between incident and approval to prosecute**  
1995-2000 (calendar years) - by date of offence



Source: OSH prosecution database  
Total number of cases: 751. 64 cases were omitted, because they provided insufficient data for this analysis

8. In the past five years, OSH has undertaken an average of 160 prosecutions per year. The graph above indicates the time between the date of the incident and the decision to prosecute. The decision whether to prosecute is most often made one to two months from the date of the incident. However there is a significant number of cases that cannot be prosecuted due to circumstances beyond OSH’s control. While OSH does not collect data on incidents that fall outside the six-month limitation period, advice received from branch managers and HSE inspectors indicates these cases are becoming a significant problem. These cases are discussed below.

<sup>1</sup> *Ministry of Transport v Gallen* [1989] DCR 529, p.535.

## Discussion

### *Long latency illness and injury*

9. The principal objective of the HSE Act is to prevent harm to employees at work. To do this, it imposes duties on employers, employees, principals and others, and promotes excellent health and safety management by employers. This in turn is achieved by identifying, eliminating or isolating hazards, including significant hazards, to prevent harm.
10. “Significant hazard” is defined in section 2 of the HSE Act and provides for hazards that cause long latency illness or injury:  
... a hazard that is an actual or potential cause or source of -  
(a) serious harm; or  
(b) harm (being harm that is more than trivial) the severity of whose effects on any person depend (entirely or among other things) on the extent or frequency of the person’s exposure to the hazard; or not easily detectable, until a significant time after exposure to the hazard ...
11. In many cases of long latency occupational illness, the time from the first exposure (to the source of harm) to the onset of symptoms may be as long as twenty years. The table below shows typical latent periods for some occupational illnesses.

<b>Average Latent Periods for Occupational Illness and Injury</b>	
<b>Illness or Injury</b>	<b>Average latency period</b>
Chemical toxicity	Six months to five years
Exposure to solvents	Ten years
HIV in healthcare workers	Ten years for AIDS symptoms
Noise induced hearing loss	Ten to twenty years
Asbestosis (lung cancer)	Twenty years
Hepatitis in healthcare workers	Twenty-five to thirty years for liver cancer
Occupational Stress	Varies. Recently the High Court upheld a claim for exposure over a period of sixteen years. <sup>2</sup>

Source: OSH health data

12. If the breach becomes apparent after six months but is ongoing, the employer is liable for a penalty of \$25,000 under the HSE Act for failure to provide a safe and healthy workplace,<sup>3</sup> instead of a \$50,000 penalty for specific harm suffered by the employee. If the exposure or injury was a one-off occurrence and is not diagnosed within six months, OSH is statute-barred from prosecution and the employer escapes punishment entirely.

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<sup>2</sup> An ex-Police Photographer was recently awarded damages of over \$200,000. Judge McGechan; *Brickell v Attorney-General*, High Court; Wellington; June 2000; CP267/97. Also refer ‘Review of the HSE Act: Occupational Stress’ (00/004152)

<sup>3</sup> Section 6.

13. There is increasing evidence that the incidence of and deaths from long latency occupational illness is much higher than that of injury.<sup>4</sup> Research by the Wellington School of Medicine has attempted to confirm the scale of the problem by analysing various studies. It found, for example, that among the population in which exposure typically occurs,<sup>5</sup> about 20 to 25 percent of all cancer deaths are work related. The researchers comment:

It is possible to extrapolate from these estimates to quantify deaths that result in occupational disease. It is generally accepted that the total is 4 or 5 times, and possibly up to 10 times, the number of deaths resulting from workplace fatal injuries. This equates to somewhere between 250 and 600 deaths each year from occupational disease in New Zealand.<sup>6</sup>

14. Because of the difficulties discussed above, only a very small fraction of occupational illness cases can be diagnosed or even investigated within the current limitation period.<sup>7</sup> This results in an anomaly in the HSE Act in that while it anticipates that these injuries and illnesses are significant hazards to be managed, failure to do so will not be punished.

#### *Latent defects in machinery*

15. Regulations made under the HSE Act are also subject to its limitation period. Issues arise in a similar manner to latent illness in relation to the duties of designers, manufacturers and suppliers of plant, substances, protective clothing, or protective equipment. Where defective machinery is the source of the harm suffered, the offending party may be the designer, manufacturer, or supplier of the machinery. In such cases, prosecution is barred where serious harm resulted from a hazard attributed to the design, manufacture or supply that took place more than six months prior to the defect being discovered.
16. The exact number of latent defect cases which are not accommodated by the current limitation period is impossible to determine as OSH does not record incidents that fall outside the six month limit. However based on the experience of branch managers and HSE inspectors, latent defects which are discovered outside the limitation period are a persistent problem. Given that the Act is both preventative and punitive in nature, inability to prosecute in cases of latent defects appears to frustrate the intention of the HSE Act.

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<sup>4</sup> Research undertaken by OSH has suggested deaths from occupational diseases are nine to ten times higher than those from injuries. (N Holden, J Dirkzwager and G Trotman; *Together to Zero: Occupational Disease Taskforce*; Department of Labour; 1996; Wellington.)

<sup>5</sup> Manual workers in mining, agriculture and industry.

<sup>6</sup> Dave McLean; 'The Hidden Hazards: Occupational Health and working in a Large Business'; Non-Communicable Diseases Research Centre; Wellington School of Medicine; p.2.

<sup>7</sup> OSH has investigated an average of 47 fatalities per year since the HSE Act came into force (OSH Prosecution Database).

### *Non-reporting of accidents or illnesses*

17. Section 25(3) of the HSE Act requires the employer to report serious harm as soon as possible, and in writing within 7 days. If the employer fails to notify OSH, the date they fail in their duty becomes the date of the alleged offence. This can be contrasted to a continuing offence that tends to require a continuing positive act.<sup>8</sup> Unless the *failure to notify* comes to the attention of OSH within six months of the breach, the employer cannot be prosecuted due to the expiry of the limitation period.
18. Research undertaken by the Injury Prevention Research Unit, Otago University, suggests this under-reporting is a significant problem.<sup>9</sup> It found that between 1985 and 1994 there were an average of 80 occupational injury fatalities per year. Approximately 74 of these fell within OSH's jurisdiction.<sup>10</sup> In contrast, OSH currently investigates an average of 47 occupational fatalities per year. In terms of non-fatal occupational injuries, the total number of serious harm cases notified to OSH accounts for about 5% of all claims to the Accident Insurance Regulator over the past year.<sup>11</sup>
19. It has been further estimated there are a further 250 – 600 occupational illness fatalities per year.<sup>12</sup> OSH has received notice of diagnosis of approximately half this number to its Notification of Occupational Disease System (NODS), and investigates virtually no fatalities from occupational illness, the reasons for which were explained in an earlier discussion (paragraphs 9 - 14) on latent illness and injury. Given the disproportionate number of cases that clearly never come to OSH's attention, we can assume that there is a substantial number of fatalities and injuries that OSH cannot investigate or prosecute for failure to notify.
20. In some cases failure to notify may also prevent OSH from laying charges for the specific harm suffered by the employee. For example, earlier this year OSH received a letter from a solicitor requesting investigation reports for an accident involving their client. OSH had no record of this accident and subsequently found an employee had suffered a serious harm accident the previous year. In this case, the six month limitation period had expired and OSH was statute-barred from laying charges for the specific harm suffered by the employee, as well as for the failure to notify.

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<sup>8</sup> For example, discharging contaminants without consent or authority under the Resource Management Act 1991. Section 339(6) provides:

The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Act shall be deemed a continuing offence.

<sup>9</sup> 'Work-related Fatal Injuries in New Zealand 1985 – 1994'. New Zealand Environmental and Occupational Health Research Centre and the Injury Prevention Research Unit; Otago University; 1999.

<sup>10</sup> The IPRU study included fatalities under the jurisdiction of the Maritime Safety Authority (preliminary findings indicate this accounts for approximately 9 deaths per year in this period); and excludes occupational fatalities outside normal work ages of 15 – 84 years (OSH data suggests this accounts for up to 3 deaths each year). Both the IPRU study and OSH jurisdiction exclude occupational road fatalities, under the jurisdiction of the Land Transport Safety Authority.

<sup>11</sup> Under the HSE Act, failure to notify OSH of accidents and serious harm is an offence under section 25(3). In the past year, OSH has received approximately 4,700 notifications of serious harm.

<sup>12</sup> Dave McLean; 'The Hidden Hazards: Occupational Health and working in a Large Business'; Non-Communicable Diseases Research Centre; Wellington School of Medicine; p.2.

### *Prosecution by other parties*

21. If the current prosecution monopoly is removed, the limitation period may also need to be considered within the context of prosecutions by other parties. In these situations an extension mechanism will be needed, as it is likely that parties may choose to begin their investigation only after OSH has decided not to prosecute.
22. Experience with prosecutions under the Resource Management Act 1991 and the Building Act 1992 has shown that non-Council prosecutions are rare.<sup>13</sup> However the opportunity to delay laying charges until OSH decides not to prosecute possibly should be available despite the fact private prosecutions may rarely be taken.<sup>14</sup>

### **Summary**

23. The purpose of the six-month limitation period in the HSE Act was not to prevent prosecutions of genuine breaches but to ensure fairness and balance for employers, employees and others with obligations and rights under the HSE Act, by ensuring the claim is brought within a reasonable time.
24. Employers and others have various obligations to ensure the health and safety of their employees, and people affected by work activity. Failure to meet these obligations amounts to an offence under the HSE Act. However in the following circumstances, the current limitation period prevents OSH from prosecuting those offences.
  - Occupational illness and injury where the latency period is often many years.
  - Harm caused by the defective design, manufacture or supply of machinery.
  - Failure to notify OSH within the current limitation period.
  - In the event the prosecution monopoly is removed, allowing sufficient time for other parties to lay charges.
25. The need to address these issues argues for an amendment to the limitation period to the HSE Act. The relative effectiveness of each option will be assessed according to the following criteria:
  - ensures the policy behind the limitation period is maintained: the achievement of certainty, meeting minimum evidential requirements, and diligence on the part of plaintiffs;<sup>15</sup>
  - optimises the benefits for all involved: for victims, the right to bring to court cases when harmed by work activity; for employers, the certainty in that they should not be subject to possible action forever and if charged, that the case is investigated and brought to Court quickly; and for OSH, the ability to investigate and prosecute cases that are currently statute-barred, as well as an increased onus on those with duties to manage and monitor hazards;
  - has minimal effects outside the objective;
  - achieves the Government's objectives: defined in Labour Party policy as achieving healthier and safer work environments, including a shift in focus to

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<sup>13</sup> Stephen Quinn, Solicitor for Council (personal communication).

<sup>14</sup> Also refer to 'Review of the HSE Act: Proposal to remove the monopoly' (00/004218).

<sup>15</sup> *W v G* [1999] 2 NZLR 709, p.46.

accommodate occupational health issues;<sup>16</sup> and also contained in the general tenor of Alliance policy;

- has minimum compliance costs; and
- legislative implications: with the exception of the status quo, all options discussed would require a legislative amendment.

26 Officials have identified four broad approaches, two with sub-options, available to Government to resolve these issues. These are outlined below.

## Options

### *Option 1: Retain the status quo*

27. Make no change to the current six month limitation period on laying charges under the HSE Act.

### *Option 2: A stated limitation period that provides an extension in all cases*

28. A section would be added to the HSE Act specifying a period/s of limitation. Accordingly, section 14 of the SP Act would not apply.

### *Option 3: Add an extension mechanism*

29. **a. Extension by discretion:** A provision with guiding criteria is drafted to give the Court discretion in deciding which cases warrant an extension to the limitation period.

30. **b. Extension by criteria:** A provision is drafted which lists criteria under which appropriate cases are automatically granted an extension to the limitation period.

### *Option 4: Incorporate the 'reasonable discoverability test' into the HSE Act*

31. **a. Incorporate the reasonable discoverability test into the HSE Act and retain the current limitation period of six months:** A new section would be drafted to provide for charges to be laid in all cases within six months from the time when the matter of the information becomes known, or should have become known, to the person who laid the charge.

32. **b. Incorporate the reasonable discoverability test into the HSE Act as well as an extension of the specified limitation period to twelve months:** This option incorporates the reasonable discoverability test but extends the limitation period to twelve months after the matter of the information becomes known, or should have become known, to the person who laid the charge.

33. **c. Incorporate the reasonable discoverability test into the HSE Act as well as a discretionary extension mechanism to the current limitation period of six months:** This option incorporates the reasonable discoverability test but gives the

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<sup>16</sup> 'Labour on Occupational Safety and Health'; Labour Party policy; October 1999; p.2,4.

Courts discretion in deciding which cases warrant an extension to the current limitation period, with guiding criteria.

## **Analysis**

### *Option 1: Retain the status quo*

34. The first option is to make no changes to the six-month limitation period. Based on the discussion above, this option is not recommended.

### *Option 2: A stated limitation period that provides an extension in all cases*

35. The HSE Act would contain a specified limitation period for all cases. While this option would resolve some issues, many of the problems OSH currently experiences would remain. It would achieve government objectives to a limited extent but a general extension would frustrate the policy behind the limitation period. Adopting this option may create the perception that OSH is simply gaining more time and will not maintain an expedient approach. This would increase the overall time the defendant spends in the court process, and would not necessarily allow sufficient time for private prosecutions.
36. In addition, most occupational illnesses have latency periods of a number of years. Extending the limitation period to four years for example would accommodate diseases with latency periods up to four years but would still be insufficient for longer latency diseases such as asbestosis. Importantly, this option would not resolve issues of non-reporting if OSH discovered the breach after the expiration of the specified limitation period.

### *Option 3: Add an extension mechanism*

34. This option retains the current six-month limitation period but includes a mechanism for extensions in certain cases.

#### *Option 3a: Extension by discretion*

35. The current limitation period would be subject to a discretionary extension. Such a provision with guiding criteria, would give the Courts discretion in deciding which cases would warrant being covered by the provision. An application to extend the limitation period in certain cases would be made to the District Court.
36. This option would accommodate cases of latent illness, injury and defects. It would also be possible for OSH to apply for extensions in cases of non-reporting. However such a discretionary provision may lead to uncertainty for the parties involved. Although defendants would normally be subject to the specified limitation period; there remains the possibility of the Courts awarding extensions meaning defendants are possibly subject to court action for longer. In addition, applications for or appeals against decisions would increase the costs for all parties involved, and has implications for the workload of the District Court.

*Option 3b: Extension by criteria*

37. The current limitation period would be extended in cases that meet a list of criteria set out in the Act. This would enable long latency cases and cases with complex proof issues on the one hand to be distinguished from open and shut cases on the other, and would provide consistency for the parties involved.
38. However, exception provisions are difficult to draft effectively so as to include all conceivable cases which should be covered by the exception, and exclude all conceivable cases which should not, according to current knowledge. The United States Bureau of Labour Statistics recently cautioned that new technologies can create new problems, for example computer-chip manufacturing may expose workers to many exotic chemicals whose long-term impact on workers is not yet known.<sup>17</sup> Further, this option goes against the prevailing trend of non-prescriptive legislation in New Zealand and other Commonwealth countries.
39. Each of the three broad approaches outlined above is chosen may create as many problems as they resolve. The 'reasonable discoverability' test resolves the majority of issues and addresses the main drawbacks of the above options.

*Option 4: Incorporate the reasonable discoverability test into the HSE Act*

40. Known as the reasonable discoverability test, a new section of the HSE Act would be drafted to provide for charges to be laid within a specific period from the time when the matter of the information became known, or should have become known, to the person who laid the charge.
41. This option would resolve cases where the victim did not know they were suffering from a work-related illness or injury. The Court in *S v G* held that where damage is an element of the cause of action, as in negligence, the reasonable discoverability of the link between the psychological and emotional harm and the past abuse may be employed to determine when the cause of action accrued:

By analogy it can be said that the victim who reasonably has not linked serious psychological and emotional damage to the abuse does not have the limitation period run merely because of awareness of the symptoms of that damage. It is only when the damage is or reasonably should have been identified and linked to the abuse that it can be said that the elements of the negligence cause of action are known and thus the cause of action has accrued.<sup>18</sup>
42. There is no public interest in protecting persons in breach of the Act from the consequences of their acts or omissions while the victim continues to suffer or the hazard continues. This test contains an important proviso, in that it also gives certainty to the defendant by including the words 'should have known' in its test. The District Court has defined this proviso as 'unable to overlook ... cannot justify having been missed.'<sup>19</sup>

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<sup>17</sup> *Futurework: trends and challenges for working the 21<sup>st</sup> Century*. United States Bureau of Labour Statistics; 1999; p.3.

<sup>18</sup> *S v G* [1995] 3 NZLR p.687.

<sup>19</sup> Judge Joyce; *R v Kiwi Well Drilling Co. Limited*; District Court; Auckland, July 1996; T147/96.

43. There are several arguments in favour of this option. First, it may be argued that the HSE Act codifies common law duties of care owed by an employer to an employee and, as a result, the limitation period to which it is subject should be similar to that in the civil jurisdiction.<sup>20</sup> Second, the criminal jurisdiction already recognises long latency issues to a certain degree.<sup>21</sup> Third, the test operates successfully in comparable New Zealand legislation and overseas OSH statutes.<sup>22</sup> Fourth, Parliament has specifically recognised that the test is desirable in the context of the HSNO legislation that OSH will also enforce.<sup>23</sup> Fifth, the test will accommodate cases of non-reporting. Finally, this option will not frustrate the policies behind the HSE Act limitation provision, and would provide certainty for both defendants and plaintiffs. Therefore, officials have identified this option as the most desirable.

*Option 4a: Incorporate the reasonable discoverability test into the HSE Act and retain the current limitation period of six months*

44. This sub-option incorporates the reasonable discoverability test into the HSE Act, and retains the current limitation period of six months. However it has a significant disadvantage, in that it does not accommodate private prosecutions. In the event OSH's prosecution monopoly is removed, the six month limitation period creates a short, inflexible barrier against other parties laying charges, especially if they wait until OSH has decided not to. This may especially be the case in situations where the evidence required is particularly complex.

*Option 4b: Incorporate the reasonable discoverability test into the HSE Act as well as an extension of the specified limitation period to twelve months*

45. This sub-option incorporates the reasonable discoverability test discussed above, with an extension of the current limitation period to twelve months. It may be desirable in some cases to provide an option for extended time, particularly in the event that OSH's prosecution monopoly is removed. Twelve months would be sufficient time for other parties who delay their decision until OSH has decided whether to prosecute.

46. However this sub-option raises important issues of accountability and fairness. A general extension to twelve months is both an inflexible boundary and is not necessary in all cases. Indeed as shown, OSH most often collects sufficient evidence to support a charge within one to two months from the date of the

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<sup>20</sup> Under the Limitations Act 1950, the claim must be made within two years of the harm being 'reasonably discoverable'. The reasonable discoverability test has similarly been extended to civil claims for bodily injury in the United States, Canada, the United Kingdom, Australia and other common law countries.

<sup>21</sup> For example, Parliament has recognised the issue of latent defects in respect of buildings and enacted section 80(4) of the Building Act 1991 which provides: '... any information ... may be laid by any person at any time with six months after the time when the contravention giving rise to the information first became known, or should have become known, to the Authority ...'.

<sup>22</sup> For example, the Resource Management Act 1991 Section 338(4) provides: '... six months after the time when the contravention giving rise to the information first became known, or should have become known, to the Authority...'. Other jurisdictions are listed in the Appendix.

<sup>23</sup> Charges under the Hazardous Substances and New Organisms Act 1996 must be laid within 120 days of the offence being known, or should have become known.

incident. Inclusion of an administrative accountability provision whereby in a certain percentage of cases, charges must be laid within six months may resolve issues of accountability to some extent. However the perception may remain that OSH is simply gaining extra time, and that an administrative provision provides an insufficient safeguard against bureaucratic inertia, and causes undue delay for defendants and victims.

*Option 4c: Incorporate the reasonable discoverability test into the HSE Act as well as a discretionary extension mechanism to the current limitation period of six months*

47. This sub-option incorporates the reasonable discoverability test discussed above, but provides a more focused extension mechanism to Option (4b), while resolving the same issues of latent illness, injury, defect and non-reporting. Applications for an extension would be granted through the District Court, with guiding criteria provided for in the legislation. However OSH would still be required to notify all interested parties if a time delay was unavoidable. In the interests of fairness to the defendant, the optional extension may require a stated time limit also.
48. Further, in contrast to the other two reasonable discoverability test options, any extension must be justified in Court, ensuring any extension to the current limitation period is warranted in the opinion of an objective judicial body, thus removing the perception that OSH is able to procrastinate. While this sub-option accommodates private prosecution cases, it has an additional advantage of preventing poorly-supported cases. This means appeals against the discretion are less likely. This is the preferred sub-option.

### **Recommended Option**

49. Officials have identified circumstances where OSH cannot prosecute alleged breaches of the HSE Act and an extension mechanism is required. Sub-option 4c which incorporates the reasonable discoverability test and provides a discretionary extension mechanism has been further identified as best fulfilling the criteria, as it provides for an objective judicial body to grant extensions in genuine cases while ensuring fairness and expediency for parties involved.

## **Recommendations**

I recommend that you:

- a) **note** that this paper is being undertaken as part of the HSE Act 1992 Review Project (refer 99/004522).
- b) **note** that some cases are not currently accommodated under the six month limitation period.
- c) **agree** that the HSE Act be amended to incorporate the 'reasonable discoverability test' into the HSE Act as well as a discretionary extension mechanism to the current limitation period of six months (Option 4c).
- d) **note** that we would welcome an opportunity to discuss this issue with you.

RJM Hill  
For Secretary of Labour

**Limitation Periods for other legislation**

*New Zealand legislation dealing with criminal offences:*

- Biosecurity Act 1993: section 162: two years from date of offence
- Building Act 1991: section 80(4): six months from when the offence did or should have become known
- Electricity Act 1992: section 162: three years from date of offence
- Hazardous Substances and New Organisms Act 1996: section 109(2): 120 working days from when the offence did or should have become known
- Local Government Act 1975: section 699: twelve months from date of offence
- Misuse of Drugs Act 1975: section 28(2): four years from date of offence
- Resource Management Act 1991: section 338(4): six months from when the offence did or should have become known

*International legislation dealing with occupational safety and health offences:*

- Canada: the Federal Canada Labour Code 1992: section 149(4): twelve months from the date of the alleged offence
- United Kingdom: the Health and Safety at Work Act 1974: section 34(3): six months from where there comes to the knowledge of a responsible enforcing Authority evidence sufficient in the opinion of that authority to justify a prosecution for that offence
- Australia:
  - Western Australia: the Occupational Safety and Health Act 1984: section 52(3): three years from date of the alleged offence but section 54A(1) includes a provision for continuing offences
  - Queensland: the Workplace Health and Safety Act 1995: section 165: one year from date of offence or within six months of the alleged offence coming to the attention of the complainant's knowledge
  - Tasmania: the Workplace Health and Safety Act 1993: section 55: twelve months from date of alleged offence
  - New South Wales: the Occupational Safety and Health Act 1983: section 49(1): two years from the date of the alleged offence but cases of latent defects and non-notification are accommodated by an extension mechanism: 'within six months after it first becomes apparent to the WorkCover Authority'
  - South Australia: the Occupational Health, Safety and Welfare Act 1986: section 58(7): two years from the date of the alleged offence
  - Victoria: Occupational Health and Safety Act 1985: section 49: if a prosecution has not been brought within six months after the date of the alleged offence, any person may request the Authority to bring a prosecution
  - Northern Territory: the Health Act 1996: section 179: three years from the date of the alleged offence
- Ireland (Dublin): the Safety, Health and Welfare at Work Act 1989: section 51: one year from the date of the alleged offence but extensions are provided in certain cases, for example after a coroner's report