

**EMBARGO: FOR IMMEDIATE RELEASE****MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION  
CONCERNING ITS INVESTIGATION ON PRESCRIPTION PERIODS (PROJECT  
125)**

The South African Law Reform Commission (SALRC) hereby releases its discussion paper on prescription periods (Discussion Paper 126) for general information and comment.

The discussion paper deals with the problem of having different prescription periods contained in statutes which create inequalities between people with claims against public institutions and those against other defendants. The Prescription Act 68 of 1969 (the Prescription Act) provides different periods for different claims save where an Act of Parliament provides otherwise, the period of prescription of any debt not listed in section 11(d) of the Prescription Act shall be three years. This on its own does not create a uniform prescription period for claims.

Most persons who sustain compensable injuries or are otherwise entitled to financial compensation are either unaware of, or poorly informed about their legal rights and what they should do in order to enforce those. The normal difficulties of accessing legal services are exacerbated by gross inequality, high cost of legal services and the remoteness of the law from most people's lives. Justice is even harder to come by.

Currently there is no condonation in terms of the Prescription Act where there is late filing of a claim. Claimants with genuine claims may not have the opportunity to institute their cases even where there is a just cause for failure to institute such claim.

This discussion paper therefore includes proposals for possible law reform to harmonise the provisions of existing laws providing for different prescription periods. The legislative proposals can be summarised as follows:

- (a) Different prescription periods as provided in section 11 of the Prescription Act be retained.
- (b) That the prescription period set out in section 11(d) of the Prescription Act be extended from three to five years from the period the creditor has

knowledge of the debt or could have taken necessary steps to acquire such knowledge.

- (c) That the notice requirement of the intention to institute legal proceedings against organs of state before issuing of summons be abolished.
- (d) That courts should be granted the power to condone, on good cause shown, the late institution of a claim, where the debt has prescribed in terms of section 11(d) of the Prescription Act. A court considering whether or not to grant condonation should consider the following factors:
  - (i) the nature of the relief sought;
  - (ii) the extent and cause of the delay;
  - (iii) the effect of the delay on the administration of justice and other litigants;
  - (iv) the prospects of success of the case; and
  - (v) on good cause shown.
- (e) That the prescription period in section 44 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 be repealed.
- (f) That section 23 of the Road Accident Fund Act 56 of 1996 should be amended and that prescription should start to run from the date on which the accident occurred unless the creditor has knowledge of the facts from which the accident arises: Provided that a creditor shall be deemed to have such knowledge if s/he could have acquired it by reasonable care.
- (g) That damages claims which arises from offences listed in section 18 of the Criminal Procedure Act 51 of 1977 should be suspended until the criminal trial is concluded.

The SALRC invites comments and suggestions on Discussion Paper 126, which should reach the SALRC by 30 September 2011 at the following address:

The Secretary  
South African Law Reform Commission  
Private Bag X668

Pretoria 0001

Tel: (012) 392 9540  
Fax: (012) 323-4406  
E-mail: [gmoloi@justice.gov.za](mailto:gmoloi@justice.gov.za)  
Website: <http://www.justice.gov.za/salrc/index.htm>

Discussion Paper 126 will be made available on the Internet at the following site:  
<http://www.justice.gov.za/salrc/dpapers.htm>.

The discussion paper is also obtainable free of charge from the SALRC upon request (the contact person is Mr Jacob Kabini at (012) 392 9580).

**ISSUED BY THE SECRETARY: SA LAW REFORM COMMISSION**

**DATE: July 2011**

CONTACT FOR ENQUIRIES IN RESPECT OF MEDIA STATEMENT: Ms G Moloi

Tel: (012) 392 9540  
Fax: (012) 323 4406  
E-mail: [gmoloi@justice.gov.za](mailto:gmoloi@justice.gov.za)

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