

Regulatory Impact Statement

Customs and Excise Act Review – Limitation Period

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the New Zealand Customs Service (Customs).
2. It analyses options for the limitation period/s in respect of the approximately 90 offences set out under the Customs and Excise Bill.
3. Analysis has included a review of available guidance relating to limitation periods (including reference to LAC Guidelines and advice from the Ministry of Justice), consideration of precedents (including the Criminal Procedure Act 2011 and the legislation of New Zealand's enforcement and revenue agencies), information provided by Customs subject-matter experts, and consultation with relevant agencies.
4. Due to time constraints:
 - 4.1. Prosecutorial data has not been collected in relation to the status quo. In its place, subject-matter experts from the Legal and Operational branches of the Customs Service have provided advice during development and testing of the options.
 - 4.2. Limited public consultation has been conducted with relevant members of Customs' Stakeholder Reference Group and regular submitters during development of the Bill.

Signed by:

Signed by Michael Papesch on 3 March 2017

Michael Papesch
Group Manager, Policy, Legal and Governance

Date: 3 March 2017

Crown Copyright © 2017



This work is licensed under the Creative Commons Attribution 4.0 New Zealand licence. In essence, you are free to share, copy and redistribute the material for noncommercial use as long as you do not change it in any way and attribute the work to the Crown and abide by the other licence terms. To view a copy of this licence, visit <https://creativecommons.org/licenses/by-nc-nd/4.0/>.

Please note that no departmental or governmental emblem, logo or Coat of Arms may be used in any way that infringes any provision of the Flags, Emblems, and Names Protection Act 1981 (www.legislation.govt.nz/act/public/1981/0047/latest/whole.html#DLM51358).

Attribution to the Crown should be in written form and not by reproduction of any such emblem, logo or Coat of Arms.

Executive summary

5. A limitation period is the point after which charges cannot be laid for an offence. Under the Customs and Excise Act 1996, the limitation period is five years after the time when the offence was committed. This provision was carried over into the current Customs and Excise Bill (clause 375).
6. There are two issues with the current five year limitation period:
 - 6.1. it appears highly disproportionate in relation to the very minor offences attracting low penalties (eg failure to comply with a direction to stop using an electronic device, which has a penalty of \$1,000)
 - 6.2. Customs can sometimes find it challenging to meet the five year deadline in respect of the very serious offences under the Act (eg Defrauding the revenue of Customs, with a penalty of 5 years or a fine up to \$50,000), due to delays in offence detection and the complexity of investigation.
7. Five options were considered. Customs prefers **Option 5**, which proposes generally lowering the limitation period to four years, with 21 specified offences using the no limitation and six month limitation periods specified in the Criminal Procedure Act 2011 (refer **Appendix 3**).
8. This option best meets Customs-specific law enforcement challenges, including allowing for possible time delays in investigating cross-border offending or picking up errors discovered during later audit or investigation. This approach also ensures that the approach to limitation periods is proportionate in relation to the level of offending under the Bill.

Status quo and problem definition

9. A limitation period is the point after which charges cannot be laid for an offence. Limitation periods provide defendants with certainty over the possible jeopardy they may face and also recognise that the public interest in prosecuting certain offences diminishes over time.
10. Under the Customs and Excise Act 1996, the limitation period is five years after the time when the offence was committed. This provision was carried over into the current Customs and Excise Bill (clause 375).
11. This approach is distinct from the position at general law proscribed under section 25 of the Criminal Procedure Act 2011, which specifies different limitation periods (ranging from six months to no limitation depending on the level of penalty and therefore seriousness of the offence).

12. The Customs and Excise Bill contains a wide range of offences, including:

Offence types	Offence eggs	Penalty maximums
Serious criminal offences	Offences in relation to knowingly importing or exporting objectionable publications (clause 348)	Individual: Imprisonment 10 years. Body corporate: \$100,000 fine.
	Defrauding the revenue of Customs (clause 348)	Individual: Imprisonment 5 years or \$10,000 fine (\$20,000 if tobacco is involved). Body corporate: \$50,000 fine. Fines are three times the value of the goods if higher.
Offences related to data quality and assurance at the border	Offences in relation to erroneous or defective entries (clause 341(1))	Individual: \$1,000 fine. Body corporate: \$5,000 fine.
	Offences in relation to declarations and documents that are known to be faulty (clause 345)	Individual: Imprisonment 6 months or \$10,000 fine. Body corporate: \$50,000 fine. Fines are three times the value of the goods if higher.
Offences related to the treatment of goods in Customs-controlled areas	Offence in relation to unloading goods (clause 79)	\$5,000 fine.
	Interference with cargo (clause 337)	\$15,000 fine
Offences related to behaviour of passengers and those in charge of craft	Offence in relation to failure to produce evidence of identity/entitlement to travel, etc (clause 181)	\$5,000 fine
	Offence in relation to leaving or boarding arriving craft before inward report made (clause 20)	\$5,000 fine
	Offence in relation to use of electronic communication (clause 196)	\$1,000

13. The circumstances surrounding Customs offences exhibit a number of framework-specific characteristics:

- 13.1. Some offences are detected immediately (eg failure to produce evidence of identity/entitlement to travel), while others are picked up through audit, by intelligence analysts or through information passed to Customs, potentially years after commission of the offence (eg erroneous entries)

- 13.2. Some offences require complex and lengthy investigation, including engagement with international partners (eg offences where organised crime is involved)
 - 13.3. Some offences cannot be progressed while offenders are temporarily out of New Zealand waters (eg failure to provide advance notice of departure)
 - 13.4. Multiple offences may be progressed as part of the same investigation into a chain of conduct (eg making false declarations, selling uncustomed goods and defrauding the revenue of Customs).
14. There are two issues with the current five year limitation period:
- 14.1. it appears highly disproportionate in relation to the very minor offences attracting low penalties (eg failure to comply with a direction to stop using an electronic device, which has a penalty of \$1,000)
 - 14.2. Customs can sometimes find it challenging to meet the five year deadline in relation to the very serious offences (eg Defrauding the revenue of Customs, with a penalty of 5 years imprisonment or a fine up to \$50,000), due to delays in offence detection and the complexity of investigation.¹ In some cases, charges have been filed under analogous offences under the Crimes Act 1961 as the limitation period under the Customs and Excise Act has expired (or because the penalty is deemed more fitting).
15. The status quo is discussed further as Option 1 below.

Objectives

16. The first objective of this policy is to provide reasonable opportunity for enforcement of Customs offences. Relevant factors are the likelihood and impact of:
- 16.1. Cross-border issues
 - 16.2. Detection issues
 - 16.3. Complexity of investigation
 - 16.4. Linked chains of conduct.
17. The second objective is to provide proportionality between the Bill's offences and their relevant limitation periods, as well as fairness and certainty for defendants.
18. The third objective is consistency across the statute book.

¹ For example, a decision to prosecute was taken in relation to Operation Twister II (tobacco smuggling) around October 2014 relating to fraudulent imports going back to May 2009.

In July 2017, an appeal against a sentence of imprisonment, was dismissed in the Auckland High Court. No further appeal was lodged. The case is now closed

Options and impact analysis

19. Five options feasibly wholly or partly achieve the policy's objectives:

Option 1 - Status quo (retain 5 year limitation period across all Customs offences, with some use of Crimes Act provisions).

Option 2: Apply graduated limitation period in the Criminal Procedure Act 2011 to Customs offences.

Option 3: Limitation period four years after the time when the offence was committed or within any longer time allowed by the Criminal Procedure Act 2011. Operational guidelines would reinforce expected levels of promptness of filing charging documents, in particular in relation to the commission of minor offences.

Option 4: Substantial alignment with the Criminal Procedure Act, with retention of the five year limitation period (where otherwise the limitation would be six or twelve months) for specified offences.

Option 5: Limitation period four years after the time when the offence was committed, with specified offences using the limitation period under the Criminal Procedure Act 2011.

20. Key points of options analysis are described under each of the options set out in paragraphs 22 to 35 below. The options analysis is summarised at **Table 1** below and provided in full in **Appendix 1**.
21. It is not anticipated that additional costs will arise from implementation of any of the options. Customs may distribute resources differently in relation to meeting limitation deadlines arising from any legislative changes, however overall costs are likely to be very little different.

Option 1 – Status Quo (five year maximum limitation period)

22. Under Option 1, the Bill would retain a five year limitation period across all Customs offences. Recourse to Crimes Act provisions may be required where a limitation period for the most serious Customs offences has expired.
23. In most circumstances, the status quo has the benefit of maintaining Customs' current ability to file charges for offences despite possible delays due to cross-border investigation or offence detection.
24. This option is inadequate to address the problem related to filing charging documents for very serious and complex investigations (eg relating to offence of defrauding the revenue of Customs).

25. While there is no evidence that Customs regularly relies on long limitation periods or compromises a defendant's fair trial, a five year limitation period appears highly disproportionate in respect of very low levels of offending under the Bill.

This option is not recommended.

Option 2 – Alignment with Criminal Procedure Act 2011

26. Under Option 2, the graduated limitation periods contained in the Criminal Procedure Act 2011 would apply to Customs offences. This would result in the following limitation periods:
- 26.1. *Increase – No limitation period* – two offences (offences relating to objectionable material, defrauding revenue of Customs)
 - 26.2. *Retain – Limitation period 5 years (with addition that Solicitor-General may consent to filing after that date)* – fifteen offences (eg offences in relation to craft arrival and departure from New Zealand, offences related to use of the Joint Boarder Management System)
 - 26.3. *Decrease – Limitation period 12 months* – twenty-three offences (eg offences related to border reporting, offences relating to erroneous entries)
 - 26.4. *Decrease – Limitation period 6 months* – forty-nine offences (eg offences related to leaving craft unauthorised, failure to comply with signs related to use of electronic devices, refusals to answer Customs' questions).
27. This option has a high level of proportionality, where minor offences have short limitation periods and more serious offences have either no limitation or the ability to seek Solicitor-General leave to extend the limitation deadline.
28. However, this option would seriously inhibit enforcement of a large number of Customs offences relating to data quality and border assurance (including where errors are picked up at a later period of time due to audit or investigation).

This option is not recommended.

Option 3 – Four year limitation + longer time allowed by CPA

29. Under Option 3, the limitation period would be lowered to four years after the time when the offence was committed or within any longer time allowed by the Criminal Procedure Act 2011. Seventeen offences at the higher end of offending under the Customs and Excise Act would have limitation periods of five years or more. These are set out as **Appendix 2**.
30. In addition to the proposed regulatory change, this option incorporates a non-regulatory element. Customs would develop operational guidelines which would specify expected

levels of promptness in filing charging documents, in particular in relation to the commission of minor and immediately-detected offences.

31. This option meets Customs-specific law enforcement challenges, including allowing for possible time delays in investigating cross-border offending or picking up errors discovered during later audit or investigation.² However, it only partially addresses concerns relating to proportionality and certainty for defendants.

This option is not recommended.

Option 4 – Criminal Procedure Act with exceptions

32. Under Option 4, there would be substantial alignment with the Criminal Procedure Act 2011, with retention of the five year limitation period (where otherwise the limitation would be six or twelve months) for specified offences.
33. Most of the offences under the Customs and Excise Bill would use the limitation periods prescribed by the Criminal Procedure Act (ranging from 6 months to no limitation). The 36 offences retaining the five year limitation period would be:
- 33.1. offences which relate to trans-border offending or where offenders are temporarily absent from New Zealand
 - 33.2. offences relating to assurance at the border (where offence detection may be delayed).
34. While this option also meets the policy's dual objectives, it creates an unnecessarily complex regime. This affects its transparency and ease of enforcement.

This option is not recommended.

Option 5 – Four year limitation period with exceptions (preferred option)

35. Under Option 5, the limitation period would be generally lowered to four years after the time when the offence was committed, with specified offences moving to the no limitation and six month limitation periods consistent with the Criminal Procedure Act 2011.
36. The latter includes twenty-one offences (set out at **Appendix 3**) sitting at the very high and at the lower end of offending. For example:
- 36.1. knowingly importing or exporting objectionable publications (with a possible penalty of 10 years imprisonment for an individual or a fine of \$100,000 for a body corporate) would move to no limitation period

² The four year period aligns with Customs' audit processes.

- 36.2. failure to produce evidence of identity/entitlement to travel on request (with a possible \$5,000 penalty) would move to six months limitation.
37. This option best meets the policy's objectives. It addresses Customs-specific law enforcement challenges as well as concerns that the overall approach to limitation periods be proportionate in relation to the level of offending. In general, the offences with a proposed 6 month limitation period are both minor and immediately detected. It is also consistent with the approach taken in other Acts.

This option is the **preferred option**.

Table 1: Summary of options analysis – limitation periods under the Customs and Excise Bill

Criteria	What this means	Option 1 (Status quo – 5 years)	Option 2 (Criminal Procedure Act)	Option 3 (4 years + longer time allowed by CPA)	Option 4 (CPA with 5 year exceptions)	Option 5 (4 years with CPA exceptions)
KEY: Max 5: Low = 1; Medium = 3; High = 5. Max 3: Low = 1; Medium = 2; High = 3.						
OVERALL SCORE (/21)		15	15.5	18.5	18.5	19.5
Proportionate response to offending (weight: max 5)	<ul style="list-style-type: none"> Limitation period reflects the seriousness of the offence Meets the public interest in seeing unlawful or otherwise wrongful conduct addressed, while recognising that public interest in prosecution of less serious offences diminishes over time 	Low-Medium	High	Medium-High	High	High
		2	5	3	5	5
Provides reasonable opportunity for detection and investigation of offence and for apprehension of offender (weight: max 5)	<ul style="list-style-type: none"> Ensures someone who has committed an unlawful act does not escape punishment because their actions remained undetected for many years, because they don't return to New Zealand waters within the limitation period or because an investigation is highly complex 	Medium-High	Medium	High	High	High
		4	3	5	5	5
Workable and Transparent (weight: max 5)	<ul style="list-style-type: none"> Easy to understand and easy to enforce Chain of conduct (and related offences) not arbitrarily separated 	High	Low-Medium	High	Medium	Medium-High
		5	2	5	3	4

Criteria	What this means	Option 1 (Status quo – 5 years)	Option 2 (Criminal Procedure Act)	Option 3 (4 years + longer time allowed by CPA)	Option 4 (CPA with 5 year exceptions)	Option 5 (4 years with CPA exceptions)
Certainty and fairness (weight: max 3)	<ul style="list-style-type: none"> Provides legal certainty for individuals and businesses through legislative guide to appropriate maximum length of limitation period Protects defendant's interest in being certain, as far as possible, of any jeopardy he or she faces Defendant (whether individual or corporate entity) is not unreasonably constrained in presenting a full defence by an unfair passage of time (ie. witnesses unavailable or unreliable, documents lost, evidence destroyed) 	Medium 2	High 3	Medium-High 2.5	High 3	High 3
Consistency with statute book (weight: max 3)	<ul style="list-style-type: none"> Consistent with the Criminal Procedure Act 2011 Consistent with approaches used by other regulatory agencies 	Medium 2	Medium-High 2.5	Medium 2	Medium-High 2.5	Medium-High 2.5

Consultation

38. The Ministry of Justice, Crown Law, Police, the Ministry of Primary Industries, and the Ministry of Foreign Affairs and Trade were consulted. The Ministry of Justice supports Customs' preferred approach. The Department of the Prime Minister and Cabinet was informed.
39. The following government agencies have been consulted on this paper: Crown Law; Ministry of Foreign Affairs; Ministry of Justice; Ministry for Primary Industries; Police; and the Office of the Privacy Commissioner. The Department of the Prime Minister and Cabinet was informed.
40. Limited public consultation was also conducted with the following organisations comprising the relevant members of Customs' Stakeholder Reference Group and regular submitters during development of the Bill: Importer's Institute; New Zealand Shippers' Council Inc; New Zealand Airports Association; Business New Zealand/ Export New Zealand; Board of Airline Representatives NZ Inc; International Container Lines Committee; Customs Brokers and Freight Forwarders Federation of NZ; Conference of Asia Pacific Express Carriers; Shipping agents; Distilled Spirits Association of New Zealand; Winegrowers Institute; and Gull New Zealand Limited.
41. No objections to the proposal were raised.

Conclusions and recommendations

42. Customs recommends Option 5.

Implementation plan

43. This analysis is being undertaken as part of the Review of the Customs and Excise Act 1996. A Customs and Excise Bill is currently before select committee. Any changes to the Bill need to be progressed via the Departmental Report on the Bill or Supplementary Order Paper. The Bill is due to be reported back to the House by 6 June 2017.
44. The plan for the implementation of the new Customs and Excise Bill includes a comprehensive plan for seamless transition to the new arrangements. The changes to the limitation period regime will be included in operational guidelines and staff training. The new provisions will apply as of commencement of the legislation (1 April 2018). Additional compliance costs are expected to be negligible.
45. There will also be an industry engagement plan to publicise the changes. A further enforcement strategy is not required.

Monitoring, evaluation and review

46. There will be an overall evaluation of the Customs and Excise Act Review. This will include evaluation of limitation period policy.

Appendix 1: Options analysis – limitation periods under the Customs and Excise Bill

Criteria	What this means	Option 1 (status quo – 5 years)	Option 2 (Criminal Procedure Act)	Option 3 (4 years + longer time allowed by CPA)	Option 4 (CPA with 5 year exceptions)	Option 5 (4 years with CPA exceptions)
KEY: Max 5: Low = 1; Medium = 3; High = 5. Max 3: Low = 1; Medium = 2; High = 3.						
OVERALL SCORE (/21)		15	15.5	18.5	18.5	19.5
Provides proportionate response to offending (weight: max 5)	<ul style="list-style-type: none"> Limitation period reflects the seriousness of the offence Meets the public interest in seeing unlawful or otherwise wrongful conduct addressed, while recognising that public interest in prosecution of less serious offences diminishes over time 	<p>LOW-MEDIUM/2</p> <ul style="list-style-type: none"> Limitation period highly disproportionate in relation to less serious offending (mitigated by Customs' operational good practice in promptly filing charging documents and Court oversight monitoring any abuse of process) Limitation period disproportionate in relation to highly serious offending 	<p>HIGH/5</p> <ul style="list-style-type: none"> Limitation periods proportionate in relation to graduated seriousness of offending 	<p>MEDIUM-HIGH/4</p> <ul style="list-style-type: none"> Limitation period disproportionate in relation to less serious offending (mitigated by Customs' operational guidelines relating to prompt filing of charging documents and Court oversight monitoring any abuse of process) Limitation period proportionate in relation to highly serious offending 	<p>HIGH/5</p> <ul style="list-style-type: none"> Limitation periods proportionate in relation to graduated seriousness of offending 	<p>MEDIUM-HIGH/5</p> <ul style="list-style-type: none"> Limitation periods proportionate in relation to graduated seriousness of offending
Provides reasonable	<ul style="list-style-type: none"> Ensures someone who has 	MEDIUM-HIGH/4	MEDIUM/3	HIGH/5	HIGH/5	HIGH/5

Criteria	What this means	Option 1 (status quo – 5 years)	Option 2 (Criminal Procedure Act)	Option 3 (4 years + longer time allowed by CPA)	Option 4 (CPA with 5 year exceptions)	Option 5 (4 years with CPA exceptions)
<p>opportunity for detection and investigation of offence and for apprehension of offender (weight: max 5)</p>	<p>committed an unlawful act does not escape punishment because their actions remained undetected for many years, because they don't return to New Zealand waters within the limitation period or because an investigation is highly complex</p>	<ul style="list-style-type: none"> Addresses offending where detection of offence is likely to be immediate Addresses offending where detection of offence may be delayed (eg erroneous entries in relation to border assurance detected through audit) Addresses offending where offender temporarily leaves New Zealand's jurisdiction Addresses much offending involving complex investigation and engagement with domestic and international partners (eg trans-border offending) Does not address offending in relation to some highly complex and serious offending (eg Defrauding the Revenue of Customs) 	<ul style="list-style-type: none"> Addresses offending where detection of offence is likely to be immediate Addresses offending involving complex investigation and engagement with domestic and international partners (eg trans-border offending) Addresses offending in relation to some highly complex and serious offending (eg Defrauding the Revenue of Customs) Does not address offending where detection of offence may be delayed (eg erroneous entries in relation to border assurance detected through audit) Does not address offending where offender temporarily leaves New Zealand's jurisdiction 	<ul style="list-style-type: none"> Addresses offending where detection of offence is likely to be immediate Addresses offending where detection of offence may be delayed (eg erroneous entries in relation to border assurance detected through audit) Addresses offending where offender temporarily leaves New Zealand's jurisdiction Addresses offending involving complex investigation and engagement with domestic and international partners (eg trans-border offending) Addresses offending in relation to highly complex and serious offending (eg Defrauding the Revenue of Customs) 	<ul style="list-style-type: none"> Addresses offending where detection of offence is likely to be immediate Addresses offending where detection of offence may be delayed (eg erroneous entries in relation to border assurance detected through audit) Addresses offending where offender temporarily leaves New Zealand's jurisdiction Addresses offending involving complex investigation and engagement with domestic and international partners (eg trans-border offending) Addresses offending in relation to highly complex and serious offending (eg Defrauding the Revenue of Customs) 	<ul style="list-style-type: none"> Addresses offending where detection of offence is likely to be immediate Addresses offending where detection of offence may be delayed (eg erroneous entries in relation to border assurance detected through audit) Addresses offending where offender temporarily leaves New Zealand's jurisdiction Addresses offending involving complex investigation and engagement with domestic and international partners (eg trans-border offending) Addresses offending in relation to highly complex and serious offending (eg Defrauding the Revenue of Customs)

Criteria	What this means	Option 1 (status quo – 5 years)	Option 2 (Criminal Procedure Act)	Option 3 (4 years + longer time allowed by CPA)	Option 4 (CPA with 5 year exceptions)	Option 5 (4 years with CPA exceptions)
		Defrauding the Revenue of Customs)	Zealand’s jurisdiction			offending in relation to highly complex and serious offending (eg Defrauding the Revenue of Customs)
Workable and Transparent (weight: max 5)	<ul style="list-style-type: none"> Easy to understand and easy to enforce Chain of conduct (and related offences) not arbitrarily separated 	<p>HIGH/5</p> <ul style="list-style-type: none"> High ease of understanding and enforcement Related offences able to be progressed on same timeline 	<p>LOW-MEDIUM/2</p> <ul style="list-style-type: none"> Medium ease of understanding and enforcement at commencement, over time likely to rise to High Related offences not able to be progressed on same timeline 	<p>HIGH/5</p> <ul style="list-style-type: none"> High ease of understanding and enforcement, over time likely to rise to High Related offences generally able to be progressed on similar timelines 	<p>MEDIUM/3</p> <ul style="list-style-type: none"> Medium ease of understanding and enforcement at commencement, over time likely to rise to High Related offences generally able to be progressed on similar timelines 	<p>MEDIUM-HIGH/4</p> <ul style="list-style-type: none"> Medium-High ease of understanding and enforcement, over time likely to rise to High Related offences generally able to be progressed on similar timelines
Certainty and fairness (weight: max 3)	<ul style="list-style-type: none"> Provides legal certainty for individuals and businesses through legislative guide to appropriate maximum length of limitation period Protects defendant’s interest in being 	<p>MEDIUM/2</p> <ul style="list-style-type: none"> Minimal legislative guide While mitigated by Customs’ operational practice/Court oversight, there remains a risk of the following: <ul style="list-style-type: none"> some uncertainty 	<p>HIGH/3</p> <ul style="list-style-type: none"> Detailed legislative guidance High level of certainty for individuals and businesses in terms of facing possible prosecution Not unreasonably 	<p>MEDIUM-HIGH/2.5</p> <ul style="list-style-type: none"> Legislative guidance While mitigated by Customs’ operational practice/Court oversight, there remains a risk of the following: <ul style="list-style-type: none"> uncertainty for individuals and 	<p>HIGH/3</p> <ul style="list-style-type: none"> Detailed legislative guidance High level of certainty for individuals and businesses in terms of facing possible prosecution Not unreasonably constrained in 	<p>HIGH/3</p> <ul style="list-style-type: none"> Legislative guidance High level of certainty for individuals and businesses in terms of facing possible prosecution

Criteria	Option 1 (status quo – 5 years)	Option 2 (Criminal Procedure Act)	Option 3 (4 years + longer time allowed by CPA)	Option 4 (CPA with 5 year exceptions)	Option 5 (4 years with CPA exceptions)
<p>certain, as far as possible, of any jeopardy he or she faces</p> <ul style="list-style-type: none"> Defendant (whether individual or corporate entity) is not unreasonably constrained in presenting a full defence by an unfair passage of time (ie. witnesses unavailable or unreliable, documents lost, evidence destroyed) 	<p>for individuals and businesses in terms of facing possible prosecution</p> <ul style="list-style-type: none"> defendant may be unreasonably constrained in presenting a full defence 	<p>constrained in presenting a full defence</p>	<p>businesses in terms of facing possible prosecution</p> <ul style="list-style-type: none"> defendant may be unreasonably constrained in presenting a full defence 	<p>presenting a full defence</p>	
<p>Consistency with statute book (weight: max 3)</p> <ul style="list-style-type: none"> Consistent with the Criminal Procedure Act 2011 (Note: LAC Guidelines stipulate that legislation should not provide for a different limitation period in respect of new criminal 	<p>MEDIUM/2</p> <ul style="list-style-type: none"> Low consistency with Criminal Procedure Act 2011 Medium consistency with approach in Fisheries Act 1996 and Immigration Act 2009 (limitation) 	<p>MEDIUM-HIGH/2.5</p> <ul style="list-style-type: none"> High consistency with Criminal Procedure Act 2011 Medium inconsistency with regulatory legislation (limitation periods are significantly 	<p>MEDIUM/2</p> <ul style="list-style-type: none"> Low-medium consistency with Criminal Procedure Act 2011 (only provides increase to no limitation period for 3 offences) High consistency with 	<p>MEDIUM-HIGH/2.5</p> <ul style="list-style-type: none"> High consistency with Criminal Procedure Act 2011 Medium consistency with regulatory legislation (limitation periods are significantly lower for 	<p>MEDIUM-HIGH/2.5</p> <ul style="list-style-type: none"> Medium consistency with Criminal Procedure Act 2011 High consistency with regulatory legislation (Tax Administration Act,

Criteria	What this means	Option 1 (status quo – 5 years)	Option 2 (Criminal Procedure Act)	Option 3 (4 years + longer time allowed by CPA)	Option 4 (CPA with 5 year exceptions)	Option 5 (4 years with CPA exceptions)
	<p>offences)</p> <ul style="list-style-type: none"> Consistent with approaches used by other regulatory agencies 	<p>period used is significantly lower at 12 months or two years)</p> <ul style="list-style-type: none"> Medium consistency with Tax Administration Act 1993, Biosecurity Act 1993, and Animal Welfare Act 1999 (each having blanket limitation periods of 10/4 years (TAA) and 2 years (BA and AWA) with limitation periods applying under the Criminal Procedure Act for specified offences). 	<p>lower in Fisheries Act and Immigration Act; Tax Administration Act, Biosecurity Act and Animal Welfare Act all carve out exceptions).</p>	<p>Food Act 2014</p> <ul style="list-style-type: none"> Medium consistency with Biosecurity Act 1993 	<p>Fisheries Act and Immigration Act; Tax Administration Act, Biosecurity Act and Animal Welfare Act all carve out exceptions)</p>	<p>Biosecurity Act and Animal Welfare Act all carve out exceptions)</p>

Appendix 2 – Option 3 – Criminal Procedure Act 2011 limitation periods for specified Customs and Excise Bill offences

Customs and Excise Bill offence	Proposed limitation period (pursuant to Criminal Procedure Act)
1. Offences in relation to knowingly importing or exporting objectionable publications (clause 367)	No limitation
2. Defrauding revenue of Customs (clause 348)	
3. Offences in relation to advance notice of arrival (clause 13)	5 years (Solicitor-General may also consent to filing after that date)
4. Offences in relation to craft that arrive at place other than Customs place (clause 18(1))	
5. Offence in relation to craft departing without certificate of clearance, etc (clause 36)	
6. Offences in relation to departure only from Customs place (clause 42)	
7. Offences in relation to facilitation of boarding (clause 172(1))	
8. Offences in relation to facilitation of boarding (clause 172(2))	
9. Offences in relation to custody of detained goods (clause 225(3))	
10. Offence in relation to unauthorised access to or improper use of registered user system (clause 306)	
11. Offence in relation to interference with registered user system (clause 307)	
12. Further offences related records and information (clause 347)	
13. Offence in relation to seized goods (clause 352)	
14. Threatening or resisting Customs officer (clause 353)	
15. Killing or injuring Customs dog (clause 356)	
16. Personation of Customs officer (clause 357)	
17. Offences in relation to knowingly importing or exporting goods for dishonest purpose (clause 368)	

Appendix 3 – Option 5 – Criminal Procedure Act 2011 limitation periods for specified Customs and Excise Bill offences

Customs and Excise Bill offence <i>(Offence summarised where not self-evident from clause title)</i>	Maximum penalty	Proposed limitation period (pursuant to Criminal Procedure Act)
1. Offences in relation to knowingly importing or exporting objectionable publications (clause 367)	Individual: 10 years imprisonment; Body Corporate: \$100,000 fine	No limitation
2. Defrauding revenue of Customs (clause 348)	Individual: 5 years imprisonment, or \$10,000 fine (or 3 times value of goods if greater). Body Corporate: \$50,000, or 3 times value of goods if greater. Where goods are tobacco: Individual: 5 years imprisonment or \$20,000 fine or both; Body Corporate: \$100,000 fine.	
3. Offences in relation to craft that arrive at place other than Customs place, etc (clause 18(3)) <i>Failure to comply with requirement that no person may leave or board craft at a place other than a Customs place unless authorised to do so by a Customs officer.</i>	\$5,000 fine	6 months
4. Offence in relation to leaving or boarding arriving craft before inward report made (clause 20) <i>Failure to comply with the requirement to not leave/board a craft (unless authorised by a Customs officer) until inward report has been provided to Customs.</i>	\$5,000 fine	
5. Offences in relation to inward report, etc (clause 25(1) and (2)) <i>Owner/person in charge of craft fails to comply with requirement to provide inward report to Customs within prescribed time, inward report not provided as prescribed by chief executive's rules or with required supporting documents, person in charge of craft fails to comply with Customs' directions relating to movement of the craft within a Customs place or unloading of goods/disembarkation of persons.</i>	\$5,000 fine	

Customs and Excise Bill offence <i>(Offence summarised where not self-evident from clause title)</i>	Maximum penalty	Proposed limitation period (pursuant to Criminal Procedure Act)
6. Offences in relation to failure to answer questions or produce documents (clause 27)	Individual: \$5,000 fine (\$25,000 for a body corporate)	
7. Offences in relation to production of certificate of clearance (clause 40) <i>Failure to produce certificate of clearance when required by Customs officer/refusal to answer questions relating to craft/occupants/journey/knowingly gives a false answer to a question</i>	\$5,000 fine	
8. Offence in relation to unloading goods (clause 79) <i>Failure to comply with prohibition on unloading goods subject to control of Customs from a craft except where permit of safety of the craft/goods/persons on craft)</i>	\$5,000 fine	
9. Offence in relation to direction of chief executive under section 131(3)(b) (clause 133(1) and (2)) <i>Failure to comply with a direction to retain possession or control of goods pending the resolution of the dispute</i>	Individual: \$5,000 fine (\$25,000 for a body corporate)	
10. Offence in relation to securing seized goods (clause 160) <i>Fails to keep the goods in safe keeping until a forfeiture decision is made.</i>	\$5,000 fine	
11. Offences in relation to requirements imposed under section 186 or 187 (clause 188) <i>Wilfully failing to comply with any requirement imposed under those sections. Section 186 ("Completion of processing under Immigration Act 2009 and Biosecurity Act 1993") requires a person to remain in a designated place until processing is complete. Section 187 ("Cases requiring investigation for public health or law enforcement purposes") empowers a Customs officer to direct the person to remain in a designated place.</i>	\$5,000 fine	
12. Offence in relation to failure to produce evidence of identity/entitlement to travel, etc (clause 181)	\$5,000 fine	

Customs and Excise Bill offence <i>(Offence summarised where not self-evident from clause title)</i>	Maximum penalty	Proposed limitation period (pursuant to Criminal Procedure Act)
13. Offence in relation to use of electronic communication (clause 196)	\$1,000 fine	
14. Offence in relation to failure to produce evidence of identity, entitlement to travel or other matters (clause 198)	\$5,000 fine	
15. Offence in relation to failure to comply with requirement under section 230 or 231 (clause 232) <i>Failing to comply with requirement imposed under those sections. Section 230 ("Requirement to produce documents") empowers the chief executive to require a person to produce records and documents, take copies, answer any questions (where Customs officer has reasonable cause to suspect goods are or may be dealt with unlawfully). Section 231 ("Further powers in relation to documents") requires a person to produce for inspection any records/documents where relevant to an investigation, audit, recovery of debt, take copies, answer all questions.</i>	Individual: \$5,000 fine (\$25,000 for a body corporate)	
16. Offence in relation to failure to attend, give evidence, supply certain things, etc (clauses 329 and 330) <i>Failure to attend etc when summoned to attend the Customs Appeal Authority</i>	\$5,000 fine	
17. Offences in relation to failure to give Customs access to information (clause 335(3) and (4))	Individual: \$5,000 fine (\$25,000 for a body corporate)	
18. Obstructing Customs officer or interfering with Customs property (clause 354)	3 months imprisonment or \$5,000 fine	
19. False allegation or report to Customs officer with intention of diverting deployment of Customs personnel, etc (clause 355)	3 months imprisonment or \$5,000 fine	
20. Failure to answer questions (clause 360)	Individual: \$5,000 fine (\$25,000 for a body corporate)	
21. Possession of incomplete documents (clause 363)	\$5,000 fine	