



AUSTRALIAN CUSTOMS NOTICE NO. 2010/24

Infringement Notice Scheme (INS): Legislation and Guidelines Amendments

Background

On 22 May 2009 the *Customs Amendment (Enhanced Border Controls and Other Measures) Act 2009* received royal assent. This legislation was introduced to formalise the undertaking to industry that when considering sanctions, Customs and Border Protection would base its calculations for Cargo Report timeliness on the Actual Arrival of a vessel or aircraft. This refers to consideration for sanctions only and does not negate the legal requirement for Cargo Reporters to lodge their reports based on the estimated time of arrival.

New offences were also introduced relating to accounting for and keeping safe goods that are subject to the control of Customs and Border Protection, including goods unloaded and stored at a Cargo Terminal Operator (wharf or airport), and goods held in a section 77G licensed depot or a section 79 licensed warehouse.

Failing to Account for Goods and Keeping Goods Safely

The *Customs Act 1901* requires people who deal with dutiable goods that are subject to the control of Customs and Border Protection (i.e. between importation and delivery following the payment of duty, GST etc) to keep those goods safely and account for them if requested. If these obligations are not satisfied, Customs and Border Protection can demand the payment of the duty on those goods.

Prior to this legislative change, there was no appropriate penalty to enforce the requirement to keep non-dutiable goods safe. While no duty applies to these goods, the goods still need to be accounted for as the goods may be prohibited by or subject to a restriction under the *Customs Act 1901* or another law of the Commonwealth.

New offences have been created for failing to keep goods which are subject to the control of Customs and Border Protection safely and failing to account for such goods to the satisfaction of a Collector of Customs and Border Protection if required to do so.

The following new subsections of section 36 and a new section 37 have been created:

- Subsections 36(1) and (2) create two new offences for failing to keep goods, which are subject to the control of Customs and Border Protection, safely;
- Subsections 36(4), (5), (6) and (7) create four new offences for failing, if required by a Collector, to account for goods which are subject to the control of Customs and Border Protection; and
- Section 37 specifies how a person, if requested, is to account for goods to the satisfaction of a Collector.

Some of these offences are strict liability, and where offences are detected the INS may be used in lieu of prosecution.

New offence	Penalty under the INS	Maximum penalty a court could impose
s36(1)	N/A	500 penalty units or \$55,000
s36(2)	12 penalty units or \$1,320	60 penalty units or \$6,600
s36(4)	N/A	500 penalty units or \$55,000
s36(5)	N/A	500 penalty units or \$55,000
s36(6)	12 penalty units or \$1,320	60 penalty units or \$6,600
s36(7)	12 penalty units or \$1,320	60 penalty units or \$6,600

Legislation and policy allow for offences dealt with under the INS to be subject to a lower financial penalty. For the new offences under s36 included in the INS the penalty amount will be \$1,320, whereas the maximum penalty that a court could impose upon prosecution is up to \$55,000.

Exception to the offence of failing to make a cargo report – Schedule 3

A new exception to the offence in “Section 64AB(10) - failure to meet reporting requirements for the report of cargo” has been included (the exception regards timing of the late Cargo Report).

Cargo Reports for ships must be made at least 48 hours before the estimated time of arrival of the ship. Cargo Reports for aircraft must be made at least 2 hours before the estimated time of arrival of the aircraft. Shorter periods apply for short journeys. A Cargo Reporter commits an offence if a cargo report is late.

Following discussions with industry it was agreed that Customs and Border Protection would not prosecute or serve an Infringement Notice in relation to reports that are made at least 48 hours (for ships) or 2 hours (for aircraft) before the actual time of arrival of the ship or aircraft. This amendment gives legislative effect to that agreement. Note that in some circumstances the actual time of arrival of a ship or aircraft may be earlier than its estimated time of arrival. In these cases it would be the estimated time of arrival that is used to determine whether the Cargo Report is late for prosecution or infringement notice purposes.

This change refers to consideration for sanctions only and does not negate the legal requirement for Cargo Reporters to lodge their reports based on the estimated time of arrival.

Administrative Moratorium

A six month moratorium on the new offences introduced by this legislation means that Customs and Border Protection will not be acting on any offences prior to 22 May 2010. The administrative moratorium has been extended to 30 June 2010 to allow industry to implement any changes required to meet compliance obligations in relation to the new offences.

For further information contact the Customs and Border Protection Depot or Warehouse Compliance team in your area, email: compliance1@customs.gov.au or call 1300 363 263.

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