

INFRINGEMENT NOTICE GUIDELINES (2010)
Customs Act 1901, Part XIII, Subdivision A of Division 5

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1. INTRODUCTION

Customs and Border Protection's Regulatory Philosophy serves as the framework within which all our regulatory activities are undertaken. These guidelines should be read in that context.

When clients comply with Customs-related laws, the need for Customs and Border Protection's intervention is minimized. Customs and Border Protection therefore has a direct interest in improving the compliance levels of the importing and exporting community and is committed to fostering an environment where we work cooperatively with them to improve compliance.

Our response to non-compliant activity is determined by the extent and nature of the non-compliance.

1.1 The Infringement Notice Scheme

The *Customs Act 1901* (the Act) contains a range of offence provisions. Many of these offences are specifically described as 'strict liability' offences.

Subdivision A of Division 5 of Part XIII of the Act contains an infringement notice scheme that applies to some, but not all, of those strict liability offences. The relevant offences are listed in paragraph 3.1.1 below.

These infringement notice guidelines relate only to those offences and **must** be taken into account when exercising powers under Subdivision A of Division 5 (see section 243XA of the Act).

In relation to infringement notices, the powers in Subdivision A of Division 5 are:

- to cause a notice to be served (section 243Y);
- to withdraw a notice (section 243ZA); and
- to extend the period for payment of the penalty (section 243ZE).

The guidelines are intended to assist the relevant decision-maker in exercising the discretion to use these powers by setting out relevant considerations to be taken into account.

While the guidelines must be considered, they are only for guidance. They do not give directions as to whether an infringement notice should or should not be served in any particular circumstance. That is a matter for the decision-maker to decide on the facts of each case.

It should also be remembered that, just because Customs and Border Protection could impose a penalty for an offence by using the infringement notice scheme, this does not rule out the option of proceeding straight to prosecution in court.

Where Customs and Border Protection does serve an infringement notice, it is because Customs and Border Protection is prepared to prosecute the offence in court if the penalty in the infringement notice is not paid.

1.2 Meaning of certain words

In this document:

the Act	means	the <i>Customs Act 1901</i> ;
the CEO	means	the Chief Executive Officer;
the decision-maker	means	the CEO or delegate;
the guidelines	means	these Infringement Notice Guidelines; and
the ITM Act	means	the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i>

Also, unless otherwise indicated:

- References to section numbers are to sections of the Act; and
- Words and phrases defined in the Act have the same meaning in the guidelines.

1.2.1 What is a 'statement'? Sections 243T, 243U and 243V

Most statements to Customs and Border Protection will be communications in writing. Customs and Border Protection will generally regard an entry¹ or a report as a whole required under the Act, (rather than a single line or piece of information in such a communication) as a statement.

Example: *an import entry of 200 lines will be regarded as a statement. An outturn report listing 30 consignments will also be regarded as a single statement for section 243V.*

However, under section 243U, a statement does not include:

- A statement made under Part XVA (Tariff Concession Orders) or XVB (Special provisions relating to anti-dumping duties) of the Act; or
- A statement that a person who is a passenger on, or a member of the crew of, a ship or aircraft made in relation to his or her accompanied person or household effects that were carried on the ship or aircraft.

Electronic communications to Customs and Border Protection are taken to be statements made to the CEO (section 243W refers).

¹ The term 'entry' includes a declaration, an RCR or an ACEAN..

1.2.2 'Reasonableness'

There are various references in these guidelines to the concept of reasonableness (for example, 'reasonable grounds to believe...' in part 3.1.2; 'reasonable efforts to comply ...' in part 3.3.4). The references to reasonableness are discussed under the relevant consideration.

1.2.3 Who makes, or causes to be made, a statement or omission?

From 14 January 2004, under sections 243U and 243V², where a false statement that does not result in a loss of duty is made, liability for the offence rests not only on the person who 'makes' the statement but also on any person who 'caused' the statement to be made. By broadening the class of possible offenders to cover all those potentially involved in the making of the statement, Customs and Border Protection will have the flexibility to target where the breakdown in accuracy occurred, rather than being limited to the final communicator of the information to Customs and Border Protection.

For example, if an owner provides false information to a broker and the broker includes that information in a communication to Customs and Border Protection, the owner will have 'caused' the false statement to be made. If, however, the broker incorrectly transcribes accurate information provided by the owner and then communicates it to Customs and Border Protection, then the broker will be liable for having made the false statement.

The Customs Act as in force before 14 January 2004 will continue to apply to statements made prior to that date.

1.2.4 What is a 'material particular'? Sections 243T, 243U and 243V.

A particular is material if it affects Customs and Border Protection's ability to perform its functions under Customs-related laws effectively and efficiently. These functions include:

- Collecting customs duty and indirect taxes;
- Administering other border-related revenue collection;
- Border and community protection; and
- Statutory functions under the Act or Customs-related law.

All data required in approved and prescribed forms and statements is considered material. In other statements, whether a particular is material will depend on the consequences for Customs and Border Protection's functions.

Example: *The date of arrival or departure of a ship is important for the purposes of Customs and Border Protection examining cargo, because the wrong date could prevent examination.*

² These provisions were amended by *Customs Legislation Amendment Act (No.2) 2003*.

1.2.5 When is a statement false or misleading?

A statement is false or misleading if information in the statement about a material particular is wrong or tends to indicate to Customs and Border Protection something other than what is actually the case. A statement could also be false or misleading if the same effect is achieved by leaving information about a material particular out of the statement.

This will often depend on the type of statement being made and may vary between statements. A statement may be misleading even though technically it is not false.

Example: *A statement that correctly describes goods may be regarded as misleading if it omits that they are made of a substance for which a permit may be required.*

1.2.6 False or misleading statements relating to refunds and drawbacks

From 14 January 2004 section 243T³ makes the owner of goods liable for an offence when:

- the amount of duty properly payable on the goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading; or
- the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis that the statement was not false or misleading exceeds the amount of the refund or drawback properly payable (which may be nil).

Before 14 January 2004, section 243T as it related to false statements resulting in the overpayment of a refund or drawback of duty required the refund or drawback to have actually been paid before an offence was committed. This section has been amended to provide that it is an offence if, on the basis of a false statement, a greater amount of refund or drawback would have been payable than would have been the case if the statement had not been false.

The Customs Act as in force before 14 January 2004 will continue to apply to statements made prior to that date.

³ This provision was amended by *Customs Legislation Amendment Act (No.2) 2003*.

2. DELEGATION

The following matters are relevant for the CEO when considering delegation of the powers under Subdivision A of Division 5:

2.1 Preferred level of officer

2.1.1 Subject to paragraph 2.2.3, deciding to serve an infringement notice or extend time for payment:

- SES officers;
- Regional Directors; and
- ACS Level 5 officers with primary responsibility for cargo management or compliance related issues; and

2.2.2 Subject to paragraph 2.2.3, deciding to withdraw an infringement notice:

- SES officers; and
- Regional Directors.

2.2.3 The preferred level of officer for deciding to serve an infringement notice or withdraw an infringement notice for any offence under subsections 64(13), 64AA(10), 64AAB(7), 64AAC(6), 64AB(10), 64ABAA(9), 71AAAQ(1), 71G(1), 74(6), or 243V(1) is SES officers only.

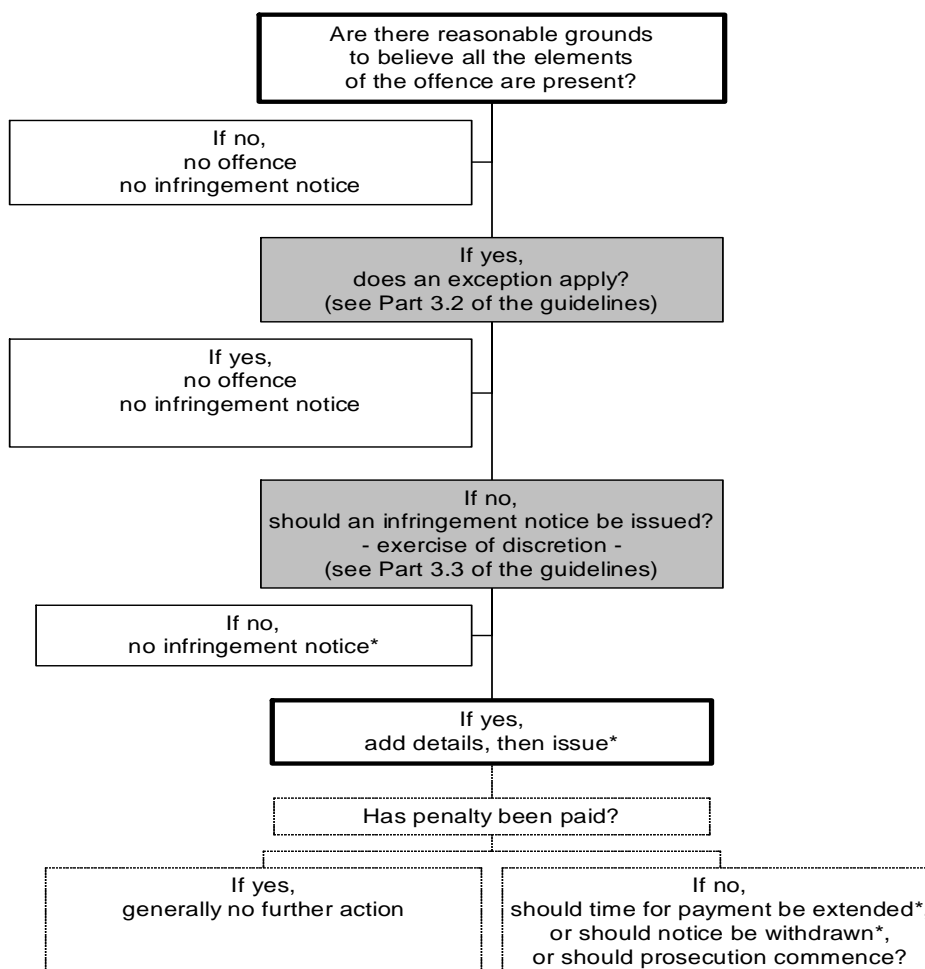
2.2 Training

Whether the officer has satisfactorily completed a training course on the exercise of powers under the infringement notice scheme in Subdivision A of Division 5.

3. POWER TO SERVE AN INFRINGEMENT NOTICE

3.1 What is the process for serving notices?

The following flowchart indicates the questions the decision-maker should ask, and the steps to be taken, in administering infringement notices. The guidelines expand on the steps in the process.



Note: At any point above marked with an asterisk (*), it is possible to proceed to prosecution instead of completing the infringement notice process.

3.1.1 What are the relevant offences?

Subject to these guidelines, the infringement notice scheme only applies to the strict liability offences listed in section 243X⁴ of the Act. The listed offences did not all commence operation at the same time. The infringement notice scheme and these guidelines only apply to the specified offences from the time when they commenced.

The offences are:

SUBSECTION	HEADING
33(2), (3) & (6)	Moving altering or interfering with goods subject to Customs control without authority
36(2), (6) & (7)**	Failure to keep goods safely or failure to account for goods
64(13)*	Failure to meet reporting requirements for the impending arrival of a ship or aircraft
64AA(10)*	Failure to meet reporting requirements for the arrival of a ship or aircraft
64AAB(7)*	Failure to meet reporting requirements for particulars of other cargo reporters
64AAC(6)*	Failure to meet reporting requirements for persons engaged to unload cargo
64AB(10)*	Failure to meet reporting requirements for the report of cargo
64ABAA(9)*	Failure to meet reporting requirements for outturn reports
71AAAQ(1)*	Making more than one self assessed clearance declaration
71G(1)*	Entering goods that have already been entered for home consumption
74(6)*	Failure to comply with directions
99(3)	Delivery of goods for export without authority
102A(4)	Failure of holder of warehouse licence to notify Customs of prescribed goods for export
113(1)	Failure to enter goods for export and loading/exporting without authority to deal
114B(7)	Failure to comply with confirming exporter conditions
114E(1)	Delivering goods to a wharf or airport for export without authority
114F(2)	Failure to notify of delivery to or release from a wharf or airport

⁴ The listed provisions are those provisions as inserted, substituted or amended by the ITM Act, those provisions as amended by a later Act or provision inserted, substituted or amended by a later Act only. If the relevant ITM Act item substituting a provision had not commenced at the time an incident otherwise having all the elements of the offence occurred, there is NO power to serve an infringement notice for a repealed provision of the Act with the same section number.

115(1)	Permitting goods to be taken on board a ship or aircraft without authority
116(2)	Failure to withdraw or amend an export declaration
117AA(1)	Consolidation of prescribed goods other than at a prescribed place
117AA(2)	Failure to notify of receipt of prescribed goods
117AA(3)	Release of prescribed goods without ascertaining status
117AA(4)	Failure to notify Customs of release of prescribed goods
117AA1)	Failure to provide submanifests
118(1)	Departing without Certificate of Clearance
119(3)	Failure to communicate outward manifest
243T(1)	False or misleading statements resulting in a loss of duty
243U(1)	False or misleading statements not resulting in a loss of duty
243V(1)	False or misleading statements in a cargo report or outturn report

* These offences commenced on 19 July 2005. A statutory moratorium applied to the serving of infringement notices for offences against subsection 64AB(10) of the Act in relation to the electronic reporting of cargo that occurred before 19 January 2006. An administrative moratorium applies to the serving of infringement notices for these offences that occur before 12 April 2006. Refer to Appendix B for further details on the moratorium.

** These offences commenced on 22 November 2009. An administrative moratorium applies to the serving of infringement notices for these offences that occur before 1 July 2010. Refer to Appendix B for further details on the moratorium.

3.1.2 When CAN an infringement notice be served?

It is only when the decision-maker believes on reasonable grounds that all the elements of an offence are present that an infringement notice can be served. The elements of the listed offences are set out in detail at **Appendix A**.

3.1.3 When can an infringement notice NOT be served?

There is **NO** power to serve an infringement notice if:

- on the information available to the decision-maker, he or she does not believe on reasonable grounds that an offence has been committed, or
- the action in question falls within an exception category – these are described in paragraph 3.2 below.

3.1.4 When is there DISCRETION about serving an infringement notice?

Even if the decision-maker has reasonable grounds to believe that:

- the elements of an offence are all present, and
- no exception applies

the existence of certain indicators may make it appropriate for the decision-maker to exercise his or her discretion not to serve an infringement notice.

Guidelines for exercising this discretion are set out in paragraph 3.3 below.

3.2 Exceptions to offences

The Act and the *Criminal Code* set out a range of circumstances that create exceptions, or defences, to prosecution for an alleged offence. These include:

- voluntary disclosure of false or misleading statements (sections 243T and 243U);
- statements made using 'Amberline' – uncertainty identified at the time of making the statement (section 243T);
- exercising due diligence to prevent an employee moving goods without authority (section 33);
- statutory moratorium for late cargo reports (section 64AB);
- timing of late cargo reports (section 64AB);
- mistaken facts – all offences.

In most cases, these exceptions have several elements, each of which must be present for the exception to operate.

In addition, Customs and Border Protection:

- will apply an administrative moratorium in some cases (See paragraph 3.2.5); and
- will not serve an infringement notice in particular circumstances where the false or misleading statement relates to a claim for preferential treatment under the Australia-United States Free Trade Agreement (see section 3.2.7).

If the decision-maker is satisfied on reasonable grounds that an exception applies in relation to an offence, then there is **NO** power to serve an infringement notice for the offence.

3.2.1 Voluntary disclosure of false or misleading statements – sections 243T & 243U

The offences in sections 243T and 243U relating to statements that are false or misleading in a material particular, do not apply in certain circumstances where the person voluntarily discloses, in an error notice, that a statement is false or misleading before a notice under section 214AD has been given to:

- the owner or agent (see subsections 243T(4) and (4A));
- the person who made the statement or omission or the person who caused the statement or omission to be made (see subsection 243U(4) and (4A)).

An offence will not be committed if the following are also satisfied:

- a person voluntarily gives the error notice to an officer doing duty in relation to the matter to which the statement relates, indicating that the statement is false or misleading in a material particular (including because of the omission of a matter or thing);
- any duty unpaid, or refund or drawback of duty overpaid, is paid to Customs and Border Protection before an infringement notice is served in relation to the statement or proceedings are commenced in relation to the statement.

An error notice is taken not to be given voluntarily if it is given after:

- an officer exercises a power under a Customs-related law to verify information in the statement; or
- an infringement notice is served in relation to the statement; or
- proceedings are commenced in relation to the statement.

The owners of goods and their service providers should take care to ensure that communications to Customs and Border Protection are accurate in the first instance, and to correct errors as soon as they become aware of them. Correcting errors after Customs and Border Protection seeks to verify the content of a communication will not provide protection from liability for an offence.

The following factors are relevant when considering a voluntary disclosure of a false or misleading statement:

- to whom the disclosure was made;
- whether the disclosure was in writing;

- when the disclosure was made;
- whether the person making the disclosure had been given notice of a proposal to exercise monitoring powers under section 214AD;
- whether an officer exercised a power under a Customs-related law to verify information in the statement; or
- whether an infringement notice has been served in respect of the offence;
- whether proceedings have been commenced in respect of the offence;
- if any under paid duty ,or overpaid refund or drawback, has been paid to Customs and Border Protection and when it was paid.

Exception applies – section 243T

When **ALL** of the following apply:

- The disclosure that a statement was false or misleading was made voluntarily and in writing; and
- The disclosure was made to the officer to whom the false or misleading statement was made or another officer doing duty in relation to the matter to which the statement relates; and
- No notice of a proposal to exercise monitoring powers had been given under section 214AD during the time between the making of the false or misleading statement and the voluntary disclosure:
- if the duty had been underpaid – the duty is paid in full before an infringement notice is served on the owner of the goods in relation to the statement or proceedings have commenced against the owner in relation to the statement;
- if a refund or drawback of duty has been overpaid – the excess amount is repaid to Customs and Border Protection before an infringement notice is served on the owner of the goods in relation to the statement or proceedings have commenced against the owner in relation to the statement.

Exception does not apply – section 243T

When any one of the following applies:

- The disclosure was not made in writing.
- The disclosure was not made to the officer to whom the false or misleading statement was made or to another officer doing duty in relation to the matter to which the statement relates.

- Notice of a proposal to exercise monitoring powers had been given under section 214AD during the time between the making of the false or misleading statement and the voluntary disclosure.
- The underpaid duty is not paid in full before an infringement notice is served on the owner of the goods in relation to the statement or proceedings have been commenced against the owner in relation to the statement.
- The overpaid refund or drawback of duty is not repaid to Customs and Border Protection before an infringement notice is served on the owner of the goods in relation to the statement or proceedings have commenced against the owner in relation to the statement.

Exception applies – section 243U

When **ALL** of the following apply:

- The disclosure that a statement was false or misleading was made voluntarily and in writing; and
- The disclosure was made to the officer to whom the false or misleading statement was made or another officer doing duty in relation to the matter to which the statement relates; and
- No notice of a proposal to exercise monitoring powers had been given under section 214AD during the time between the making of the false or misleading statement and the voluntary disclosure.

Exception does not apply – section 243U

When any one of the following applies:

- The disclosure was not made in writing.
- The disclosure was not made to the officer to whom the false or misleading statement was made or to another officer doing duty in relation to the matter to which the statement relates.
- Notice of a proposal to exercise monitoring powers had been given under section 214AD during the time between the making of the false or misleading statement and the voluntary disclosure.

3.2.2 Statements made using ‘amberline’ – uncertainty identified at the time of making the statement – section 243T

The false or misleading statement offence in subsection 243T(1) does not apply in certain circumstances where a person specifies uncertainty as to the accuracy of the information included or omitted from a statement at the time of making the statement (see subsections 243T(5) and (6)).

The following factors are relevant when considering a person’s uncertainty as to the accuracy of a statement due to the information included in, or omitted from, the statement:

- whether the uncertainty was identified at the time the false or misleading statement was made.
- whether the information included or omitted that might make the statement false or misleading in a material particular (the relevant information) is identified.
- whether the statement sets out reasons why the person is uncertain about the relevant information or the reasons for the person’s uncertainty about the effect of omitting the information.

Exception applies

When **ALL** of the following apply:

- The uncertainty was identified by the person making the statement at the time the statement was made; and
- The information included or omitted that might make the statement false or misleading in a material particular is identified; and
- The statement sets out reasons why the person is uncertain about the identified information or the reasons for the person’s uncertainty about the effect of omitting the information.

Example: *In relation to an import declaration, it would generally be acceptable for a person to state that the quantity details from an overseas supplier are illegible in a fax and no clearer copy has been provided despite requests by the person.*

It should be noted that the exception only applies to a false or misleading statement that results in a loss of duty. It does not apply to false or misleading statements for exports, for imports where the statement does not result in loss of duty, in cargo reports or outturn reports.

Exception does not apply

When any one of the following applies:

- The uncertainty was not identified by the person making the statement at the time the false or misleading statement was made.
- The information included or omitted that might make the statement false or misleading in a material particular is not identified.

- The statement does not set out reasons why the person is uncertain about the identified information or the reasons for the person's uncertainty about the effect of omitting the information.

Example: *It will generally be insufficient, in relation to an import declaration, to simply state "I am not sure if this information is correct".*

3.2.3 Due Diligence – subsection 33(3) – employee moves goods without authority

In relation to an offence committed by a person whose employee moves, alters or interferes with goods without authority, it is a defence to prosecution if the person can show that certain reasonable steps were taken to prevent the action (see subsection 33(4)).

If:

- an employer commits an offence because his or her employee, on behalf of the employer, moves, alters or interferes with goods that are subject to the control of Customs, otherwise than by authority of the Act; and
- the employer claims to have taken reasonable precautions, and to have exercised due diligence, to prevent an employee from moving altering or interfering with goods;

the following factors may be relevant:

- The degree of management control or supervision that the employer had over the employee.
- The management systems the employer has in place to monitor the actions of the employee while working.
- The degree of responsibility/autonomy given to the employee relative to the skills and abilities of the employee.

Exception applies

- The employer can demonstrate that he or she adequately managed, controlled or supervised the actions of the employee while the employee was working.

Exception does not apply

- The employer cannot demonstrate that he or she adequately managed, controlled or supervised the actions of the employee while the employee was working.

3.2.4 Statutory moratorium for late cargo reports (section 64AB)

Section 64AB requires cargo reporters to make an electronic cargo report within a specified period before the estimated time of arrival of a ship or aircraft. After section 64AB commences (on 19 July 2005), the Act provides a general moratorium period of 6 months, and a possible further moratorium period of up to an additional 18 months*. An infringement notice **cannot** be served on a cargo reporter who fails to report within the specified period for reporting (see subsection 64AB(12)).

(* This further moratorium period may be granted by the CEO to a cargo reporter who applies for further preparation time to make electronic cargo reports, subject to some conditions).

The following factors are relevant when considering whether the offence is subject to the moratorium:

- whether section 64AB was breached because a cargo report was not made within the prescribed period before the estimated arrival time of the ship or aircraft.
- whether the general 6-month moratorium period applies.
- whether a further moratorium period has been granted to the cargo reporter.

Exception applies

When **ALL** the following apply:

- The offence was committed during the general moratorium period, or a further moratorium period granted to the cargo reporter; and
- The breach of section 64AB occurred because the report was not made within the prescribed period before the estimated arrival time of the ship or aircraft. For example, the cargo report was required to be made 48 hours before the estimated time of arrival of the ship at the first port in Australia but the cargo report was made after the arrival of the ship at the first port in Australia.

Exception does not apply

If any of the following apply:

- The offence was committed after the general moratorium period, or a further moratorium period granted to the cargo reporter.
- The breach of section 64AB occurred for a reason other than because the report was not made within the specified time before the estimated arrival time of the ship or aircraft. For example, the report was not made in the approved form.

3.2.5 Timing of late cargo reports (section 64AB)

Section 64AB requires cargo reporters to make an electronic cargo report within a specified period before the estimated time of arrival of a ship or aircraft. It is a defence to a prosecution and an infringement notice **cannot** be served if the cargo reporter can show that they made the cargo report not later than the specified period, but before the actual time of arrival of the ship or aircraft in Australia.

The following factors are relevant when considering the timing of late cargo reports:

- whether section 64AB was breached because a cargo report was not made within the prescribed period before the estimated arrival time of the ship or aircraft.
- whether the ship or aircraft actually arrived at the first port in Australia after the estimated arrival time or arrival.
- whether the cargo report was made within the prescribed period before the actual arrival of the ship or aircraft.

***For example**, where a cargo reporter, who was required by subsection 64AB to make the cargo report for a ship not later than 48 hours before the estimated time of arrival of that ship in Australia, fails to make the cargo report within the required time but makes the report 48 hours before the actual time of arrival of the ship at its first port in Australia.*

Exception applies

When **ALL** of the following apply:

- A cargo report was made.
- That cargo report was not made within a specified period before the estimated time of arrival of the ship or aircraft as required by section 64AB(8).
- The actual time of arrival at which the ship or aircraft arrived was later than the estimated time of arrival.
- The cargo reporter would not have contravened section 64AB(8) if the estimated time of arrival of the ship or aircraft had been its actual time of arrival.

Exception does not apply

When **ANY** of the following apply:

- A cargo report was not made.
- The breach of section 64AB occurred for a reason other than because the report was not made within a specified period before the estimated time of arrival of the ship or aircraft. For example, the report was not made in the approved form.

The actual time of arrival at which the ship or aircraft arrived was not later than the estimated time of arrival.

- The cargo reporter would have contravened section 64AB(8) if the estimated time of arrival of the ship or aircraft had been its actual time of arrival.

3.2.6 Administrative Moratorium

In addition to the statutory moratorium for section 64AB, Customs and Border Protection has decided to allow a period of grace in relation to other offences covered by the infringement notice scheme. The details are set out in [Appendix B](#) to these guidelines.

The following is relevant when considering any administrative moratorium:

- the published terms of any moratorium declared by the CEO on serving of infringement notices for offences to which Subdivision A of Division 5 applies.

Indicators for not serving an infringement notice

- The circumstances in which the offence was committed are covered by the terms of the moratorium.

Indicators for serving an infringement notice

- The circumstances in which the offence was committed are NOT covered by the terms of the moratorium.

3.2.7 Mistake of fact – all offences

The defence of mistake of fact for strict liability offences is contained in Part 2.3, section 9.2 of the *Criminal Code*. That part of the Criminal Code applies to the Act (section 5AA of the Act refers).

The following factors are relevant where a person claims that an alleged offence was a result of acting under a mistaken belief as to facts:

- the reasonableness of the mistaken belief in the circumstances.
- whether the offence resulted because of the mistaken belief.

What is 'reasonable' will vary from case to case. In order to decide whether this exception applies to a person, the decision-maker will have regard to relevant information supplied by the person to Customs and Border Protection for the purposes of the activity or communication in question, but may also need to seek additional related information.

Exception applies

- Mistaken belief was reasonable; and
- The offence would not have occurred but for that belief.

Exception does not apply

- Mistaken belief was not reasonable; or
- The offence was not a result of the mistaken belief.

3.2.8 Australia - United States Free Trade Agreement (AUSFTA)

In addition to the statutory exceptions for offences against sections 243T and 243U of the Act, where an invalid claim of preferential origin under the AUSFTA is corrected and any duty owing is paid, Customs and Border Protection has decided that an infringement notice will not be served where article 5.13.4 of the AUSFTA would apply.

Indicators for not serving an infringement notice

When ALL of the following apply:

- An invalid claim of preferential origin under the AUSFTA was made; and
- The importer on becoming aware the claim was not valid corrects the invalid claim; and
- The importer on becoming aware the claim was not valid pays any duty owing; and
- The corrections and payment of any duty owing is made within a period of 4 years from the submission of the invalid claim.

Indicators for serving an infringement notice

When any one of the following applies:

- The importer did not correct the invalid claim of preferential origin under the AUSFTA when the importer became aware the claim was not valid.
- The importer intended to make the invalid claim of preferential origin under the AUSFTA, or, recklessly or knowingly made the invalid claim.
- The importer did not pay any duty owing when the importer became aware the claim was not valid.
- The correction of the invalid claim of preferential origin under the AUSFTA and payment of any duty owing did not occur within a period of 4 years from the submission of the invalid claim.

3.3 Exercising discretion - relevant considerations when exercising power to serve an infringement notice

Once a decision-maker has reasonable grounds to believe that one or more of the strict liability offences in question has been committed, then whether or not to serve an infringement notice is still a matter for the discretion of the decision-maker.

This part of the guidelines sets out relevant considerations for deciding how to exercise that discretion. While the guidelines must be considered, they are for guidance only – they do not give directions as to whether an infringement notice should or should not be served in any particular circumstance. That is a matter for the decision-maker to decide in each case.

The areas of consideration are:

- significance of the breach;
- effort/attempt to comply;
- reliance on Customs and Border Protection's advice;
- reasons beyond the person's control; and
- difficulties experienced during the introduction of the Integrated Cargo System (ICS).

Each area of consideration includes factors relevant to the area. **The factors are not weighted and are not intended to be an exhaustive list.** Each area of consideration also includes indicators for serving or not serving an infringement notice. All of the indicators under a particular heading do not need to be satisfied for the decision-maker to consider taking the action in that heading. Likewise, the existence of a factor under one heading does not preclude a decision-maker considering action under the other heading.

The purpose of considering these matters is to put a particular incident into context and to assist in determining the most appropriate response to non-compliance in a particular case.

Ultimately the decision whether or not to serve an infringement notice rests with the decision-maker based on all available relevant information – the indicators are only a guide.

3.3.1 Significance of the breach

The following factors are relevant in considering the significance of a breach of a regulatory requirement.

- The seriousness of the consequences flowing from this particular breach of the regulatory requirement.
- The nature of the goods to which the breach relates (eg, do they have community /revenue protection implications).
- In the context of an offence against section 243T (false or misleading statements resulting in loss of duty), the amount of duty at risk.
- In the context of section 243U (false or misleading statements not resulting in a loss of duty), the number of false or misleading particulars or omissions in the statement.
- In the context of section 243V (false or misleading statements in a cargo or outturn report), the number of false or misleading particulars or omissions in the statement.
- Any advice as specified in an Australian Customs Notice or Australian Customs Cargo Advice applies.

Indicators for not serving an infringement notice

- The regulatory obligation was breached in a relatively minor way (e.g. the entry of goods that have already been entered for home consumption did not or was not likely to, impact on Customs and Border Protection's ability to examine or otherwise risk assess the goods).
- The goods the subject of the offence were considered 'low risk' in terms of community/revenue protection objectives.
- In the context of section 243T, the amount of duty loss resulting from the false or misleading statement is less than \$1250.
- In the context of section 243U, there are less than 5 false or misleading particulars or omissions in the relevant statement.
- In the context of section 243V, there are less than 3 false or misleading particulars or omissions in the relevant cargo or outturn report.

In the above circumstances, even though there may be reasonable grounds to believe that the offence has been committed, the relatively minor nature of the breach may indicate that another response, for example, a warning letter, may be more appropriate than serving an infringement notice.

- The offence, or the circumstances surrounding the offence, is part of more serious conduct, or presents a major risk to the revenue or community protection objectives.

In this circumstance it may be more appropriate to pursue a prosecution in the first instance, instead of serving an infringement notice.

Indicators for serving an infringement notice

- The regulatory obligation was breached in a significant way (eg the lateness of a report adversely impacted on Customs and Border Protection's ability to examine or risk assess cargo).
- The goods the subject of the offence were of high risk to the revenue or community (such as alcohol and tobacco, or goods requiring a permission/licence to import or export).
- In the context of section 243T, the amount of duty loss resulting from the false or misleading statement is \$1250 or more.
- In the context of section 243U, there are 5 or more false or misleading particulars or omissions in the relevant statement.
- In the context of section 243V, there are 3 or more false or misleading particulars or omissions in the relevant cargo or outturn report.

In the above circumstances the behaviour of the person or the consequences of the breach may be serious enough to serve an infringement notice, but not so serious as to pursue a prosecution in the first instance.

3.3.2 Effort/Attempt to Comply

Customs and Border Protection encourages commitment to continuous improvement in compliance.

When considering serving an infringement notice for a particular type of offence, the following factors are relevant:

- whether Customs and Border Protection assisted or offered to assist the person to improve their compliance;
- any effort made to comply with Customs regulatory requirements, including, for example, by participating in Customs and Border Protection, industry association or appropriate institutional training and education activities.
- whether Customs and Border Protection has previously warned the person that further breaches of the type in question could be dealt with through the infringement notice scheme (Note: Customs and Border Protection is not obliged to give such a warning before serving an infringement notice).
- the length of time that has expired since a penalty was imposed* or an infringement notice was served for an offence of the same type.
- Whether a person's previous non-compliance with the particular regulatory requirement was due to difficulties experienced with the operation of the Integrated Cargo System (ICS).

(* For section 234T this includes penalties imposed for false or misleading statements made prior to 1 July 2002.)

Indicators for not serving an infringement notice

- The person appears to have made reasonable efforts to comply with regulatory requirements.
- The person has sought Customs and Border Protection's assistance on how to meet regulatory requirements and acted in accordance with any advice.
- Where a breach of the same offence type has occurred previously, the person appears to have made reasonable attempts or effort to comply with regulatory requirements since that time (in this regard, the longer ago an offence of the same type was committed, the less likely it is Customs and Border Protection will serve an infringement notice).
- The person has not previously been warned that an infringement notice might be served for further breaches, of the same type.

These indicators may militate against the service of an infringement notice on a particular occasion, even though there may be reasonable grounds to believe an offence has been committed. If so, alternative compliance action may be more appropriate, for example, by Customs and Border Protection recommending or providing education or sending a warning letter.

Consideration of difficulties beyond a Cargo Reporter's control

Australian Customs Notice 2007/03 (ACN 2007/03) sets out the compliance approach which takes into account the difficulties in reporting cargo that have been encountered by industry members and concerns about measuring cargo reporting timeliness for compliance purposes by reference to the estimated time of arrival as specified in the original version of the impending arrival report. The compliance approach takes into account feedback concerning:

- reporting surplus cargo;
- the need to re-report cargo that may have originally been reported on time in order to amend particular fields on a cargo report;
- differences between the estimated time of arrival of a ship or aircraft and the actual arrival time of the ship and aircraft; and
- the various versions of the estimated time of arrival of a ship or aircraft that may exist and may be relied upon by industry members to determine the time by when a cargo report needs to be made.

Indicators for serving an infringement notice

- The person appears not to have made reasonable efforts to comply with regulatory requirements.
- The person has not attempted to inform him or herself on how to meet regulatory requirements.
- The breach is part of an ongoing pattern of non-compliance.

When considering whether the breach is part of an ongoing pattern of non-compliance, the context of the person's previous non-compliance (e.g the circumstances in which the non-compliance has occurred) will be considered.

- Offers of assistance from Customs and Border Protection to improve compliance have been rejected or, if accepted, not acted upon.
- Where a breach of the same offence type has occurred previously, no reasonable attempts or efforts to comply appear to have been made in the intervening period.

- Customs and Border Protection has previously warned the person that further breaches of the type were likely to be dealt with using an infringement notice.

When considering these indicators, any previous non-compliance with the particular regulatory requirement that was due to difficulties experienced with the operation of the ICS shall not adversely impact on a person's efforts/attempts to comply.

3.3.3 Reliance on Customs and Border Protection's Advice

The following factors will be relevant when a person claims that they committed the offence as a result of relying on advice given by Customs and Border Protection:

- Whether the person received written advice from Customs and Border Protection (including Tariff or Valuation advices) relevant to the circumstances of the offence.
- If the person asserts that they have received oral advice from Customs and Border Protection – whether the person can detail the circumstances in which the advice was sought and provided.
- In relation to written or oral advice:
 - The information provided by the person to Customs and Border Protection on which the advice was based;
 - The terms of that advice;
 - Whether Customs and Border Protection has subsequently published or given the person further advice.

Indicators for not serving an infringement notice

- The person has written advice from Customs and Border Protection on a matter related to the circumstance in which the offence occurred. (This includes any advice in the public domain, including information on Customs and Border Protection's website, public notices or training materials, to the extent that the advice has not been superseded by later written advice.)
- The person can clearly detail the circumstances in which the oral advice was given.
- The person acted in accordance with the advice and the commission of the offence was a direct result of acting in that way.
- Customs and Border Protection has not provided further advice which alters the advice relied on by the person.

Indicators for serving an infringement notice

- The person does not have written advice from Customs and Border Protection on a matter related to the circumstance in which the offence occurred.
- The person cannot clearly detail the circumstances in which the oral advice was given.
- The person was advised by Customs and Border Protection to seek written advice but did not do so.
- The person has advice but acted in a way inconsistent with that advice which resulted in the commission of the offence.
- The person obtained the advice on the basis of false or misleading information provided to Customs and Border Protection by the person.
- The person acted on the basis of advice that has since been superseded by further advice (eg published in an Australian Customs Notice).

3.3.4 Reasons beyond the control of the person who committed the offence

The following factors are relevant in considering whether the offence was committed for reasons beyond the control of the person who committed the offence:

- How the actions of any other person contributed to the person committing the offence.
- The nature of any business relationship between the person committing the offence and any other person whose actions contributed to the offence.
- For false or misleading statement offences, whether the person who provided the information to Customs and Border Protection relied upon information provided by an unrelated person (eg an overseas entity) and whether it was reasonable to do so without further verification of the accuracy of the information.
- Any business practices in place to make other parties aware of the person's regulatory obligations.
- Unforeseen or unavoidable failures of IT or telecommunications systems.
- Whether the reasons apparently beyond the control of the person have occurred previously.

Indicators for not serving an infringement notice

- The person could not reasonably have foreseen or responded to the independent actions of an unrelated person (eg an overseas entity) which contributed to the commission of the offence.
- There are adequate business practices in place to inform other parties (such as overseas agents) whose actions impact on the accuracy or timeliness of information or the standards required for the person who committed the offence to meet his or her regulatory obligations.
- For offences for a false or misleading statement, the person can demonstrate that reasonable steps were taken, or that it was not practicable to take steps, to verify the accuracy of information received before providing it to Customs and Border Protection.
- IT systems or telecommunications failures that were beyond the control of the person resulted in the breach and there was no other reasonable means by which the person could meet his or her regulatory obligations.

Indicators for serving an infringement notice

- Another person who contributed to the commission of the offence is employed or contracted by, or acting on behalf of (for example overseas agents), the person who committed the offence.
- Lack of, or inadequate, business practices in place to inform other parties (such as overseas agents) whose actions impact on the accuracy or timeliness of information or the standards required for the person who committed the offence to meet his or her regulatory obligations.
- For offences for a false or misleading statement, the person is unable to demonstrate that reasonable steps were taken or that it was not practicable to take steps to verify that information received was correct before providing that information to Customs and Border Protection.
- The breach was the result of IT systems or telecommunications failures that were NOT beyond the control of the person.
- There were other reasonable means by which the person could meet their regulatory obligations.
- Previous similar incidents have occurred and reasonable steps do not appear to have been taken to prevent recurrence.

3.3.5 Difficulties experienced during the introduction of the Integrated Cargo System (ICS)

The following factors are relevant in considering whether the offence was committed due to difficulties experienced during the introduction of the ICS:

- Whether the offence occurred during the introduction of the ICS
- Whether Customs and Border Protection has identified the specific problem with the ICS;
- Whether the non-compliance continues after Customs and Border Protection has advised ICS users that a system fix has been applied.

Indicators for not serving an infringement notice

When ALL of the following apply:

- A person has made reasonable efforts to comply with regulatory requirements;
- The person has been unable to comply due to an identified Customs and Border Protection system problem; and
- The system problem occurred during the introduction of the ICS.

Indicators for serving an infringement notice

When ANY of the following apply:

- Non-compliance with a regulatory requirement continues after a system fix is applied within the ICS; and
- The person has not made reasonable efforts to comply with regulatory requirements.

Note: *An identified Customs and Border Protection system problem includes an ICS system fault, a Customs and Border Protection IT system outage, a failure in Customs and Border Protection electronic data interchange communication or changes to Customs and Border Protection requirements for electronic data interchange or cargo management procedures occasioned by these ICS problems. This is not an exhaustive list of system problems that could be considered to be an identified Customs and Border Protection system problem for these purposes.*

3.4 Disputes in courts etc.

Where there is a dispute with Customs and Border Protection as to the correctness of a statement (eg. where an application for review of a decision made under another part of the Act has been made to Customs and Border Protection, the Administrative Appeals Tribunal [the AAT], or a court), then it is inappropriate to serve an infringement notice on the party involved in the matter until the dispute is resolved.

Note that if an infringement notice is served on a person for an offence against subsection 243T(1) and the person applies for a review of the separate decision about the amount of duty demanded under section 167, the time taken for that review is not included when working out the 28 days for payment of the penalty in the infringement notice. See subsection 243Z(2) of the Act.

4. THE INFRINGEMENT NOTICE DOCUMENT

4.1 What must be included

Section 243Z sets out the information that must be included in an infringement notice. An infringement notice must include:

- the name of the person on whom the notice is being served;
- that it is being served on behalf of the CEO;
- the nature of the alleged offence;
- the time (if known), the date on and place at which the offence is alleged to have been committed; and
- the maximum penalty that a court could impose for the alleged offence;
- where the alleged offence is against section 243T and there is still unpaid duty or unrepaid refund or drawback, a statement that the obligation to pay the duty or repay the refund or drawback continues despite the infringement notice being served;
- the amount of penalty that is payable under the notice in respect of the alleged offence;
- a statement that if the person receiving the infringement notice does not wish the matter to be dealt with by a court and, in the case of section 243T, has paid any unpaid duty or unrepaid refund or drawback of duty within the 28 days after the date of serving the notice, that the person may pay to the CEO, within that 28 days of service of the notice, the amount of penalty specified in the notice;
- a statement that if the penalty and, if relevant any unpaid duty or unrepaid refund or drawback of duty, is paid within 28 days of the service of the notice that the person cannot be prosecuted for the alleged offence and will not be regarded as having been convicted of the offence; and
- advice that the person may make written representations to the CEO seeking the withdrawal of the notice.

4.2 What else can be included?

An infringement notice may contain any other matters that the CEO considers necessary. Relevant matters that might be considered necessary by a decision-maker include:

- The manner in which payment of the penalty can be made.
- The address or location where payment of the penalty can be made.
- A telephone number or contact address to obtain further information about the alleged offence or how to make representations seeking withdrawal of the notice or request extra time for payment of the penalty.
- Reasons for issuing the notice.

Example forms of infringement notices to be used under this scheme are at **Appendix C**.

4.3 Infringement Notice Penalty Amounts

On conviction for an offence by a court, the court can impose any penalty up to the maximum stated in the Act for the offence. However, a penalty in an infringement notice is fixed at 20 per cent of the maximum amount that a court could impose if the offence was prosecuted. The only exception for this is false or misleading statements not resulting in loss of duty (section 243U), where the penalty is the lesser of 10 penalty units, or half ($\frac{1}{2}$) a penalty unit for each false or misleading material particular. The table at **Appendix D** shows the penalty to be applied for each offence under the infringement notice scheme, as well as the maximum penalty a court could impose if convicted for the same offence.

4.4 Time for serving an Infringement Notice

An infringement notice may be served up to 12 months from the date of the offence, with the exception of offences against sections 243T and 243U that are detected as a result of the exercise of monitoring powers. For these two sections, an infringement notice must be served within 12 months of the detection of the alleged offence, or up to a maximum of 4 years after the statement was made, whichever period ends first.

4.5 Method of Serving an Infringement Notice

An infringement notice will be served on the person by:

- where the person is a natural person (i.e not a company) sending it by pre paid post to the last known address of the place of residence or business or delivering it to the person personally; or
- where the person is a body corporate (e.g. a company), leaving it at, or sending it by pre paid post to the head office, registered office or principal office.

5. TIME FOR PAYMENT OF A PENALTY

A person is not obliged to pay the penalty specified in an infringement notice, but may do so to avoid prosecution. The time for payment is 28 days (not including Sundays or public holidays) from the day the notice is served on the person.

5.1 Extending time for payment

Time for payment can be extended before or after the initial 28 day period ends [section 243ZE refers].

The following factors are relevant when considering whether to extend the time for payment of a penalty specified in an infringement notice

- The amount of the penalty.
- The financial circumstances of the person on whom the infringement notice was served.
- Whether the decision-maker intends to withdraw the notice.
- Whether written representations seeking withdrawal of the notice have been made.
- Whether prosecution action has commenced.

Indicators for extending time for payment

- The amount of the penalty is large relative to the capacity of the person to pay within the original 28 days for payment.
- Not extending the time for payment would cause unreasonable financial hardship.
- The time for payment has expired (whether or not the person has already paid the penalty) and the decision-maker now wishes to withdraw the infringement notice.
- Written representations for withdrawal of the notice have been received for Customs and Border Protection's consideration.
- Prosecution action has not commenced.

Indicators for not extending time for payment

- The amount of the penalty is small relative to the capacity of the person to pay within the original 28 days for payment.
- Payment within 28 days would not cause unreasonable financial hardship.
- The decision-maker does not wish to withdraw the infringement notice.
- Prosecution action has commenced.

5.2 Time period for payment if withdrawal is considered

If written representations seeking the withdrawal of the notice are received, the relevant decision-maker, to allow reasonable time for the representation to be considered, must consider extending the time for payment.

6 WITHDRAWING AN INFRINGEMENT NOTICE

A person who has been served with an infringement notice may write to the CEO seeking withdrawal of the notice (see section 243ZA).

The CEO may also initiate the withdrawal of an infringement notice.

6.1 Different Decision-Maker to consider the withdrawal

A different decision-maker from the one who made the decision to serve the infringement notice should decide the merits of withdrawing the infringement notice.

Preferred levels of officers with the delegation to withdraw a notice are identified in Part 2 above.

Note: The Act provides no right of internal appeal or AAT (Administrative Appeals Tribunal) review of a decision not to withdraw a notice, yet a person ultimately has the right to refuse to pay the penalty in an infringement notice and to defend that matter in court if prosecuted.

6.2 Considerations for withdrawing an infringement notice

Subsection 243ZA(3) provides that the matters to which the decision-maker may have regard to in deciding whether to withdraw an infringement notice include, but are not limited to, the following:

- Whether the person has previously been convicted of an offence for a contravention of the Act;
- The circumstances in which the offence specified in the notice is alleged to have been committed;
- Whether the person has previously been served with an infringement notice in respect of which the person paid the penalty specified in the notice;
- Any written representations made by the person.

In addition to these matters, in deciding whether to withdraw an infringement notice, all the considerations set out under paragraph 3 of these guidelines will be relevant.

Indicators for withdrawing an infringement notice

- On the basis of information that was unavailable to the original decision-maker at the time the decision to serve the infringement notice was made, or on reconsideration of information that was available, the new decision-maker:
 - does not believe on reasonable grounds that the offence was committed; or

- considers that one of the exceptions to an offence set out in paragraph 3.2 of these guidelines applies; or
- otherwise considers that an infringement notice should not have been served (including because prosecution for the offence is more appropriate).

Indicators for not withdrawing an infringement notice

- No new information has become available since the time of the decision to serve the infringement notice, or
- On the basis of information that was unavailable to the original decision-maker at the time the decision to serve the infringement notice was made, or on reconsideration of information that was available, the new decision-maker:
 - believes on reasonable grounds that the offence was committed; and
 - does not consider that one of the exceptions set out in paragraph 3.2 of these guidelines applies; and
 - does not otherwise consider that an infringement notice should not have been served.

6.3 The withdrawal decision

If an infringement notice is to be withdrawn, the decision-maker must notify the person on whom it was served, in writing. The decision-maker should attempt to do this within 28 days (excluding Sundays and public holidays) of receipt by Customs and Border Protection of any written representation. Paragraph 5.2 applies if the withdrawal decision cannot be given during the period within which the penalty specified in the infringement notice is required to be paid.

The decision-maker should provide reasons for the withdrawal, or refusal to withdraw, at the time of notification of the decision. If an infringement notice is withdrawn after the penalty in the notice has been paid, the decision-maker must arrange for the penalty amount to be repaid.

7 PROSECUTION

Nothing in Subdivision A of Division 5 of Part XIII of the Act or these guidelines requires an infringement notice to be served for an offence. The decision-maker always retains the discretion to prosecute a person for an alleged offence, either in the first instance, or following the withdrawal of an infringement notice. The Decision maker can also prosecute a person for an offence if an infringement notice served for the offence is not complied with or is withdrawn.

8. ACCESS TO INFORMATION

A person who has been served with an infringement notice in relation to an activity or communication, or has been notified of a decision to withdraw such a notice, may ask the decision-maker for information (if any) about the person's record of such activities or communications that was considered relevant by the decision-maker. The decision-maker must arrange for the person to be provided with a written copy of that information within a reasonable time.

Access to any information held by Customs and Border Protection is also subject to the *Freedom of Information Act 1982*.

APPENDIX A - GUIDE TO ELEMENTS OF STRICT LIABILITY OFFENCES

All references to legislation below are references to the *Customs Act 1901* as in force on the day on which these Guidelines commence.

Subsection 33(2) – moving, altering or interfering with goods subject to Customs control, without authority

When is an offence committed?

An offence is committed if:

- a) a person moved, altered or interfered with goods;
- b) at the time the goods were subject to the control of Customs; and
- c) the movement, alteration or interference was not authorised by or under the *Customs Act 1901*.

Who commits the offence?

The person who moves, alters or interferes with the goods.

Subsection 33(3) - moving, altering or interfering with goods subject to Customs control, without authority

When is an offence committed?

An offence is committed if:

- a) an employee of a person moved, altered or interfered with goods;
- b) at the time the goods were subject to the control of Customs;
- c) the employee was acting on behalf of the person in moving, altering or interfering with the goods; and
- d) the movement, alteration or interference was not authorised by or under the *Customs Act 1901*.

Note: an **employee** of a body corporate includes a person who is a director, a member, or a member of the board of management, of the body corporate.

Who commits the offence?

The employer.

Defence

It is a defence to a prosecution if the employer took reasonable precautions, and exercised due diligence, to prevent the employee from moving, altering or interfering with the goods.

Subsection 33(6) – moving , altering or interfering with goods subject to Customs control, without authority

When is an offence committed?

An offence is committed if:

- a) a person directed or permitted another person to move, alter or interfere with goods;
- b) at the time the goods were subject to the control of Customs; and
- c) the movement, alteration or interference is not authorised by or under the *Customs Act 1901*.

Who commits the offence?

The person who directs or permits the goods to be moved, altered or interfered with.

Subsection 36(2) – failure to keep goods safely

When is an offence committed?

An offence is committed if:

- a) a person has, or has been entrusted with, the possession, custody or control of goods;
- b) at the time the goods were subject to the control of Customs, and
- c) the person fails to keep the goods safely.

Who commits the offence?

The person entrusted with the possession, custody or control of the goods.

Subsection 36(6) – failure to account for goods

When is an offence committed?

An offence is committed if:

- a) a person has, or has been entrusted with, the possession, custody or control of goods;
- b) at the time the goods were subject to the control of Customs, and
- c) the person does not account for the goods to the satisfaction of a Collector when requested by a Collector.

Who commits the offence?

The person entrusted with the possession, custody or control of the goods.

Subsection 36(7) – failure to account for goods

When is an offence committed?

An offence is committed if:

- d) a person has an authority to deal or a section 71E permission in relation to the goods;
- e) the goods are taken from a place for removal to another place, in accordance with the authority to deal or the section 71E permission;
- f) the goods, or part of the goods, are not delivered to that other place;
- g) at the time the goods were subject to the control of Customs, and
- h) the person does not account for the goods to the satisfaction of a Collector, or part of the goods, when requested by a Collector.

Who commits the offence?

The person having the authority to deal or section 71E permission for the goods.

Subsection 64(13) – failure to meet reporting requirements for the impending arrival of a ship or aircraft

When is an offence committed?

An offence is committed if:

- a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia and was due to arrive at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight); and
- b) the operator of the ship or aircraft:
 - did not report to Customs and Border Protection, in accordance with section 64, the impending arrival of the ship or aircraft; or
 - made the impending arrival report earlier than 10 days before the time stated in the report to be the estimated time of arrival of the ship or aircraft; or
 - for a ship - made the impending arrival report later than the start of the prescribed period before the ship's estimated time of arrival; or
 - for an aircraft - made the impending arrival report later than the prescribed period before the time stated in the report to be the estimated time of arrival of the aircraft.

Who commits the offence

The operator of the ship or aircraft.

Subsection 64AA(10) – failure to meet reporting requirements for the arrival of a ship or aircraft

When is an offence committed?

An offence is committed if:

- a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia and it arrived at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight); and
- b) the operator of the ship or aircraft:
 - did not report to Customs and Border Protection, in accordance with section 64AA, the particulars of the arrival of the ship or aircraft and the time of arrival; or
 - for a ship - did not report the arrival of the ship before the earlier of the end of 24 hours (disregarding Saturday, Sundays and holidays) after the ship's arrival and the issue of a Certificate of Clearance in respect of the ship and the port; or
 - for an aircraft - did not report the arrival of the aircraft before the earlier of the end of 3 hours after the aircraft's arrival and the issue of a Certificate of Clearance in respect of the aircraft and the airport.

Who commits the offence?

The operator of the ship or aircraft.

Subsection 64AAB(7) – failure to meet reporting requirements for other cargo reporters

When is an offence committed?

An offence is committed if:

- a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia; and
- b) a cargo reporter had entered into an agreement or arrangement with another cargo reporter under which cargo for whose carriage the other cargo reporter was responsible was to be carried on the ship or aircraft during the voyage or flight; and
- c) the cargo reporter:
 - did not give to Customs and Border Protection, in accordance with section 64AAB, particulars of the other cargo reporter; or
 - did not give to Customs and Border Protection that report before the latest time by which a cargo report may be made.

Who commits the offence?

The cargo reporter.

Subsection 64AAC(6) – failure to meet reporting requirements for persons engaged to unload cargo

When is an offence committed?

An offence is committed if:

- a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia; and
- b) the operator of the ship or aircraft:
 - for a ship - did not report to Customs and Border Protection, in accordance with section 64AAC, the particulars of the stevedore with whom the operator has entered into a contract for the unloading of the cargo from the ship at a place in Australia; or
 - for an aircraft - did not report to Customs and Border Protection the particulars of the depot operator who will first receive the cargo after it has been unloaded from the aircraft at a place in Australia; or
 - did not make that report during the period within which an impending arrival report is required to be made.

Who commits the offence?

The operator of the ship or aircraft.

Subsection 64AB(10) – failure to meet reporting requirements for the report of cargo

When is an offence committed?

An offence is committed if:

- a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia and was due to arrive at a port or airport in Australia since it last departed from a port or airport outside Australia; and
- b) a cargo reporter:
 - did not report to Customs and Border Protection, in accordance with section 64AB, the particulars of the goods that the cargo reporter had arranged to be carried on the ship or aircraft on the voyage or flight and that were intended to be unloaded from the ship or aircraft at a port or airport in Australia (where the first port or airport or any subsequent port or airport on the same voyage or flight); or
 - for a ship - did not report to Customs and Border Protection those particulars before the start of the prescribed period before the estimated time of arrival of the ship at the first port in Australia since it last departed from a port outside Australia; or
 - for aircraft - did not report to Customs and Border Protection those particulars before 2 hours or the prescribed period before the estimated time of arrival specified in the impending arrival report of the aircraft at the first airport in Australia since it last departed from an airport outside Australia.

An offence is also committed if:

- a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia and was due to arrive at a port or airport in Australia since it last departed from a port or airport outside Australia; and
- b) a cargo reporter:
 - did not report to Customs and Border Protection, in accordance with section 64AB, the particulars of the cargo that the cargo reporter had arranged to be carried on the ship or aircraft on the voyage or flight and that were intended to be kept on board the ship or aircraft for shipment on to a place outside Australia; or
 - for a ship - did not report to Customs and Border Protection those particulars before the start of the prescribed period before the estimated time of arrival of the ship at the first port in Australia since it last departed from a port outside Australia; or
 - for aircraft - did not report to Customs and Border Protection those particulars before 2 hours or the prescribed period before the estimated time of arrival specified in the impending arrival report of the aircraft at the first airport in Australia since it last departed from an airport outside Australia.

Exemptions

This does not require a cargo reporter to report goods that are accompanied personal or household effects of a passenger or member of the crew, ship's stores or aircraft's stores.

If a cargo reporter commits an offence because his or her cargo report was not made in time and he or she was required to make the report at a time before the end of the general moratorium period (6 months beginning on 19 July 2005) or, before the end of the further moratorium period (if that cargo reported has been granted a further moratorium period), an infringement notice cannot be served on the cargo reporter.

Subsection 64AB(14A) states that a cargo reporter who is required to make a cargo report in respect of particular goods is not liable to be prosecuted for, and cannot be served with an infringement notice under Subdivision A of Division 5 of Part XIII for, an offence against this section if:

- (a) the cargo reporter made a cargo report, but contravened subsection (8) because the report was not made before the start of a certain period; and
- (b) the time (the actual time of arrival) at which the ship or aircraft in question arrived at the first port or airport in Australia since it last departed from a port or airport outside Australia was later than the estimated time of arrival referred to in subsection (8); and
- (c) the cargo reporter would not have contravened subsection (8) if the estimated time of arrival of the ship or aircraft had been its actual time of arrival.

Moratorium

During the general moratorium period (6 months beginning on 19 July 2005) a cargo report may be made by document or electronically.

If the person has been granted a further moratorium period, the person may make a cargo report by document or electronically.

Who commits the offence?

The cargo reporter.

Subsection 64ABAA(9) – failure to meet reporting requirements for outturn reports

When is an offence committed?

An offence is committed if:

- a) cargo is unloaded from an aircraft at an airport and the depot operator did not communicate to Customs and Border Protection an outturn report in respect of the cargo; or
- b) that report is not provided within 24 hours, or a prescribed period, after the arrival of the aircraft as stated in the arrival report.

An offence is also committed if:

- a) a container is unloaded from a ship at a port and the stevedore did not communicate to Customs and Border Protection an outturn report in respect of the container; or
- b) that report is not provided in the 3 hour, or prescribed, period after the container was unloaded.

An offence is also committed if:

- a) cargo that is not in a container is unloaded from a ship and the stevedore did not communicate to Customs and Border Protection an outturn report in respect of the cargo; or
- b) that report is not provided within 5 days, or such other prescribed period, after the day on which the unloading of the cargo from the ship was completed.

An offence is also committed if:

- a) cargo is unloaded from an aircraft or ship and moved to a Customs place other than a warehouse and the person in charge of the Customs place did not communicate to Customs and Border Protection an outturn report in respect of the cargo; or
- b) if the cargo is in a container - that report is not provided within 24 hours, or such other prescribed period) of the container being recorded at the place (if it is not unpacked) or it is unpacked (if it is unpacked); or
- c) if the cargo is not in a container - that report is not provided before the end of the day following the day it was recorded at the place, or such other prescribed time.

Who commits the offence?

The person required to make the outturn report.

Subsection 71AAAQ(1) – communicating more than one self-assessed clearance declaration in respect of the same good

When is an offence committed?

An offence is committed if:

- a) goods are covered by a self-assessed clearance declaration;
- b) a person communicated a further self-assessed clearance declaration in respect of the goods or any part of the goods; and
- c) the first self-assessed clearance declaration was not withdrawn.

Who commits the offence?

The person who communicated the further self-assessed clearance declaration.

Subsection 71G(1) – entering goods that have already been entered for home consumption

When is an offence committed?

An offence is committed if:

- a) goods have been entered for home consumption under subsection 68(2) or (3); and
- b) a person communicated a further import declaration, a further RCR or a warehouse declaration in respect of the goods or any part of the goods; and
- c) the import declaration or RCR that resulted in the goods being entered for home consumption was not withdrawn.

Who commits the offence?

The person who communicated the further import declaration, further RCR or warehouse declaration.

Subsection 74(6) – failure to comply with directions

When is an offence committed?

An offence is committed if:

- a) an officer has given a written direction to a cargo reporter as to how and where goods are to be stored, and as to the extent (if any) to which the goods may be moved; and
- b) the cargo reporter contravened that direction.

An offence is also committed if:

- a) an officer gave written directions to a cargo reporter, a stevedore or a depot operator as to how and where goods are to be stored, and as to the extent (if any) to which the goods may be moved; and
- b) the cargo reporter, stevedore or depot operator contravened that direction.

Who commits the offence?

The cargo reporter, stevedore or depot operator who contravened the direction.

Note subsections 74(1) and (3) of the Customs Act set out the circumstances in which a direction may be given.

Subsection 99(3) – delivery of goods for export

When is an offence committed?

An offence is committed if:

- a) a holder of a warehouse licence permitted warehoused goods to be taken from the warehouse for export, and
- b) one of the following applies:
 - the goods had not been entered for export;
 - there was no authority to deal with them in force;
 - the goods were prescribed goods or goods included in a class of prescribed goods and the holder of the warehouse licence did not ascertain from information made available by Customs and Border Protection that the goods had been entered and an authority to deal was in force.

Who commits the offence?

The warehouse licence holder.

Subsection 102A(4) – failure of holder of warehouse licence to notify Customs

When is an offence committed?

An offence is committed if:

- a) prescribed goods or goods included in a class of prescribed goods were to be released from a warehouse for export; and
- b) the holder of the warehouse licence:
 - did not give notice to Customs and Border Protection, in accordance with section 102A, of the goods that were released; or
 - did not give that notice within the period that begins at the prescribed time and ends at the prescribed time; or

An offence is also committed if:

- a) prescribed goods or goods included in a class of prescribed goods were returned to a warehouse; and
- b) the holder of the warehouse licence:
 - did not give notice to Customs and Border Protection, in accordance with section 102A, of the returned goods; or
 - did not give that notice within the period prescribed by the regulations.

Who commits the offence?

The warehouse licence holder.

Subsection 113(1) – failure to enter goods for export and loading/exporting without authority to deal

When is an offence committed?

An offence is committed if:

- a) the owner of goods intended for export did not ensure that the goods were entered for export.

An offence is also committed if:

- a) the owner of a ship or aircraft intended for export which is to be exported otherwise than in a ship or aircraft, allowed the ship or aircraft to leave the place of exportation; and
- b) there was no authority to deal with the goods in force; and
- c) the goods were not prescribed goods.

An offence is also committed if:

- a) the owner of goods (not being a ship or aircraft that is not going to be exported in another ship or aircraft) intended for export allowed the goods to be loaded on a ship or aircraft in which they were to be exported; and
- b) there was no authority to deal with the goods in force; and
- c) the goods were not prescribed goods.

Who commits the offence?

The owner of the goods.

Subsection 114B(7) – confirming exporters

When is an offence committed?

An offence is committed if:

- a) a person was granted confirming exporter status; and
- b) that person failed, without reasonable excuse, to comply with a condition to which the grant is subject.

Who commits the offence?

The confirming exporter.

Subsection 114E(1) – delivering goods to a wharf or airport for export

When is an offence committed?

An offence is committed if:

- a) a person delivered goods (other than goods prescribed under subsection 114E(5)) to another person (the deliveree) at a wharf or airport for export; and
- b) the goods were required to be entered for export and had been entered for export; and
- c) the goods were not goods prescribed under paragraph 114E(1)(a)(ii); and
- d) there was no authority to deal with the goods in force; and
- e) the person did not give the deliveree prescribed particulars in the prescribed manner.

An offence is also committed if:

- a) a person delivered goods (other than goods prescribed under subsection 114E(5)) to another person (the deliveree) at a wharf or airport for export; and
- b) the goods were required to be entered for export and had been entered for export; and
- c) the goods were goods prescribed under paragraph 114E(1)(a)(ii); and
- d) the person did not give to the deliveree, at or before the time of delivery, prescribed particulars in the prescribed manner.

An offence is also committed if:

- a) a person delivered goods to another person (the deliveree) at a wharf or airport for export; and
- b) those goods were not required to be entered for export; and
- c) the person did not give to the deliveree, at or before the time of delivery, the prescribed particulars in the prescribed manner.

An offence is also committed if:

- a) a person delivered goods to another person (the deliveree) at a wharf or airport for export; and
- b) the goods were required to be entered for export and were not so entered at the time of delivery; and
- c) the deliveree failed to enter the goods for export within the prescribed period after the time of delivery.

Who commits the offence?

The person who delivered the goods.

Subsection 114F(2) – failure to notify of delivery to or release from a wharf or airport

When is an offence committed?

An offence is committed if:

- a) a person took delivery of goods (other than prescribed goods) for export at a wharf or airport (other than a prescribed wharf or airport); and
- b) the person:
 - did not give notice to Customs and Border Protection, in accordance with section 114F; or
 - did not give that notice to Customs and Border Protection within the prescribed period.

An offence is also committed if:

- a) after a person took delivery of goods (other than prescribed goods) for export at a wharf or airport, those goods were removed from the wharf or airport otherwise than for the purpose of being loaded onto a ship or aircraft for export; and
- b) the person did not notify Customs and Border Protection, in accordance with section 114F, before the goods were removed from the wharf or airport.

Who commits the offence?

The person who took delivery of the goods.

Subsection 115(1) – permitting goods to be taken on board a ship or aircraft

When is an offence committed?

An offence is committed if:

- a) the owner of a ship or aircraft permitted goods required to be entered for export to be taken on board the ship or aircraft.

When is an offence not committed?

An offence is not committed if:

- a) there was an authority to deal with the goods in force under section 114C; or
- b) the goods are were excluded by the regulations from the application of section 115.

Who commits the offence?

The owner of the ship or aircraft.

Subsection 116(2) – failure to withdraw or amend an export declaration

When is an offence committed?

An offence is committed if:

- a) goods were entered for export by the making of an export declaration;
and
- b) those goods were not exported (either all or some) within 30 days (the first period) after the intended day of exportation notified in the entry; and
- c) the authority to deal was taken to be totally revoked and the owner did not withdraw the entry relating to the goods within 7 days after the end of the first period.

An offence is also committed if:

- a) goods were entered for export by the making of an export declaration;
and
- b) those goods were not exported (either all or some) within 30 days (the first period) after the intended day of exportation notified in the entry; and
- c) the authority to deal was taken to be partially revoked and the owner did not amend the entry so that it related only to the goods exported before the end of the period within 7 days after the end of the first period.

Who commits the offence?

The owner of the goods.

Subsection 117AA(1) – consolidation of prescribed goods

When is an offence committed?

An offence is committed if:

- a) a person consolidated or took part in the consolidation of, prescribed goods for export; and
- b) the consolidation was carried out at a place that was not prescribed in the regulations for the purposes of section 117AA.

Who commits the offence?

The person who consolidated the goods or took part in the consolidation.

Subsection 117AA(2) – failure to notify of receipt of goods

When is an offence committed?

An offence is committed if:

- a) prescribed goods have been received at a prescribed place for the purpose of being consolidated for export; and
- b) the person in charge of the place:
 - did not notify Customs and Border Protection of that receipt; or
 - did not give that notice within the prescribed period after the goods were received at the place.

Who commits the offence?

The person in charge of the prescribed place.

Subsection 117AA(3) – release of prescribed goods

When is an offence committed?

An offence is committed if:

- a) the person in charge of a prescribed place permitted prescribed goods to be released from the place; and
- b) one of the following is satisfied:
 - the person did not ascertain, from the information made available by Customs and Border Protection, that the goods had been entered for export and an authority to deal with the goods was in force;
 - there wasn't a permission to move, alter or interfere with the goods given under section 119AA.

Who commits the offence?

The person in charge of the prescribed place.

Subsection 117AA(4) – failure to notify Customs of release of prescribed goods

When is an offence committed?

An offence is committed if:

- a) prescribed goods have been released from a prescribed place; and
- b) the person in charge of the place did not notify Customs and Border Protection that the goods were released; or
- c) the person in charge of the place did not give that notice to Customs and Border Protection within the prescribed period after the goods were released.

Who commits the offence?

The person in charge of the place.

Subsection 117A(1) – failure to provide submanifests

When is an offence committed?

An offence is committed if:

- a) goods for exportation by a ship or aircraft were consolidated at a place;
and
- b) the person in charge of that place did not, so as to enable the exportation, prepare and communicate to Customs and Border Protection a submanifest in respect of the goods.

Who commits the offence?

The person in charge of the place.

Subsection 118(1) – departing without Certificate of Clearance

When is an offence committed?

An offence is committed if:

- a) the master of a ship or the pilot of an aircraft has departed with the ship or aircraft from any port, airport or other place in Australia; and
- b) at that time the person had not received from the Collector a Certificate of Clearance in respect of the ship or aircraft.

Who committed the offence?

The master of the ship or pilot of the aircraft.

Subsection 119(3) – failure to communicate outward manifest

When is an offence committed?

An offence is committed if:

- a) a ship or aircraft departed from a port, airport or other place in Australia;
and
- b) the master or owner of the ship, or the pilot or owner of the aircraft:
 - did not communicate electronically to Customs and Border Protection an outward manifest; or
 - did not communicate to Customs and Border Protection that outward manifest within 3 days after the day of departure, or such time as is prescribed in relation to the departure, of the ship or aircraft.

Who commits the offence?

The master or owner of the ship or the pilot or owner of the aircraft.

Subsection 243T(1) – false or misleading statements resulting in loss of duty

When is an offence committed?

An offence is committed if:

- a) a person makes to an officer a statement, in respect of goods, that is false or misleading in a material particular; or
- b) a person omits from a statement, in respect of particular goods, made to an officer any matter or thing without which the statement is false or misleading in a material particular;
and:
- c) the amount of duty properly payable on the goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading; or
- d) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis of that statement was not false or misleading exceeds the amount of refund or drawback properly payable (which may be nil).

When is an offence not committed?

An offence is not committed if:

- a) the statement was made in a cargo report or outturn report; or
- b) all of the following are satisfied:
 - there was a voluntary disclosure (in an error notice) of the false or misleading statement or omission;
 - the error notice was given to an officer before a notice under section 214AD has been given to the owner or an agent (if an agent made the statement);
 - if duty has been under paid - the duty is paid in full before an infringement notice is served, or proceedings are commenced, in respect of the statement;
 - if a refund or drawback of duty has been overclaimed and paid - the excess amount is repaid before an infringement notice is served, or proceedings are commenced, in respect of the statement; or
- c) uncertainty as to information was identified at the time of making the statement using the 'Amberline' (see paragraph 3.2.3 of the guidelines).

When is an error notice given voluntarily?

An error notice is taken not to be given voluntarily if it is given after:

- a) an officer exercises a power under a Customs-related law to verify information in the statement; or
- b) an infringement notice is served on the owner; or
- c) proceedings are commenced against the owner.

Who commits the offence?

The owner of the goods, (not be a person who is to be treated as the owner because that person is the agent of the owner).

(Section 243T was amended on 14 January 2004. The unamended section continues to apply to statements made before 14 January 2004.)

Subsection 243U(1) – false or misleading statements – not resulting in loss of duty

When is an offence committed?

An offence is committed if:

- a) a person made, or causes to be made, to an officer a statement that is false or misleading in a material particular; or
- b) a person omitted, or caused to be omitted, from a statement made to an officer any matter or thing without which the statement is false or misleading in a material particular;

and neither:

- a) the amount of duty properly payable on the goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading; or
- b) the amount that would have been payable as a refund or drawback of duty on the goods if that amount had been determined on the basis of that statement was not false or misleading exceeds the amount of refund or drawback properly payable (which may be nil).

When is an offence not committed?

An offence is not committed if:

- a) the statement is made in a cargo report or outturn report; or
- b) the statement is made under Part XVA or XVB of the Customs Act; or
- c) the statement that is made by a person who is or was a passenger on, or a member of the crew of, a ship or aircraft made in relation to his or her accompanied personal or household effects that were carried on the ship or aircraft; or
- d) there was a voluntary disclosure (an error notice) of the false or misleading statement or omission and the error notice was given to an officer before a notice under section 214AD has been given to the owner or an agent (if an agent made the statement).

When is an error notice given voluntarily?

An error notice is taken not to be given voluntarily if it is given after:

- a) an officer exercises a power under a Customs-related law to verify information in the statement; or
- b) an infringement notice is served on the person who made the statement or caused it to be made or the person who omitted, or caused to be omitted, from a statement a matter or thing; or
- c) proceedings are commenced against one of those people.

When does a person cause a statement to be made?

A person is taken to have caused a statement that is false or misleading in a material particular to be made if:

- a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement by the other person or someone else to an officer; and
- b) the other person or someone else makes such a statement including the information to an officer.

This does not limit the ways in which a person may cause a statement to be made.

When does a person cause an omission to be made from a statement?

A person is taken to cause an omission to be made from a statement of a matter or thing without which the statement is false or misleading in a material particular, if:

- a) the person gives to another person, for inclusion in a statement by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and
- b) the other person or someone else makes such a statement including the information to an officer.

This does not limit the ways in which a person may cause an omission to be made.

Who commits the offence?

The person who made, or caused to be made, the statement or omitted, or caused to be omitted, the matter or thing.

(Section 243U was amended on 14 January 2004. The unamended section continues to apply to statements made before 14 January 2004.)

Subsection 243V(1) – false or misleading statement in a cargo report or outturn report

When is an offence committed?

An offence is committed if:

- a) a person made, or causes to be made, to an officer a statement in a cargo report or outturn report that was false or misleading in a material particular; or
- b) a person omitted, or caused to be omitted, from a statement, in a cargo report or an outturn report, made to an officer any matter or thing without which the statement was false or misleading in a material particular.

When does a person cause a statement to be made?

A person is taken to have caused a statement that is false or misleading in a material particular to be made if:

- a) the person gives information that is false or misleading in a material particular to another person for inclusion in a statement by the other person or someone else to an officer; and
- b) the other person or someone else makes such a statement including the information to an officer.

This does not limit the ways in which a person may cause a statement to be made.

When does a person cause an omission to be made from a statement?

A person is taken to cause an omission to be made from a statement of a matter or thing without which the statement is false or misleading in a material particular, if:

- a) the person gives to another person, for inclusion in a statement by the other person or someone else to an officer, information that is false or misleading in a material particular because of an omission of other information that the person has; and
- b) the other person or someone else makes such a statement including the information to an officer.

This does not limit the ways in which a person may cause an omission to be made.

Who commits the offence?

The person who made, or caused to be made, the statement or omitted, or caused to be omitted, the matter or thing.

APPENDIX B – ADMINISTRATIVE MORATORIUM RELATING TO STRICT LIABILITY OFFENCES

In 2001, the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* (the ITM Act) amended the Act by inserting a number of **strict liability offences** and by inserting new provisions that introduced a scheme that allows Customs and Border Protection to serve **infringement notices** for some of these strict liability offences. To allow for the smooth introduction of the **Infringement Notice Scheme (the INS)**, provision was made for an administrative **moratorium** for most of the offences. (A statutory moratorium exists in relation to section 64AB – see section D of this Appendix.)

The *Customs Amendment (Enhanced Border Controls and Other Measures) Act 2009* inserted additional strict liability offences. Again, to allow for the smooth introduction of the new offences, provision was made for an administrative moratorium for these additional offences.

This document explains how Customs and Border Protection applies the moratoriums - during which Customs and Border Protection does not serve infringement notices and/or does not prosecute - for offences committed in the **6 months** after **most** (but not all) of the strict liability offences commence or apply.

A. Provisions subject to the INS from 1 July 2002

The offence provisions listed in Table 1 commenced on 1 July 2002 and are now fully operational and subject to the INS. Infringement notices may be served and prosecutions may be brought for offences committed against the following provisions.

Table 1 Offences subject to the INS that commenced on 1 July 2002

Subsection	Description
243T(1)	false or misleading statements resulting in loss of duty
243U(1)	false or misleading statements not resulting in loss of duty
33(2), (3) and (6)	moving, altering or interfering with goods subject to Customs control without authority.
113(1)	failure to enter goods for export and loading/exporting without authority to deal.

B. Provisions subject to the INS from 6 October 2004

The offence provisions listed in Table 2 and 3 commenced on 6 October 2004.

Infringement notices will NOT be served for an offence referred to in Table 2 that occurred before 6 April 2005, but prosecutions can still be brought, where:

- a section contains an offence that is a new strict liability offence, and
- the offence mirrors an existing offence, but
- the offence was not formerly subject to an administrative penalty.

Offences that fall into this category that commenced on 6 October 2004 are:

Table 2 Offences that commenced on 6 October 2004 and a moratorium applies to infringement notices for offences occurring before 6 April 2005

Subsection	Description
114B(7)	failure to comply with confirming exporter conditions
115(1)	permitting goods to be taken on board a ship or aircraft without authority
116(2)	failure to withdraw or amend an export declaration
118(1)	departing without Certificate of Clearance

Also, infringement notices will NOT be served and prosecutions will NOT be brought for an offence referred to in table 3 that occurred before 6 April 2005 where:

- a section contains an offence that is a new strict liability offence, and
- the offence is not an existing offence.

Offences that fall into this category that commenced on 6 October 2004 are:

Table 3 Offences that commenced on 6 October 2004 and a moratorium applies to infringement notices and prosecutions for offences occurring before 6 April 2005

Subsection	Description
99(3)	delivery of goods for export without authority
102A(4)	failure of holder of warehouse licence to notify Customs of prescribed goods for export
114E(1)	delivering goods to a wharf or airport for export without authority
114F(2)	failure to notify of delivery to or release from a wharf or airport
117AA(1)	consolidation of prescribed goods other than at a prescribed place
117AA(2)	failure to notify of receipt of prescribed goods
117AA(3)	release of prescribed goods without ascertaining status
117AA(4)	failure to notify Customs of release of prescribed goods
117A(1)	failure to provide submanifests
119(3)	failure to communicate outward manifest

C. Provisions subject to the INS from 19 July 2005

The offence provisions listed in tables 4 and 5 commenced on 19 July 2005. However, these provisions did not apply until 12 October 2005. In these instances, the 6 month moratorium commenced from the time these provisions applied.

Infringement notices will not be served, but prosecutions can still be brought for offences referred to in table 4 that occur before 12 April 2006, where:

- a section contains an offence that is a new strict liability offence, and
- the offence mirrors an existing offence, but
- the offence was not formerly subject to an administrative penalty.

Offences that fall into this category that commenced on 19 July 2005 are:

Table 4: Offences that commenced on 19 July 2005 and a moratorium applies to infringement notices for offences occurring before 12 April 2006

Subsection	Description
64(13)	failure to meet reporting requirements for the impending arrival of a ship or aircraft
64AA(10)	failure to meet reporting requirements for the arrival of a ship or aircraft
71G(1)	entering goods that have already been entered for home consumption

Also, infringement notices will NOT be served and prosecutions will NOT be brought for offences referred to in table 5 that occur before 12 April 2006, where:

- a section contains an offence that is a new strict liability offence, and
- the offence is not an existing offence.

Offences that fall into this category that commence on 19 July 2005 are:

Table 5 Offences that commenced on 19 July 2005 and a moratorium applies to infringement notices and prosecutions for offences occurring before 12 April 2006

Subsection	Description
64AAB(7)	failure to meet reporting requirements for particulars of other cargo reporters
64AAC(6)	failure to meet reporting requirements for persons engaged to unload cargo
64ABAA(9)	failure to meet reporting requirement for outturn reports
71AAQ	making two self assessed clearance declarations in relation to the same goods
74(6)	failure to comply with directions

D. Statutory moratorium for late cargo reports

Section 64AB of the Act in relation to cargo reporting specifically includes a 6 month general moratorium from 19 July 2005 and allows the CEO of Customs to grant individual cargo reporters additional time, to prepare to meet electronic cargo reporting requirements. If a cargo reporter does not lodge a cargo report on time while the general (or any extended) moratorium period applies, an infringement notice cannot be served and a prosecution cannot be commenced.

The only offence in this category is subsection 64AB(10) - failure to meet regulatory requirements for the report of cargo.

Additional Administrative Moratorium

In addition to the statutory moratorium on infringement notices and prosecutions for offences against subsection 64AB(10) for making a late cargo report, an administrative moratorium will apply to such offences committed between 19 January 2006 and 12 April 2006:

- Infringement notices will not be served and prosecutions will not be brought where the offence relates to the report of goods that are intended to be unloaded in Australia;
- Infringement notices will not be served, but prosecutions can still be brought, where the offence relates to the report of goods intended to be left on board the ship or aircraft ('in-transit cargo').

E. Provisions subject to the INS from 22 November 2009

The offence provisions listed in table 6 commenced on 22 November 2009.

- Infringement notices will NOT be served and prosecutions will NOT be brought for offences referred to in table 6 that occur before 1 July 2010.

Offences that fall into this category that commenced on 22 November 2009 are:

Table 6: Offences that commenced on 22 November 2009 and a moratorium applies to infringement notices and prosecutions for offences occurring before 1 July 2010.

Subsection	Description
36(2)	failure to keep goods safely
36(6)	failure to account for goods
36(7)	failure to account for goods

Reasons for serving infringement notice

insert Delegate's reason

If you do not wish this matter to be dealt with by a court, you may pay the penalty amount in this notice, and any (unpaid duty or unrepaid refund or drawback of duty), to the Chief Executive Officer of Customs and Border Protection within 28 days (excluding Sundays and public holidays) of receiving this notice. If the penalty is paid within 28 days of service of the notice then you cannot be prosecuted for the alleged offence and will not be regarded as having been convicted of the offence.

The penalty amount in this notice is 20% of the maximum amount of \$Prosecution amount that a court could impose if the matter was prosecuted.

You may make written representation to the CEO seeking the withdrawal of this notice.

Further information about your rights and obligations is attached.

What to do if you receive an infringement notice from Customs and Border Protection

Do I have to pay the penalty in the notice?

You are **not** obliged to pay the penalty amount specified in the notice.

What happens if I do pay?

If:

- within 28 days of service of this notice you pay:
 - the penalty amount; and
 - any unpaid duty, or unrepaid refund or drawback of duty; and
- the notice is not withdrawn,
then
 - any liability for the offence is taken to have been discharged;
 - Customs and Border Protection cannot prosecute you for the offence; and
 - you are not regarded as having been convicted of the offence.

What happens if I don't pay?

If you do not pay the penalty amount in the notice, Customs and Border Protection can prosecute you for the offence. If convicted, the court could impose the maximum amount for the offence – not just the amount of the infringement penalty.

Can I seek the withdrawal of an infringement notice?

The person named in the notice may write to the Chief Executive Officer seeking the withdrawal of an infringement notice. You must say why the notice should be withdrawn.

Customs and Border Protection will write to you telling you whether the notice has been withdrawn. We will also tell you if the time for payment of the penalty has been extended.

If the notice is not withdrawn, then you may still pay the penalty. You may also refuse to pay the penalty.

If the penalty in this notice is paid and the notice is then withdrawn, the Chief Executive Officer will repay the amount paid.

Section 243T offences – review of duty payable

Separate from this notice you may still have a right to have the decision as to the amount of duty payable on the goods reviewed by a court or tribunal. If you do exercise that right, then the period from the making of the application for review until the final determination of amount of duty by a tribunal or court, is not taken into account for when working out the period of 28 days for payment of the penalty in the infringement notice.

You are still obliged to pay the duty, or repay the refund or drawback (as the case may be) despite receiving the infringement notice.

How can I pay the amount in the infringement notice?

Payment of the penalty notice may be made at the Customs Office – located at
Payment may be made by cash or cheque (made payable to the Australian Customs and Border Protection Service).

How can I get an extension of time to pay?

Contact Customs and Border Protection – the details are provided below.

Contact details

If you need more information contact: Australian Customs and Border Protection Service

**CUSTOMS ACT 1901
INFRINGEMENT NOTICE
(Section 243U)**

Infringement Notice Number
PenaltyRecordNumber

This notice is served on behalf of the Chief Executive Officer of Customs (the CEO).

I, Delegate Name, delegate of the CEO, after having regard to the Infringement Notice Guidelines for Subdivision A of Division 5 of Part XIII of the *Customs Act 1901*, have reasonable grounds to believe that the person named below has committed the offence(s) detailed below.

.....
Signature of Delegate

.....
Region

.....
Dated

Name

Address

Client Name

Client Address

Nature of alleged offence:

This notice is for an alleged offence against section 243U of the *Customs Act 1901* for making a false or misleading statement (that does not result in the loss of duty).

Details of offence:

Date: Offence Date
Time: Offence Time (Delete line if unknown)
Place: Location

Transaction No.	Voyage/Flight Arrival/Departure	Voyage/Flight No.	House Bill/Other No.	Ocean Bill/Master Air Waybill No.	Unique ID Container No.
Transaction No.	Transaction Date	Voyage or Flight Number	House Bill	Master Air Way Bill	Container No.

Details of false or misleading statements

Material particular in error	
As stated/omitted	
As should be	

Penalty payable under this notice

Penalty Amount in words

\$Penalty Amount

Reasons for serving infringement notice

insert Delegate Reason.

If you do not wish this matter to be dealt with by a court, you may pay the penalty amount in this notice to the Chief Executive Officer of Customs within 28 days (excluding Sundays and public holidays) of receiving this notice. If the penalty is paid within 28 days of service of the notice then

you cannot be prosecuted for the alleged offence and will not be regarded as having been convicted of the offence.

If the matter was prosecuted, the maximum amount a court could impose is \$Prosecution Amount.

You may make written representation to the CEO seeking the withdrawal of this notice.

Further information about your rights and obligations is attached.

What to do if you receive an infringement notice from Customs and Border Protection

Do I have to pay the penalty in the notice?

You are **not** obliged to pay the penalty amount specified in the notice.

What happens if I do pay?

If:

- within 28 days of service of this notice you pay the penalty amount and the notice is not withdrawn,
- then
- any liability for the offence is discharged;
 - Customs and Border Protection cannot prosecute you for the offence; and
 - you are not regarded as being convicted of the offence.

What happens if I don't pay?

If you do not pay the penalty amount in the notice, Customs and Border Protection can prosecute you for the offence. If convicted, the court could impose the maximum amount for the offence – not just the amount of the infringement penalty.

Can I seek the withdrawal of an infringement notice?

The person named in the notice may write to the Chief Executive Officer seeking the withdrawal of an infringement notice. You must say why the notice should be withdrawn.

Customs and Border Protection will write to you telling you whether the notice has been withdrawn. We will also tell you if the time for payment of the penalty has been extended.

If the notice is not withdrawn, then you may still pay the penalty. You may also refuse to pay the penalty.

If the penalty in this notice is paid and the notice is then withdrawn, the Chief Executive Officer will repay the amount paid.

How can I pay the amount in the infringement notice?

Payment of the penalty notice may be made at the Customs and Border Protection Office – located at (*address details here*). Payment may be made by cash or cheque (made payable to the Australian Customs and Border Protection Service).

How can I get an extension of time to pay?

Contact Customs and Border Protection – the details are provided below.

Contact details

If you need more information contact: Australian Customs and Border Protection Service

Reasons for serving infringement notice

insert Delegate Reason.

If you do not wish this matter to be dealt with by a court, you may pay the penalty amount in this notice to the Chief Executive Officer of Customs within 28 days (excluding Sundays and public holidays) of receiving this notice. If the penalty is paid within 28 days of service of the notice then you cannot be prosecuted for the alleged offence and will not be regarded as having been convicted of the offence.

If the matter was prosecuted, the maximum amount a court could impose is \$Prosecution Amount.

You may make written representation to the CEO seeking the withdrawal of this notice.

Further information about your rights and obligations is attached.

What to do if you receive an infringement notice from Customs and Border Protection

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If:

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- then
- any liability for the offence is discharged;
 - Customs and Border Protection cannot prosecute you for the offence; and
 - you are not regarded as being convicted of the offence.

What happens if I don't pay?

If you do not pay the penalty amount in the notice, Customs and Border Protection can prosecute you for the offence. If convicted, the court could impose the maximum amount for the offence – not just the amount of the infringement penalty.

Can I seek the withdrawal of an infringement notice?

The person named in the notice may write to the Chief Executive Officer seeking the withdrawal of an infringement notice. You must say why the notice should be withdrawn.

Customs and Border Protection will write to you telling you whether the notice has been withdrawn. We will also tell you if the time for payment of the penalty has been extended.

If the notice is not withdrawn, then you may still pay the penalty. You may also refuse to pay the penalty.

If the penalty in this notice is paid and the notice is then withdrawn, the Chief Executive Officer will repay the amount paid.

How can I pay the amount in the infringement notice?

Payment of the penalty notice may be made at the Customs and Border Protection Office – located at (*address details here*). Payment may be made by cash or cheque (made payable to the Australian Customs and Border Protection Service).

How can I get an extension of time to pay?

Contact Customs – the details are provided below.

Contact details

If you need more information contact: Australian Customs and Border Protection Service

APPENDIX D - CALCULATING PENALTIES UNDER THE INFRINGEMENT NOTICE SCHEME

For each offence type in column A of the following table, column B shows the amount of penalty (expressed as a dollar amount and in terms of penalty units) that will be used in an infringement notice if the offence is dealt with under the infringement notice scheme. The amounts shown are one-fifth of the maximum amount that a court could impose which appears in column C.

Note: a penalty unit is defined in section 4AA of the *Crimes Act 1914* to be \$110.

CALCULATING PENALTIES UNDER THE INFRINGEMENT NOTICE SCHEME

A		B	C
STRICT LIABILITY OFFENCE TYPE		PENALTY UNDER INFRINGEMENT NOTICE SCHEME	MAXIMUM PENALTY A COURT COULD IMPOSE
SUBSECTION	DESCRIPTION		
33(2), (3) and (6)	moving altering or interfering with goods subject to Customs control without authority	\$1320 (12 penalty units)	\$6600 (60 penalty units)
36(2), (6) and (7)	Failure to keep goods safely or failure to account for goods	\$1320 (12 penalty units)	\$6600 (60 penalty units)
64(13)	failure to meet reporting requirements for the impending arrival of a ship or aircraft	\$1320 (12 penalty units)	\$6600 (60 penalty units)
64AA(10)	failure to meet reporting requirements for the arrival of a ship or aircraft	\$1320 (12 penalty units)	\$6600 (60 penalty units)
64AAB(7)	failure to meet reporting requirements for particulars of other cargo reporters	\$1320 (12 penalty units)	\$6600 (60 penalty units)
64AAC(6)	failure to meet reporting requirements for persons engaged to unload cargo	\$1320 (12 penalty units)	\$6600 (60 penalty units)
64AB(10)	failure to meet reporting requirements for the report of cargo	\$1320 (12 penalty units)	\$6600 (60 penalty units)
64ABAA(9)	failure to meet reporting requirements for outturn reports	\$1320 (12 penalty units)	\$6600 (60 penalty units)
71AAAQ(1)	making more than one self-assessed clearance declaration in respect of goods	\$330 (3 penalty units)	\$1650 (15 penalty units)

STRICT LIABILITY OFFENCE TYPE		PENALTY UNDER INFRINGEMENT NOTICE SCHEME	MAXIMUM PENALTY A COURT COULD IMPOSE
SUBSECTION	DESCRIPTION		
71G(1)	entering goods that have already been entered for home consumption	\$330 (3 penalty units)	\$1650 (15 penalty units)
74(6)	failure to comply with directions	\$1320 (12 penalty units)	\$6600 (60 penalty units)
99(3)	delivery of goods for export without authority	\$1320 (12 penalty units)	\$6600 (60 penalty units)
102A(4)	failure of a holder of a warehouse licence to notify Customs of release of prescribed goods for export	\$1320 (12 penalty units)	\$6600 (60 penalty units)
114E(1)	delivering goods to a wharf or airport for export without authority	\$1320 (12 penalty units)	\$6600 (60 penalty units)
114F(2)	failure to notify of delivery to or release from a wharf or airport	\$1320 (12 penalty units)	\$6600 (60 penalty units)
115(1)	permitting goods to be taken on board a ship or aircraft without authority	\$1320 (12 penalty units)	\$6600 (60 penalty units)
116(2)	failure to withdraw or amend an export declaration	\$1100 (10 penalty units)	\$5500 (50 penalty units)
117AA(1)	consolidation of prescribed goods other than at a prescribed place	\$1320 (12 penalty units)	\$6600 (60 penalty units)
117AA(2)	failure to notify of receipt of prescribed goods	\$1320 (12 penalty units)	\$6600 (60 penalty units)
117AA(3)	release of prescribed goods without ascertaining status	\$1320 (12 penalty units)	\$6600 (60 penalty units)
117AA(4)	failure to notify Customs of release of prescribed goods	\$1320 (12 penalty units)	\$6600 (60 penalty units)
117A(1)	failure to provide submanifests	\$1320 (12 penalty units)	\$6600 (60 penalty units)
118(1)	departing without Certificate of Clearance	\$1320 (12 penalty units)	\$6600 (60 penalty units)
119(3)	failure to communicate outward manifest	\$1320 (12 penalty units)	\$6600 (60 penalty units)
243T(1)	false or misleading statements resulting in loss of duty	20% of – - the amount of duty shortpaid; - the amount of refund or drawback paid erroneously	- The amount of the duty shortpaid; - the amount of refund or drawback paid erroneously

STRICT LIABILITY OFFENCE TYPE		PENALTY UNDER INFRINGEMENT NOTICE SCHEME	MAXIMUM PENALTY A COURT COULD IMPOSE
SUBSECTION	DESCRIPTION		
243U(1)	false or misleading statements not resulting in loss of duty	The lesser of: - 1/2 a penalty unit (\$55) per false or misleading particular, or omission, or - 10 penalty units (\$1100) per statement	\$5500 (50 penalty units)
243V(1)	false or misleading statement in a cargo report or outturn report	\$1100 (10 penalty units)	\$5500 (50 penalty units)