



INSTRUCTIONS AND GUIDELINES

Unentered Goods and Certain Abandoned Goods

August 2009

**These Instructions & Guidelines refer to Practice Statement:
PS2009-23 Clearance of Cargo – Imports**

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Availability: Internal and external
Subject: Unentered Goods and Certain Abandoned Goods
Purpose: To describe the treatment of unentered goods and certain abandoned goods
Owner: National Director Trade and Compliance
Category: Operational Procedures (OP)
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The electronic version published on the intranet is the current Instructions and Guidelines.

1. Summary of main points

These Instructions and Guidelines:

- Explain the application of s.218A of the *Customs Act 1901* (the Customs Act) to certain abandoned goods and the restricted use of this provision.
- Explain the application of s.72 the Customs Act - 'failure to make entries'.
- Detail Australian Customs and Border Protection Service's treatment of goods that are not required to be entered, or goods that are not able to be entered.
- Explain the term "owner" and its wide application.
- Outline industry responsibilities and options for the treatment of unentered goods.
- Describe the 'limited circumstances' under which certain goods may be disposed and when those circumstances may apply.
- Describe the requirements for goods to be disposed of or destroyed.

2. These I&Gs apply to staff in the following divisions:

- Trade/Compliance Division
- Cargo Division

3. Introduction

There are circumstances where the owner of imported goods fails to claim the goods or intentionally abrogates their responsibility to deal with the goods, as required under Customs law. The abrogation of responsibility by an owner does not mean the Australian Customs and Border Protection Service (Customs and Border Protection) will bear the costs or burden of dealing with those goods.

In addition to the importer's (owner) responsibilities for dealing with these goods, the responsibilities are also shared by operators of wharfs and airports (s.15 places), depot operators (s.77G places), licensed warehouse operators (s.79 places) shippers, freight forwarders, express couriers, shipping lines and airlines, and other logistical services providers.

4. Context and Scope

These Instructions and Guidelines apply to:

- I. Imported goods that are found in a Customs place, in particular, goods found in a port or airport (s. 15 places) that are/were the personal effects of passengers or crew members of a ship or aircraft:

These goods may be treated as certain abandoned goods under s.218A of the Customs Act.

- II. Imported goods that were cargo reported¹ and are goods found in a Customs place such as wharfs, airports (s.15 places) and depots (s.77G places) that have not been entered in the time required.

These goods generally will not be treated as certain abandoned goods for the purposes of s.218A of the Customs Act. Other processes apply.

These Instructions and Guidelines have limited application to goods that are:

- imported motor vehicles without a Vehicle Import Approval; or
- imported whiskey, brandy or rum without proof of maturation.

These Instructions and Guidelines do not apply to goods that are:

- listed in the Prohibited Imports (*Customs (Prohibited Imports) Regulations 1956*);
- listed in the Prohibited Exports (*Customs (Prohibited Exports) Regulations 1958*);
- forfeited goods or special forfeited goods;
- input into the Customs Detained Goods Management System (DGMS);
- subject to Customs and Border Protection investigation or seizure action; or
- held in a Customs store for any reason.

Instructions and Guidelines

5. Legislation

Section 218A - Disposal of Certain Abandoned Goods

Section 218A of the Customs Act was introduced to deal with goods that were left unclaimed at a port or airport that were the personal effects of passengers or crew. Such goods often do not have sufficient marks or numbers to identify the owner, or the owner is not able to be contacted.

In effect, Section 218A applies to goods that:

- I. are found at a Customs place,
- II. where a Collector has reason to believe the goods are not required to be, or are not able to be entered for home consumption,
- III. a Collector has reason to believe the goods have been abandoned by the owner.

All three of these requirements must be present before the goods can be dealt with under s.218A. If all three requirements are met, a Collector may take steps to dispose of those certain abandoned goods in an appropriate manner. Customs and Border Protection cannot be compelled to exercise its power to deal with certain abandoned goods. The term 'may' in s.218A indicates discretion rather than an obligation to act.

Section 72 - Failure to make entries

Section 72 of the Customs Act relates to the failure to make entries when goods are required to be entered (s. 68 of the Customs Act *refers*).

If an entry is not made within the prescribed time (or a further time allowed) Customs and Border Protection may deal with those unentered goods and may require the goods to be moved to a warehouse (s.79) or a specified, secure place. The movement to a warehouse does not constitute an entry of goods into the warehouse.

¹ Goods reported to Customs and Border Protection in accordance with s.64AB of the *Customs Act 1901*

Customs and Border Protection has a lien on such goods for expenses incurred for the removal, rent or storage charges related to the movement and storage of the goods (s.72(3) refers).

Where the goods are live animals, or goods of a perishable or hazardous nature, they may be sold or otherwise disposed of without delay, if a Collector considers it expedient to do so (s. 72(2)).

If goods were moved, or may be moved, and the goods are not entered and delivered into home consumption within 6 months (as prescribed under the *Customs Regulations 1926*), Customs and Border Protection may also sell or otherwise dispose of the goods under s.72(4).

The use of the term 'may' in s.72 indicates Customs and Border Protection is not obliged to act, despite the expectations of some stakeholders that Customs and Border Protection should act.

Section 77P - Conditions of a depot licence – imported goods

Section 77P relates to the timeframe that imported goods may stay in a depot.

When imported goods are received into a depot and are not delivered into home consumption, they may remain in the depot until the end of the following month. At that time, the depot operator must move the goods to a s.79 warehouse. A further extension of 30 days may be granted by Customs and Border Protection providing a written request has been made by the depot licence holder.

Goods that have exceeded the allowable time in a depot are known as 'time up' goods.

Customs and Border Protection is aware that some warehouse operators (s.79 places) are often reluctant or will refuse to accept 'time up' goods. Warehouse operators are aware that acceptance of such goods may create a financial burden for the warehouse.

Customs and Border protection encourages operators to act once an operator is satisfied the owner has abrogated responsibility to enter goods. Such action by an operator may take place well before 'time up' has occurred.

Section 79 Warehouse Licences - Disposal of goods in a warehouse

Goods entered into a warehouse (import declaration into a warehouse) may remain in the warehouse indefinitely. However, s.94 of the Customs Act permits the owner of imported goods to request Customs and Border Protection to destroy (or permit destruction of) the goods and remit the duty when the value of the goods is less than the duty payable. Destruction of goods under s.94 does not affect the liability of the owner of the goods to pay the holder of a warehouse licence any rent or charges payable in respect of the goods.

Alternatively, under s.96, where any rent or charges in respect of warehoused goods are in arrears for:

- 6 months for goods; or
- 30 days for unclaimed baggage of a passenger or member of the crew of a ship or aircraft;

a Collector may sell the goods.

The use of the term 'may' in s.94 and s.96 indicates Customs and Border Protection is not obliged to act.

Section 33 - Persons not to move goods subject to the control of Customs

There are several offences, including strict liability offences, in this section if goods that are subject to the control of Customs are moved, altered or interfered with, without authorisation.

6. Requirements and Expectations

Certain abandoned goods (s.218A)

Certain abandoned goods are goods found in a Customs place; in particular, goods found in a port or airport (s15 places) that are/were the personal effects of passengers or crew members of a ship or aircraft:

- that are unclaimed, or
- that have insufficient marks or numbers to identify the owner, or
- the owner, if identified, is not contactable; and
- that are not required to be entered for home consumption or are not able to be entered for home consumption; or
- are goods to which Customs and Border Protection determines 'limited circumstances' apply.

Note

- Goods for which a self-assessed clearance (SAC) declaration was made or can be made, are not to be treated as certain abandoned goods.
- Goods that are unaccompanied personal effects (UPEs) and were cargo reported, are not to be treated as certain abandoned goods.

Determining if goods have been abandoned

In some cases, it will be obvious that goods are/were abandoned by the owner and industry operators may assist by providing Customs and Border Protection with appropriate evidence or documents. In such a case (and subject to risk assessment by Customs and Border Protection), the goods may be taken to have been abandoned from the time Customs and Border Protection is satisfied that the owner abandoned the goods.

However, in other cases, it may not be clear if the owner has abandoned the goods. This is most likely to occur when the owner of the goods cannot be identified or contacted*. In such cases, s. 218A(2) provides that if the prescribed period (currently 90 days) has passed since the goods were 'found' and no person has claimed ownership of the goods, the goods are deemed to be certain abandoned goods. The 90 days commences from the time those goods arrived in that Customs place.

**The operator of a Customs place may be able to provide evidence of unsuccessful attempts to contact the owner of the goods who has been identified by the marks and numbers on the goods and/or from associated commercial documentation.*

Disposal of goods under 'limited circumstances' as determined by Customs and Border Protection

Goods that were cargo reported and have an associated air waybill or ocean bill of lading (including house bills) generally cannot be considered certain abandoned goods, as the owner may be identifiable through the associated commercial documents and/or the fact that the goods can be entered.

In very 'limited circumstances', where it is in the public interest, Customs and Border Protection may facilitate the disposal of such goods. These circumstances will generally be limited to dealing with intractable, toxic or hazardous goods, goods which pose an unacceptable risk to life or limb, or other circumstances that further the operational objectives of Customs and Border Protection.

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Before Customs and Border Protection takes any action in relation to these goods, approval must be obtained from the National Manager Air Cargo and Detained Goods, the National Manager Compliance Assurance or National Manager Trade Policy and Regulation.

(In the event of changed responsibilities or position titles, the equivalent senior level approval will still be required.)

As set out in the “Determining if goods have been abandoned” section above, goods may be deemed to be abandoned from the time Customs and Border Protection is satisfied that they are abandoned, or the 90 day period applies.

Section 72 Failure to make entries (long stay unentered goods)

Long stay unentered goods are imported goods found in a Customs place such as wharfs, airports (s.15 places) and depots (s.77G places) and are:

- goods which were cargo reported; and
- goods which have an associated air waybill or ocean bill of lading (including house bills); and
- able to be entered for home consumption, but have not been entered as required under s.68 of the Customs Act; and
- have remained in a Customs place for an extended time.

Where the owner has had ample opportunity to enter the goods and has not done so, an industry operator with a lawful basis for ownership may choose to deal with long stay unentered goods as outlined in these Instructions and Guidelines under ‘Industry responsibilities’.

Long stay unaccompanied personal effects for which a completed Unaccompanied Personal Effects Statement (B534) was not submitted to Customs and Border Protection, and for which an industry operator is satisfied a B534 will not be submitted, may be treated as unentered goods. See ‘Industry Responsibilities’ below.

Options for a Section 79 Warehouse licence holder

Goods in a warehouse that are identified as goods for which the owner has abrogated responsibility to enter them for home consumption or for export, may be subject to a lawful basis for ownership by the warehouse operator.

A warehouse operator may deal with long stay goods as the owner of the goods if the warehouse operator has a lawful basis for ownership (or a lien) and the original owner has effectively abandoned the goods.

Section 94 of the Customs Act which permits the owner of imported goods to request Customs and Border Protection destroys (or permits destruction of) the goods and remits the duty when the value of the goods is less than the duty payable. This power will be applied at the discretion of Customs and Border Protection.

Generally, the same principles apply to warehouse operators that apply to other operators who deal with unentered goods. These principles are outlined in the section titled ‘Industry Responsibilities’.

Goods for which Customs and Border Protection is unable to issue an ‘Authority to Deal’

Imported goods that are found in Customs places such as wharfs, airports (s.15 places), depots (s.77G places) and warehouse (s.79 places) that are:

- imported motor vehicles without a Vehicle Import Approval (VIA) for which a VIA will not be issued; or
- imported whiskey, brandy or rum without proof of maturation, or where proof of maturation cannot be provided,

cannot be entered for home consumption and must be exported or destroyed under Customs and Border Protection supervision. Within those constraints, an industry operator with a lawful basis for ownership may choose to deal with such goods as the owner, as outlined in these Instructions and Guidelines under 'Industry Responsibilities'.

7. Roles and Responsibilities

Owner's responsibilities

Section 68 of the Customs Act requires most imported goods to be entered for home consumption by the owner of the goods. Customs and Border Protection cannot compel an owner to enter goods. When an owner abrogates responsibility to enter their goods, the owner's responsibility is not diminished in relation to any breaches of the Customs Act or other Commonwealth laws related to the importation that occurred before title was transferred, the goods were abandoned, or were deemed to be certain abandoned goods.

Customs and Border Protection's Responsibilities

As a general guideline, auctioning goods (Customs sales) is no longer a viable option for the disposal of unentered goods or certain abandoned goods.

There is inherent in any expenditure of public monies an obligation to do so in a cost effective manner. The Financial Management and Accountability Act states that the "Chief Executive must manage the affairs of the agency in a way that promotes proper use of Commonwealth resources". Customs and Border Protection support of industry in this fashion (by conducting Customs sales) would not generally meet the Department of Finance's requirements. However, there may be 'limited circumstances' where it is in the public interest for Customs and Border Protection to facilitate the disposal of certain goods.

In addition, Customs and Border Protection is not obliged to become involved in the disposal of goods abandoned as a result of failed commercial transactions. Nor will Customs and Border Protection bear the cost of the disposal of such goods. The exception to this principle is the 'limited circumstances' described in these Instructions and Guidelines.

Customs and Border Protection encourages industry operators to take lawful action that will realise cost effective outcomes for industry. Positive action by industry operators will reduce the amount of unentered goods in storage, and reduce the period of time for which such goods are held.

Customs and Border Protection will not make decisions for operators regarding ownership, or provide operators with advice as to the legitimacy of ownership.

Customs and Border Protection will create and maintain appropriate records relating to the treatment of unentered goods and certain abandoned goods under these Instructions and Guidelines.

Industry Responsibilities

Operators in the importation industry have responsibilities for dealing with time-up and long stay unentered goods (including low value goods and UPEs) and can take certain actions to deal with those goods. The definition of owner in s.4 of the Customs Act is sufficiently broad to allow operators in possession of the goods to initiate action to lawfully deal with time-up and long stay unentered goods, in accordance with contractual terms and conditions and/or other relevant commercial arrangements.

Such action may include:

- making a SAC declaration as the owner of low value goods; or
- entering the goods as the owner into a warehouse or for home consumption; or
- exporting the goods as the owner; or

- destroying/disposing of the goods as the owner, with Customs and Border Protection's permission (and under supervision); or
- moving the cargo to an approved warehouse.

Customs and Border Protection encourages lawful action to deal with long stay unentered goods. However, the obligation to pay duty and GST only arises for an industry operator where the operator chooses to enter goods for home consumption.

Sales to third parties (being parties not entitled to claim ownership) of long stay unentered goods (including low value goods and UPEs) may not take place until such goods are delivered into home consumption and duty, GST and other taxes and charges are paid accordingly. Sales of goods may be permitted within a s.79 warehouse.

Where an industry operator, as the owner, intends to enter goods for home consumption or make a SAC declaration, the requirements of s.159 *Value of imported goods* apply and duty, GST and other taxes and charges must be paid accordingly. Section 95 *Revaluation* applies only to accidentally damaged goods entered into a s.79 warehouse.

As a guide to good practice, industry operators intending to deal with goods in this manner should:

- be satisfied that ample opportunity was given to the original importer to deal with the goods lawfully;
- resolve competing claims of ownership before commencing any action;
- have some lawful basis* for ownership;
- seek independent advice when considering ownership;
- negotiate with other affected/interested parties to agree on actions (including unpacking of containers);
- keep Customs and Border Protection informed of decisions made and intended actions regarding the goods;
- keep good records of correspondence, commercial documents, decisions and actions related to the goods especially when being the owner; and
- seek authorisation from Customs and Border Protection before disposing of or destroying any goods under Customs control.

*An entity with a beneficial interest may be the owner of imported goods (s.4). *Prima facie* evidence of ownership may be required – this could be in the form of a lien, an original bill of lading, contract conditions or agreements or significant debt etc.

- As the owner of unclaimed UPEs, an industry operator is not entitled to use the concessional treatment for UPEs. If the goods are to be delivered into home consumption, an entry will be required.
- Unclaimed low value goods require a SAC declaration and an authority to deal before they can be delivered into home consumption.
- Customs and Border Protection will not verify or audit the above good practice other than normal requirements for keeping documents and records as the owner of goods and retaining approvals given to destroy goods.
- Where Customs and Border Protection suspects there is an attempt to defraud the Commonwealth of revenue, or there is criminal activity associated with the beneficial ownership (described above) then Customs and Border Protection will act accordingly.

Consequences of Industry Action

When an industry operator deals with long stay unentered goods (including low value goods and UPEs) in any of the following ways by:

- making a SAC declaration as the owner of low value goods; or
- entering the goods as the owner into a warehouse or for home consumption; or
- exporting the goods as the owner; or
- destroying/disposing of the goods as the owner, with Customs and Border Protection's permission for destruction or disposal (under supervision);

then the requirement to enter the goods for home consumption (or make a SAC declaration) and pay duty and GST is extinguished, except where goods remain in a warehouse.

8. Destruction/disposal under Customs and Border Protection's supervision

Risk Assessment of goods subject to disposal

A decision by Customs and Border Protection to physically supervise the destruction/disposal of goods under Customs control will be made on a risk assessment basis. Some key factors normally considered are the:

- value of goods;
- likeliness of pilfering/theft;
- likeliness of diversion;
- risk to the community; and/or
- likelihood of damage to Customs and Border Protection's reputation.

To ensure the efficient use of resources, Customs and Border Protection may be satisfied with verifiable destruction processes or trusted parties undertaking destruction/disposal where risks are considered low. On application, Customs and Border Protection will:

- provide disposal/destruction instructions and conditions if necessary; and
- advise if Customs and Border Protection will attend the destruction/disposal; or
- specify what verification Customs and Border Protection may require .

Physical supervision of destruction will normally be required where 'limited circumstance' goods are approved for disposal.

A request to destroy/dispose of goods under Customs control

A request to Customs and Border Protection for permission to destroy goods under Customs control should be in writing (email or fax is satisfactory from known clients). The request should contain sufficient information to identify the particular goods/consignment/s and advise the time, the date, the location and proposed method of destruction. The request must also identify the entity requesting the permission and include an authorised signature (for email – address recognition is satisfactory).

Approval will usually be given in the same manner as the request was made. Customs and Border Protection will advise the person making the request if the request is denied, and give the reasons for denial.

Occupational Health and Safety Considerations

Should destruction/disposal involve hazardous, dangerous or toxic goods, guidance must be obtained from the relevant state or territory Occupational Health and Safety Agency or Environmental Protection Agency. Consideration may need to be given to the use of licensed

transporters, prerequisite consideration for recycling, incineration and other actions prior to disposal.

Specific information on the substance, such as ecotoxicity data provided in the substance's Material Safety Data Sheet, may assist to determine appropriate action. Disposal should not be undertaken for unknown substances, which may be poisonous, explosive or otherwise hazardous to people or to the environment. A sample of unknown substances may be sent for identification to an analytical laboratory before its disposal, whether it is a large or small quantity. This may include apparently innocuous materials, such as empty chemical containers.

Australian Quarantine and Inspection Service (AQIS) Considerations

Certain goods such as used vehicles and personal effects may also be subject to quarantine and/or be of quarantine concern even if not entered. If a decision is made to dispose of unclaimed goods, then AQIS should be consulted for advice on disposal methods likely to be required to mitigate any identified quarantine risk (Contact: AQIS Import Clearance Program, Inspections Team: treat.inspect@aqis.gov.au). If in doubt, contact AQIS.

Cost Recovery

Where the destruction or other method of disposal is protracted because of the hazardous or toxic nature, quantity of goods, or the class of goods, Customs and Border Protection may seek to recover costs for providing supervision of the destruction or disposal of goods. Cost recovery will be applied in accordance with s.28 of the Customs Act.

9. Quality Assurance

Customs and Border Protection officers will ensure that when following these Instructions and Guidelines a supervising officer is aware of the circumstances and is satisfied that any action or approvals by Customs and Border Protection comply with these Instructions and Guidelines, and the relevant legislation.

Customs and Border Protection officers will ensure where disposal under 'limited circumstances' applies approval is obtained from the National Manager Air Cargo and Detained Goods, the National Manager Compliance or National Manager Trade Policy and Regulation before any action is taken.

10. Related Policies and References

- Australian Dangerous Goods (ADG) Code for road and rail transport

Practice Statements:

- Clearance of Cargo – Imports
- Australian Dangerous Goods (ADG) Code for road and rail transport
- OHS Policy – OHS Risk Management HSMA2

Other Instructions & Guidelines

- Asbestos
- Biological Hazards
- Explosives and Explosive Devices

11. Key Roles and Responsibilities

- National Manager Trade Policy and Regulation is responsible through Import Policy for developing, maintaining, reviewing and publishing these Instructions and Guidelines.
- The National Manager Air Cargo and Detained Goods, the National Manager Compliance or National Manager Trade Policy and Regulation will approve any application of 'limited circumstances' described in these Instructions and Guidelines.
- Directors are responsible for ensuring that officers are aware of and conversant with these Instructions and Guidelines, and for recovering costs associated with supervision of disposal or destruction.
- The business area that determines if 'limited circumstances' may apply to some goods should provide a brief to the relevant National Manager who may approve the limited circumstances. That brief should include:
 - key issues;
 - urgency (e.g. if the 90 day period should be disregarded);
 - expected costs;
 - reason for the recommendation;
 - any reasonable alternatives; and
 - an explanation of any significant risks (e.g. likelihood of a compensation claim etc).
- The business area that receives a request to destroy/dispose of goods under Customs control will finalise the process. That principle also applies to dealing with goods that under 'limited circumstances' are to be disposed of or destroyed at Customs and Border Protection's expense.
- Managers and supervisors will work with operational teams to implement these Instructions and Guidelines and provide training and coaching as required. Managers will provide ad hoc feedback on the effectiveness of these Instructions and Guidelines to Import Policy.
- Officers will apply these Instructions and Guidelines diligently, keep appropriate records and ensure supervisors and managers are aware of the application of these Instructions and Guidelines.

12. Consultation

Internal

The following internal stakeholders have been consulted in the development of these Instructions and Guidelines.

- Safety, Health and Wellbeing section of Staffing Branch
- Compliance Assurance Branch
- Passengers Operations Branch
- Cargo Division
- Customs Legal Unit
- Detained Goods Management

External

A series of meetings were held in Sydney and Melbourne with key industry stakeholders and included representatives from:

- Shipping Australia
- Depot operators
- CAPEC
- Freight Forwarders
- CBFCA

13. Approval

Approved on	July 2009	(signature)
By	Sue Pitman ND Trade and Compliance	
Review Period	Initial Review to take place after 6 months of operation.	