



AUSTRALIAN CUSTOMS NOTICE NO. 2006/DRAFT

Customs' Approach to Managing Cargo Reporting Compliance

Customs relies upon members of the international trading industry to provide accurate and timely information to assist in the risk assessment and clearance of cargo. On time cargo reports are particularly important as the first step in our risk assessment process. Customs and industry have been working together in recent years to achieve improved cargo reporting compliance.

In most cases we encourage and support voluntary compliance through means such as education, examination and feedback to our clients. These always have been and always will be the primary means we use to achieve compliance with Customs-related laws.

However our experience also shows that a penalty regime is an important element in ensuring compliance when other efforts have not achieved compliant behaviour. Part of this regime is the Infringement Notice Scheme (INS) that was introduced on 1 July 2002.

The purpose of this notice is to inform you about how we administer the INS and to address concerns regarding certain situations in which non-compliant behaviour may have arisen as a result of circumstances beyond a cargo reporter's control. This guidance is particularly relevant as a number of new import related offence provisions are due to soon come into operation.

Customs Regulatory Philosophy

The INS applies to a range of 'strict liability' offences for breaches of statutory obligations where it is considered there is significant risk to the community and revenue. Our intention is to minimise these risks through education and client feedback in the first instance.

It is important that, as a first step, reporters are aware of the new reporting requirements and, hence, the offences that may arise. Therefore we have focused on working with industry over the last few years to raise awareness of the new reporting requirements and the offences that may arise. A list of the new import related offences is contained in Attachment A. Further explanation of each of these and other offences covered by the scheme is provided in the Infringement Notice Guidelines that can be found on our internet site at www.customs.gov.au.

Operation of the Moratorium

An administrative moratorium applies to all of these offences, except for the section 64AB offence relating to electronic cargo reporting, until 12 April 2006. This means that we will not take penalty action for an offence that occurs before 13 April 2006.

A statutory six month moratorium period applied to mandatory electronic reporting of cargo reports under section 64AB from 19 July 2005 until 19 January 2006. Our CEO is able to grant a longer period on an individual basis up to a further 18 months.

Application of the Infringement Notice Scheme (INS)

A judgement is made in each and every case based on the individual circumstances of the case. The penalty provisions of the *Customs Act 1901* do not impose an obligation on us to use the INS for every offence detected.

Only a small number of very senior Customs officers with delegated authority can issue infringement notices. When deciding what compliance action to undertake, these officers must have regard to the Infringement Notice Guidelines, a public document that was tabled in and accepted by the Parliament. The Infringement Notice Guidelines set out the relevant considerations that need to be taken into account before issuing an infringement notice and this ensures that penalties are applied only after careful consideration of all the relevant facts and on a case-by-case basis.

Even where a decision maker has reasonable grounds to believe that an offence subject to the INS has been committed, they are required to consider the:

- significance of the breach;
- effort/attempt to comply;
- any reliance on Customs advice; and
- reasons beyond the persons control.

In particular decision makers will take into account the compliance history of the client and the seriousness of the non-compliance. This list of considerations is not exhaustive. Other reasons for exercising discretion can also be considered. A current example concerns difficulties that some have experienced during the introduction of the Integrated Cargo System (ICS). The principle we have adopted is that if a person makes a reasonable attempt to comply with a regulatory requirement but is unable to do so because of an identified Customs system fault, then an infringement notice will not be issued. (Continuing non-compliance after a system fix is applied within the ICS is a separate matter.)

Further information about the matters that a Customs decision maker will be taking into account is contained in Attachment B.

Parties communicating to us about the movement of cargo are reminded that there is a requirement under section 240AB of the *Customs Act 1901* to retain records verifying the contents of communications to us for a period of 12 months. Records such as emails from clients requesting that cargo reports be amended, could support a claim that reasonable efforts had been made to comply with the legislation.

Some Examples Where Penalties Would Not Apply

Example 1

A shipping line provides us with a cargo report not less than 48 hours prior to a vessel's arrival at the first Australian port. Advice is subsequently received that some of the details contained in the report were inaccurate and an amendment is lodged a few hours prior to the vessel's arrival. The shipping line may then be concerned about the risk of the amended report being regarded as late (and possibly subject to an infringement notice) as it was submitted after the normal 48 hour cut-off.

In this particular case, we would treat the first report as satisfying the requirement for 48 hours prior notice. Penalty action relating to timeliness would not be considered in respect of the amendment in this case. However, penalty action relating to the accuracy of the information communicated to Customs in the cargo report would still be considered by Customs as a separate matter.

Example 2

A cargo reporter is informed by us that, as an interim measure during the introduction of the imports component of the Integrated Cargo System (ICS), we will accept the misreporting of ocean bill of lading numbers in order to achieve a match between a cargo report and an import declaration within the ICS.

Although the misreporting of an ocean bill of lading could be considered a false or misleading statement in a cargo report, an infringement notice would not be issued as the reporter is acting in accordance with advice from us.

Example 3

An agent/operator of a Bulk cargo carrier receives notification that they have responsibility for the movement of a vessel between Australian ports. This advice is received after the arrival of that vessel at the first port in Australia. The agent/operator may then be concerned about the risk of reporting the Impending Arrival outside of the prescribed timeframes and the report being regarded as late.

This issue, including the application of the issue to other types of vessels such as car carriers and tankers, is currently being examined in consultation with industry. We will not issue an infringement notice in this case while the matter is unresolved.

Responding to an Infringement Notice

When receiving an infringement notice, there are three options available to you: 1) pay the penalty amount stated in the notice; or 2) write to the CEO seeking withdrawal of the notice. This will lead to a different Customs officer reviewing the original decision to impose the penalty; or 3) refuse payment but realise we will then pursue prosecution through the courts.

Enquiries Concerning this Notice

Enquiries concerning this notice may be directed to Manager, Compliance Legal Policy on telephone number (02) 6275 5606 or fax number (02) 6275 6227.

Jeff Buckpitt
National Manager
Compliance Branch
March 2006

Attachment A

New Import-related Offences Subject to the INS

Offence	Penalty	Administrative Moratorium
Subsection 64(13) - Failure to meet reporting requirements for the impending arrival of a ship or aircraft.	Infringement notice 12 penalty units* Prosecution Maximum 60 penalty units.	Administrative moratorium from 19 July 2005 until and including 12 April 2006 on infringement notices only.
Subsection 64AA(10) - Failure to meet reporting requirements for the arrival of a ship or aircraft.	Infringement notice 12 penalty units. Prosecution Maximum 60 penalty units.	Administrative moratorium from 19 July 2005 until and including 12 April 2006 on infringement notices only.
Subsection 64AAB(7) - Failure to meet reporting requirements for particulars of other cargo reporters.	Infringement notice 12 penalty units. Prosecution Maximum 60 penalty units.	Administrative moratorium from 19 July 2005 until and including 12 April 2006 on infringement notices and prosecution.
Subsection 64AAC(6) - Failure to meet reporting requirements for persons engaged to unload cargo.	Infringement notice 12 penalty units. Prosecution Maximum 60 penalty units.	Administrative moratorium from 19 July 2005 until and including 12 April 2006 on infringement notices and prosecution.
Subsection 64AB(10) - Failure to meet reporting requirements for the report of cargo.	Infringement notice 12 penalty units. Prosecution Maximum 60 penalty units.	Administrative moratorium from 19 July 2005 until and including 12 April 2006 on: <ul style="list-style-type: none"> - Infringement notices and prosecutions where the offence relates to the report of goods that are intended to be unloaded in Australia; - Infringement notices only where the offence relates to the report of goods intended to be left on board the ship or aircraft.
Subsection 64ABAA(9) - Failure to meet reporting requirements for outturn reports	Infringement notice 12 penalty units. Prosecution Maximum 60 penalty units.	Administrative moratorium from 19 July 2005 until and including 12 April 2006 on infringement notices and prosecution.
Section 71AAAQ - Making more than one self-assessed clearance declaration in respect of goods.	Infringement notice 3 penalty units. Prosecution Maximum 15 penalty units.	Administrative moratorium from 19 July 2005 until and including 12 April 2006 on infringement notices and prosecution.
Section 71G - Entering goods that have already been entered for home consumption.	Infringement notice 3 penalty units. Prosecution Maximum 15 penalty units.	Administrative moratorium from 19 July 2005 until and including 12 April 2006 on infringement notices only.
Subsection 74(6) - Failure to comply with directions as to storage or movement of certain goods	Infringement notice 12 penalty units. Prosecution Maximum 60 penalty units.	Administrative moratorium from 19 July 2005 until and including 12 April 2006 on infringement notices and prosecution.

Subsection 243V(1) - False or misleading statements in a cargo report or outturn report	Infringement notice 10 penalty units Prosecution Maximum 50 penalty units	Administrative moratorium applied from 1 July 2002 until and including 1 January 2003 on infringement notices and prosecution. However, infringement notices will not be served and prosecutions will not be brought for such offences committed before 12 April 2006.
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* A penalty unit is currently \$110.

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Attachment B

Considerations to be taken into account before issuing a notice

1) *Significance of the breach*

The following factors could be relevant when considering the significance of a breach of a regulatory requirement:

- The seriousness of the consequences flowing from this particular breach of the regulatory requirement.
- 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.

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 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.

Indicators for serving an infringement notice:

- The regulatory obligation was breached in a significant way (e.g. the lateness of a report adversely impacted on Customs ability to examine or risk assess cargo).
- The goods were of high risk to the revenue or community (such as alcohol and tobacco, or goods requiring a permission/licence to import or export).

2) *Effort/Attempt to Comply*

Customs encourages commitment to continuous improvement in compliance and would consider the following factors if relevant:

- Whether Customs 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, industry association or appropriate institutional training and education activities.

Indicators for not serving an infringement notice:

- In the particular circumstances of the case, the person appears to have made reasonable efforts to comply with regulatory requirements.
- The person has sought Customs assistance on how to meet regulatory requirements and acted in accordance with any advice.

Indicators for serving an infringement notice:

- The person was not relying on Customs advice.
- The person has not attempted to inform him or herself on how to meet regulatory requirements.

3) *Reliance on Customs 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:

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

Indicators for not serving an infringement notice:

- The person has written advice from Customs on a matter related to the circumstance in which the offence occurred. (This includes advice such as an Australian Customs Cargo Advice to the extent that the advice has not been superseded by later written advice.)
- The person acted in accordance with the advice and the commission of the offence was a direct result of acting in that way.
- Customs 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 on a matter related to the circumstance in which the offence occurred.
- The person has advice but acted in a way inconsistent with that advice which resulted in the commission of the offence.

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.
- For false or misleading statement offences, whether the person who provided the information to Customs 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.
- Unforeseen or unavoidable failures of IT or telecommunications systems.

Indicators for not serving an infringement notice:

- The person could not reasonably have foreseen or responded to the independent actions of an unrelated person 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.
- 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 (for example 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.
- 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.

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

Indicators for not serving an infringement notice

When ALL of the following apply:

- A person has made reasonable efforts to comply with regulatory requirements; and
- The person has been unable to comply due to an identified Customs 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;

- The person has not made any effort or attempt to comply with a regulatory requirement.

All of these indicators may mitigate 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.

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