

AUSTRALIAN CUSTOMS NOTICE NO. 2004/05

Amendments to false and misleading statement provisions in the Customs Act

The *Customs Legislation Amendment Act (No. 2) 2003* (the CLA (2) Act), which received Royal Assent on 17 December 2003, includes amendments to the false and misleading statement offence provisions of the *Customs Act 1901* (the Customs Act). These amendments will take effect on 14 January 2004.

There are provisions in the Customs Act that make it an offence to ‘make a statement that is false or misleading in a material particular’ or to ‘omit a thing or matter from a statement, without which it is false or misleading in a material particular’. For simplicity, this Notice will refer to all such statements as ‘false statements’, but the information detailed below also applies to misleading statements and to statements that are false or misleading as the result of an omission.

The amendments ensure that these offence provisions take account of the complexity of emerging commercial arrangements for communicating with Customs within the importing and exporting community.

# Liability for false statements that do not result in a loss of duty

Sections 243U and 243V of the Customs Act have been amended to provide that, 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 be made. By broadening the class of possible offenders to cover all those potentially involved in the making of the statement, Customs 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.

For example, if an owner provides false information to a broker and the broker includes that information in a communication to Customs, 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, then the broker will be liable for having made the false statement.

Similar amendments have been made to the fault-based false statement offences in section 234 of the Customs Act, making an offence to intentionally give information to another person, knowing that the information is false or misleading in a material particular and that the other person or someone else will include that information in a statement to Customs.

Consequential amendments have also been made to the record-retention obligations in section 240AB of the Customs Act so that any one involved in preparing or sending communications to Customs must keep records that verify the content of those communications and enable Customs to trace information included in communications to its source.

# False statements in refund or drawback applications

Section 243T of the Customs Act makes the owner of imported goods liable for an offence when a false statement is made that results in a loss of duty. The previous wording of this provision 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.

# Voluntary disclosure defence

The amendments also clarify that, for a disclosure of a false statement under section 243T or 243U to be considered ‘voluntary’, an error notice must be given to a Customs officer before:

Customs gives the owners of the goods or their agent an audit notice under section 214AD of the Act; or

Customs exercises a power under a Customs-related law to verify the accuracy of the information included in the statement; or

Customs issues an infringement notice in relation to the statement; or Customs commences legal proceedings in relation to the statement.

An error notice is a notice in writing given to Customs that indicates that a false statement was made. It can be made electronically by communicating an amendment to the original statement to Customs and can be made by any person (other than a Customs Officer).

Where the duty payable as a result of the error notice is higher than that based on the initial false statement, the duty must also be paid before an infringement notice is issued or proceedings commenced in relation to the statement in order to avoid liability for the offence.

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

# Application of amendments

The changes detailed in this Notice apply only in relation to statements made to Customs on or after 14 January 2004. The Customs Act as in force before 14 January 2004 will continue to apply to statements made prior to that date.

CMR fact sheets and information booklets that include information about false and misleading statement offences should be read as subject to this Notice. More detailed information about the effect of these amendments will be placed on the ‘complying with customs’ section of the Customs Internet ([www.customs.gov.au](http://www.customs.gov.au/)) as soon as possible.

Inquiries concerning this notice may be directed to Manager Infringement Notice Scheme Coordination on telephone number (02) 6275 5610 or fax number (02) 6275 6227.

Steve Holloway National Manager Compliance CANBERRA ACT

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