# AUSTRALIAN CUSTOMS NOTICE NO. 2005/37

Updated - Moratorium relating to strict liability import offences

**This Australian Customs Notice (ACN) replaces ACN No. 2005/34 issued 21 July 2005. ACN No. 2005/34 referred to 12 April 2005 as the end of the extended moratorium period when it should have read 12 April 2006.**

The administrative moratorium in relation to the Infringement Notice Scheme (INS) is being republished. The key change involves giving industry the original intended benefit of a full

6 months moratorium on infringement notices and prosecutions for the new import offences.

The extension of the Integrated Cargo System (ICS) cut-over period from 40 days from commencement of the imports related legislation to 12 October 2005 would have effectively used up 3 months of both the administrative and statutory moratoriums for the INS import related offences.

The attached moratorium document details how the moratorium will apply to the INS import related offences. The extended moratorium began on 19 July 2005 and will run until 6 months after the 12 October 2005 cut-over time, i.e. until and including 12 April 2006.

The statutory moratorium on mandatory electronic reporting of cargo reports (under section 64AB of the *Customs Act 1901*) will not be extended. Therefore, a cargo reporter lodging documentary cargo reports who requires additional time to be able to report electronically will still need to apply for an extended moratorium period under that section.

The statutory moratorium on serving infringement notices and commencing prosecutions for late reports under section 64AB will apply for the 6 months from 19 July 2005 or until the end of any further moratorium period granted to an individual cargo reporter.

For cargo reporters who do not require an extension of time to be able to report electronically, in addition to the statutory moratorium on infringement notices and prosecutions for offences against section 64AB(10), an administrative moratorium will apply until 6 months after the import cut-over time.

Customs response to non-compliance with import requirements will be determined by the extent and nature of the non-compliance in accordance with the “Customs Regulatory Philosophy” and the “Guidelines for Serving Infringement Notices”. The issuing of infringement notices is not automatic but is an option available to Customs, considering the circumstances on a case-by- case basis.

The Customs Regulatory Philosophy and the Chief Executive Officer’s Guidelines for Serving Infringement Notices are available on the Customs Internet site at [www.customs.gov.au](http://www.customs.gov.au/).



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

Jeff Buckpitt National Manager Compliance Branch For

Chief Executive Officer 28 July 2005

# MORATORIUM

**RELATING TO STRICT LIABILITY IMPORT OFFENCES**

The moratorium period on the serving of infringement notices and or commencing prosecutions for the import related offences detailed below will apply to offences committed between the commencement of the relevant offence and 6 months after the time the CEO determines as the import cut-over time for import transactions in the Integrated Cargo System.

1. **Moratorium on Infringement Notices only**

Infringement notices will not be served, 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 are:

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

## Moratorium on Infringement Notices and Prosecutions

Infringement notices will not be served and prosecutions will not be brought 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 are:

|  |  |
| --- | --- |
| **Subsection** | **Description** |
| 64AAB(7) | failure to report particulars of other cargo reporters |
| 64AAC(6) | failure to report persons engaged to unload cargo |
| 64ABAA(9) | failure to make an outturn report |
| 71AAAQ | making two self assessed clearance declarations in relation to the same goods |

## Statutory moratorium for late cargo reports

Section 64AB of the Act in relation to cargo reporting specifically includes a 6 months general moratorium 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 report 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 before

6 months after the import cut-over time as follows:

* 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’).