

AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2013/25

New Customs laws to strengthen the supply chain against criminal infiltration receive Royal Assent

The *Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013* (the Act) received Royal Assent on 28 May 2013. Some of the measures commence the day after Royal Assent.

# What are the Customs Act 1901 changes and why are they necessary?

Two reports have highlighted organised crime threats and vulnerabilities in the maritime and aviation sectors: the Parliamentary Joint Committee on Law Enforcement (PJCLE) 2011 report following its Inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime; and a 2012 report prepared by Joint Task Force Polaris that examined criminality in the Sydney maritime environment.

Issues identified by the Polaris and the PJCLE reports include:

* individuals with access to restricted zones at airports and seaports have been identified on law enforcement high threat priority target lists,
* individuals using access to cargo movement information to track illicit goods and providing that information to criminal groups, and
* individuals accessing containers in terminals to collect illicit goods for criminal groups.

The amendments to the Customs Act implement a number of recommendations of these reports and seek to strengthen the cargo supply chain against criminal infiltration by:

* Placing statutory obligations on Cargo Terminal Operators (CTOs) and those that load and unload cargo, which are similar to those that the Customs Act imposes on holders of depot and warehouse licences. These obligations include mandatory reporting of unlawful activity, ensuring the physical security of relevant premises and cargo, and fit and proper person checks on management at Custom’s request. Non-compliance will attract criminal or administrative sanctions.
* Creating new offences for using information from the Integrated Cargo System (ICS) to aid a criminal organisation.
* Providing that the CEO of Customs and Border Protection can consider the suspension, refusal or cancellation of an Aviation or Maritime Security Identification Card (ASIC or MSIC) when determining whether the person is fit and proper under the Customs Act.
* Aligning aspects of the customs broker licensing scheme with that of depots and warehouses, including providing the CEO of Customs and Border Protection with the power to impose new licence conditions at any time and making it an offence to breach certain licence conditions.
* Adjusting other controls and sanctions in the Custom Act, including increasing penalties for certain strict liability offences and the offences in section 234, and improving the utility of the infringement notice scheme by for example increasing the relevant penalties.

# When will the Customs Act changes commence?

Most of the Customs Act amendments will commence on Proclamation, which may be up to 6 months after the legislation receives Royal Assent.

A delay of up to six months from Royal Assent to commencement of some Customs Act measures is necessary to develop subordinate legislation, change Customs and Border Protection IT systems and to ensure that officers and industry are suitably informed and where required business processes modified to comply with the amendments.

Part 3 in Schedule 1 of the Act, introduces new offences for using and disclosing information held on a Customs computer to another person to commit an offence against the Commonwealth, a State or a Territory. This provision commences the day after Royal Assent. There is no reason to delay commencement of these offences; there are no complex interrelationships between this measure and other measures in the legislation, and there should be no misuse of Customs systems or information now and the new offences will reinforce that message.

# Will you provide additional information to support implementation of the Custom Act changes?

We will publish further information on the Act on the Customs and Border Protection website at [http://www.customs.gov.au/site/page4271.asp.](http://www.customs.gov.au/site/page4271.asp)

You can find on the website new Guidelines on the application of the offences in section 233BABAF of the Customs Act. In particular, these Guidelines will provide information on when Customs and Border Protection will not consider the disclosure of information to contravene subsection 233BABAF(3).

If you have any queries about this Notice, please direct them to [Compliance1@customs.gov.au.](mailto:Compliance1@customs.gov.au)

[signed]

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Compliance Assurance Branch 29 May 2013