

10. PENALTY ADMINISTRATION

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KEY MESSAGES

- The penalty scheme is only used as a last resort. The legislation imposes no obligation on Customs to use the scheme every time an offence is detected.
- Guidelines on the administration of the infringement notice scheme for specified strict liability offences will be available as a public document. The guidelines will be a disallowable instrument – they must be gazetted and tabled in Parliament. Customs will have regard to the guidelines when considering whether to apply a penalty.
- Only certain senior officers with the delegation from the CEO of Customs will be able to serve infringement notices. Other staff will be able to make recommendations to these delegates.
- Where an infringement notice has been served, a person will be able to make representations seeking withdrawal of that infringement notice.

THE LEGISLATION

The key new provisions of the Customs Act relating to penalty administration are listed below.

- 243SA:** Failure to answer questions
- 243SB:** Failure to produce documents or records
- 243SC:** Preservation of the privilege against self-incrimination
- 243T:** False or misleading statements resulting in loss of duty
- 243U:** False or misleading statements not resulting in loss of duty
- 243V:** False or misleading statements in cargo reports or outturn reports
- 243W:** Electronic communications to Customs to be treated as statements to CEO
- 243X:** Application of Division
- 243XA:** Guidelines for serving infringement notices
- 243Y:** When an infringement notice can be served
- 243Z:** Matters to be included in an infringement notice
- 243ZA:** Withdrawal of infringement notice
- 243ZB:** What happens if unpaid duty or unrepaid refund or drawback and penalty are paid
- 243ZC:** More than one infringement notice may not be served for the same offence
- 243ZD:** Infringement notice not required to be served
- 243ZE:** CEO may extend period for payment of penalty

INTRODUCTION

Customs compliance strategy relies on a self-assessment system where, in part, industry is required to accurately report cargo in a timely manner and pay the correct amount of duty and taxes owing. A penalty scheme is an important part of a self-assessment system because it encourages compliance through the use of pecuniary penalties.

The Trade Modernisation Act introduces into the Customs Act a range of penalties, many of which are strict liability offences. It also replaces the current administrative penalty system with an infringement notice scheme for specified strict liability offences.

This new penalty scheme will have 3 levels, as follows.

- **Level 1** – court proceedings in cases where a fault element must be proved (this level will attract the highest maximum penalty)
- **Level 2** – court proceedings to prosecute a strict liability offence
- **Level 3** – an infringement notice in lieu of prosecution for a strict liability offence (this level will attract the lowest level of penalty).

What is a ‘strict liability’ offence?

A strict liability offence is one where the fault element does not have to be proved. This means that, regardless of whether the person making the error has acted intentionally, recklessly or otherwise, the fact that the action occurred is sufficient to establish the offence.

An offence is one of ‘strict liability’ **only** if it is specified as strict liability by the legislation creating the offences. For example, new section 64 of the Customs Act specifies that a late or inaccurate impending arrival report is an offence of strict liability, but failure to answer a question asked by a Customs officer (section 243SA) is not an offence of strict liability therefore an infringement notice cannot be served and it can only be dealt with by prosecuting the offence in court.

Prosecution for strict liability offences must commence within five years from the time the offence is committed (section 249 of the Customs Act, which is unchanged).

What is a ‘penalty unit’?

A penalty unit represents a dollar amount, currently \$110. The number of units for the particular offence is multiplied by that dollar amount. For example, 30 penalty units equates to \$3300.

Replacement of administrative penalties with an infringement notice scheme

The administrative penalty system, in operation since 1989, will be replaced by a scheme based on infringement notices. The current administrative penalty system has several shortcomings:

- it is limited to duty-related errors appearing on import entries and refund applications
- it cannot be used for errors on export entries, for late or inaccurate cargo reports, or for unauthorised movement of goods
- it is draconian in that it imposed a penalty of 200 per cent of the duty shortfall, and
- its remission process is cumbersome.

The new infringement notice scheme:

- applies across most aspects of cargo management
- applies a penalty in an infringement notice that is one-fifth (that is, 20 per cent) of the maximum amount that a court might impose for a strict liability offence
- allows a person to make representations to the CEO or delegate seeking to have the infringement notice withdrawn
- requires guidelines to be made and regard to be had to them (those guidelines will be a disallowable instrument and must be gazetted and tabled in Parliament).

Customs does not, in fact, serve many administrative penalties, despite a high rate of duty-related errors. Customs approach to serving infringement notices will not change with the new penalty scheme – penalties, including infringement notices, will only proceed when other aspects of the Customs Compliance Strategy have failed. Guidelines on the administration of those strict liability offences that fall within that scheme will be publicly available .

Infringement notices

The infringement notice is a notice that may be served in lieu of prosecuting the offence in court, where the CEO (or his delegate) has reasonable grounds to believe that the person has committed an offence. This decision to serve an infringement notice is made after having regard to the Guidelines. Infringement notices may only be served for those strict liability offences specified in section 243X of the Customs Act. An infringement notice is an administrative way of addressing a regulatory breach.

The legislation requires the infringement notice to specify certain particulars, including where and when the offence is alleged to have been committed and the amount of penalty that must be paid if the person wishes to avoid prosecution for the offence.

Commencement

The new penalty scheme applies only to transactions and reports occurring on or after the commencement of the new legislation. The current section 243T penalties will continue to apply to false or misleading statements resulting in loss of duty made before the new penalty provisions come into force.

Moratorium for cargo reporting

A six-month legislative moratorium applies to the imposition of penalties for late cargo reports (see [Topic 5: Import Cargo Reporting](#) for further information about the moratorium). This will allow industry time to set up electronic systems to ensure accurate and timely cargo reporting. In addition, where the CEO is satisfied that a cargo reporter has made reasonable progress towards complying with the new provisions, the CEO may grant a further extension of both these exemptions for up to an additional 18 months.

Delegates

Certain senior officers will be delegated the power from the CEO to serve infringement notices for those strict liability offences that fall within the infringement notices scheme. Those officers will be at a senior level and will be trained and qualified to exercise that power. This means that only a few, well-qualified officers will have the power to serve infringement notices. Other officers will be able to make recommendations to a delegate, but the decision whether to serve an infringement notice rests with the delegate. This system ensures that penalties are applied only after careful consideration of the relevant facts and on a case-by-case basis.

Guidelines for the administration of strict liability offences

Section 243XA requires the CEO to make guidelines for the administration of the infringement notice scheme for strict liability offences subject to that scheme. The CEO and delegates must have regard to the Guidelines when deciding whether to serve an infringement notice.

The Guidelines will set out matters for the CEO or delegate to consider before exercising the discretion to serve an infringement notice. The Guidelines will not direct the CEO to exercise this discretion in a particular way in a particular instance – they are only a guide.

The Guidelines will be a disallowable instrument (subsection 243XA(2)). This means the Guidelines must be gazetted and tabled in Parliament. Although the Guidelines will come into force upon gazettal (or another specified date after gazettal), Parliament has 15 sitting days to scrutinise the instrument. If Parliament disagrees with some or all of the contents, it can disallow the instrument. If the Guidelines are not disallowed, they continue in force. If disallowed, the Guidelines cease to have effect from the date of disallowance.

THE THREE LEVELS OF THE PENALTY SCHEME

The new penalty scheme will have three levels:

- **Level 1** – court proceedings in cases where a fault element must be proved
- **Level 2** – court proceedings to prosecute the strict liability offence
- **Level 3** – an infringement notice in lieu of prosecution for a strict liability offence.

Level 1 – court proceedings for fault based offences

For offences not specified to be strict liability, a fault element (eg intention) must be proved. Penalties for fault based offences are relatively higher than those for strict liability offences.

Level 2 – court proceedings to prosecute strict liability offence

A prosecution for a strict liability offence can be brought:

- (i) where an infringement notice is not considered appropriate, or
- (ii) an infringement notice is served and the amount specified in that notice is not paid within the prescribed time.

Maximum penalties for strict liability offences are relatively low (30–60 penalty units).

Level 3 – infringement notice in lieu of prosecution for strict liability offence

This level will attract the lowest level of penalty – one-fifth (that is, 20 per cent) of the maximum penalty that a court can impose if the matter were prosecuted. It is only available when the offence is specified in section 243X of the Customs Act.

Serving an infringement notice

Section 243Y of the Customs Act provides that the CEO of Customs (or his delegate) must have reasonable grounds to believe that a strict liability offence has been committed before serving an infringement notice. The decision whether to serve an infringement notice is made by the CEO or his delegate after having regard to the Guidelines. More than one infringement notice cannot be served for the same offence (section 243ZC).

Nothing in the Customs Act requires the CEO to serve an infringement notice if an offence is detected (section 243ZD). The CEO or his delegate may decide that no action is warranted or that a warning is sufficient.

However, if an infringement notice is served, there is no obligation to pay the amount specified in the infringement notice. If the amount remains unpaid, the onus is on Customs to pursue the matter in court. There is no Administrative Appeals Tribunal (AAT) review. In contrast, unpaid administrative penalties served under the current system become a debt to the Commonwealth, which could be recovered through the court process as a debt.

The person who received the infringement notice may make representations to the CEO or his delegate as to why the infringement notice should be withdrawn. The CEO has the power to withdraw the notice (section 243ZA), whether or not the person has made representations seeking withdrawal of the notice.

An infringement notice may be served up to 12 months from the day after the date of the offence. However, an infringement notice for breaches involving false or misleading statements resulting in loss of duty or not resulting in loss of duty, that are detected during the exercising of monitoring powers (see [Topic 9: Monitoring and Export Examination Powers](#)) may be served within 12 months after the day on which the offence was detected, up to a maximum of four years after the statement was made.

Paying the penalty

A period of 28 days is allowed to pay the penalty (subsection 243Z(1)(f)) but the CEO may extend this period (section 243ZE). Liability of the person is taken to be discharged if the penalty in the infringement notice is paid and, in the case of section 243T, if the person pays any unpaid duty or any unrepaid refund or drawback before the end of that period. Customs can take no further action to prosecute the offence and the person is not regarded as having been convicted of the offence (section 243ZB).

If there is unpaid duty or unrepaid refund or drawback of duty (under section 243T), the obligation to pay the duty or repay the refund or drawback continues despite the service of the infringement notice (paragraph 243Z(1)(d)).

If the penalty is not paid

If the amount specified in the notice is not paid, the CEO may institute a Customs prosecution in respect of the strict liability offence. This will depend upon the circumstances of the case. Failure to pay the amount does not create a debt due to the Commonwealth.

Maximum penalty

The penalty to be imposed in an infringement notice is one-fifth (that is, 20 per cent) of the maximum penalty that a court could impose in respect of a strict liability offence (section 243Z(4)).

OFFENCES AND LIABILITY

Offences

In addition to offences for failure to meet obligations under the various aspects of cargo management detailed in the preceding topics, the following offences apply across a range of dealings with Customs:

- making a false or misleading statement resulting in loss of duty (subsection 243T(1))
- making a false or misleading statement not resulting in loss of duty (subsection 243U(1))
- making a false or misleading statement in cargo reports or outturn reports (subsection 243V(1))
- failure to answer questions (section 243SA)
- failure to comply with a direction (subsections 74(1) and (3))
- move, alter or interfere with cargo under Customs control without authority (subsections 33(1), (2), (3), (5) and (6)).

The table 'Guide to offences and penalties' following this section sets out the elements of all new or amended offences, the nature of each offence, and the maximum penalty that can be imposed by a Court. Although not specified in the table, a penalty in an infringement notice (where available and served) is 20 per cent of the maximum that a Court may impose for a strict liability offence.

Liability

As a general rule, the person who carries out an action is liable for the offence. A 'person' is defined in section 22 of the *Acts Interpretation Act 1901* to include a body corporate. The circumstances of the case will determine whether the person or the body corporate will be penalised.

GUIDE TO OFFENCES AND PENALTIES

Note: All references to legislation are references to the Customs Act 1901 as amended by the Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001.

Subsection 33(1)

Moving, altering or interfering with goods subject to Customs control, without authority

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *500 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a person intentionally moves, alters or interferes with goods
- (b) at the time the goods were subject to the control of Customs, and
- (c) the movement, alternation or interference was not authorised by the *Customs Act 1901*.

Who commits the offence?

The person who moves, alters or interferes with the goods.

Subsection 33(2)

Moving, altering or interfering with goods subject to Customs control, without authority

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a person moved, altered or interfered with goods
- (b) at the time the goods were subject to the control of Customs, and
- (c) the movement, alternation or interference was not authorised by the *Customs Act 1901*.

Who commits the offence?

The person who moves, alters or interferes with the goods.

Subsection 33(3)

Moving, altering or interfering with goods subject to Customs control, without authority

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) an employee of a person moves, alters or interferes with goods
- (b) at the time the goods were subject to the control of Customs
- (c) the employee was acting on behalf of the person in moving, altering or interfering with the goods, and
- (d) the movement, alteration or interference was not authorised by the *Customs Act 1901*.

Note: An *employee* of a body corporate includes a person who is a director, a member, or a member of the board of management, of the body corporate.

Who committed the offence?

The employer.

Defence

It is a defence to a prosecution if the person took reasonable precautions, and exercised due diligence, to prevent the employee from moving, altering or interfering with the goods.

Subsection 33(5)

Moving, altering or interfering with goods subject to Customs control, without authority

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *500 penalty units*

When is an offence committed?

An offence is committed if:

- (a) person intentionally directs or permits another person to move, alter or interfere with goods
- (b) at the time the goods were subject to the control of Customs, and
- (c) the movement, alteration or interference is not authorised by the *Customs Act 1901*.

Who commits the offence?

The person who directs or permits another person to move, alter or interfere with the goods.

Subsection 33(6)

Moving , altering or interfering with goods subject to Customs control, without authority

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a person directs or permits another person to move, alter or interfere with goods
- (b) at the time the goods were subject to the control of Customs, and
- (c) the movement, alteration or interference is not authorised by the *Customs Act 1901*.

Who commits the offence?

The person who directs or permits the goods to be moved, altered or interfered with.

Subsection 64(12)

Failure to report impending arrival

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *120 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia and was due to arrive at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight) and:
 - (b) the operator intentionally did not report to Customs, in accordance with section 64, the impending arrival of the ship or aircraft, or
 - (c) the operator of a ship or aircraft intentionally made the impending arrival report earlier than 10 days before the time stated in the report to be the estimated time of arrival of the ship or aircraft, or
 - (d) the operator of a ship or aircraft intentionally made the impending arrival report late.

When will the impending arrival report be late?

Refer to [Topic 5: Import Cargo Reporting](#).

How must an impending arrival report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

Who commits the offence

The operator of the ship or aircraft.

Subsection 64(13)

Failure to report impending arrival

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) ship or aircraft was on a voyage or flight to Australia from a place outside Australia and was due to arrive at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), and:
- (b) the operator did not report to Customs, in accordance with section 64, the impending arrival of the ship or aircraft, or
- (c) the operator of a ship or aircraft made the impending arrival report earlier than 10 days before the time stated in the report to be the estimated time of arrival of the ship or aircraft, or
- (d) the operator of a ship or aircraft made the impending arrival report late.

When will the impending arrival report be late?

Refer to [Topic 5: Import Cargo Reporting](#).

How must an impending arrival report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

Who commits the offence

The operator of the ship or aircraft.

Subsection 64AA(9)

Failure to report the arrival of a ship or aircraft

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *120 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia and it arrived at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight),
and:
- (b) the operator intentionally did not report to Customs, in accordance with section 64AA, the particulars of the arrival of the ship or aircraft and the time of arrival, or
- (c) the operator of the ship or aircraft intentionally did not report the arrival of the ship or aircraft in time.

When must the arrival report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

How must an arrival report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

Who commits the offence?

The operator of the ship or aircraft.

Subsection 64AA(10)

Failure to report the arrival of a ship or aircraft

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia and it arrived at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight),
and:
- (b) the operator did not report to Customs, in accordance with section 64AA, the particulars of the arrival of the ship or aircraft and the time of arrival, or

- (c) the operator of the ship or aircraft did not report the arrival of the ship or aircraft in time.

When must the arrival report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

How must an arrival report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

Who commits the offence?

The operator of the ship or aircraft.

Subsection 64AAA(8)

Failure to report ship's stores and prohibited goods

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *120 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia and it arrived at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight),
and:
- (b) the operator intentionally did not report to Customs, in accordance with section 64AAA, the particulars of the ship's stores or aircraft's stores and of any prohibited goods on board at the time of arrival, or
- (c) the operator of the ship or aircraft intentionally did not make that report in time.

When must a report of stores and prohibited goods be made?

Refer to [Topic 5: Import Cargo Reporting](#).

How must report of stores and prohibited goods be made?

Refer to [Topic 5: Import Cargo Reporting](#).

Who commits the offence?

The operator of the ship or aircraft.

Subsection 64AAB(6)

Failure to report other cargo reporters

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *120 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia, and
- (b) a cargo reporter had entered into an agreement or arrangement with another cargo reporter under which cargo for whose carriage the other cargo reporter was responsible was to be carried on the ship or aircraft during the voyage or flight,

and:

- (c) the cargo reporter intentionally did not give to Customs, in accordance with section 64AAB, particulars of the other cargo reporter, or
- (d) the cargo reporter intentionally did not give to Customs that report on time.

When must a report of other cargo reporters be made?

Refer to [Topic 5: Import Cargo Reporting](#).

How must the cargo reporter notify Customs?

Refer to [Topic 5: Import Cargo Reporting](#).

Who commits the offence?

The cargo reporter.

Subsection 64AAB(7)

Failure to report other cargo reporters

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia, and
- (b) a cargo reporter had entered into an agreement or arrangement with another cargo reporter under which cargo for whose carriage the other cargo reporter was responsible was to be carried on the ship or aircraft during the voyage or flight,

and:

- (c) the cargo reporter did not give to Customs, in accordance with section 64AAB, particulars of the other cargo reporter, or
- (d) the cargo reporter did not give to Customs that report on time.

When must a report of other cargo reporters be made?

Refer to [Topic 5: Import Cargo Reporting](#).

How must the cargo reporter notify Customs?

Refer to [Topic 5: Import Cargo Reporting](#).

Who commits the offence?

The cargo reporter.

Subsection 64AAC(6)

Failure to report persons engaged to unload cargo

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia,

and:

- (b) the operator of the ship did not report to Customs, in accordance with section 64AAC, the particulars of the stevedore with whom the operator has entered into a contract for the unloading of the cargo from the ship at a place in Australia, or
- (c) the operator of the aircraft did not report to Customs the particulars of the depot operator who will first receive the cargo after it has been unloaded from the aircraft at a place in Australia, or
- (d) the operator of a ship or aircraft made that report earlier than 10 days before the time stated in the report to be the estimated time of arrival of the ship or aircraft, or
- (e) the operator of a ship or aircraft made the report late.

When will the impending arrival report be late?

Refer to [Topic 5: Import Cargo Reporting](#).

How must the report of persons engaged to unload cargo be made?

Refer to [Topic 5: Import Cargo Reporting](#).

Who commits the offence?

The operator of the ship or aircraft.

Subsection 64AB(9)

Failure to report cargo

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *120 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia and was due to arrive at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight),
and:
- (b) a cargo reporter intentionally did not report to Customs, in accordance with section 64AB, the particulars of the goods that the cargo reporter had arranged to be carried on the ship or aircraft on the voyage or flight and that were intended to be unloaded from the ship or aircraft at the port or airport, or
- (c) a cargo reporter intentionally did not report to Customs those particulars on time.

When must a cargo report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

How must a cargo report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

Exemptions

This does not require a cargo reporter to report goods that are accompanied personal or household effects of a passenger or member of the crew, ship's stores or aircraft's stores.

If a cargo reporter commits an offence because his or her cargo report was not made in time and he or she was required to make the report at a time before the end of the general moratorium period (6 months beginning on the date of the commencement of section 64AB) or, before the end of the further moratorium period (if that cargo reported has been granted a further moratorium period) an infringement notice cannot be served on the cargo reporter.

Moratorium

During the general moratorium period (6 months beginning on the date of the commencement of section 64AB) a cargo report may be made by document or electronically.

If the person has been granted a further moratorium period, the person may make a cargo report by document or electronically.

Who commits the offence?

The cargo reporter.

Subsection 64AB(10)

Failure to report cargo

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a ship or aircraft was on a voyage or flight to Australia from a place outside Australia and was due to arrive at a port or airport in Australia (whether the first port or airport or any subsequent port or airport on the same voyage or flight), and:
- (b) a cargo reporter did not report to Customs, in accordance with section 64AB, the particulars of the goods that the cargo reporter had arranged to be carried on the ship or aircraft on the voyage or flight and that were intended to be unloaded from the ship or aircraft at the port or airport, or
- (c) a cargo reporter did not report to Customs those particulars on time.

When must a cargo report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

How must a cargo report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

Exemptions

This does not require a cargo reporter to report goods that are accompanied personal or household effects of a passenger or member of the crew, ship's stores or aircraft's stores.

If a cargo reporter commits an offence because his or her cargo report was not made in time and he or she was required to make the report at a time before the end of the general moratorium period (6 months beginning on the date of the commencement of section 64AB) or, before the end of the further moratorium period (if that cargo reported has been granted a further moratorium period) an infringement notice cannot be served on the cargo reporter.

Moratorium

During the general moratorium period (6 months beginning on the date of the commencement of section 64AB) a cargo report may be made by document or electronically.

If the person has been granted a further moratorium period, the person may make a cargo report by document or electronically.

Who commits the offence?

The cargo reporter.

Subsection 64ABAA(8)

Failure to make an outturn report

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *120 penalty units*

When is an offence committed?

An offence is committed if:

- (a) cargo is unloaded from an aircraft at an airport and the depot operator intentionally did not communicate to Customs an outturn report in respect of the cargo,
- (b) a container is unloaded from a ship at a port and the stevedore intentionally did not communicate to Customs an outturn report in respect of the container,
- (c) cargo that is not in a container is unloaded from a ship and the stevedore intentionally did not communicate to Customs an outturn report in respect of the cargo,
- (d) cargo is unloaded from an aircraft or ship and moved to a Customs place other than a warehouse and the person in charge of the Customs place intentionally did not communicate to Customs an outturn report in respect of the cargo,
- (e) in any of those circumstances the relevant person intentionally did not communicate to Customs the outturn report on time.

When must an outturn report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

How must an outturn report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

Who commits the offence?

The person required to make the outturn report.

Subsection 64BAA(9)

Failure to make an outturn report

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) cargo is unloaded from an aircraft at an airport and the depot operator did not communicate to Customs an outturn report in respect of the cargo,
- (b) a container is unloaded from a ship at a port and the stevedore did not communicate to Customs an outturn report in respect of the container,
- (c) cargo that is not in a container is unloaded from a ship and the stevedore did not communicate to Customs an outturn report in respect of the cargo,
- (d) cargo is unloaded from an aircraft or ship and moved to a Customs place other than a warehouse and the person in charge of the Customs place did not communicate to Customs an outturn report in respect of the cargo,
- (e) in any of those circumstances the relevant person did not communicate to Customs the outturn report on time.

When must an outturn report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

How must an outturn report be made?

Refer to [Topic 5: Import Cargo Reporting](#).

Who commits the offence?

The person required to make the outturn report.

Subsection 71G(1)

Entering goods that have already been entered for home consumption

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *15 penalty units*

When is an offence committed?

An offence is committed if:

- (a) goods have been entered for home consumption under subsection 68(2) or (3), and
- (b) a person communicated a further import declaration, a further RCR or a warehouse declaration in respect of the goods or any part of the goods, and

- (c) the import declaration or RCR that resulted in the goods being entered for home consumption was not withdrawn.

Who commits the offence?

The person who communicated the further import declaration, further RCR or warehouse declaration.

Subsection 74(5)

Failure to comply with directions

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *120 penalty units*

When is an offence committed?

An offence is committed if:

- (a) an officer has given a written direction to a cargo reporter as to how and where goods are to be stored, and as to the extent (if any) to which the goods may be moved, and
- (b) that cargo reporter intentionally contravened that direction.

An offence is also committed if:

- (a) an officer gave written directions to a cargo reporter, a stevedore or a depot operator as to how and where goods are to be stored, and as to the extent (if any) to which the goods may be moved, and
- (b) that cargo reporter, stevedore or depot operator intentionally contravened that direction.

Who commits the offence?

The cargo reporter, stevedore or depot operator who contravened the direction.

Note: Subsections 74(1) and (3) of the Customs Act set out the circumstances in which a direction may be given.

Subsection 74(6)

Failure to comply with directions

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) an officer has given a written direction to a cargo reporter as to how and where goods are to be stored, and as to the extent (if any) to which the goods may be moved, and
- (b) that cargo reporter contravened that direction.

An offence is also committed if:

- (a) an officer gave written directions to a cargo reporter, a stevedore or a depot operator as to how and where goods are to be stored, and as to the extent (if any) to which the goods may be moved; and
- (b) that cargo reporter, stevedore or depot operator contravened that direction.

Who commits the offence?

The cargo reporter, stevedore or depot operator who contravened the direction.

Note: Subsections 74(1) and (3) of the Customs Act set out the circumstances in which a direction may be given.

Subsection 99(2)**Delivery of goods into home consumption**

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a holder of a warehouse licence permitted warehoused goods to be delivered for home consumption.

When is an offence not committed?

An offence is not committed if:

- (a) the goods had been entered for home consumption, and
- (b) an authority to deal with them was in force.

Who commits the offence?

The warehouse licence holder.

Subsection 99(3)

Delivery of goods for export

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a holder of a warehouse licence permitted warehoused goods to be taken from the warehouse for export.

When is an offence not committed?

An offence is not committed if:

- (a) the goods had been entered for export, and
- (b) there was an authority to deal with them in force, and
- (c) the goods were prescribed goods or goods included in a class of prescribed goods and the holder of the warehouse licence ascertained from information made available by Customs that the goods had been entered and an authority to deal was in force.

Who commits the offence?

The warehouse licence holder.

Subsection 102A(4)

Failure of holder of warehouse licence to notify Customs

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) prescribed goods or goods included in a class of prescribed goods were released from a warehouse for export,
and:
- (b) the holder of the warehouse licence did not give notice to Customs of the goods that were released, or
- (c) the holder of the warehouse licence did not give that notice within the period prescribed by the regulations, or
- (d) the goods were returned to the warehouse and the holder of the warehouse licence did not give notice to Customs of the returned goods, or

- (e) the goods were returned to the warehouse and the holder of the warehouse licence did not give that notice within the period prescribed by the regulations.

How must the notice of goods released be made?

The notice must:

- (a) be made electronically, and
- (b) state that the goods have been released, and
- (c) give such particulars as are required by an approved statement.

How must the notice of returned goods be made?

The notice must:

- (a) be made electronically, and
- (b) state that the goods have been returned, and
- (c) giving such particulars as are required by an approved statement.

Who commits the offence?

The warehouse licence holder.

Subsection 113(1)

Failure to enter goods for export and loading/exporting without authority to deal

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *50 penalty units*

When is an offence committed?

An offence is committed if:

- (a) the owner of goods intended for export did not ensure that the goods were entered for export, or
- (b) the owner of goods (being a ship or aircraft) intended for export which is to be exported otherwise than in a ship or aircraft, allowed the ship or aircraft to leave the place of exportation, or
- (c) the owner of goods (not being a ship or aircraft that is not going to be exported in another ship or aircraft) intended for export allowed the goods to be loaded on a ship or aircraft in which they were to be exported.

When is an offence not committed?

An offence will not be committed under paragraph (b) or (c) if:

- (a) there was an authority to deal with the goods in force, or
- (b) the goods were prescribed goods.

Who commits the offence?

The owner of the goods.

Subsection 114B(7)

Confirming exporters

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *10 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a person was granted confirming exporter status, and
- (b) that person failed, without reasonable excuse, to comply with a condition to which the grant is subject.

Who commits the offence?

The confirming exporter.

Subsection 114D(1)

Goods entered for export

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *10 penalty units*

When is an offence committed?

An offence is committed if:

- (a) an owner of goods in respect of which an export entry had been communicated to Customs did not deal with the goods in accordance with the entry as soon as practicable after an authority to deal with the goods had been granted, or
- (b) an owner of goods in respect of which an export entry had been communicated to Customs removed any of the goods from the possession of the person to whom they were delivered, or
- (c) an owner of goods in respect of which an export entry had been communicated to Customs removed any of the goods from the possession of any person to whom they were subsequently passed in accordance with the entry.

When is the offence not committed?

An offence is not committed under paragraph (b) or (c) if the entry had been withdrawn or withdrawn in so far as it applied to the goods.

Who commits the offence?

The owner of the goods.

Subsection 114E(1)**Delivering goods to a wharf or airport for export**

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a person delivered goods to another person (the deliverer) at a wharf or airport for export, and
- (b) the goods were required to be entered for export and had been entered for export, and
- (c) the goods were not prescribed goods,
and
- (d) there was no authority to deal with the goods in force, or
- (e) the person did not give the deliverer particulars of the authority.

An offence is also committed if:

- (a) a person delivered goods to another person (the deliverer) at a wharf or airport for export, and
- (a) the goods were required to be entered for export and had been entered for export, and
- (b) the goods were prescribed goods, and
- (c) the person did not give to the deliverer, at or before the time of delivery, particulars of the goods in the prescribed manner.

An offence is also committed if:

- (a) a person delivered goods to another person (the deliverer) at a wharf or airport for export, and
- (b) those goods were not required to be entered for export, and
- (c) the person did not give to the deliverer, at or before the time of delivery, particulars of the goods in the prescribed manner.

An offence is also committed if:

- (a) a person delivered goods to another person (the deliverer) at a wharf or airport for export, and
- (b) the goods were required to be entered for export and were not so entered at the time of delivery, and

- (c) the deliverer failed to enter the goods for export within the prescribed period after the time of delivery.

Who commits the offence?

The person who delivered the goods.

Subsection 114F(2)

Failure to notify of delivery to or release from a wharf or airport

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a person took delivery of goods for export at a wharf or airport (other than a prescribed wharf or airport),
- and
- (b) the person did not give notice to Customs of the goods delivered to the wharf or airport, or
 - (c) the person did not give that notice to Customs within the prescribed period.

An offence is also committed if:

- (a) after the person took delivery of goods for export at a wharf or airport those goods were removed from the wharf or airport otherwise than for the purpose of being loaded onto a ship or aircraft for export,
- and:
- (b) the person did not give notice to Customs of the goods that were removed from the wharf or airport, or
 - (c) the person did not give that notice to Customs within the prescribed period.

How must the notice of goods received at a wharf or airport be made?

The following apply to a notice of goods received at a wharf or airport:

- (a) the notice must be made electronically,
- (b) the notice must state that the person received the goods,
- (c) the notice must give such particulars as are required by an approved statement.

How must the notice of goods removed from a wharf or airport be made?

The following apply to a notice of goods received at a wharf or airport:

- (a) the notice must be made electronically,
- (b) the notice must state that the goods had been removed,
- (c) the notice must give such particulars as are required by an approved statement.

Who commits the offence?

The person who took delivery of the goods.

Subsection 115(1)**Permitting goods to be taken on board a ship or aircraft**

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) the owner of a ship or aircraft permitted goods required to be entered for export to be taken on board the ship or aircraft.

When is an offence not committed?

An offence is not committed if:

- (a) there was an authority to deal with the goods in force under section 114C, or
- (b) the goods are were excluded by the regulations from the application of section 115.

Who commits the offence?

The owner of the ship or aircraft.

Subsection 116(2)**Failure to withdraw or amend an export declaration**

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *50 penalty units*

When is an offence committed?

An offence is committed if:

- (a) goods were entered for export by the making of an export declaration, and
- (b) those goods were not exported (either all or some) within 30 days after the intended day of exportation notified in the entry, and
- (c) the authority to deal was taken to be totally revoked and the owner did not withdraw the entry relating to the goods within 7 days after the 30 day period expired, and
- (d) the authority to deal was taken to be partially revoked and the owner did not amend the entry so that it related only to the goods exported before the end of the period within 7 days after the 30 day period expired.

Who commits the offence?

The owner of the goods.

Subsection 117AA(1)

Consolidation of prescribed goods

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a person consolidated or took part in the consolidation of, prescribed goods for export, and
- (b) the consolidation was carried out at a place that was not prescribed in the regulations for the purposes of section 117AA.

Who commits the offence?

The person who consolidated the goods or took part in the consolidation.

Subsection 117AA(2)

Failure to notify of receipt of goods

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) prescribed goods have been received at a prescribed place for the purpose of being consolidated for export,
- and:
- (b) the person in charge of the place did not notify Customs of that receipt, or
 - (c) the person in charge of the place did not give that notice within the prescribed period after the goods were received at the place.

How must the notice of goods received at a prescribed place be made?

A notice must:

- (a) be given electronically, and
- (b) state that the goods were received, and
- (c) set out such particulars of the goods as are required by an approved statement.

Who commits the offence?

The person in charge of the prescribed place.

Subsection 117AA(3)**Release of prescribed goods**

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) the person in charge of a prescribed place permitted prescribed goods to be released from the place, and
- (b) the person did not ascertain, from the information made available by Customs, that the goods had been entered for export and an authority to deal with the goods was in force.

Who commits the offence?

The person in charge of the prescribed place.

Subsection 117AA(4)**Failure to notify Customs of release of prescribed goods**

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) prescribed goods have been released from a prescribed place, and:
- (b) the person in charge of the place did not give notice to Customs in respect of the goods so released, or
- (c) the person in charge of the place did not give that notice to Customs within the prescribed period after the goods were released.

How must the notice of goods released from a prescribed place be made?

The notice must:

- (a) be made electronically, and
- (b) state that the goods were released, and

- (c) give particulars of the entry for export and authority to deal that relates to the goods.

Who commits the offence?

The person in charge of the place.

Subsection 117A(1)

Failure to provide submanifests

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) goods for exportation by a ship or aircraft were consolidated at a place, and
- (b) the person in charge of that place did not, so as to enable the exportation, prepare and communicate to Customs a submanifest in respect of the goods.

How must a submanifest be made?

The submanifest must:

- (a) be made electronically, and
- (b) must communicate such information as set out in an approved statement.

Who commits the offence?

The person in charge of the place.

Subsection 118(1)

Departing without Certificate of Clearance

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) the master of a ship or the pilot of an aircraft has departed with the ship or aircraft from any port, airport or other place in Australia, and
- (b) at that time the person had not received from the Collector a Certificate of Clearance in respect of the ship or aircraft.

Who committed the offence?

The master of the ship or pilot of the aircraft.

Subsection 119(3)

Failure to communicate outward manifest

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *60 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a ship or aircraft departed from a port, airport or other place in Australia, and:
- (b) the master or owner of the ship, or the pilot or owner of the aircraft did not communicate electronically to Customs an outward manifest, or
- (c) the master or owner of the ship, or the pilot or owner of the aircraft did not communicate to Customs that outward manifest *within 3 days* after the day of departure of the ship or aircraft.

How must an outward manifest be made?

An outward manifest must:

- (a) be made electronically, and
- (b) specify all the goods, other than goods prescribed for the purposes of section 120, that were loaded on board the ship or aircraft at the port, airport or other place, and
- (c) if there were no goods of that kind, make a statement to that effect.

Who commits the offence?

The master or owner of the ship or the pilot or owner of the aircraft.

Subsection 126E(3)

Failure to communicate information

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *50 penalty units*

When is an offence committed?

An offence is committed if:

- (a) the CEO had notified that an information system had become temporarily inoperative, and
- (b) a person who could have otherwise communicated electronically to Customs by means of the system, communicated information to an officer by document, and
- (c) the CEO notified that the information system had again become operative, and

- (d) the person did not communicate the information electronically to Customs within 24 hours after the second notice was given.

Who commits the offence?

The person who failed to communicate the information.

Subsection 126F(3)

Failure to comply with undertaking

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *50 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a person who would ordinarily make a payment to Customs electronically was unable to do so because an information system was temporarily inoperative, and
- (b) that person gave Customs an undertaking to make the payment as soon as practicable after, and in any case not later than 24 hours after, the CEO notified that their systems had become operable again, and
- (c) Customs accepted that undertaking, and
- (d) the person did not comply with the undertaking.

Who commits the offence?

The person who failed to comply with the undertaking.

Section 240

Commercial documents to be kept

Failure to keep for the time period specified; in the form stated or failure to inform an officer of the whereabouts of the documents can be an offence (fault based). Refer to [Topic 7: Document and Record Retention](#).

Section 240AA

Verifying communications to Customs

Failure to keep records that verify the contents of communications in accordance for the period and the form specified in the provision can be an offence (fault based). Refer to [Topic 7: Document and Record Retention](#).

Subsection 243SA(1)

Failure to answer questions

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *30 penalty units*

When is an offence committed?

An offence is committed if:

- (a) an officer pursuant to a power conferred on the officer by the *Customs Act 1901* required a person to answer a question, and
- (b) the person failed to answer the question.

Who commits the offence

The person who failed to answer the question.

Defence

If a person who would be required to answer a question need not comply with the requirement if so complying would:

- (a) tend to incriminate the person, or
- (b) result in further attempts to obtain evidence that would tend to incriminate the person.

This does not apply, and the person must comply with the requirement, if the person has waived his or her right against incrimination.

Subsection 243SB(1)

Failure to produce documents or records

Nature of offence – *fault based*

Is the offence within the infringement notice scheme – *no*

Maximum penalty that can be imposed by a Court – *30 penalty units*

When is an offence committed?

An offence is committed if:

- (a) an officer, pursuant to a power conferred on the officer by the *Customs Act 1901* other than a power conferred by section 71DA, 71DL, 114A or 118, required a person to produce a document or record, and
- (b) the person failed to produce the document or record.

Who commits the offence?

The person who failed to produce the document or record.

Defence

If a person who would be required to produce a document or record need not comply with the requirement if so complying would:

- (a) tend to incriminate the person, or
- (b) result in further attempts to obtain evidence that would tend to incriminate the person.

This does not apply, and the person must comply with the requirement, if the person has waived his or her right against self incrimination.

Subsection 243T(1)

False or misleading statements resulting in loss of duty

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *a penalty not exceeding:*

- (a) *the amount of the excess, or*
- (b) *the refund that would not have been payable, or the amount of the excess, as the case may be, or*
- (c) *the drawback that would not have been payable, or the amount of the excess, as the case may be.*

When is an offence committed?

An offence is committed if:

- (a) a person makes to an officer a statement, in respect of goods, that is false or misleading in a material particular, or
- (b) a person omits from a statement, in respect of particular goods, made to an officer any matter or thing without which the statement is false or misleading in a material particular,

and:

- (c) the amount of duty properly payable on the goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading, or
- (d) a refund of duty on the goods was paid that would not have been payable, or that exceeded the amount of the refund of duty that would have been payable, if the amount of the refund were determined on the basis that the statement was not false or misleading, or
- (e) a drawback of duty on the goods was paid that would not have been payable, or that exceeded the amount of the drawback of duty that would have been payable, if the amount of the drawback were determined on the basis that the statement was not false or misleading.

When is an offence not committed?

An offence is not committed if:

- (a) the statement was made in a cargo report, or

- (b) the statement was made in an outturn report.

Who commits the offence?

The owner of the goods.

Subsection 243U(1)

False or misleading statements – not resulting in loss of duty

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *an amount not exceeding 50 penalty units for each statement that is found by the Court to be false or misleading.*

When is an offence committed?

An offence is committed if:

- (a) a person made to an officer a statement which is false or misleading in a material particular, or
- (b) a person omitted from a statement made to an officer any matter or thing without which the statement is false or misleading in a material particular.

When is an offence not committed?

An offence is not committed if:

- (a) the statement is made in a cargo report and outturn report, or
- (b) the statement is made under Part XVA or XVB of the Customs Act, or
- (c) the statement that is made by a person who is or was a passenger on, or a member of the crew of, a ship or aircraft made in relation to his or her accompanied personal or household effects that were carried on the ship or aircraft, or
- (d) the amount of duty properly payable on particular goods exceeds the amount of duty that would have been payable if the amount of duty were determined on the basis that the statement was not false or misleading, or
- (e) a refund of duty on goods was paid that would not have been payable, or that exceeded the amount of the refund that would have been payable, if the amount of refund were determined on the basis that the statement was not false or misleading, or
- (f) a drawback of duty on goods was paid that would not have been payable, or that exceeded the amount of the drawback that would have been payable, if the amount of drawback were determined on the basis that the statement was not false or misleading.

Who commits the offence?

The person who made the statement or omitted the matter or thing.

Subsection 243V(1)

False or misleading statement in a cargo report or outturn report

Nature of offence – *strict liability*

Is the offence within the infringement notice scheme – *yes*

Maximum penalty that can be imposed by a Court – *an amount not exceeding 50 penalty units*

When is an offence committed?

An offence is committed if:

- (a) a person made to an officer a statement in a cargo report or outturn report that was false or misleading in a material particular, or
- (b) a person made to an officer a statement in a cargo report or outturn report and the person omitted from the statement any matter or thing without which the statement was false or misleading in a material particular.

Who commits the offence?

The person who made the statement or omitted the matter or thing.