

INTRODUCTION

About this information package

The *Introduction to the Customs Trade Modernisation Legislation* explains the changes to cargo management made by amendments to Customs legislation, passed by Parliament in June 2001. It does not provide training in the use of new systems, nor methods of reporting, but sets out in plain English the key effects of the legislation and gives readers a clear picture of the way that the changes introduced by Cargo Management Re-engineering (CMR) are expected to operate. Each topic focuses on a key area affected by the amendments.

Who should read this package?

The *Introduction to the Customs Trade Modernisation Legislation* is aimed at all traders, service providers, Customs staff and government agencies involved in cargo management. Not all topics need to be read by everyone. To determine whether a topic is relevant for a particular cargo management role, refer to the table ‘[Which topics should I read?](#)’ on the inside front cover.

Documents and resources

The CMR web site at www.customs.gov.au/cmr/cmr.htm provides access to other information about CMR, including:

- lists of FAQs (frequently asked questions)
- the business rules for the Accredited Client Program
- audit guidelines for the Accredited Client Program
- fact sheets
- contacts, and
- latest news.

You can also use the website to contact Customs about any questions you may have about the legislative changes or CMR generally. The internet address to use is www.customs.gov.au.

Supporting materials such as penalty administration guidelines will be available when developed. Notification of these resources will be on the Customs Internet site.

Names of Acts

The trade modernisation legislation is made up of three Acts:

- the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*
- the *Import Processing Charges Act 2001*, and
- the *Customs Depot Licensing Charges Amendment Act 2001*.

Collectively, the three Acts are referred to as the trade modernisation legislation.

Printed copies of these Acts, and other Customs-related legislation, can be purchased from the Australian Government Info Shop. Alternatively, a copy of the Acts can be downloaded from scaleplus.law.gov.au.

Throughout this package, the names of the relevant Acts are abbreviated as follows:

- the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* – the Trade Modernisation Act
- the *Customs Act 1901* – the Customs Act
- the *Import Processing Charges Act 2001* – the Import Processing Charges Act
- the *Customs Depot Licensing Charges Amendment Act 2001* – the Depot Licensing Charges Amendment Act.

Reference to section numbers

Unless stated otherwise, references to section numbers are references to the Customs Act as amended by the Trade Modernisation Act.

1. OVERVIEW OF THE TRADE MODERNISATION LEGISLATION

INTRODUCTION

Why is there new customs legislation?

The Australian Customs Service has been in existence, under various titles, for more than 100 years. Over that time, many different systems have been used to control cargo, manage compliance and conduct business. Although Customs processes and systems have led to its recognition as a world leader in customs practice, these systems can no longer keep pace with changes in international business practices and in communications and computer technologies. Historically, compliance with cargo reporting requirements is generally poor, resulting in a significant loss of revenue, severe impact on Customs ability to deliver its community protection obligations, and the distortion of Australia's trade figures.

To address these problems, Customs developed the Cargo Management Re-engineering (CMR) Project. CMR involves far-ranging changes to the way Customs conducts business, the way Customs and its clients communicate, the reporting of cargo and the monitoring of compliance, and the computer systems used to manage these processes.

New legislation has been developed to give effect to these changes. The new legislation:

- creates the legal foundations for an electronic business environment for cargo management
- establishes a new approach to managing compliance that recognises that 'one size does not fit all', and
- improves controls over cargo and its movement.

What is the trade modernisation legislation?

The trade modernisation legislation package contains three Acts:

- the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* (the Trade Modernisation Act)
- the *Import Processing Charges Act 2001* (the Import Processing Charges Act) and

- the *Customs Depot Licensing Charges Amendment Act 2001* (the Depot Licensing Charges Amendment Act).

The major piece of legislation, the Trade Modernisation Act, amends the *Customs Act 1901* and the *Customs Administration Act 1985* and repeals the *Import Processing Charges Act 1997*. The amendments to the Customs Administration Act are generally unrelated to CMR and are not addressed in this package.

The Import Processing Charges Act is a new Act. It replaces the Import Processing Charges Act 1997.

The Depot Licensing Charges Amendment Act amends the *Customs Depot Licensing Charges Act 1997*.

When does the legislation take effect?

The Trade Modernisation Act received Royal Assent in July 2001. However, the provisions of the Act **will not commence until they are Proclaimed**. Normally, in cases where the provisions of an Act commence by Proclamation, the provisions come into effect no later than six months after Royal Assent. Because the Trade Modernisation Act involves substantial changes to computer and administrative systems for industry and government, this commencement requirement has been extended to two years. That is, the provisions of the Trade Modernisation Act as it amends the Customs Act will commence no later than 21 July 2003.

By phasing commencement, the trading community and the Government will have time to implement and test new systems and prepare for the new reporting requirements.

Benefits of the trade modernisation legislation

Benefits to industry

Benefits to industry as a result of the changes introduced through the trade modernisation legislation include:

- ease of communication and promotion of e-commerce
- reduction in communication costs
- improved resource allocation through the periodic declaration of trade data, which will alleviate the resource allocation problems faced by some businesses due to fluctuations in import and export activity from month to month, and
- flexible declaration arrangements for low-risk importers and exporters.

Benefits to government

Benefits to government of the changes introduced through the trade modernisation legislation include:

- enhanced community protection through the electronic reporting of cargo, which will help Customs and other government agencies to identify high-risk cargo prior to arrival

- facilitation of international trade through accredited client arrangements and the separation of the payment of duty from the clearance of goods
- improvement in the cost-effective use of resources, and
- increased voluntary compliance levels.

SUMMARY OF LEGISLATIVE CHANGES

The key features of the legislative changes are:

- the establishment of an electronic business environment with mandatory electronic reporting of certain information to Customs using an integrated computer system
- the introduction of streamlined reporting mechanisms, declaration procedures and payment options for importers and exporters who meet certain criteria
- simplified processes for declaring imports
- new reporting measures for imported cargo
- changes to the way exported cargo is reported and cleared
- new document and record retention requirements
- changes to cost recovery arrangements
- new monitoring powers
- clarification of examination powers for goods destined for export that are not yet under Customs control, and
- a new infringement notice system.

Each of these features is discussed in Topics 2–10, as outlined below.

Topic 2: E-commerce

Customs new system for managing, processing reports and monitoring cargo, the Integrated Cargo System, is an integral part of the CMR project. A key feature of the legislation governing the system is that, as far as practicable, **all** cargo-related communication with Customs is to be carried out electronically. This is in line with the Government's *Government Online* strategy, which aims to deliver all appropriate Commonwealth services online by 2001.

The move to electronic reporting and communication will:

- provide flexible access for all users
- help industry to report on time
- provide timely status information, and
- increase the efficient movement of cargo by allowing goods to move more quickly while helping to identify high-risk consignments accurately.

The legislative amendments remove the current ‘legacy systems’ in the Customs Act and replace them with a single integrated system, allowing electronic communication with Customs via a range of connection options, including email and the Internet. The legacy systems (COMPILE, EXIT, the Sea Cargo Automation System and the Air Cargo Automation System) will be phased out gradually.

Industry will communicate with Customs via the Customs Connect Facility (CCF), which replaces the current Customs information gateways. The CCF’s main elements are:

- Customs Interactive facility – the Internet access to the Integrated Cargo System
- electronic data interchange (EDI) – the means of exchanging batched business documents without the need for human intervention, via email.

People wishing to communicate with Customs will require suitable equipment and software – for example, a personal computer, Internet access and email software – and will choose the equipment that best suits their needs while meeting Customs requirements.

Topic 3: Accredited Client Program

To date, all importers and exporters are treated the same by Customs. A new scheme, the Accredited Client Program, allows certain importers and exporters, who have demonstrated that they regularly provide accurate and timely information, consistently make revenue payments and pose a lesser risk to the Australian community, to negotiate individually tailored information contracts to meet their needs.

In exchange for maintaining high standards of compliance accredited clients will:

- have access to individual case managers
- provide minimal information at the time of importing via a request for cargo release with other information provided in periodic declarations
- use an accredited client export approval number (ACEAN) to enter goods for export with all information provided in a monthly declaration
- have goods cleared with minimal intervention
- benefit from an alternative cost recovery model, based on periodic declarations.

Topic 4: Import Declarations and Duty Deferral

The amendments to the Customs Act introduce a simplified, streamlined process for declaring imported goods. The legislation allows importers to declare goods using a variety of flexible, user-friendly methods. Other features include the removal of transshipment entries and changes to the cost recovery system.

Import declarations and warehouse declarations

Imported goods will be entered for either home consumption or warehousing via a system of declarations.

There will be three ways to declare imported goods for home consumption:

- import declaration (both full and simple versions)
- self-assessed clearance declaration (for low value goods)
- request for cargo release or RCR (for accredited clients)

Imported goods can also be entered for warehousing via a warehouse declaration.

Duty deferral

The regulations and policy on duty deferral are still in development but will allow importers who present a minimal financial risk to revenue to defer payment of duty.

Topic 5: Import Cargo Reporting

The trade modernisation legislation introduces new compliance measures for reporting imported cargo. These measures will improve the quality and timeliness of cargo information provided to Customs, which in turn will allow Customs to more easily identify high-risk cargo, particularly cargo that might contain illicit drugs.

The legislation sets out the timeframes within which a person who organises the transport of goods into Australia will be obliged to report information to Customs. People unloading cargo from a ship or aircraft will be required to lodge outturn reports to account for surplus or short-landed cargo.

The legislation also allows Customs officers to control the movement of goods if there are reasonable grounds to believe they have been incorrectly reported or if there are reasonable grounds to believe there has been a breach of the Customs Act or other Customs legislation.

Topic 6: Exports

The legislative changes introduce a number of changes to the way export cargo is reported and cleared, providing greater flexibility to industry while delivering improved Customs control. The changes will also improve the quality and timeliness of export cargo reporting and help to address the problem of export cargo diverted into the Australian domestic market.

The definition of 'goods under Customs control' has been broadened to render all goods subject to Customs control as soon as they are delivered to a prescribed place for export. This gives Customs the right of examination for all goods brought to a prescribed place for export, not just goods whose export is subject to a statutory condition or requirement.

To combat the problem of general goods for export being diverted into the Australian domestic market, an authority to deal will be required before delivery is made to a prescribed place for export. In addition, consolidations of prescribed goods under Customs control will only be undertaken at prescribed places. The operator of such a place must communicate electronically the movement of these goods to Customs.

Other changes include:

- the alignment of export entry thresholds by raising the minimum value of goods required to be reported in an air or sea export entry from \$500 per line to \$2000 per consignment
- a requirement for the reporting of all goods requiring a permit on an export declaration, unless excluded by regulation
- simplified export declaration arrangements for exporters who become accredited clients (see [Topic 3: Accredited Client Program](#))
- provisions to allow authorised Customs officers a qualified power to enter premises with the occupier's consent, where there are reasonable grounds to believe export goods are or have been located in those commercial premises (this issue is discussed in Topic 9: Monitoring and Export Examination Powers)
- reporting by a person who takes delivery of goods for export at a wharf or airport, unless exempt
- communication of outwards manifests may be reported up to three days after the day of departure
- total electronic tracking of prescribed underbond goods, and
- total electronic reporting of submanifests and outward manifests.

Topic 7: Document and Record Retention

The amendments to the Customs Act incorporate new document and record retention requirements to reflect Customs broad client base, to allow for technological change and to ensure that the accountability for accuracy and compliance with customs law can be easily established.

The obligation to retain commercial documents has been extended to include everyone who causes cargo to be imported into and exported from Australia and persons who receive those goods. An obligation to retain records has been introduced for people who communicate information to Customs to allow Customs to verify the content of the information.

Topic 8: Cost recovery and Depot Licensing Fees

The Depot Licensing Charges Amendment Act and the Import Processing Charges Act introduce new cost recovery arrangements to support the changes to import and export processes, and to ensure that Customs charging regime is reasonable and transparent and provides certainty of costs.

The new cost recovery system:

- streamlines the existing processes
- removes the differentiation between the cost of transactions across different modes of transport
- focuses on the declaration of the goods imported, and
- encourages electronic lodgement with a substantial price discount.

Topic 9: Monitoring and Export Examination Powers

New monitoring powers, which replace the audit powers in the Customs Act, have been introduced. The powers of officers contained in Part XII, Divisions 1A and 1B Customs Act remain in force.

The new provisions have been introduced to provide a modernised legislative framework for monitoring compliance with the Customs Act and with Customs-related laws, and to ensure that the ability to monitor carried out in accordance with government policy.

There are two discrete powers in the Customs Act which enable Customs officers to enter premises for the purpose of monitoring or examination:

- the monitoring powers (by consent or warrant, for monitoring compliance only)
- the export examination power (by consent only, for examining goods for export).

Customs can enter premises to exercise the **monitoring powers** only with the consent of the occupier. If there is no consent, or if it is later withdrawn or not sought, Customs must obtain a monitoring warrant to enter the premises.

The **export examination powers** allow Customs to examine goods for export that are not under Customs control (that is, they have not been delivered to a prescribed place for export). These powers are by consent only; there is no recourse to a monitoring warrant where consent is refused or later withdrawn.

Topic 10: Penalty Administration

The administrative penalty system, in operation since 1989, has been replaced by a scheme based on a range of strict liability offences for breaches of statutory obligations. There will be an infringement notice scheme for some of the strict liability offences.

These penalties have been introduced because:

- there is a significant risk to revenue if imported or exported goods are inaccurately reported, and
- there is a significant risk to the community if prohibited imports such as narcotics are not stopped at the border.

The new penalty scheme is organised on the basis of three levels:

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

The infringement notice scheme (Level 3):

- 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 apply to the CEO or delegate to have the infringement notice withdrawn.

In addition to any specific offences as covered in this topic, the following offences apply throughout cargo management:

- making a false or misleading statement
- failure to report or to report on time
- failure to comply with certain directions, and
- move, alter or interfere with goods without authority.

Topic 10: Penalty Administration details the offences and the elements, penalties and liability in the table '[Guide to offences and penalties](#)'.

Customs approach to imposing penalties will not change with the new scheme. Penalties, including infringement notices, will only be pursued 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 and will be a disallowable instrument and therefore must be gazetted and tabled in Parliament.