

7. DOCUMENT AND RECORD RETENTION

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KEY MESSAGES

- Commercial documents must be retained for five years. Owners of imported or exported goods, persons who cause goods to be imported or exported and persons who receive those goods must keep commercial documents – this includes freight forwarders and cargo reporters.
- Records must be retained for one year. Everyone involved in communicating information to Customs must keep records verifying the communications.
- Commercial documents and records must be kept in a way that is readily accessible – therefore, systems and methods used to store documents and records will need regular updating.
- By keeping commercial documents and records, people will be able to demonstrate their compliance with Customs-related laws.

THE LEGISLATION

The key new provisions of the Customs Act relating to document and record retention are listed below.

- 240:** Commercial documents to be kept
- 240AA:** Authorised officer may require person to produce commercial documents
- 240AB:** Verifying communications to Customs
- 240AC:** Authorised officer may require person to produce record

INTRODUCTION

The amendments to section 240 of the Customs Act extend the obligation to retain commercial documents to everyone who handles cargo imported to and exported from Australia. New section 240AB introduces a new obligation to retain records for people who communicate information to Customs.

The amendments to document and record retention have been introduced to reflect Customs broad client base, to allow for technological change and to ensure that the accountability for accuracy and compliance with customs law. The amendments also allow Customs to check the compliance of certain persons with Customs-related law. The object of commercial document retention is to confirm the person's revenue-related obligations as well as the correctness of information communicated either by them or on their behalf. The object of record retention, on the other hand, is to verify the correctness of information sent to Customs by service providers.

Demonstrating compliance

By keeping documents and records, many of which are already kept for tax and other business purposes, people will be able to demonstrate their compliance with Customs-related laws.

Accessibility of documents or records

Documents and records must be kept in a way that makes them readily accessible. As they may be kept in any form, including electronically, any systems or methods used will need to be regularly updated to allow access. For example, if a particular technology used for document keeping becomes obsolete, the person will have an obligation to transfer the documents to a new technology. Similarly, if a method of document keeping means that the document might become illegible within the time it is required to be kept, the document will need to be transferred to another method. For example, some printouts from fax machines will not keep for more than a few years without fading.

DOCUMENT RETENTION

Who must retain documents?

The owner of goods imported into Australia (subsections 240(1) and (1AA)) or exported from Australia (section 240(1A)) and a person who causes goods to be imported or exported or a person who receives such goods (subsection 240(1B)) must retain commercial documents relating to the goods for a period of **five years** from the time the goods were imported or exported.

New subsection 240(1A) ensures people retain documents relating to **all** exports, not just for goods entered for export. Regulations will be made under current subsection 240(7) to exempt some exports from the document retention requirement – eg personal baggage and low value postal goods.

New subsection 240(1B) extends the requirement for commercial document retention to cargo handlers (including freight forwarders and cargo reporters).

Subsections 240(1) and (1AA) are unchanged and require owners of imported goods to keep commercial documents for five years from the time of entry for home consumption or making a return when goods are delivered without entry.

What documents must be kept?

Commercial document

‘Commercial document’ is defined in subsection 4(1) of the Customs Act to mean documents prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or their carriage but does not include electronic communications to or from Customs.

Owners of imported goods

For owners of imported goods, the documents that must be kept are those that come into the person’s possession before, on, or after the making of the entry or return and are necessary to enable a Collector to be satisfied of the correctness of the particulars of the entry or return (subsections 240(1) and (1AA)).

Owners of exported goods

For owners of exported goods, the documents that must be kept are those that come into the person’s possession at any time and are necessary to enable a Collector to be satisfied of the correctness of information communicated by, or on behalf of, the person to Customs (subsection 240(1A)).

Cargo handlers

For cargo handlers, the documents that must be kept include all commercial documents relating to the cargo and its carriage to or from Australia that come into the person’s possession at any time. A relevant document is one which is necessary to assess whether the person is complying with a Customs-related law or to assess the correctness of information communicated to Customs (subsection 240(1B)).

How must documents be kept?

The new provisions in section 240 modernise the requirements for the manner of keeping documents to take account of advances in technology.

Documents may be kept at any place, including a place outside Australia and may be kept in any form and stored in any way (such as electronically, in hard copy or on microfiche) (subsection 240(4)). However, in accordance with subsection 240(5), a document must:

- be able to be readily transformed into a document in English or translated to English, and
- be kept in a manner that enables a Collector to readily ascertain whether goods have been properly described and properly valued or rated for duty.

Inform officer of whereabouts of documents

A person required to keep documents must, on a written request from an authorised officer, inform the officer of the whereabouts of the documents within a reasonable time (subsection 240(6)).

Deface or alter documents

A person required to keep commercial documents must not deface or alter the documents (subsection 240(6B)). Notations or markings made in accordance with ordinary commercial practice are not taken to deface or alter the document (subsection 240(6C)).

Other amendments

Minor amendments have been made to subsections 240(1), 240(1AA) and 240(1A) of the Customs Act to change all penalties to 30 penalty units. Subsection 240(1AA) has also been amended to remove the cross reference to 77D in the Customs Act (which will be repealed).

Requirement to produce documents

As commercial documents can now be held outside Australia, the monitoring powers will not be sufficient to allow Customs to examine all documents to assess a person's compliance with a Customs-related law. Therefore, an authorised officer may, by written notice, require a person who is to keep commercial documents to produce the documents for inspection, either at the person's business premises in Australia or at a place in Australia specified in the notice, and within a period specified in the notice (not less than 14 days after the notice was given) (section 240AA).

Failure to produce a document under this section is an offence under section 243SB.

RECORD RETENTION

Many people who have reporting obligations for imported or exported goods use agents (licensed Customs brokers and other service providers) to communicate information on their behalf to Customs. To verify the content of such communications, a new record retention obligation for communicators has been introduced (section 240AB).

Who must retain records?

Anyone who communicates information to Customs must retain records verifying the contents of that communication for **one year** after the communication was made (subsection 240AB(3)).

This means that brokers and other service providers, as well as importers, exporters and cargo reporters who communicate directly with Customs, must retain records that will enable Customs to verify the content of communications.

How must records be kept?

Records may be kept at any place, including a place outside Australia, and may be kept in any form or stored in any manner (subsection 240AB(4)). Some of the forms people could use are:

- good quality photocopies of commercial documents returned to clients
- good quality scanned, electronically stored copies of documents and invoices
- a database of information received
- sufficiently detailed notes of instructions received by telephone.

No matter how the records are stored, they must:

- be able to be readily translated to English, and
- be kept in a manner that a document setting out the information can readily be produced (subsection 240AB(5)).

Inform officer of whereabouts of records

A person required to keep records must, on a written request from an authorised officer, inform the officer of the whereabouts of the records within a reasonable time and in a manner specified in the notice (subsection 240AB(6)).

Requirement to produce records

An authorised officer may, by written notice, require a person who is to keep records to produce the records for inspection, either at the person's business premises in Australia or at a place in Australia specified in the notice, and within a period specified in the notice (not less than 14 days after the notice was given) (section 240AC).

If the record is in writing, the record itself must be produced. If the record is kept by a mechanical, electronic or other device, the information contained in the record must be produced (that is, information contained in a record kept on a database may be printed out).

Failure to produce a document under this section is an offence under section 243SB.