



DEPARTMENT OF HOME AFFAIRS NOTICE

No. 2019/10

Prescription of asbestos as a Tier 1 good

From 26 March 2019, asbestos, and goods containing asbestos, are prescribed as Tier 1 Goods (table item 24 under subclause 1(1) of Schedule 7 of the *Customs Regulation 2015*).

As a result, and as an alternative to the offence under section 233 of the *Customs Act 1901* (the Customs Act), the unlawful importation and exportation of asbestos can be prosecuted as an offence relating to Tier 1 goods under subsections 233BAA(4) and (5) of the Customs Act.

For further information regarding these changes please consult the legislation directly, including the explanatory statement located at: www.legislation.gov.au.

Penalties for the unlawful importation or exportation of asbestos

The Australian Government will consider the evidence available in deciding whether to prosecute an asbestos border offence as a Tier 1 criminal offence under section 233BAA of the Customs Act, or the alternative strict liability offence under section 233.

A person convicted of an offence against section 233 of the Customs Act is punishable by a fine not exceeding 1000 penalty units (currently AUD210,000) or three times the value of the goods, whichever is the greater.

A person convicted of an offence under section 233BAA is punishable by a fine not exceeding 1000 penalty units and/or imprisonment for up to five years.

When a body corporate is found guilty of an offence against section 233, or section 233BAA, the court may impose a fine of up to 5000 penalty units (AUD1,050,000) or 15 times the value of the goods, whichever is the greater, through application of section 4B(3) of the *Crimes Act 1914* (Cth).

The prescription of asbestos as a Tier 1 good enhances the existing suite of sanctions available to the Australian Border Force (ABF) for asbestos border offences. The ABF may issue fines under the Customs Act Infringement Notice Scheme in lieu of prosecution where considered appropriate.

The importance of supply chain management

Importers and exporters need to be aware of the risk of asbestos entering their supply chain for a range of goods, regardless of their country of origin. The Department of Home Affairs and the ABF have significantly increased the amount of guidance information to assist voluntary compliance with the asbestos border control.

If goods at the border are suspected of containing asbestos, they may be held for examination, including sampling and testing. Associated costs, including storage pending the testing outcome, are the responsibility of the owner regardless of whether or not asbestos is detected.

The important role of border industry members

Licensed Customs Brokers, freight forwarders and other border industry members have an important role in raising awareness of the asbestos border control with their clients. Border industry members are best placed to identify goods at risk of containing asbestos moving across the border, and to inform their clients of the potential consequences of asbestos border offences.

Information about the border control for asbestos is available at the ABF website: www.abf.gov.au/asbestos.

[signed]

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