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# 1 What is the purpose of this Infringement Notice Scheme Guide (the Guide)?

This Guide explains the Australian Border Force (ABF) approach to issuing an infringement notice under the *Customs Act 1901* since the current scheme was updated effective from 1 February 2014. This Guide replaces the previous version of the Guide published in January 2023.

While the decision-maker should consider the Guide before issuing an infringement notice, it does not give directions as to whether the decision-maker should issue an infringement notice in any particular circumstance. Whether or not to issue an infringement notice is a matter for the decision-maker to determine on the facts of the case.

This Guide should be read in conjunction with the *Customs Act 1901* and *Customs Regulation 2015*.

This Guide does not constitute legal advice. You are encouraged to obtain professional advice about the consequences of ABF issuing an infringement notice.

## 2 What is the meaning of certain words or phrases in the Guide?

In this document:

the Act	<i>Customs Act 1901</i>
the Regulation	<i>Customs Regulation 2015</i>
Comptroller-General of Customs	a designated role of the ABF Commissioner
days	all days except Sundays and public holidays
decision-maker	an infringement officer authorised in writing by the Comptroller-General of Customs
person	a natural person or a body corporate

Also, unless otherwise indicated:

- references to section numbers are to sections of the Act
- words and phrases defined in the Act have the same meaning in this document.

## 3 What is an infringement notice?

An infringement notice is an administrative enforcement remedy that the ABF may issue in certain circumstances. Infringement notices are a valuable enforcement and regulatory tool as they can provide a timely and cost-efficient outcome for both the ABF and the person that is the subject of an investigation.

In issuing the infringement notice, the ABF puts the recipient on notice that it has reasonable grounds to believe that they have contravened the law. The recipient has the option of resolving the matter immediately by paying the penalty specified in the infringement notice or having the matter determined by the relevant court.

The Act and this Guide set the amount payable under an infringement notice. These infringement notice penalties are significantly less than the penalties that a court could otherwise impose.

## 4 What is the legislative framework?

Subsection 243X(1) of the Act provides a regulation making power to establish an infringement notice scheme. Regulation 133 of the Regulation notes that Part 15, Division 2 of the Regulation (which is regulations 133-145) is made for subsection 243X(1) of the Act.

Part 15, Division 2 and Schedule 8 of the Regulation specifies most matters in relation to the infringement notice scheme except the maximum penalty, which the Act prescribes. The Act also specifies that an infringement notice may only apply to strict liability and absolute liability offences contained in the Act.

Subsection 243X(2) provides that the maximum penalty under the scheme must not exceed either:

- one-quarter of the maximum penalty a court could impose on an individual for that offence
- 15 penalty units for an individual or 75 penalty units for a body corporate.

A note at the end of subsection 243X(2) highlights that subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine on a body corporate that is up to five times the maximum that could be imposed on an individual convicted of the same offence. This note is included to clarify subsection 243X(2)(a) that a corporate multiplier applies to infringement notice penalties.

Subsection 243X(3) of the Act provides an exception to maximum penalties in paragraph 243X(2)(b). In some cases under the Act, the maximum penalty a court can impose for a strict or absolute liability offence is determined by reference to the amount of duty or value of the goods. Section 243T of the Act is an example. The amount payable under an infringement notice will be limited to one quarter of the maximum penalty a court could impose.

The key aspects of the infringement notice scheme contained in the Regulation are:


- when an infringement notice can be issued
- the offences for which an infringement notice may be issued
- what matters must be included in an infringement notice
- the process for seeking a withdrawal of an infringement notice
- the process for seeking to extend the period for payment of the penalty.

In addition to the regulation making power, the Act also contains provisions regarding forfeiture of goods that are prohibited imports if an infringement notice is paid.

**Attachment A** of this Guide lists the offences to which the infringement notice scheme applies and the infringement penalty amount for an individual or body corporate who has allegedly committed the offence.

## 5 In what circumstances is the ABF likely to issue an infringement notice?

The decision-maker must have reasonable grounds to believe that the person has committed a prescribed offence before issuing an infringement notice.



In determining whether an infringement notice is an appropriate enforcement response, the ABF takes into account a broad range of factors. Circumstances where the ABF is more likely to give an infringement notice rather than prosecute for an offence may include:

- where the alleged offence is isolated or non-systematic
- where remedial or risk mitigation action was taken following the ABF bringing the issues of concern to the person's attention (for example, through a formal warning)
- where the facts that led to the alleged offence are straight forward and are not in dispute
- where the alleged offence does not pose a significant risk to the border or the collection of revenue
- where the ABF considers the infringement notice is necessary to form part of a broader industry or sector compliance and enforcement program.

Circumstances where prosecution is more likely to be an appropriate enforcement response may include:

- where the ABF has previously taken action against the person for similar breaches of the law
- where the alleged offence is more serious in nature and the consequences to the community could be severe
- where the alleged offender has a substantial record of non-compliance and recidivism, for which an infringement notice would not be an effective deterrent
- where the person has, as a consequence of alleged offences, obtained a financial or other advantage, to the detriment of others.

## 6 Who decides to issue an infringement notice?

An infringement officer decides whether to issue an infringement notice to a person in lieu of prosecution for an alleged offence. The Comptroller-General of Customs will authorise in writing an infringement officer to exercise this function and it is restricted to officers of relevant seniority and expertise, and who have received appropriate training.

## 7 When can an infringement notice be issued?

The time for issuing an infringement notice for any offence covered by the infringement notice scheme is within one year of the offence being detected or four years of the offence being committed, whichever period ends first.

The period for issuing an infringement notice does not limit in any way the application of provisions which deal with when a prosecution can be commenced. Section 249 of the Act provides that 'Customs prosecutions may be instituted within 5 years after the cause thereof'. The prosecution alternative to a Customs Act infringement notice is usually a customs prosecution. The exception is section 243T, which cannot be dealt with by a customs prosecution since it refers to imposing a 'fine' upon conviction. For section 243T, section 15B of the *Crimes Act 1914* may impose a 12-month limit from when an alleged offence occurred to commence prosecution in some circumstances. If it does then it would not be practical to issue an infringement notice for that offence 12 months or more after the alleged contravention occurred.

## 8 What details will be included in the infringement notice?

Regulations 137 and 138 of the Regulation lists the matters that must be included in an infringement notice. This includes for example, the name of the person to whom the notice is given, brief details of the alleged contravention, the amount payable, as well as advising of the consequences of paying and not paying the notice. The notice will also include administrative information regarding the process of paying the notice, seeking a withdrawal of the notice and contacting the ABF.

The notice may include any other matters that the infringement officer considers necessary.

## 9 What can a person do if they receive an infringement notice?

A recipient of an infringement notice is not obliged to pay the penalty, but may do so to avoid prosecution. Payment of an infringement notice is not an admission of guilt and does not count in any way as a criminal record.

In most cases, the recipient will have had some contact with the ABF prior to receiving an infringement notice. This will often include a discussion of the circumstances that led to the alleged offence and the person may be able to provide any documents or information relevant to ABF concerns.

A decision to give an infringement notice is not subject to an external merits review. However, a recipient is entitled to take the following action:

- request an extension to the period of payment of the penalty
- request withdrawal of the infringement notice
- refuse to pay the penalty and to defend the matter in court if prosecuted.

### 9.1 How do you request an extension to the period of payment?

The Regulation specifies the time for payment of an infringement notice penalty as does the infringement notice.

A recipient of an infringement notice can request an extension of the period of payment, in writing, to the decision maker. In making a request, the person should set out the reasons why the ABF should grant the extension. The request should explain:

- whether the recipient intends to pay the penalty
- the circumstances as to why the recipient is unable to pay the penalty in the payment period (including the financial circumstances of the recipient)
- the circumstances as to why the recipient anticipates that they will be able to comply if the payment period is extended
- whether the recipient is requesting a withdrawal of the infringement notice in accordance with paragraph 9.2.

## 9.2 How do you request a withdrawal of an infringement notice?

The ABF may withdraw an infringement notice of its own volition or following a request for withdrawal from the recipient of the notice.

If a recipient of an infringement notice believes that they have not engaged in the alleged conduct or there is additional information that the ABF has not considered, the recipient may seek withdrawal of the notice. A request to withdraw an infringement notice:

- must be made in writing to the ABF
- must be made prior to the date for payment of the infringement notice
- should provide evidence or information to assist the ABF in deciding whether or not to withdraw the infringement notice.

A different infringement officer from the one who originally issued the infringement notice considers requests for withdrawal made by the recipient of an infringement notice.

The ABF will notify the recipient of the infringement notice of its decision, in writing.

The Act provides no right of internal appeal or Administrative Appeals Tribunal review of a decision not to withdraw a notice. However, a person ultimately has the right to refuse to pay the penalty in an infringement notice and to defend that matter in court if prosecuted and in addition may seek a review of the decision not to withdraw a notice by an appeal direct to the Federal Court.

If the ABF withdraws the infringement notice after payment of the penalty specified in the notice, then the ABF will arrange for a refund of the paid penalty amount.

## 10 What are the consequences of paying and not paying the infringement notice penalty?

If a recipient **pays** the infringement notice penalty, within the specified period, and the notice is not withdrawn:

- any liability of the person for the offence specified in the notice is discharged
- the person is not regarded as having been convicted of the offence
- the payment is not taken to be an admission by that person of any liability for the alleged offence
- if the alleged offence is for importing prohibited imports, the goods are forfeited and the title to the goods immediately vest in the Commonwealth to the exclusion of all other interests in the goods. The Comptroller-General of Customs may then dispose of the goods as he or she considers appropriate. The former owner is not entitled to claim the return of the seized goods.

If a recipient **does not pay** the infringement notice penalty, the ABF may prosecute them for the alleged offence or refer the matter to the Commonwealth Director of Public Prosecutions for further action. In such cases, the recipient could face the maximum penalty that a court can impose for the offence.

# 11 What are the relevant offences and amounts payable?

Subsections 243X(2) and (3) of the Act provide the maximum penalty payable under an infringement notice. Under these maximum limits, the ABF has established national policy that sets the amount of penalty imposed under an infringement notice. Individual officers do not have discretion to vary the amount of penalty imposed.

Schedule 8 of the Regulation prescribes all the offences to which the infringement notice scheme applies.

The relevant offences and the amount payable are set out in **Attachment A**.

## 11.1 Individual

The ABF has set the amount payable by an individual at the maximum amount permitted by the Act, except for certain offences allegedly committed by a person who is in a section 234AA place and is either embarking or disembarking from a ship or aircraft or is in that place without authorisation.

The ABF recognises that significant numbers of people move through section 234AA places, some of them Australian residents, some of them not. To minimise disruption to legitimate travellers and ensure the swift and effective imposition of sanctions for relatively minor breaches of the Act, the amount payable for an infringement notice in these cases is two penalty units.

In addition, where a person receives an infringement notice while moving through a section 234AA place, in most cases the person must pay the penalty before leaving the Customs controlled area, unless granted extra time to pay by an authorised officer. In all other instances, infringement notice recipients are given a period of 28 days to pay (not including Sundays and public holidays).

## 11.2 Corporate multiplier

The ABF has set the amount payable by a body corporate under an infringement notice at three times the amount that is payable by an individual. This is intended to have a positive and lasting impact on corporate behaviour. If this amount does not improve compliance, then the ABF has flexibility to increase the amount payable by a body corporate under an infringement notice up to five times the amount payable by an individual.



## Attachment A – Offences and penalty amounts for the *Customs Act 1901* Infringement Notice Scheme

Offence	Type of Entity <sup>1</sup>	INS penalty <sup>2</sup>	Penalty Amount <sup>3</sup>	Penalty Amount <sup>4</sup>	Penalty Amount <sup>5</sup>	Penalty Amount <sup>6</sup>	Penalty Amount <sup>7</sup>
			31 Jul 2015 to 30 Jun 2017	1 Jul 2017 to 30 Jun 2020	1 Jul 2020 to 31 Dec 2022	1 Jan 2023 to 30 June 2023	1 Jul 2023 to 30 June 2026
<b>33(2) <i>Moving, altering or interfering with goods subject to Customs control without authority</i></b>							
	Body Corporate	45 Penalty Units	\$8100	\$9450	\$9990	\$12,375	\$14,085
	Individual	15 Penalty Units	\$2700	\$3150	\$3330	\$4125	\$4695
<b>33(3) <i>Employee moves, alters or interferes with goods subject to Customs control without authority</i></b>							
	Body Corporate	45 Penalty Units	\$8100	\$9450	\$9990	\$12,375	\$14,085
	Individual	15 Penalty Units	\$2700	\$3150	\$3330	\$4125	\$4695
<b>33(6) <i>A person directs or permits another person to move, alter or interfere with goods subject to Customs control without authority</i></b>							
	Body Corporate	45 Penalty Units	\$8100	\$9450	\$9990	\$12,375	\$14,085
	Individual	15 Penalty Units	\$2700	\$3150	\$3330	\$4125	\$4695
<b>36(2) <i>Failure to keep goods safely</i></b>							
	Body Corporate	45 Penalty Units	\$8100	\$9450	\$9990	\$12,375	\$14,085
	Individual	15 Penalty Units	\$2700	\$3150	\$3330	\$4125	\$4695

<sup>1</sup> **Body Corporate penalties** – Current policy setting applies a three (3x) times corporate multiplier to the penalty amount. INS corporate multiplier provided by s243X(2) of the *Customs Act 1901*.

**Individual** – means a natural person.

**Person in a s234AA place** – Specific to a module of the INS used in the traveller environment for a group of offences when alleged to have occurred within a s234AA customs controlled area.

<sup>2</sup> Most offences are calculated using penalty units. Some may alternatively be calculated using either the duty shortfall or goods value. Penalty unit value established by s4AA of the *Crimes Act 1914*.

<sup>3</sup> **Penalty unit value = \$180**. Applies to contraventions committed between 31 Jul 2015 to 30 Jun 2017.

<sup>4</sup> **Penalty unit value = \$210**. Applies to contraventions committed between 1 Jul 2017 to 30 Jun 2020

<sup>5</sup> **Penalty unit value = \$222**. Applies to contraventions committed between 1 Jul 2020 to 31 Dec 2022

<sup>6</sup> **Penalty unit value = \$275**. Applies to contraventions committed between 1 January 2023 and 30 June 2023.

<sup>7</sup> **Penalty unit value = \$313**. Applies to contraventions committed between 1 July 2023 and 30 June 2026.























