



Understanding the Customs Act Infringement Notice Scheme

The Department of Home Affairs and the Department's operational arm, the Australian Border Force (ABF), have a mission to protect Australia's border and manage the movement of people and goods across it. Our objective is to foster and enable high levels of voluntary compliance while dealing effectively with those who do not comply with Customs-related law.

This mission is underpinned by legislation, including the *Customs Act 1901* (the Act) and the *Customs Regulation 2015* (the Regulation). The ABF has a number of treatment options available to address compliance with the Act, including education, warning letters, infringements, suspension or cancellation of Department issued licences and/or prosecution.

Where an alleged breach has occurred, the ABF will decide on the treatment to impose on an entity based on (among other things) the nature of the offence, the seriousness of the breach and the compliance history of the person or organisation. This factsheet provides general information about the Customs Act Infringement Notice Scheme (INS).

Definitions:

<i>Duty shortfall</i>	the difference between the amount of duty declared and actual duty payable. Examples include undeclared dutiable goods or over-claimed duty refunds.
<i>INS eligible offence</i>	Strict liability offences under the <i>Customs Act 1901</i> (the Act) listed in Schedule 8 of the Customs Regulation 2015
<i>Customs control</i>	Imported goods prior to entering home consumption or export goods until exported (section 30 of the Act describes specific circumstances where goods are under customs control).
<i>Person</i>	A natural person or other legally recognised entity.
<i>Strict liability</i>	An offence where fault (intent) does not have to be proved.

How does the Infringement Notice Scheme work?

The Infringement Notice Scheme (INS) is an administrative enforcement remedy that the ABF may use in certain circumstances. An infringement notice is a valuable enforcement and regulatory tool as it can provide a timely and cost-effective outcome for both ABF and the person that is alleged to have breached the law.

The objective of an infringement notice is to address the alleged breach and influence positive change so that entities improve self-regulation and maintain a high level of compliance with Australia's border laws.

In issuing an infringement notice, the ABF advises the recipient that it has reasonable grounds to believe that they have contravened the law. The recipient has the options of:

1. Resolving the matter immediately by paying the penalty specified in the infringement notice (Note that this is not an admission of guilt or liability)
2. Providing evidence to support their right to request withdrawal of the infringement notice.
3. Providing evidence to support their right to request an extension of the payment period so the recipient may pay the penalty amount.
4. Choose not to pay the penalty and have the matter heard by the relevant court if prosecuted.

The Act provides no right of internal appeal or external review of INS decisions by bodies such as the Administrative Appeals Tribunal. However, a person ultimately has the right to refuse to pay the infringement notice and to defend the matter in court if prosecuted.

Where do INS penalty amounts come from?

Each offence in the Act includes a provision for the maximum amount of penalty that a court could impose if a person was convicted of that offence. This penalty may be calculated based on penalty units or using the amount of duty shortfall or goods value in some cases.

The maximum INS penalty is 25% of the penalty a court may impose on a person. There is an additional limit if the offence penalty is calculated using penalty units. The maximum INS penalty is:

- 15 penalty units for a person, except body corporate entities
- 75 penalty units for a body corporate.

Under these maximum limits, the ABF has established national policy that sets the amount of INS penalty. Individual officers do not have discretion to vary the amount of INS penalty imposed.

Penalty Units

Most offences under the Act refer to a number of penalty units to establish the maximum amount of penalty that may be imposed. The value of a penalty unit is set out in section 4AA of the *Crimes Act 1914*. The value of a penalty unit is periodically subject to change. The value of a penalty unit at the time an offence was committed is used when calculating the amount of penalty imposed.

Value of a Penalty Unit

Date of offence	Value of one Penalty Unit
Prior to 28 December 2012	\$110
From 28 December 2012	\$170
From 31 July 2015	\$180
From 1 July 2017	\$210
From 1 July 2020	\$222

Note: This table provides details on the current and previous values of a penalty unit

Corporate Multiplier

Section 4B(3) of the *Crimes Act 1914* enables a court to impose a maximum penalty against a body corporate up to five times (5x) greater than that of an individual committing the same offence. Section 234X of the Act provides a similar corporate multiplier of up to five times (5x) that may be applied to infringement notices served on a body corporate.

At the time of publication, ABF policy is that for alleged breaches committed by a body corporate the amount of INS penalty applied will be three times (3x) the amount that is payable by an individual. This is intended to have a positive and lasting impact on corporate behaviour. If a multiple of three does not improve compliance, then the ABF has flexibility to increase the INS penalty amount imposed.

One transaction, multiple breaches

It is important to note that multiple alleged offences may be committed in one transaction. Examples include multiple breaches of a single offence, multiple breaches of different offences or offences that may be pursued against multiple persons involved in the same transaction.

This could lead to one or more parties being liable for the offences and the ABF serving multiple infringement notices or pursuing prosecution for multiple offences.