



# Understanding Offences in the Supply Chain

This factsheet provides general information regarding some common offences in the supply chain. It should be read in conjunction with the *Understanding the Customs Act Infringement Notice Scheme* factsheet that provides general information about the Customs Infringement Notice Scheme.

The Australian Border Force (ABF) have a number of treatment options available to address compliance with the *Customs Act 1901*, including education, warning letters, infringements, suspension or cancellation of Department issued licences and/or prosecution. The ABF will decide on the treatment imposed based on a number of factors including the nature of the offence, the seriousness of the breach and the compliance history of the person or organisation.

## Important facts you need to know

### *Definitions:*

<i>Collector</i>	Any officer of the ABF performing a duty associated with the expression “Collector” under the Act.
<i>Customs control</i>	Imported goods prior to entering home consumption or export goods until exported. <i>Section 30 of the Act describes specific circumstances where goods are under customs control.</i>
<i>Person</i>	A natural person or other legally recognised entity.

## One transaction, multiple breaches

It is important to note that multiple 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 ABF serving multiple infringement notices or pursuing prosecution for multiple offences.

Note: This factsheet is for general information only and does not constitute legal advice. Persons or corporations should make their own enquiries before forming decisions based on information provided within.

# Common Supply Chain Offences

## Section 33 – Moving goods subject to customs control

### *Section 33(2) and (3)*

It is an offence under section 33(2) of the Act for a person to move, alter or interfere with goods that are subject to customs control if the action was not authorised under the Act. A similar offence is also under section 33(3) for an employee to move, alter or interfere with goods subject to customs control where the action was not authorised under the Act. Both offences apply the same amount of penalty units.

Penalty	Maximum INS Penalty	Maximum Court Penalty
Natural Person	15 Penalty Units (\$3,330)	60 Penalty Units (\$13,320)
<b>Body Corporate</b>	<b>75 Penalty Units (\$16,650)</b>	<b>300 Penalty Units (\$66,600)</b>

Note: Penalties quoted are the maximum allowed under legislation and using a penalty unit value of \$222.

Any reference to a 'person' in the Act, such as that in section 33(2), is taken to apply to a body corporate (or corporation) as well as a natural person. Section 33(3) applies to an employee of a person or body corporate. If an employee is acting as directed or following company policy, *section 33(3)* may apply and the employer may be at fault. If an individual is acting of their own accord without direction or contrary to company policy, *section 33(2)* may apply.

These offences make it illegal to move, alter or interfere with goods subject to customs control unless authorised to do so.

Common examples of unauthorised actions covered under sections 33(2) or 33(3) include (not exhaustive):

- Moving goods into/out of storage or outside of a licensed area or between two addresses
- Delivering HELD consignments to a consignee
- Breaking the seal of a container
- Swapping pallets or re-wrapping shipments
- Loading a consignment onto a truck
- Opening a consignment or inspecting the contents
- Replacing damaged containers

## Section 33(6)

A person who directs or permits another person to move, alter or interfere with goods subject to customs control, where that action was not authorised under the Act, commits an offence under section 33(6).

Penalty	Maximum INS Penalty	Maximum Court Penalty
Natural Person	15 Penalty Units (\$3,330)	60 Penalty Units (\$13,320)
<b>Body Corporate</b>	<b>75 Penalty Units (\$16,650)</b>	<b>300 Penalty Units (\$66,600)</b>

Note: Penalties quoted are the maximum allowed under legislation and using a penalty unit value of \$222

This offence makes it illegal to direct or permit someone to move, alter or interfere with goods subject to customs control. These directions may include any verbal, electronic, or written communications in respect of such goods.

This offence does not require the goods to **actually** be moved, altered or interfered with. The **directing** or **permitting** the movement, alteration or interference of the goods may also constitute an offence.

Common examples of unauthorised actions covered under sections 33(6) include (not exhaustive):

- Failing to incorporate adequate checks on customs status into policy or procedures
- A warehouse manager instructing an employee to move a consignment
- A warehouse manager permitting a consignment to be moved
- Arranging/approving the delivery of a HELD consignment
- Failing to communicate movement instructions/conditions
- Permitting the release of goods without authority

# Section 36 - Failure to keep goods safely or account for goods

## Section 36(2)

It is an offence under section 36(2) of the Act for a person to fail to keep safe goods that are subject to customs control, and for which custody, control or possession has been entrusted to the person.

<b>Penalty</b>	<b>Maximum INS Penalty</b>	<b>Maximum Court Penalty</b>
Natural Person	15 Penalty Units (\$3,330)	60 Penalty Units (\$13,320)
<b>Body Corporate</b>	<b>75 Penalty Units</b> <b>(\$16,650)</b>	<b>300 Penalty Units</b> <b>(\$66,600)</b>

Note: Penalties quoted are the maximum allowed under legislation and using a penalty unit value of \$222.

Safekeeping includes storing the goods at an approved secure facility and ensuring the goods are kept safe whilst in those facilities or whilst in transit during an underbond movement (as per section 36(9)).

Theft or damage of goods subject to customs control are two examples of failing to keep goods safely. However, there is no requirement for the goods to have been tampered with or stolen for this offence to have occurred. The coincidental safety of the goods is not a sufficient defence for failing to establish the required safeguards.

Common examples covered under section 36(2) include (not exhaustive):

- Delivery of HELD consignments
- Storing goods outside of a licensed area
- Failing to use, or failing to secure, a deadhouse
- Providing inadequate protection against the theft of consignments
- Using unlicensed premises for storage
- Destroying goods without authority
- Goods leaving your establishment without your permission

## Section 36(6)

It is an offence under section 36(6) of the Act for a person to fail to account for goods that are subject to customs control, to the satisfaction of a Collector in accordance with section 37, where the person was entrusted with the possession, custody or control of those goods.

Penalty	Maximum INS Penalty	Maximum Court Penalty
Natural Person	15 Penalty Units (\$3,330)	60 Penalty Units (\$13,320)
<b>Body Corporate</b>	<b>75 Penalty Units (\$16,650)</b>	<b>300 Penalty Units (\$66,600)</b>

Note: Penalties quoted are the maximum allowed under legislation and using a penalty unit value of \$222.

All licensed operators are required to keep sufficient auditable records for all goods subject to customs control that pass through their establishments. Section 37 provides the mechanism by which goods are accounted for.

### Section 37: Accounting for goods

A person accounts for goods, or a part of goods, to the satisfaction of a Collector in accordance with this section if, and only if:

- a. The Collector sights the goods; or
- b. If the Collector is unable to sight the goods – the person satisfied the Collector that the goods have been dealt with in accordance with this Act.

If you cannot provide an officer with a visual inspection of the goods when requested, you may provide an auditable record trail (to the satisfaction of the officer) to show the goods were dealt with as authorised or permitted under the Act. Failure to do so is an offence.

Common examples covered under section 36(6) include (not exhaustive):

- Losing or being unable to locate goods
- Storing goods outside the licensed area
- Not providing sufficient records about release or delivery of the goods

## Section 36(7)

It is an offence under section 36(7) of the Act for a person to use a movement authority to remove goods from an establishment and not deliver the goods as authorised.

Penalty	Maximum INS Penalty	Maximum Court Penalty
Natural Person	15 Penalty Units (\$3,330)	60 Penalty Units (\$13,320)
<b>Body Corporate</b>	<b>75 Penalty Units (\$16,650)</b>	<b>300 Penalty Units (\$66,600)</b>

Note: Penalties quoted are the maximum allowed under legislation and using a penalty unit value of \$222.

An authorised movement is the direct transport of goods from the originating establishment to the nominated destination. Importantly, once any part of the goods included in the permission leaves the originating establishment, all goods included are bound by the authority and can only be moved directly to the nominated destination.

Using a transport yard, transit depot or any other location not on the movement authorisation is an offence under section 36(7). Delivery to an alternate address (including the consignee) is also an offence.

Accepted transport options under an authorised movement include:

1. Direct transport from originating establishment to the nominated destination
2. Where multiple goods are picked up for multiple destinations, goods are delivered via the most direct route, allowing for the closest goods to be delivered first, and
3. Where multiple goods are picked up, transfer to other vehicles for immediate and direct transport to the nominated destination

Common examples covered under section 36(7) include (not exhaustive):

- Delivery of goods to another destination
- Not delivering the goods directly to the nominated destination
- Using temporary storage before delivery to the nominated destination
- Not delivering the whole consignment

## Common scenarios, possible offences and potential liable parties<sup>1</sup>

Scenario	Possible Offences (Sections)	Potentially Liable Parties
Release of a HELD consignment	33(2) or 33(3) 33(6) 36(2) 36(6)	Individual, Depot, Warehouse, Container Terminal Operator (CTO), Broker
Storing customs goods outside a licensed area	33(2) or 33(3) 33(6) 36(2) 36(6) 36(7)	Individual, Depot, Warehouse, Broker, Transport Company
Storage at a transport yard or transit depot during an authorised movement	33(2) or 33(3) 33(6) 36(2) 36(7)	Individual, Depot, Warehouse, Broker, Transport Company
Opening a container for inspection	33(2) or 33(3) 33(6) 36(2)	Individual, Depot, Warehouse, CTO, Transport Company
Moving a consignment between two addresses	33(2) or 33(3) 33(6) 36(2)	Individual, Depot, Warehouse, CTO, Broker
Moving a consignment outside licensed area	33(2) or 33(3) 33(6) 36(2)	Individual, Depot, Warehouse, CTO, Broker
Not delivering a consignment to destination	33(2) or 33(3) 33(6) 36(2) 36(7)	Individual, Depot, Warehouse, CTO, Broker, Transport Company

### Further Information:

General Information refer to the ABF website at:

<https://www.abf.gov.au>

For information about cargo clearance, contact the Cargo Systems Support on **1300 558 099** or [cargosupport@abf.gov.au](mailto:cargosupport@abf.gov.au)

For Warehouse or Depot Licencing information:

<https://www.abf.gov.au/licensing/warehouses>    <https://www.abf.gov.au/licensing/depots>

Warehouse or Depot Licencing Conditions refer to **ACN 2013/56** or **ACN 2013/55** for Brokers.

Duty Free Licencing Conditions refer to **ACN 2012/35 Attachment C**.

<sup>1</sup> Note: The examples are displayed to illustrate common scenarios, multiple potential offences and potential parties liable for offences committed under the *Customs Act 1901*. Examples are not exhaustive or definitive and are subject to individual circumstances. Offences relating to breaches of licence conditions may also apply.