



CHANGES TO CUSTOMS ACT OFFENCES

Parliament passed the *Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013* (Organised Crime Act) on 16 May 2013 and it received Royal Assent on 28 May 2013.

The legislation introduces and adjusts a number of sanctions and controls to strengthen the cargo supply chain against criminal infiltration and deter non-compliant behavior. These changes include a number of new offences as well as modifying a number of existing offences in the *Customs Act 1901*.

Commencement of the amendments

The amendments commenced on 28 November 2013, 6 months after the legislation received Royal Assent. The new offences for using information held by Customs commenced on 29 May 2013.

What are the new Customs Act offences?

The Organised Crime Act creates several new offences to address misuse of information held by ACBPS, to strengthen the customs broker licensing regime and to support new obligations on cargo terminal operators and cargo handlers. The table below summarises those new offences. Please note that value of a penalty unit is standard across Commonwealth legislation and is currently set at \$170. The penalties listed in the tables in this fact sheet are the maximum penalty a court can impose for a conviction against the specified offence.

Section number and title	Offence Description	Max. penalty for a natural person	Max. penalty for a body corporate
102CK - Offence - failure to comply with obligations or requirements.	A strict liability offence where a cargo terminal operator fails to comply with specified statutory obligations or requirements.	60 penalty units	300 penalty units
102DE - Offence— failure to comply with obligations or requirements	A strict liability offence where a cargo handler fails to comply with specified statutory obligations or requirements.	60 penalty units	300 penalty units
102FA - Failure to comply with direction	A strict liability offence where a person fails to comply with a direction given under section 102F of the Customs Act.	100 penalty units	500 penalty units
183CGC - Breach of a broker's licence condition.	A strict liability offence for the breach of a condition of a customs broker's licence.	60 penalty units	300 penalty units
233BABAF - Using information held by Customs	This section contains two new criminal offences for obtaining and using restricted information to commit an offence, and for unlawfully disclosing restricted information obtained from Customs.	Two years imprisonment or 120 penalty units, or both.	600 penalty units

What offences are having their penalties increased?

The Organised Crime Act increases and standardises the penalties for many Customs Act strict liability offences and significantly enhances the effectiveness of the enforcement regime in deterring conduct that undermines the integrity of the Australian border and the collection of revenue. The table below summarises those offences where the penalty increases.

Subsections of the Customs Act	Existing max. penalty for a natural person	Amended max. penalty for a natural person	Existing max. penalty for a body corporate	Amended max. penalty for a body corporate
61(1), 62 (1), 63(1), 65(1), 65(2), 67E(1), 69(10), 70(7), 77R(1), 77Y(4), 82C(1), 96A(11), 96B(11), 105C(2), 112D(2), 113(1), 116(2), 191(1), 192(1), 234A(1), 243U(3) & 243V(3).	50 Penalty units	60 penalty units	250 penalty units	300 penalty units
64AE(1), 64AE(2), 123(1), 123(2) & 188(1).	5 Penalty units	30 penalty units	25 penalty units	150 penalty units
64A(1), 127(1), 129(3)(a) & 130B(3)	20 Penalty units	60 penalty units	100 penalty units	300 penalty units
64A(2), 64A(3), 90(1), 101(1), 102(1), 102(2), 114B(7), 126C, 181(5), 195(2) & 234AB(3),	10 Penalty units	30 penalty units	50 penalty units	150 penalty units
71AAAQ(1) & 71G(1)	15 Penalty units	60 penalty units	75 penalty units	300 penalty units
197(6) & 227E(5)	45 Penalty units	60 penalty units	225 penalty units	300 penalty units
100(7) amended from 100(2)	10 Penalty units	60 penalty units	50 penalty units	300 penalty units
234(2)(c)	100 Penalty units	250 penalty units	500 penalty units	1250 penalty units
234(3)	50 Penalty units and twice the amount of the duty payable	100 penalty units and twice the amount of the duty payable	250 penalty units and ten times the amount of the duty payable	500 penalty units and ten times the amount of the duty payable
243T(3)	The duty short paid	60 penalty units or the duty short paid whichever is the greater	Five times the duty short paid	300 penalty units or five times the duty short paid whichever is the greater

What other changes are being made to existing Customs Act offences?

The Organised Crime Act changes a number of existing fault based offences to strict liability offences. The relevant offences are summarised in the table below.

Section number and title	Offence Description
60 – Boarding Stations	Two offences relating to requirements for international aircraft to land at airports with appointed boarding stations
240 - Commercial Documents to be kept	A number of offences regarding adherence to the record keeping obligations for commercial documents relating to imported or exported goods
240AB - Verifying Communications to Customs	A number of offences regarding adhering to the record keeping obligations for information that verifies communications made to Customs.
243SA - Failure to answer questions	A number of offences for failing to answer questions by an officer in specified circumstances.
243SB - Failure to produce documents or records	An offence for failing to produce a required document or record.

Changes to Section 243T

In addition to amending the penalty for the offence in section 243T of the Customs Act, the Organised Crime Act improves further the utility of the offence by providing that liability for the offence will apply in the same way as under section 243U and 243V. The amendments provide that the person who makes, or causes to be made, or omits or causes to be omitted, the statement that is false or misleading in a material particular will commit an offence under this section and not only the owner of the goods.

Further information

More information is available on the legislative amendments including industry specific fact sheets, the legislation and Explanatory Memorandum and other explanatory material at <http://www.customs.gov.au/site/page4271.asp>. Should you require any further information or have any questions, please direct them to compliance1@customs.gov.au