

The Costs of Delayed Customs Reporting

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Following a recent series of fines and prosecutions, this short note is to remind our clients and contacts of the penalties applicable for the failure to file crew reports on time in accordance with the requirements under the *Customs Act 1901* (Cth) and *Customs Regulations 1926* (Cth).

Under the above legislation, any ship arriving in Australia from a place outside of Australia must, before its first port of call in Australia, report to Customs each member of the crew who will be on board the ship at the time of its arrival at the first Australian port.

Operators of the ship must file reports electronically and within the prescribed time period, being:

- 1) not earlier than 10 days before the ship's estimated time of arrival; and
- 2) not later than 96 hours before the ship's estimated time of arrival.

Failure to comply with the reporting requirements is a strict liability offence, meaning that an offence is committed regardless of the reason for failing to submit the required crew report or the extent of the delay. By failing to file the report on time, an operator of a ship will have committed a separate offence for each individual crew member on board the ship. An operator of a ship failing to file a report on time with 30 crew members on board will commit 30 separate offences.

The penalty for committing these separate offences is hefty. An operator of a ship can be fined up to 120 penalty units (currently up to A\$13,200.00) per offence if it is found that the ship intentionally contravened its reporting requirements. If there is found to be no intention but there is still a failure to file the report on time, then the operator of a ship will face fines of up to 60 penalty units (currently up to A\$6,600.00) per offence.

On a trading ship with 30 crew, the operator of the ship will face total fines of up to A\$198,000.00 for an unintentional failure and A\$396,000.00 for an intentional failure. On a passenger ship with 450 crew, the operator of the ship will face total fines of up to A\$2,970,000.00 for an unintentional failure and A\$5,940,000.00 for an intentional failure. In addition, an identical obligation and penalty regime apply for each passenger on board a cruise ship.

In order to prevent facing such fines, crew should be updated and made aware of their reporting requirements prior to calling at their first Australian port and reporting systems should be implemented to safeguard against any failure and/or delay in reporting on time.

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If you have any queries or require further information, please contact:

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