



## PKI – False and Misleading Statements

This fact sheet explains who is responsible for the content of communications that are made electronically to Customs using Public Key Infrastructure (PKI) technology.

This fact sheet is relevant for the following clients:

- exporters, importers and cargo reporters;
- service providers, such as customs brokers and freight forwarders;
- bureaus (who may create and/or transmit messages on behalf of the above groups); and
- any person who communicates with Customs through the Integrated Cargo System (ICS).

### Statements to Customs

Clients who intend to communicate electronically with Customs through the ICS will be required to use PKI technology. Please refer to the *Public Key Infrastructure (PKI) Technology* factsheets on the Customs website at [www.customs.gov.au](http://www.customs.gov.au) for further information on PKI.

When a client communicates with Customs through the ICS their digital certificate is applied to the communication. The digital certificate is used as an electronic signature.

The client whose electronic signature appears on the communication will be considered to have made the statement to Customs. They will be regarded as being responsible for the content of the communication unless they can prove otherwise.

It is therefore imperative for the certificate holder to ensure that they meet the obligations under the User Agreement (also known as the Customs Connect Facility Conditions of Use) and Certificate Policy issued by VeriSign Australia. The User Agreement is signed when the certificate holder registers with Customs to gain access to Customs IT systems. Agreeing with the obligations in the Certificate Policy is part of the process in acquiring a digital certificate.

### Who is responsible for the content of communications to Customs?

The *Customs Act 1901* (the Customs Act) contains provisions dealing with false and misleading statements made to Customs. Sections 243U and 243V provide that a person commits an offence if the person makes, or causes to be made, a statement to Customs that is false or misleading in a material particular. The person who makes the statement is the person who communicates it to Customs.

The extension of liability to the person who causes a statement to be made recognises that breakdowns in the accuracy of communications can occur at various stages in the communication chain. This provides Customs with the flexibility to identify where the breakdown occurred.

For example, if an owner provides false information to a Customs broker and the Customs broker includes that information in a communication to Customs, the owner will have 'caused' the false statement to be made. If, however, the Customs broker (or bureau) incorrectly transcribes accurate information provided by the owner and then communicates it to Customs, then the Customs broker (or bureau) will be liable for having made the false statement.

### **Record Retention**

The record retention obligations of communicators require them to keep records that verify the content of the communications for a period of 12 months. This enables Customs to trace information included in communications to its source.

As well as being a legal requirement, it is in the best interests of clients who electronically sign communications to Customs on behalf of others, to comply with this requirement. If records show the communicator reasonably relied on false information provided to them by another party then, in accordance with the CEO's Guidelines for Serving Infringement Notices, it is unlikely an infringement notice would be served on the communicator.

[Australian Customs Notice No. 2004/05](#) provides details of the amendments to the Customs Act giving effect to these liability provisions.

### **For more Information**

Further information about PKI and the use of digital certificates can be found in the following fact sheets:

- *PKI – Bureaus and Wholesaler/ Co-load Arrangements;* and
- *PKI – Customs and PKI Technology.*

Additionally, [Chief Executive Officer Determination Number 1 of 2006](#) details the information technology requirements for signing electronic communications to Customs.

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