

Licensing Review

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Dear Licensing Review team,

The following is a submission in relation to the current **“Review of Customs Licensing”**.

My submission deals only with **Customs Broker licensing**.

Introduction

- [Redacted]

Submission

For ease of making this submission, I have responded to the questions posed in red

Are the licensing regimes effective in achieving the Government’s objectives of:

- o protecting the revenue of the Commonwealth;
- o ensuring compliance with the legislation; and
- o protecting the interests of importers, exporters and the community generally.

Customs Broker licensing provides a high level of assurance for the Government in the protection of the revenue, compliance with the legislation and in protecting the interests of importers, exporters and the community generally. The overwhelming majority of Customs Brokers are dedicated to ensuring that their clients pay the correct amount

of Customs Duty / GST on Import. It is in their own best interests and those of their clients to comply strictly with the multitude of laws that a single importation or exportation may involve. In so doing, the interests of the community are protected.

Should the Government retain licences for depots, warehouses and customs brokers or consider an alternate model such as a registration or accreditation scheme?

It is my very strong view that licensing of Customs Brokers should be retained.

Any change would be detrimental to Australia.

The current model is working well and could do with some tightening by DIBP in the area of targeted compliance monitoring. As has been seen in a couple of recent AFP / DIBP operations, not all Customs Brokers are operating within the law. A higher level of compliance monitoring would put the industry “on notice” that the high level of work expected of them must remain a priority.

If the current licensing regimes are retained should they be:

- o simplified and streamlined; and/or
- o extended beyond depots, warehouses and customs brokers to other stakeholders in the import-export chain?

I am certain that some areas of the current regime could be simplified and streamlined. For this to be done I believe that the current “course of study” would need to be improved considerably. Aspiring Customs brokers are simply not receiving sufficient “on the job” practical experience across the very broad range of “Broker-like” matters that a Customs Broker is expected to deal with every day of his working life. A more demanding “course of study” would be essential in filling that void and ensuring that the standard of young Customs Brokers is maintained.

The current triennium licensing / renewal period works well but, in my view, this could be extended to five years without causing major issues. The prime issue to be addressed would be the monitoring of compliance with the Broker licence condition relating to CPD. I am certain that there are software models available to allow Brokers to keep up-to-date records which could be easily submitted to the DIBP in electronic form.

The appalling compliance results in the export area (primarily submitted by non-licensed employees of freight forwarders) would appear to be reason enough to licence these members of the logistics industry. An alternative would be that export documentation could only be submitted to DIBP by a licensed Customs Broker.

What legislative amendments may be necessary to achieve the Government’s objectives of effectiveness and efficiency?

One small efficiency could be that NCBLAC be made the actual “decision-maker” in the Broker licensing realm

Fit and proper person

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- Whether the criteria to meet the 'fit and proper' requirements for customs licences are appropriate and meet the Government's objectives.

That is best answered by the department

- Whether the requirement to meet fit and proper person requirements for both customs and biosecurity purposes is burdensome for persons or companies involved in the importation of goods into Australia.

The current "fit and proper" requirements are in no way burdensome and should be retained. The integrity of those working in the Customs Broker industry is paramount

- Whether a single or combined fit and proper person requirement could be developed and applied, which meets and is accepted, for both customs licensing and biosecurity purposes. A combined requirement would be eminently sensible

The regulatory burden of the licensing arrangements

Requirements for a licence

There are a number of requirements that must be met for a licence to be granted. The Department welcomes comments on:

- Whether any of the requirements for the grant of a licence are considered to be unnecessary or impose an unreasonable burden on the applicant.

In my view the current requirements are in no way burdensome. The current course of study is available online and can be completed part-time in two and a half years. That, combined with on- the-job "acquired experience" sets an applicant up for a fulfilling and very well paid job for life.

That is certainly not burdensome !!

Licence conditions

A licence imposes a number of ongoing licence conditions on the licence holder. The Department welcomes comments on:

- Whether there are any licence conditions considered to be unnecessary or impose an unreasonable burden on licence holders.

The "Dob-In" condition (Additional Condition 2) attached to a Customs Brokers licence certainly does cause angst in the Broker community. There exists a major conflict between protecting a client's confidential interests and informing DIBP where the Broker becomes aware that "errors, false statements or omissions" may have occurred. A client (the person indirectly paying the Brokers salary) expects a high level of confidentiality but that is currently not possible under Additional Condition 2. Licensed Customs Brokers are in an invidious position compared to professions such as lawyers. I believe that more work needs to be done in this space.

- Whether there should be any improvements or alternatives to the imposition of licence conditions. If so, please provide details on how any changes would operate to ensure that they are effective.

The current use of "additional" licence conditions is an effective way of dealing with the issue. The addition or removal of an additional condition is a fairly simple administrative procedure.

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Securities

The Department welcomes comments on:

- Whether securities should also be required and taken from applicants for a ~~depot licence and/or~~ a customs broker licence.

I see no advantage in requiring securities of Customs Brokers in general.

The only Customs Broker related area where a Security may be necessary is where a Broker defaults on a payment related to a FID. This should be a “one strike and you are out” scenario. It is my understanding that this is not currently the case and that the Department fails to take action against repeat offenders .If a Broker defaults, they should be either required to lodge a security to the tune of a value of \$100,000 or be removed from the system and forced to pay by bank cheque or similar.

The requiring of Trust Accounts for some Corporate Customs Brokers is another matter that could be explored

Duration of a licence

At present, depot and warehouse licences operate for one year while customs broker licences operate for three years. The Department welcomes comments on:

- Whether the duration of licences should remain the same, or be changed.

I believe that the Department should look at extending the licensing period from three years to five. This would ease the administrative burden within the Department.

- Whether licence renewals should be done in bulk rounds or on an ongoing basis.

I believe that handling Broker licence renewals in bulk is the most efficient means of completing the process

Timeliness of decisions

The Department welcomes comments on:

- Whether there should be a statutory timeframe for the granting of a customs broker licence.

I believe that a statutory timeframe for the granting of a licence would be most beneficial. The current “open-ended” arrangement is open to “abuse” by applicants who fail to lodge complete applications at the start. From my experience the Broker Licensing section within the Department spend a lot of time going backwards and forwards with applicants who have not lodged full applications. With a statutory timeframe in place the department could take a harder line and knock back incomplete applications. I believe that 60 days is a reasonable timeframe.

The administrative process of the licensing arrangements

The Department welcomes comments on whether there are any steps that the Department could take to simplify and streamline the current administrative practices to reduce the regulatory burden, or whether and an alternate model should be developed.

Application form

An application form for a depot, a warehouse and a customs broker licence requires the applicant to provide a range of information and documentation.

The Department welcomes comments on:

- The amount of time required to provide the information and documentation requested in the application form.

I do not believe that the amount of time required to provide the information and documentation for a Customs Brokers licence is in any way burdensome.

- Whether the application form requires any information or documentation that is difficult to provide.

The information required for the form and supporting documentation is in no way difficult to provide

- Whether the application form requires any information or documentation that is considered to be unnecessary and/or of limited value.

This is a question best answered by the Department

- The format and means by which applications are required to be submitted.

Wherever possible lodgement of applications should be available online

Manual Process

The application process for all licences is a paper-based manual system. The Department welcomes comments on:

- Whether the manual licence application and/or renewal process is a burden on applicants.
- Whether an on-line application and/or renewal system would be more efficient and preferable to the paper-based forms.
- Whether an increase in the fees and charges associated with applications and/or licence grants and renewals is appropriate to cover the cost of introducing an on-line application and renewal system.
- Any ways to improve or streamline the application and/or renewal process.
- If answering the above questions, please specify the type of licence and specific aspects of the renewal process to which your answers relate.

Collectively answering the above questions, I believe that the conversion to electronic / online process is desirable and should be pursued by the Department as a matter of priority.

Information and advice

The Department provides information for licence applicants on its website and through its Information and Support Centre. In the interests of ensuring that information is provided in a simple but comprehensive way, the Department welcomes comments on:

- Whether the information on the website (for example, the application guide) is easy to understand and provides sufficient detail.

Having had some input to the relevant information on the website I believe that it is easy to understand and provides sufficient detail

- Whether the Department provides advice to applicants on the application process for licences that is timely and easy to understand.

I certainly believe that applicants are provided with timely and appropriate advice by the Department

- Whether the NCBLAC secretariat provides advice to applicants on the application process and the outcomes of that process that is timely and easy to understand.

Having worked very closely with the NCBLAC secretariat for 15 years I strongly believe that the advice given to applicants is timely and easy to understand. In many cases the applicants choose to ignore the good advice they are given.

- Whether the reasons given for a decision not to grant a licence are easy to understand and provide sufficient detail.

The reasons given for a decision “not to grant” are comprehensive and provide applicants with an excellent guide as to where they need to acquire a broader range of experience. From experience on the NCBLAC, I have seen many unsuccessful applicants return for a second Hearing in 18 months or so and they have demonstrated that they have taken the reasons “on board” and have, in some cases, changed employers so as to gain that broader experience. In other cases we see situations where the applicant has taken the decision and sat down with his employer and mapped out a means of achieving the experience required.

National Customs Brokers Licensing Advisory Committee (NCBLAC)

In terms of the licensing of customs brokers, the Department welcomes comments on the following:

- Whether the functions of NCBLAC as set out in the Customs Act are relevant and appropriate (refer Division 5, Part XI of the Customs Act).

The functions of NCBLAC, as set out in the Customs Act, are still relevant and appropriate today.

In my view the Department needs to make greater use of the NCBLAC in relation to the standards that Customs Brokers should meet in the performance of their duties etc This applies to all types of Customs Broker licences – Corporate, Nominee and Sole Trader.

In the case of Corporate licences, greater Departmental scrutiny and involvement needs to happen. Many Corporate licences are held by companies whose management have little or no knowledge of their responsibilities under the Customs Act nor to the Conditions attached to that licence.

Corporate licence holders should be held vicariously liable for the actions of their employees.

Flowing from that I believe that the Department needs to make greater use of referrals to NCBLAC in relation to disciplinary measures. In the 15 years I have been involved with NCBLAC we have seen very few referrals for disciplinary matters. Does this mean that the Customs Broker industry does not have any members who could be tempted into committing fraud or becoming involved in other criminality ? I greatly doubt that !

- Whether the size and makeup of the membership of NCBLAC is appropriate (refer s183DA of the Customs Act).

The current size and makeup of the NCBLAC is most adequate and very effective. The combination of the independent Chair, the Commonwealth Member, drawn from the ranks of senior departmental officers (who should have experience in the commercial and cargo areas of the Department) and the Industry Member (who should have experience as a Nominee Customs Broker as well as having experience in either senior management or ownership of a Corporate Customs Brokerage) is a very

good mix and provides a well balanced approach to the role of NCBLAC. I can see no value in increasing the number of Members.

- Whether the NCBLAC inquiry and review processes are efficient and effective.

The NCBLAC inquiry and review processes are both efficient and effective. In my view the only way the Committee can ascertain if an applicant has acquired experience that fits them to be a Customs Broker is to conduct a Hearing “face-to-face”. It is extremely rare that the NCBLAC would agree to make a recommendation to the Comptroller-General “on the papers”. The time between an applicant attending a Hearing with NCBLAC and receiving advice as to the outcome of their application is quite short. In many cases, at the completion of a Hearing where the NCBLAC Members are in agreement that there should be a positive recommendation made to the C-G, we will advise the applicant accordingly.

- Whether the reasons for recommendation provided by NCBLAC are adequate and appropriate.

I believe that reasons for recommendation provided by NCBLAC are certainly adequate and appropriate. The recent AAT challenge in the Holc case supported the NCBLAC position.

Conclusion

It is my very strong belief that Customs Broker licensing must be retained and if possible streamlined.

The role of a Customs Broker is complex and requires a high degree of knowledge of the relevant laws (far beyond “Customs” legislation) of Australia and internationally. Added to that a Customs Broker is required to address the myriad of commercial implications involved in the facilitation of an import or export consignment. In a “perfect world”, the modern day Customs Broker has an important role to play in the supply chain from the time an importer thinks about importing a product, let alone actually places an order on an overseas supplier.

Customs Brokers play a pivotal role in ensuring the smooth flow of Australia’s trade, internationally, a fact attested to by Trade Minister , Andrew Robb, at a recent industry conference.

The time, effort and cost of maintaining the licensing regime pays huge dividends for the Government in that the vast majority of Australia’s import transactions are channelled through just 460 (approx.) Corporate Customs Brokerages employing approx. 2,300 Nominee Customs Brokers.

I look forward to being able to further discuss these and other issues as the Review progresses.

Kind regards

International Trade Compliance Pty Limited

