

## CUSTOMS LICENSING REVIEW

Note: First, we would like to thank you for allowing individual nominees and Corporate Customs Licence holders to participate in this review. However, one has to call into question as to why this document was released for review by the Department in peak season and with a very narrow timeframe to allow a reasonable response given the scope of the questions. Please see our responses below:

### **1. Government's Objectives**

**Q: Are the licensing regimes effective in achieving the Government's objectives of:**

- **Protecting the revenue of the Commonwealth;**
- **Ensuring compliance with the legislation; and**
- **Protecting the interests of importers, exporters and the community general**

A: Yes, we believe that the current licensing regimes are effective and allow Customs Brokers to provide protection to the revenue of the Commonwealth while ensuring compliance with legislation through the current licencing arrangements and CPD Compliance requirements. With our extensive industry experience and qualifications, Customs Brokers ensure that importers and exporters and the community's interest in general are protected by way of ensuring that importers are paying the appropriate taxes on their imported goods, while also complying with current complex legislation and regulation, to name a few; TCOs, free trade agreements, restricted and prohibited goods, CITES and the Department of Agriculture and Water Resources requirements.

With the current and increasing level of education and experience required to obtain a Customs Brokers Licence, we are ensuring importers and exporters are complying with the current legislation which protects the revenue of the crown, ensures compliance with the legislation while protecting the interest of importers, exporters and the community.

We are also providing the community and government a secondary level of security on the back of current Customs and Quarantine border interventions by way of reporting to Border Watch pre and post importation suspicions.

Licencing should only be given to Australian permanent residents and must reside in Australia and should not allow customs clearance service to be shifted offshore which is the obvious focus of multinational companies and probably the reasons why this review has come about. By allowing multinational companies to shift customs clearances services offshore it will not fulfil the government's objectives of protecting the revenue of the Commonwealth; ensuring compliance with the legislation; protecting the interests of importers, exporters and the community general; and poses higher security and economic risks to Australia.

The sheer complexity and volume of the legislation involved with customs broking should mean that Customs Brokers be held to a high regard in terms of education and licensing requirements, as to be in comparison with other legal professions such as solicitors, barristers or CPAs. The licencing process should continue to be taken seriously.

We would also like to suggest the following for the Department to consider when making decisions with the review. (as an example the owner of a CPA or Solicitors firm would be a licensed practicing person in their profession as well as a financial director/owner of the company/firm, not an owner of a company that has no industry knowledge or interest in the day to day legislative requirements of his/her companies business.

1. Corporate and Nominee Customs Brokers Licences should only be issued to individuals or companies who are resident in Australia and have permanent residency in Australia.

2. Companies directors holding Corporate Customs Brokers Licences must reside in Australia and have permanent residency in Australia, have at least one licenced practicing Customs Broker on their board and should also be an Australian financially invested Director.
3. Have the appropriate Australian industry experience & qualifications to obtain such licenses.

**Q: Should the Government retain licenses for depots, warehouses and customs brokers or consider an alternate model such as a registration or accreditation scheme? For example, there are many industries that have statutory committees, boards or commissions that regulate their professions in a manner of different ways. A comparison table of these bodies is provided at Attachment D.**

A: Yes, **the Government should retain the current licencing model** for Customs Brokers. The current system is appropriate for the licensing of individuals/companies that handle international cargo entering or leaving Australia. While the system requires review from time to time, the current framework of licensing is appropriate. I have made further comments under Licence Conditions and in above Question 1.

**Q: If it is considered that an alternate model to the licensing regimes should be developed, please provide specifics on:**

- (a) **Whether all, or only some, of the current licensing arrangements should be replaced;**
- (b) **How the alternate model would operate;**
- (c) **What model of governance would be in place for the alternate model;**
- (d) **How the alternate model would ensure the achievement of the Government's objectives.**

A: I believe the Government should retain the current licensing model. The sheer complexity and volume of the legislation involved with customs broking should mean that Customs Brokers be held to a high regard in terms of education and licensing requirements, as to be in comparison with other legal professions such as solicitors, barristers or CPAs. Licencing should only be given to Australian permanent residents and must reside in Australia and should not allow customs clearance service to be shifted offshore which is the obvious focus of multinational companies and probably the reasons why this review has come about. By allowing multinational companies to shift customs clearances services offshore it will not fulfil the government's objectives of protecting the revenue of the Commonwealth; ensuring compliance with the legislation; protecting the interests of importers, exporters and the community general; and poses higher security and economic risks to Australia.

**Q: If the current licensing regimes are retained should they be:**

- **Simplified and streamlined; and/or**
- **Extended beyond depots, warehouses and customs brokers to other stakeholders in the import-export chain?**

A: Dot point 1, the current customs brokers licensing regime is appropriate, other than making the renewal application process online.

Dot point 2, Yes, from a Customs Brokers perspective, we think that International Freight forwarding companies, shipping lines and air carriers, should be applying for certain types of licencing if they are going to be involved in the movement of cargo in and out of Australia. Currently we are not aware of any responsibility and/or penalties for these types of companies when dealing with cargo incorrectly. Our reasoning behind this is:

- Many International freight forwarders, shipping lines and air carriers, that currently do not hold a Corporate Customs Licence and employ a Nominees Customs Brokers do not consider customs import/export legislative requirements for import or export of cargo. They are only interested in the cargo if it is dangerous goods or not and the revenue they gain from the volume of cargo they move. For example the more volume they move, the more revenue they will make.

- We find these companies do not consider such things as commerce markings, CITES goods, medications and military equipment requirements for export/import permits etc. We are not aware of any responsibility or penalties applied to these types of companies through the Customs Act for freight forwarders, shipping lines and air carriers moving prohibited or restricted cargo in and out of Australia.

**Q: What legislative amendments may be necessary to achieve the Government's objectives of effectiveness and efficiency?**

A: We have outlined suggestive points above. My overall view is that current Customs Brokers/Corporate Licencing model should remain as they are.

### **Fit and Proper Person**

**Q: Government welcomes comments for:**

- **Q: Whether the criteria to meet the 'fit and proper' requirements for customs licenses are appropriate and meet the Government's objectives.**

Answer: Yes, however fit and proper person must only reside in Australia and be of permanent residence status.

- **Q: 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 in Australia.**

Answer: No, however a combined fit and proper person test would be preferred.

- **Q: 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.**

Answer: Yes

- **Q: If the current licensing regime is not retained, how any alternate model would ensure that fit and proper person requirements are met.**

Answer: I believe the current fit and proper person's requirements should remain with one change that a fit and proper person should only reside in Australia and be a permanent Australian Resident.

## **2. The regulatory burden of the licensing arrangements**

### **Requirement for a licence**

**Q: Government welcomes comments for:**

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

Answer: No, we do not consider the requirements for a grant of a licence to be unnecessary or pose an unreasonable burden on the applicants

- **Whether guidelines on how to meet the relevant requirements are adequate.**

Answer: Yes, the current guidelines issued by the DIBP and CBFCA are adequate.

- **Whether there should be recognition of any other industry or government standards as alternatives to meeting the specified licensing requirements.**

Answer: No, only the customs industry offers the specified experience, the CBFCA, the educational requirements and there are no other government department that have the standards required to be in comparison with the DIBP.

## Licence conditions

### **Q: Government welcomes comments for:**

- **Q: Whether there are any licence conditions considered to be unnecessary or impose an unreasonable burden on licence holders**
  - Answer: Yes, there has been numerous discussions surrounding the issue of ownership of the imported goods in relation to penalties issued; payments of duties short paid; where by DIBP cannot locate the owner of the goods; the business has closed; the owner of the goods is an overseas entity; then the Customs Broker would be considered for the collection of fees, to be the owner of the goods. Referring to Customs Act 1901 Part I (1-5AA) Introductory, Section 4, definitions.
  - Clarifying or removing Sections of this nature would remove unnecessary financial burden on a Customs Broker.
- **Q: 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.**

Answer: Yes, as above

## Securities

### **Q: Government welcomes comments for:**

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

Answer: Current arrangements should still apply to both
- **Whether from a business perspective, there is any particular form of security preferred.**

Answer: Current arrangements should still apply to both.
- **Whether the amount of security required take into account such factors as the financial viability of the applicant and in the case of a warehouse, the value of the goods to be stored and the revenue liability of those goods.**

Answer: In both cases, the financial viability of the applicant and the business.

## Duration of a licence

### **Q: Government welcomes comments for:**

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

Answer: Should be changed to 5 years with the provision that there is CPD each year attached to each particular licence
- **Q: Whether the duration of all licences should be standardised. If so, what the standard period should be. Whether licence renewals should be done in bulk rounds or on an ongoing basis.**

Answer: Yes, the duration of all licences should be standardised. Term being every 5 years, providing that all licence type holders have to fulfil CPD requirements each year. Licence renewals should be done in bulk rounds.
- **Q: If answering the above questions, please specify the licence(s) to which your answer relates.**

Answer: Corporate Customs Brokers Licence and Nominee Customs Brokers Licence

## Timeliness of decisions

**Q: Government welcomes comments for:**

- **Whether in terms of depot and warehouse applications, the timeframes for decisions are appropriate.**  
Answer: N/A to Customs Brokers
- **Whether there should be a statutory timeframe for the granting of a customs broker licence.**  
**Answer:** For grant of a licence or further information is required, should be received within 60 days after the receipt of an application

## **3. The regulatory burden of the licensing arrangements**

### Application form

**Q: Government welcomes comments for:**

- **The amount of time required to provide the information and documentation requested in the application form.**  
Answer: The current form and time required to provide the information we found to be fair.
- **Whether the application form requires any information or documentation that is difficult to provide.**  
Answer: No
- **Whether the application form requires any information or documentation that is considered to be unnecessary and/or of limited value.**  
Answer: No
- **The format and means by which applications are required to be submitted.**  
Answer: The current initial application process to continue to be a manual process is adequate. Some documents which require a JP to certify should be continued to be submitted manually.
- **Please specify the type of licence and specific requirements to which your answer relates**  
Answer: Corporate Customs Brokers Licence and Nominee Customs Brokers Licence

### Manual Process

**Q: Government welcomes comments for:**

- **Whether the manual licence application and/or renewal process is a burden on applicants.**  
Answer: No. Now that we have CPD, 5 years for renewal would be preferable
- **Whether an on-line application and/or renewal system would be more efficient and preferable to the paper-based forms.**  
Answer: No, for the initial application where a JP is required to certify original documents then this process should be still manual and be posted, in order to prevent fraudulent documents being submitted.  
  
For renewal of a type of licence an online system would be preferable.
- **Q: 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.**  
Answer: For an initial manual application the increase in fees is appropriate, however the fees for renewal using an online based system should be reduced.
- **Q: Any ways to improve or streamline the application and/or renewal process.**  
Answer: As per above answer
- **Q: Please specify the type of licence and specific requirements to which your answer relates**  
Answer: Corporate Customs Brokers Licence and Nominee Customs Brokers Licence

## Information and advice

### **Q: Government welcomes comments for:**

- **Q: Whether the information on the website (for example, the application guide) is easy to understand and provides sufficient detail.**  
Answer: Yes
- **Q: Whether the Department provides advice to applicants on the application process for licences that is timely and easy to understand**  
Answer: Yes
- **Q: 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.**  
Answer: Yes
- **Q: Whether the reasons given for a decision not to grant a licence are easy to understand and provide sufficient details.**  
Answer: Unknown
- **Q: Please specify the type of licence and specific requirements to which your answer relates**  
Answer: Corporate Customs Brokers Licence and Nominee Customs Brokers Licence

## Customs Brokers – National Customs Brokers Licensing Advisory Committee (NCBLAC)

### **Q: Government welcomes comments for:**

- **Q: 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)**  
Answer: Yes
- **Q: Whether the size and makeup of the membership of NCBLAC is appropriate (refer s183DA of the Customs Act)**  
Answer: Yes
- **Q: Whether the NCBLAC inquiry and review processes are efficient and effective**  
Answer: Unknown
- **Q: Whether the reasons for recommendation provided by NCBLAC are adequate and appropriate**  
Answer: Unknown

## **4. Multiple licensing**

### **EEG Warehousing**

#### **Q: Government welcomes comments for:**

- **How any duplication between the processes for excise and customs warehouse licences could be simplified or otherwise improved.**  
Answer: N/A
- **Whether the requirement that importers of EEGs hold two licences under the Customs Act and Excise Act could be removed. For example whether a single licence could meet the requirements of both an excise and a customs licence, or whether there are any other alternatives that would reduce the regulatory burden.**  
Answer: Yes, a single licence would reduce not only the regulatory but the financial burden on importers and depot licence holders if EEGs were able to be bonded and warehoused by the same licence holder/company at the same location.
- **Whether there is unnecessary duplication of systems and communications between Department and the ATO for the clearance of EEGs**  
Answer: Unknown

- **Whether there are inconsistencies in the treatment of EEGs and excise goods by the Department and the ATO.**

Answer: Unknown

- **If answering the above questions, please provide details, and what types of legislative amendments may be necessary to facilitate these outcomes.**

Answer: If you hold a 77G Depot Licence, the grant by the ATO for an EEG warehouse licence should be automatically given.

##### 5. Any other issues

- lately there has been numerous discussions surrounding the issue of ownership of the imported goods in relation to penalties issued; payments of duties short paid; where by DIBP cannot locate the owner of the goods; the business has closed; the owner of the goods is an overseas entity; then the Customs Broker would be considered for the collection of fees, to be the owner of the goods. Referring to Customs Act 1901 Part I (1-5AA) Introductory, Section 4, definitions.
- Clarifying or removing Sections of this nature would remove unnecessary financial burden on a Customs Brokers.

##### **Trusted Traded Program:**

We attended a trusted trader program seminar on Saturday 13<sup>th</sup> June 15, presented by [REDACTED]; and he summarised to me issues which were raised as concerns. These are listed below:

- Small brokerages felt that the ATT was favoring the big end of town and would give incentives to multi-nationals.
- there was a feeling that those who were not in the ATT would be considered "un trust worthy" by industry. There were issues with the name "trusted trader"
- Where is the return on investment (ROI) for brokers?
- General consensus was that there were no benefits for small to medium brokerages.
- Piggy Backing by criminal organisations was raised.
- The savings for the supply chain would come at the expense of the brokers.
- Benefits were clearly defined for Exports but not clearly developed for imports.
- Periodic Reporting would be detrimental for small brokerages as they charge clients by each import declaration. The benefits were for the large organisations that had in house brokerages.

I also made additional comments by reply email to [REDACTED] as follows:

- Our company would go for the ATT for our brokerage, but as with many other brokers & freight forwarders that don't own planes, ports & trucking companies all over the world, we would find it impossible to get end to end compliance for any of our clients.
- That is the main concern. We as brokers would & should qualify with current conditions on our licenses anyway; it's the end to end part that would be out of reach for 90% of the industry.
- This is a sales/operational advantage handed to the other 10% by government regulation & I would suggest it has anti-competitive facets that would interest the ACCC.

We have not heard further comments from the Department and would like some feedback on the above.

Regards,

[REDACTED]  
Brisbane Customs Brokers