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Australian
BORDER FORCE

Customs Broker Conditions – Review

Second Round of Industry Feedback

Response due by 30 September 2023

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Customs Broker Licence Conditions - Review

- Sequence of events



Legal review



Second external consultation



Final policy review



Final Legal review



Publication

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Second External Consultation Stage

Review of Current Additional Conditions – Pursuant to Paragraph 183CG(6)

Current conditions are outlined in the current **Australian Customs Notice 2021-10: New Obligations on Customs Broker Licences** published at <https://www.abf.gov.au/help-and-support-subsite/CustomsNotices/2021-10.pdf>.

#	Current Condition	Proposed Changes	ABF Commentary / Feedback Sought
1	The holder of a customs broker licence must, when requested by the Department of Home Affairs (the Department), complete and forward the required documentation to allow the Department to undertake a fit and proper person check on the licence holder.	The holder of a customs broker licence must, when requested by the Australian Border Force (ABF) , complete and forward the required documentation to allow the ABF to undertake a fit and proper person check on the licence holder.	<ul style="list-style-type: none">• Change to ABF reference.
2	In the case of a customs broker licence held by a company; if there is a change in the director, officer, shareholder or member of the company the holder of the licence must, within 30 days after the occurrence of the event, notify the Comptroller-General of Customs of that event.	In the case of a customs broker's licence held by a company; if there is a change in the director, officer, shareholder or member of the company the holder of the licence must, within 14 days after the occurrence of the event, notify the Comptroller-General of Customs in writing of that event.	<ul style="list-style-type: none">• Change to 14 Days to address risk concerns.
3	A director, officer, shareholder or member of a licensed company must, when requested by the Department, complete and forward the required documentation to	A director, officer, shareholder or member of a licensed company must, when requested by the Australian Border Force (ABF) , complete and forward the required	<ul style="list-style-type: none">• Change to ABF reference.

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#	Current Condition	Proposed Changes	ABF Commentary / Feedback Sought
	allow the Department to undertake a fit and proper person check on that person.	documentation to allow the ABF to undertake a fit and proper person check on that person.	
4	If a holder of a customs broker licence becomes aware that information that has been provided to the Department is false, misleading or incomplete, the customs broker must, as soon as practicable after becoming aware provide written particulars of the incident to the Comptroller-General of Customs.	If a holder of a customs broker licence becomes aware that information that has been provided to the Australian Border Force or Department is false, misleading or incomplete, the customs broker must, as soon as practicable and within seven days after becoming aware provide written particulars of the incident to the Comptroller-General of Customs.	<ul style="list-style-type: none"> • Change to ABF reference. • <i>Is seven days reasonable?</i> • <i>Are there circumstances where it will be over seven days (once already aware)?</i>
5	The holder of a customs broker licence must not allow Departmental systems or information provided by the Department to be used for any unauthorised purpose or to assist, aid, facilitate or participate in any unlawful or illegal activity.	No Change	No Change
6	A natural person who holds a customs broker licence must undertake accredited Continuing Professional Development (CPD) as per the following requirements: (a) for the purposes of this condition, accredited CPD activities are the activities accredited by the Comptroller-General of Customs or by a CPD provider	A natural person who holds a customs broker licence must undertake accredited Continuing Professional Development (CPD) as per the following requirements: (a) for the purposes of this condition, accredited CPD activities are the activities accredited by the Comptroller-General of Customs or by a CPD provider that has been	<ul style="list-style-type: none"> • Change to ABF reference. • Minor change to include “mandatory CPD activities” to reflect requirement to complete ABF CPD Module.

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#	Current Condition	Proposed Changes	ABF Commentary / Feedback Sought
	<p>that has been granted Accredited CPD Provider status by the Department. A customs broker must complete sufficient accredited CPD activities, as detailed on the Australian Border Force (ABF) website, to acquire the minimum number of points each CPD year, which commences on 1 April each year and ends 31 March the following year.</p> <p>(b) the holder of the customs broker licence must keep accurate, auditable, written records of completion of accredited CPD activities and provide them upon request to the Comptroller-General of Customs.</p> <p>(c) the holder of a customs broker licence must notify the Comptroller-General of Customs if the holder of the customs broker licence has failed to complete the required number of points and provide a written explanation of the circumstances surrounding the failure prior to the end of the CPD year.</p>	<p>granted Accredited CPD Provider status by the Australian Border Force (ABF). A customs broker must complete sufficient accredited CPD activities; including all mandatory CPD activities, as detailed on the ABF website, to acquire the minimum number of points each CPD year. The CPD year commences on 1 April each year and ends 31 March the following year.</p> <p>(b) the holder of the customs broker licence must keep accurate, auditable, written records of completion of accredited CPD activities and provide them records upon request to the Comptroller-General of Customs.</p> <p>(c) the holder of a customs broker licence must notify the Comptroller-General of Customs if he or she has failed to complete the required number of CPD points together with a written explanation of the reasons for the failure to complete the required number of CPD points prior to the end of the CPD year.</p>	
7	<p>The holder of a customs broker licence must not lodge import declarations from outside Australia.</p>	<p>The holder of a customs broker licence must not lodge Full Import Declarations (FIDs) from outside Australia.</p>	<ul style="list-style-type: none"> • Now clarified to relate only to Full Import Declarations.

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#	Current Condition	Proposed Changes	ABF Commentary / Feedback Sought
8	The holder of a corporate customs broker licence must maintain suitable professional indemnity insurance for the protection of their clients and the Commonwealth. The licence holder must forward evidence of insurance to the Comptroller-General of Customs if requested.	No Change	No Change

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New Additional Licence Conditions to be applied to all licensed customs brokers

Summary of Proposed Changes

- Due Diligence requirement expanded
- Compliance with Integrated Cargo System User Agreement
- Corporate Brokerage – Staff List to be submitted (only if directed by the ABF)
- Expanded Fit and Proper Requirement (mimic depot and warehouse condition)
 - It is noted the environment is not the same as the depot/warehouse environment. Feedback is critical to ensure the Fit and Proper requirement is fit for purpose and effective.
 - Impacts to operations and persons operating offshore are areas that require further clarification.

Why is this change happening?

The Australian Border Force is looking to review and enhance licence conditions for brokers in order to respond to the changing environment and the threat of Transnational and Serious Organised Crime (TSOC). Furthermore, with the recent Operation IRONSIDE and the stand up of Operation JARDENA, there is a need to protect the Australian community from the threat of Trusted Insiders looking to circumvent border controls to facilitate unlawful activity and harm legitimate trade and businesses. The proposed changes seek to strengthen existing customs licensing requirements to provide an equal playing field for industry as it ensures that those who comply with their obligations are not being undercut by entities who seek to circumvent controls.

Who will the conditions be applied to?

The below section seeks to expand the current set of additional conditions imposed on all customs broker licences and subsequently, if implemented, will be applicable to all customs broker licences. Please note conditions will be clearly denoted in the final publication of whether the condition is applicable to a Corporate Brokerage or a Customs Nominee Broker.

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Proposed Additional Licence Conditions

#	Proposed Condition	ABF Commentary / Feedback Sought
9	A customs broker must undertake all due diligence and ensure that all information submitted on behalf of the owner of goods to the ABF is correct and that no relevant information is omitted. This includes, but not limited to, information related to classification, valuation, client identity and that goods meet all conditions of any concessions prior to claiming a concession.	<ul style="list-style-type: none"> The ABF is not stipulating the due diligence requirements prescriptively as these will vary depending on the type of client, terms of trade, client relationship etc. Business processes should reflect these variables accordingly and evidence of due diligence conducted must be retained. More guidance material will be provided if this licence condition is implemented. <i>Seeking feedback on wording and other considerations as it relates to due diligence requirements.</i>
10	The holder of a customs brokers licence must at all times comply with the Department of Home Affairs's Integrated Cargo System's (ICS) <i>User Agreement for Electronic Dealings through the Common Connect Facility</i> .	<ul style="list-style-type: none"> The ICS's User Agreement is available online¹.
11	A company or a natural person who hold a customs brokers licence must at all times comply with his or her or its obligations under the Customs Acts (as defined in s4 of the Customs Act 1901); the	<ul style="list-style-type: none"> Legislation referenced relates only to the border environment.

¹ <https://www.ccf.customs.gov.au/register/Registration/userAgreementRegistrationForm.htm>

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#	Proposed Condition	ABF Commentary / Feedback Sought
	Aviation Transport Security Act 2004; the Aviation Transport Security Regulations 2005; the Maritime Transport and Offshore Facilities Security Act 2003; the Maritime Transport and Offshore Facilities Security Regulations 2003; the Biosecurity Act 2015 and the Biosecurity Regulation 2016.	<ul style="list-style-type: none"> • <i>Does this cause any unintended consequences?</i> • <i>Are there general concerns in relation to this condition?</i>
12	<p>In the case of a customs broker licence held by a company or partnership; the holder of the licence must, when directed by the Australian Border Force (ABF), provide a list of all individuals participating in the operations of the brokerage* and participating in the work of the customs broker within 7 days.</p> <p>The list must contain the full name, full residential address, date of birth, position, residency status and the details of a current and valid form of photo identification including, but not limited to, driver's licence, passport, ASIC/MSIC card or proof of age card; and whether they have completed the required documentation to allow the ABF to undertake a Fit and proper person check.</p>	<ul style="list-style-type: none"> • Please note "when directed" clause in this condition. Corporate Brokerages will not have to submit the staff list unless the ABF has directed it. • Participate in the work of a broker is defined in the <i>Customs Act 1901</i> and is outlined in Section 183B. • There is a requirement to clearly define "participate in the operations of the brokerage". • One proposed definition is: <ul style="list-style-type: none"> ○ A person is considered to participate in the operations of the brokerage if they have access to the ICS or any system that contains information drawn from the ICS, this includes individuals residing overseas. ○ In instances of persons having access to a system that draws information from the ICS, only persons that can view, access and modify the information drawn from the ICS are likely to be in scope.

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#	Proposed Condition	ABF Commentary / Feedback Sought
		<ul style="list-style-type: none"> • ABF seeks industry feedback on the above definition in addition to the adjacent condition. <ul style="list-style-type: none"> ○ <i>Are there any concerns with the definition?</i> ○ <i>Are there persons of relevance not captured?</i> ○ <i>What is the impact to operations offshore?</i>
13	<p>All persons who participate in the operations of a brokerage must be fit and proper person. In the case of a customs broker licence held by a company or partnership; the holder of the licence must:</p> <ol style="list-style-type: none"> a. within ninety days (90) of the publication of this condition, with respect to any person who at the date of publication participates directly or indirectly in any of the operations of the brokerage; and b. within seven (7) days of any other person commencing to participate in any of the operations of the brokerage, <p>obtain from all such persons a duly completed and signed 'Consent Form - Fit and Proper Checks'. The Form will contain a Declaration by the person that:</p> <ol style="list-style-type: none"> c. the person has not been convicted of an offence against a law of the Commonwealth, or of a State of Territory, or of any other country or part of a country; 	<ul style="list-style-type: none"> • There is a requirement to clearly define "participate in the operations of the brokerage". • One proposed definition is: <ul style="list-style-type: none"> ○ A person is considered to participate in the operations of the brokerage if they have access to the ICS or any system that contains information drawn from the ICS, this includes individuals residing overseas. ○ In instances of persons having access to a system that draws information from the ICS, only persons that can view, access and modify the information drawn from the ICS are likely to be in scope. • ABF seeks industry feedback on the above definition in addition to the adjacent condition.

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#	Proposed Condition	ABF Commentary / Feedback Sought
	<p>d. the person has not been refused a transport security identification card (as defined in section 4 of the Customs Act 1901), or has had such a card suspended or cancelled;</p> <p>e. if the person is not an Australian citizen, the person has not breached any condition of their visa to reside in Australia; and</p> <p>f. the person is not an unlawful non-citizen.</p> <p>or, to the extent that the relevant person is unable to attest to the circumstances outlined at paragraph 4)c) - (f), a Statutory Declaration that:</p> <p>g. explains the circumstances relating to any of the matters outlined at paragraph 4)c) - (f) and sets out, as relevant:</p> <p>i. the offences of which the person has been convicted and the date of the convictions;</p> <p>ii. the date a transport security identification card was refused or suspended or cancelled; and</p> <p>iii. a list of all visa conditions breached by the person.</p> <p>For the purpose of these conditions the term convicted of an offence has the same meaning as in s85ZM(1) of the Crimes Act 1914 (Cth) – which may be found at https://www.legislation.gov.au/Details/C2022C00147.</p>	<ul style="list-style-type: none">○ Are there any concerns with the definition?○ Are there persons of relevance not captured?○ What is the impact to individuals and operations offshore?○ Are there issues with implementing this condition?○ Are there issues with the proposed retention period for forms?

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#	Proposed Condition	ABF Commentary / Feedback Sought
	<p>The licence holder must retain a legible copy of the Form and Identification Documents referred to in this part for a period of not less than 5 years from the date on which those documents were provided to the licence holder.</p>	
14	<p>In the case of a customs broker licence held by a company or partnership, the licence holder must notify the Comptroller-General within twenty-four (24) hours if the licence holder becomes aware that a person who participates in any of the operations of the brokerage:</p> <ul style="list-style-type: none"> a. has been convicted of an offence against a law of the Commonwealth, or of a State or Territory, or of any other country or part of a country; b. has been refused a transport security identification card (defined in section 4 of the Customs Act 1901), or has had such a card suspended or cancelled; c. has breached any condition of their visa to reside in Australia, if the person is not an Australian citizen; or d. is an unlawful non-citizen. 	<ul style="list-style-type: none"> • ABF seeks industry feedback on this condition <ul style="list-style-type: none"> ○ Are there concerns on the notification timeframes? ○ If so, what is a reasonable timeframe?
15	<p>If directed by the Comptroller-General, the licence holder must within fourteen (14) days provide to the Comptroller-General in respect of any person who participates in any of the operations of the brokerage and who is specified by the Comptroller-General, the following documents:</p>	<ul style="list-style-type: none"> • ABF seeks industry feedback on this condition <ul style="list-style-type: none"> ○ Are there concerns on the notification timeframes? ○ If so, what is a reasonable timeframe?

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#	Proposed Condition	ABF Commentary / Feedback Sought
	<p>a. National Police Check; and</p> <p>b. Right to Work Check.</p> <p>For the purpose of these conditions:</p> <p>c. a National Police Check means a criminal history check conducted by the Australian Federal Police, a State Police Force or an Australian Criminal Intelligence Commission (ACIC) Accredited body; and</p> <p>d. a Right to Work Check means an Entitlement to Work Check of a Visa Holder utilising the Visa Entitlement Verification Online system (VEVO) or through an accredited agency that can access VEVO to verify the applicant's VISA conditions are not being breached.</p>	
16	<p>Within seven (7) days of a request by the Comptroller-General, the licence holder must provide to the Comptroller-General the original of the Form and the Identification Documents with respect to any person specified by the Comptroller-General and who participates or has previously participated in any of the operations of the brokerage.</p> <p>Note: The Form approved by the Comptroller-General will include the relevant person's consent for the licence holder to obtain and retain a copy of the Form and Identification Documents and to obtain a National Police Check and Right to Work Check with respect to that person and for the licence holder to provide a copy of those documents to the Comptroller-General.</p>	<ul style="list-style-type: none"> • ABF seeks industry feedback on this condition <ul style="list-style-type: none"> ○ Are there concerns on the notification timeframes? ○ If so, what is a reasonable timeframe?

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#	Proposed Condition	ABF Commentary / Feedback Sought
17	The licence holder must ensure that any person who does not complete the Form, or provide the Identification Documents, or provide the necessary information for a National Police Check or Right to Work Check, or withdraws their consent in the Form, does not participate in any of the operations of the brokerage.	<ul style="list-style-type: none"><li data-bbox="1451 464 2047 491">• ABF seeks industry feedback on this condition

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New Additional Exceptional Conditions – Suggestions

Who will the conditions be applied to?

The following proposed 'Exceptional' conditions **will not** be applicable to all customs broker licences. Exceptional conditions are provided for transparency and would only come into effect if applied directly to a licence. Circumstances in which this could occur are if non-compliance was identified or if the licensee is unable to provide adequate assurances to the ABF of complying with their obligations. Imposition of exceptional conditions are generally the step taken to encourage compliance before action against the licence is taken in the form a suspension/revocation.

Proposed Additional Licence Conditions

#	Proposed Condition	ABF Commentary / Feedback Sought
18	<p>The holder of customs broker licence must, at minimum, meet the following due diligence requirements prior to lodging any declarations to the Department of Home Affairs or Australian Border Force;</p> <p>(a) The licence holder must obtain and retain two forms of identification for the client/importer, including one government issued identity document that contains a colour photo;</p> <p>(b) When dealing with a representative of the client/importer, the licence holder must verify all business details provided by the client/importer; and verify the representative's identity with the client/importer.</p> <p>(c) The licence holder must have an authority to act from the client/importer; (with the licence holder listed- not the freight forwarder etc.)</p> <p>(d)</p>	<ul style="list-style-type: none">• ABF seeks industry feedback on this condition

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19	In the case of a customs broker licence held by a company or partnership; the holder of the licence must implement a risk management plan approved by the Comptroller-General of Customs to identify potential border risks, in line with the mandatory continuing professional development training, and take appropriate measures to mitigate them as part of doing business.	<ul style="list-style-type: none">• ABF seeks industry feedback on this condition
20	In the case of a customs broker licence held by a company or partnership; the holder of the licence must provide suitable and ongoing training to all staff who work in the operations of the brokerage, to ensure they are aware of the company's licence obligations and risk management measures. The licence holder must demonstrate to the satisfaction of the Comptroller-General of Customs ongoing training and an ongoing review of processes to ensure compliance and provide evidence annually or as requested by the Australian Border Force.	<ul style="list-style-type: none">• ABF seeks industry feedback on this condition