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# AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE 2012/43

**Customs Broker Licence Conditions Guidance to Customs Brokers**

Australian Customs and Border Protection Notice 2012/29 advised licensed customs brokers of changes to the conditions of customs broker licences that would apply from 1 July 2012.

Australian Customs and Border Protection Notice 2012/37 advised that Customs and Border Protection would publish some additional guidance to assist customs brokers to meet their obligations.

Attachment A provides guidance to brokers on the four additional conditions specified on a customs broker licence.

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# Customs Broker Licence Conditions Guidance to Customs Brokers

## ADDITIONAL CONDITION ONE

*The holder of the broker’s licence must, when requested by Customs and Border Protection, ensure that the licence holder and any person who participates in the work of the customs broker completes a Customs and Border Protection Consent to Obtain Personal Information form to allow Customs and Border Protection to undertake an integrity check for each relevant person. The holder of the broker’s licence must forward the form to the CEO if requested.*

## Guidance

Customs and Border Protection has added this condition to enable it to conduct at any time and on request, integrity checks on the holder of a broker’s licence or any person that participates in the work of the customs broker. Customs and Border Protection will not routinely conduct checks of all relevant persons; it will take a risk-based approach to such checks.

Customs and Border Protection integrity checks may include:

* checks of Customs and Border Protection systems and databases, including information of previous disciplinary issues
* checks of Australian Federal Police and State Police holdings
* CRIMTRAC holdings
* Australian Securities Investment Commission holdings, and
* Insolvency and Trustee Service Australia holdings.

Section 183B of the *Customs Act 1901* provides that a person “participates in the work of a customs broker” if:

* that person has authority as a nominee of, or as an agent, officer or employee of, the customs broker to do any act or thing for the purposes of the Customs Act on behalf of the owner of goods; or
* that person has the authority to direct a person who has authority (as referred to above) to do any act or thing on behalf of the owner of the goods for the purposes of the Customs Act.

In practical terms, this will generally relate to people that undertake the following roles in a customs broker’s business:

* company directors/partners
* broker managers/nominees, and
* compilers/classifiers.

However, it may extend to others that have authority or those directed by a person who has authority to do something connected to the clearance of cargo. For example, someone who has access to the ICS and can check on the status of cargo.

Following recent discussions and feedback with members of the broker community, it appears that some brokers are not aware of what is required by section 183CG(4) of the Act.

Section 183CG(4) of the Act provides that:

A broker's licence held by a customs broker is subject to the condition that the broker shall do all things necessary to ensure that:

1. all persons who participate in the work of the customs broker are persons of integrity, and
2. in the case of a licence held by a partnership--all members of the partnership are persons of integrity.

Customs and Border Protection expects the holder of a broker’s licence to have a clearly defined process in place to gather evidence and undertake integrity assessments, and must be able to demonstrate the application of that process in determining each person’s integrity.

Each holder of a broker’s licence should have a process for dealing with persons who they or Customs and Border Protection deem not to be persons of integrity. This may include moving such persons to areas of the business not connected to the work of the customs broker or potentially removing the persons from the business altogether in circumstances where it is necessary to do so.

The integrity requirements are to be applied by the holder of a broker’s licence in assessing individuals prior to participating in the work of the customs broker and then on an ongoing basis. There should be evidence of the integrity assessment for each person participating in the work of the customs broker, which Customs and Border Protection may seek to review to determine compliance with the requirement under section 183CG(4).

## ADDITIONAL CONDITION TWO

*If a holder of the broker’s licence becomes aware that information that has been provided to Customs and Border Protection by or on behalf of a client of the broker is false, misleading or incomplete, the broker must, as soon as practicable after becoming aware of the error or omission provide written particulars of the incident to the CEO.*

## Guidance

Where disclosure by the holder of a broker’s licence may incriminate that broker, Customs and Border Protection will adopt a similar approach to section 183Q of the Customs Act. That is, where a broker provides information in compliance with this condition, Customs and Border Protection will not use it as evidence in any criminal or disciplinary proceeding arising from the original lodgement of false, misleading or incomplete information.

However, Customs and Border Protection may use the information as the basis on which Customs and Border Protection or other law enforcement agencies will conduct further inquiries.

In relation to the provision of information about a client, it is Customs and Border Protection’s view that brokers are required to report false, misleading or incomplete information as part of your significant role in dealing with goods under Customs control particularly in relation to revenue and community protection. The holder of a broker’s licence should ensure that their clients are aware of your obligations under this condition.

The threshold for when you need to provide Customs and Border Protection with written particulars of any false, misleading or incomplete information is when the information is likely to make a “material” difference to revenue or the security of the Australian border. For example, we would consider material any false, misleading or incomplete information that may result or has resulted in prohibited, restricted or regulated goods entering home consumption other than in accordance with Australian law.

For revenue errors, the holder of a broker’s licence would satisfy the requirement to provide “written particulars” to the CEO by entering (in the case of goods not already entered on an import declaration) or amending and finalising an import declaration in the Integrated Cargo System (ICS).

Alternatively, the holder of a broker’s licence may notify the CEO by providing written particulars, which should include the declaration number and the reason for the false, misleading or incomplete information to [compliance1@customs.gov.au.](mailto:compliance1@customs.gov.au)

Meaning of ‘as soon as practicable’

The expression ‘as soon as practicable’ does not require notification of the CEO to occur as soon as anyone could do it. It means as soon as practicable in the circumstances that prevail and apply to the party concerned.

## ADDITIONAL CONDITION THREE

*The holder of the broker’s licence must not allow Customs and Border Protection systems or information provided by Customs and Border Protection to be used for an unauthorised purpose or to assist, aid, facilitate or participate in any unlawful or illegal activity.*

## Guidance

Customs and Border Protection grants the holder of a broker licence access to certain systems, primarily the ICS, to manage the import and export of goods on behalf the owners of goods.

This condition not only applies to the ICS but to any other Customs and Border Protection system or information that it provides now or in the future to the holder of a broker’s licence.

Customs and Border Protection expects the holder of a broker licence to only access and extract information from within Customs and Border Protection’s system(s) that relates directly to the goods for which they have authority to act on behalf of the owners of the goods. Information extractions or queries for information made by the customs broker, such as declarations and cargo reports and their associated status, shall only relate to those goods and no other person’s goods. The holder of the broker’s licence may only disclose the information to the owner of the goods or a person who participates in the work of that customs broker.

Customs and Border Protection expects the holder of a broker’s licence to ensure that any other person who participates in the work of the customs broker would also comply with this condition. This includes, but is not limited to protecting the security of the information by ensuring that system user IDs and passwords are secure, confidential and not shared. In addition, the holder of the broker’s licence must ensure that any information provided by Customs and Border Protection is stored securely. Customs and Border Protection expects the holder of the licence to be able to demonstrate adherence to these security principles for themselves and other persons who participate in the work of the customs broker.

For the purpose of this condition, “unauthorised purpose” includes:

* accessing, extracting or disclosing any Customs and Border Protection information about any goods for which the holder of a broker’s licence does not have authority to act on behalf of the owners of the goods
* obtaining or attempting to obtain unauthorised access to any part of ICS
* using or attempting to use Customs and Border Protection systems or information for any purpose for which it was not intended
* using or attempting to pass yourself or another user off as another person or entity
* using or attempting to use Customs and Border Protection systems or information to manipulate the outcome of a cargo hold, or
* transferring or attempting to transfer any material of any kind to Customs and Border Protection systems that contains a virus, malicious computer code or any harmful component.

## ADDITIONAL CONDITION FOUR

*A natural person who holds a broker’s licence must undertake accredited Continuing Professional Development (CPD) as per the following requirements:*

1. *for the purposes of this condition, accredited CPD courses are the courses accredited from time to time by the CEO. A broker must attend a sufficient number of accredited CPD courses to acquire the following minimum number of points:*
   1. *for the period 1 July 2012 to 31 March 2013 - 0 points;*
   2. *for the period 1 April 2013 to 31 March 2014 - 5 points in each mandatory stream (Broker Obligations, Risks and Ethics and Professional Brokerage Skills) and 5 points from any stream (Broker Obligations, Risks and Ethics,*

*Professional Brokerage Skills or Brokerage Management); and*

* 1. *for the period 1 April 2014 to 31 March 2015 - 10 points in each mandatory stream (Broker Obligations, Risks and Ethics and Professional Brokerage Skills) and 10 points from any stream (Broker Obligations, Risks and Ethics, Professional Brokerage Skills or Brokerage Management).*

1. *the holder of the broker’s licence must keep accurate, auditable written records of attendance at accredited Continuing Professional Development courses and provide them upon request to Customs and Border Protection.*
2. *the holder of the broker’s licence must notify Customs and Border Protection by 14 April 2015 if the holder of the broker’s licence has failed to complete the minimum number of points by 31 March 2015 and provide a written explanation of the circumstances surrounding the failure.*

Australian Customs and Border Protection Notice 2012/37 provides guidance on the Continuing Professional Development scheme.