

**AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2013/55**

**New obligations on Customs Broker Licence Holders**

The *Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013 (Organised Crime Act)* received Royal Assent on 28 May 2013 (Australian Customs and Border Protection Notices 2013/12 and 2013/25 refer). These amendments place new obligations on Customs broker licence holders, which will commence on 28 November 2013.

The following amendments to the Customs Act affect customs broker licences:

* replacing the term ‘person of integrity’ with ‘fit and proper person’
* changes to the criteria for ‘fit and proper person’ tests
* changes to the notification requirements of a customs broker licence holder
* new provisions empowering the Chief Executive Officer (CEO) to impose additional conditions and vary existing conditions on customs broker licences at any time including the ability to consider the suspension, refusal or cancellation of an Aviation or Maritime Security Identification Card (ASIC or MSIC) when determining whether the person is fit and proper under the Customs Act
* a new offence for breaching conditions of a customs broker’s licence, and
* other amendments that affect all members of the international trade and transport industry, including new offences for using information held by Customs, changes to the Infringement Notice Scheme, increased record keeping obligations and increased penalties for certain offences.

Complying with notification requirements:

* All customs broker licence holders are required by section 183CG of the Customs Act to notify the CEO in writing, within 30 days, where certain events occur. This includes a requirement to notify the CEO when certain persons are convicted of certain offences or become bankrupt.
* The changes to the Customs Act introduce an additional condition on the holder of a customs brokers licence to notify the CEO in writing, within 30 days, where the licence holder, or certain persons where the licence holder is a company or partnership, have been refused an ASIC or MSIC or had an ASIC or MSIC suspended or cancelled.
* Where the suspension, cancellation or refusal of an ASIC or MSIC occurred in the 10 years prior to the commencement of these changes, a licence holder must notify the CEO within 90 days of the commencement date.

You can send notifications to the CEO for customs broker licences to [brokers.licensing@customs.gov.au](mailto:brokers.licensing@customs.gov.au).

# Licence Conditions

A broker licence is subject to the statutory conditions specified in the *Customs Act 1901*, which will change on 28 November 2013 as outlined above. These updated statutory conditions and other conditions are set out below in *Attachment A – Customs Broker Licence*. ACBPS will write to licence holders after the commencement of the legislation, notifying them of the change to their licence conditions.

Further details about these changes are contained in an ACBPS fact sheet *Changes to the Customs Broker Licensing Regime*, which is available on the ACBPS website at <http://www.customs.gov.au/site/page4271.asp>. You can find further information about the *Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013 (Organised Crime Act)* on the ACBPS internet website.

[Signed]

Anthony Seebach

National Manager, Compliance Assurance Branch 5 November 2013

**Attachment A – Customs Broker Licence Conditions as of 28 November 2013**

# Statutory Conditions

This licence is subject to the statutory conditions set out in Division 3 of Part XI of the Act as amended from time to time. The statutory conditions of this licence are:

1. A broker’s licence is subject to the condition that if:
   1. the holder of the broker’s licence is convicted of a prescribed offence; or
   2. in the case of a licence held by a natural person—the holder of the licence:
      1. becomes bankrupt; or
      2. has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; or
   3. in the case of a licence held by a company:
      1. a receiver of the property, or part of the property, of the company is appointed; or
      2. an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*; or
      3. the company executes a deed of company arrangement under Part 5.3A of that Act; or
      4. the company begins to be wound up;

the holder of the licence shall, within 30 days after the occurrence of the event referred to in paragraph (a), (b) or (c), give the CEO particulars in writing of that event.

1. A broker’s licence held by a natural person is subject to the condition that the holder of the broker’s licence shall not act as a customs broker in his or her own right at any time at which he or she is a nominee of a customs broker.
2. A broker’s licence held by a customs broker is subject to the condition that if:
   1. a person not described in the application for the licence as participating in the work of the customs broker commences so to participate; or
   2. a nominee of the customs broker dies or ceases to act as nominee of the customs broker; or
   3. a person who participates in the work of the customs broker:
      1. is convicted of a prescribed offence; or
      2. becomes bankrupt; or
      3. has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; or
   4. in the case of a licence held by a partnership:
      1. a member of the partnership is convicted of a prescribed offence or becomes bankrupt; or

(ia) a member of the partnership has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; or

* + 1. there is a change in the membership of the partnership;

the holder of the licence shall, within 30 days after the occurrence of the event referred to in whichever of the preceding paragraphs applies, give the CEO particulars in writing of that event.

1. 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 fit and proper persons; and
   2. in the case of a licence held by a partnership—all members of the partnership are fit and proper persons.
2. A broker’s licence is subject to such other conditions (if any) as are prescribed.
3. A broker’s licence is subject to such other conditions (if any) as are specified in the licence, being conditions considered by the CEO to be necessary or desirable:
   1. for the protection of the revenue; or
   2. for the purpose of ensuring compliance with the Customs Acts; or
   3. for any other purpose.
4. The CEO may, upon application in writing by a customs broker and the production of the licence held by the customs broker, vary the conditions specified in the licence by making an alteration to, or an endorsement on, the licence.

(7A) Subsection (7) does not limit section 183CGB.

1. Where a customs broker fails to comply with a condition of his or her licence the CEO may, by notice in writing served on the customs broker, require the customs broker to comply with that condition within the time specified in the notice.

# Additional Conditions

This licence is also subject to the following additional conditions pursuant to subsection 183CG(6):

1. 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 a fit and proper person check for each relevant person. The holder of the broker’s licence must forward the form to the CEO if requested.
2. 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.
3. 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.
4. 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 the CEO.
  2. the holder of the broker’s licence must notify the CEO 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.

# General Notes:

1. Pursuant to section 183B, a person “participates in the work of a customs broker” if
   1. he or she 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 Acts on behalf of an owner of goods; or
   2. he or she has authority to direct a person who has authority referred to in paragraph (a) in the exercise of that authority.
2. Where a licence condition states that information (including particulars or a form) is to be provided to the CEO, the information is to be provided to Customs Watch as specified on the Customs and Border Protection website.