

AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2013/64

Authorised Agents

The purpose of this Notice is to clarify the legislative requirements for those persons purporting to act on behalf of the owner of goods imported into Australia. This Notice replaces Australian Customs Notice No. 2007/56, which we have withdrawn.

Key points

* Only the owner of the goods or a licensed customs broker may enter the goods for home consumption.
* It is not an offence for a licensed customs broker to enter the goods for home consumption without written authority from the owner of the goods.
* Freight forwarders and other businesses that are not themselves licensed customs brokers should not describe their businesses as customs brokerages.

Authority to act

The *Customs Act 1901* (the Act) provides that only the owner of goods or a customs broker licensed by the Chief Executive Officer (CEO) of Customs can submit an import declaration to import goods. Section 180 of the Act specifically provides that a customs broker means a person who holds a broker’s licence that is in force. These requirements do not apply to the making of an export entry or self-assessed clearance (SAC) declaration under section 71AAAF of the Act.

Because of the complexity of the laws governing the importation of goods into Australia (similar to those of most other countries) and the potential financial and other implications of lodging an incorrect entry, most importers of goods choose to engage or allow, either explicitly or implicitly, a licensed customs broker to act on their behalf.

A person who submits an import declaration and is not the owner of the goods or a licensed customs broker commits an offence, which carries a maximum penalty of 30 penalty units for a natural person or 150 penalty units for a body corporate (sections 181(4) and (5)).

Section 181 appears to contemplate that the owner of the goods would authorise the licensed customs broker in writing to act on their behalf before the customs broker actually enters the goods for home consumption in order to be capable of complying with the requirements of the Act.

However, it is ACBPS’s view that section 181 must be construed in the context of other provisions in Division 2 of Part XI of the Act, including section 183. Section 183 provides that where a person holds himself or herself out as an agent of an owner of goods, that person is deemed to be the owner of the goods. In such circumstances, the person acting as if he or she were the agent may become liable for any duty payable on the goods. There is no penalty for holding oneself out as an agent, *per se.*

Further, it is open to ACBPS to require a person who claims to be an agent of the owner of goods to produce written authority from the owner authorising the person to act as an agent (section 182). If the purported agent fails to produce the written authority, the Customs officer may refuse to recognise their authority, which could delay the release of the goods. These

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provisions do not create any other penalty where an agent purports to act on behalf of an owner who has not provided written authorisation.

What does this mean in practice?

It is not an offence for a licensed customs broker to enter the goods for home consumption without written authority from the owner of the goods. This means it is largely a matter for the owner of the goods and the person purporting to provide customs clearance services on their behalf to establish arrangements governing that relationship. However, it may be prudent for any licensed customs broker purporting to act on behalf of the owner of the goods to have explicit authority to do so to protect themselves from claims against them by the owner of the goods.

Advertising broker services

It has become an increasingly common practice for freight forwarders and others who are not licensed Customs Brokers to describe their businesses as customs brokerages and to advertise that the services they provide include customs brokerage. This practice is of concern and may contravene the prohibitions on false and misleading representation that are set out in Australian consumer law. However, it is not an offence under the Act for holding oneself out as an agent, *per se*.

It is the view of ACBPS that a business that describes itself as a customs brokerage or that claims that it provides customs brokerage services is asserting that it holds a corporate, partnership or sole trader licence as a customs broker and that it has as its nominees individuals who are licensed customs brokers.

Freight forwarders and other businesses that are not themselves licensed customs brokers can arrange for the provision of customs brokerage services for their clients by a licenced customs broker. When they make such arrangements, they should not describe themselves as a customs brokerage or use similar terms that indicate that they provide customs brokerage services themselves.

However, they can claim that they arrange or organise the provision of customs brokerage services by independent licensed Customs Brokers.

If you have any questions about the this Notice, please forward them to [Compliance1@customs.gov.au](mailto:Compliance1@customs.gov.au)

[Signed] [Signed]

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Compliance Assurance Branch Customs Branch Compliance and Enforcement Division Trade and Customs Division

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