



Australian Government

Australian Customs and
Border Protection Service

AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE 2012/37

Customs Broker Licence Conditions and Continuing Professional Development for Licensed Customs Brokers

Continuing Professional Development (CPD) for Customs Brokers

Following consultation with industry, Customs and Border Protection will introduce a mandatory CPD scheme for licensed customs brokers from 1 July 2012. Accordingly, I am imposing the CPD licence condition advised in Australian Customs and Border Protection Notice 2012/29 on all customs broker licences. This includes all licences renewed with effect from 1 July 2012 and all new licences issued on or after 1 July 2012.

I am imposing this condition, as I am satisfied that it is necessary and desirable for the protection of the revenue or ensuring compliance with the Customs Acts.

The finalised CPD scheme is at Attachment A.

Persons or organisations seeking accreditation of CPD activity should submit details of the proposed activity to National Customs Brokers Licensing Advisory Committee through brokers.licensing@customs.gov.au.

Further guidance

I provided advice about changes to customs broker licence conditions that will apply from 1 July 2012 in Australian Customs and Border Protection Notice 2012/29.

In the coming weeks Customs and Border Protection will publish additional guidance for licence holders to assist them to meet their obligations.

A handwritten signature in dark ink, appearing to read 'A. Seebach'.

Anthony Seebach
National Manager
Compliance Assurance

29 June 2012

AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE
CONTINUING PROFESSIONAL DEVELOPMENT
FOR
AUSTRALIA'S CUSTOMS BROKERS

Background

The *Customs Act 1901* 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 enter goods for home consumption in connection with the importation of those goods.

Because of the complexity of the laws governing the importation of goods into Australia (similarly 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 a customs broker to act on their behalf.

Most customs brokers also offer a wider range of services than those that only a licensed customs broker can perform. For example, in addition to preparing and lodging entries for home consumption, customs brokers frequently offer other services that may include:

- lodging applications for Tariff Concession Orders
- lodging Tariff and Valuation Advice requests
- arranging permissions, licences or other approvals without which the importation of particular types of goods would be prohibited
- lodging customs duty drawback applications and refunds
- establishing Tradex arrangements
- organising compliance with biosecurity arrangements
- liaising with international and national transport providers to ensure delivery of goods, and
- providing or arranging under-bond storage of goods pending customs clearance.

To become a licensed customs broker, an individual applicant must satisfy the CEO that they meet three essential criteria:

- they must be a person of integrity
- they must have completed, or been exempted from completing, an approved course of study, and
- they must have the acquired experience that fits them to be a customs broker.¹

Before it can be licensed as a customs broker, a company must satisfy the CEO that it meets the following criteria:

- each director and officer who would participate in the work of the company as a customs broker must be a person of integrity, and
- the company itself must be a fit and proper company to hold a broker's licence.²

And, before a partnership can be licensed, it must satisfy the CEO that each partner and employee who would participate in the work of the partnership as a customs broker is a person of integrity.³

¹ Section 183CC (1)(a) of the Customs Act.

² Section 183CC (1)(b) of the Customs Act.

³ Section 183CC (1)(c) of the Customs Act.

Customs and Border Protection issues licences subject to a number of mandatory conditions specified in the Act, and the CEO or his delegate may impose other conditions.⁴

We issue licences for a period of (up to) three years, which we can also renew on payment of a prescribed fee.⁵

The statutory provisions for the licensing of customs brokers have two distinct but complementary purposes:

- protection of the Commonwealth Revenue – because it is simply impossible for Customs and Border Protection to conduct a 100% check of every entry, it is essential that Customs and Border Protection has a high degree of confidence that customs brokers will exercise their function in a professional, correct and ethical manner in order to ensure that the duty properly payable on goods is in fact paid – no more, but no less – and that import and export data is entered accurately for statistical purposes
- protection of the community – over and above the public interest in the correct revenue being collected on any importation of goods, the public has other significant interests in the performance of licensed customs brokers, such as
 - government agencies should be able to establish the true identity of parties undertaking international trade in goods and in a self-assessment context customs brokers should take responsible steps to establish the identity of their clients for the purpose of the Customs Act
 - clients who engage customs brokers should be able to rely upon their expertise to provide the services they offer in a professional and ethical manner
 - owners and employees of Australian businesses that the Government intends to protect by Australia's import duty arrangements should be able to rely on the integrity and expertise of customs brokers to ensure that imported goods attract the correct duty and tax, and
 - consumers of imported goods and others affected by their use should be able to rely on customs brokers to ensure, for example, that potentially dangerous goods are not imported if prohibited or are properly identified and labelled if allowed to be imported.

The approved course of study that we require applicants to undertake in order to gain the first issue of their licence has traditionally recognised, and continues to recognise, that licensed customs brokers offer a far wider range of services than those that only a licensed customs broker can offer. The course of study includes a range of subjects designed to impart knowledge across the breadth of law and practice applying to the movement of goods to and from Australia.

Similarly, the requirement that a licence applicant demonstrate that they have the acquired experience that fits them to be a customs broker has traditionally been, and continues to be, tested by reference to the applicant's experience in utilising their academic knowledge across the multiple facets of law and practice applying to the movement of goods to and from Australia.

At the same time, under present arrangements, a licensed customs broker can continually renew their licence without having to demonstrate that they are in fact practising as a licensed customs broker and that they are gaining ongoing experience by lodging entries in accordance with the prevailing law and practice, or that they have contemporaneous knowledge of changes to such law and practice as they occur.

⁴ Section 183CG of the Customs Act.

⁵ Section 183CH of the Customs Act.

There is little doubt that very many licensed customs brokers make a considerable effort to ensure that they have the up-to-date knowledge and that they gain the contemporaneous experience necessary to allow them to efficiently perform the full range of services that they offer to their clients. Nevertheless, nothing *requires* this to occur. Because the Commonwealth issues the licences that allow licensed customs brokers to hold themselves out as having expertise in these fields, and the CEO has the responsibility for oversight of the conduct of licensees, it is appropriate that the Commonwealth should take steps to ensure that all licensed customs brokers maintain the currency of their knowledge.

It is against this background that we have developed the scheme of Continuing Professional Development for Australia's licensed customs brokers outlined below. The aims of the scheme are to:

- afford greater protection for the Commonwealth and the Australian public that licensed customs brokers will be better able to provide their services with propriety, skill and expertise
- complement and support other Customs and Border Protection initiatives designed to increase and enhance compliance with the laws relating to goods under Customs control
- reinforce the concept of a licensed customs broker as a practitioner in a distinct and valuable profession, and
- provide opportunity and motivation for all licensed customs brokers to maintain and update their professional knowledge and skills.

What does the CPD scheme require customs brokers to do?

Under the scheme, a natural person who holds a customs broker licence is required to undertake sufficient accredited CPD activity to accrue a specified number of CPD points each year.

What is meant by "CPD activity"?

CPD activity comprises attendance at, or participation in, courses, seminars or other educational activities.

Each activity must fall into one of the following three "streams":

- Customs broker obligations, risks and ethics. Activities in this stream ensure that licensed customs brokers have a heightened capacity to understand the obligations, to which they are subject as a customs broker, the risks they run if they fail to honour those obligations, and the ethical principles that should guide them in the conduct of their activities as a customs broker.
- Professional brokerage skills. Activities in this stream will update licensed customs brokers in areas of professional development/practice where there have been recent changes in law or practice (e.g. INCO terms, free trade agreements) or emerging precedents or guidance (e.g. ACCC guidelines on cosmetic labelling), or where complex law and practice can impact a customs broker's clients with little warning (e.g. dumping and countervailing measures).
- Customs brokerage management. Activities in this stream will expose current and prospective managers of customs brokerage staff and business activities to best practice management concepts and tools that allow the pursuit of economic efficiency in a manner consistent with the legal and ethical obligations of licensed customs brokers.

How will CPD activities become “accredited”?

An activity proponent will gain accreditation of any activity by submitting details of the proposed activity to the National Customs Brokers Licensing Advisory Committee (NCBLAC) through brokers.licensing@customs.gov.au. Ideally, these details will include:

- activity content, in script or slide form
- any pre-reading or hand-out material
- any arrangement for interactive participation by or assessment of attendees
- method/format of presentation, and
- qualifications of presenters.

After reviewing these materials and undertaking any necessary follow-up with the activity proponent, NCBLAC will recommend to the CEO whether to give the activity accreditation and, if so, what point value to assign to the activity.

The CEO (or his delegate) will then take a decision on accreditation, which Customs and Border Protection will convey to the proponent.

Through this accreditation process, neither NCBLAC nor the CEO will be certifying that the content of the activity necessarily provides a correct or complete exposition of the relevant law. This will remain the responsibility of the activity proponent and presenter. Instead, the purpose of the accreditation process will be to gain satisfaction that the subject matter of the proposed activity is relevant and material to the duties of licensed brokers, that the subject matter is likely to be given substantive and practical treatment in the activity, and that presenters have qualifications and experience that enable them to deliver a meaningful learning opportunity.

What format will activities have to take?

There will be no fixed format. The presentation of an activity can occur on a face-to-face basis, by video-conferencing, by viewing of DVDs, through online activities such as “webinars”, or in other ways. The focus will be on substance rather than form – that is, on ensuring that the activity provides a professional quality treatment of the subject in question.

How many points will an activity be worth?

The CEO (or his delegate) will determine the point value on any particular activity on a case-by-case basis. However, our expectation is that we will determine points at the rate of 3 points for each presentation-time hour of professional quality activity. Activities of lesser quality and/or duration will, if accredited, receive a lower point value.

How many points will a customs broker have to achieve?

The scheme requires each licensed customs broker to undertake sufficient CPD activity to qualify for a total of 30 points per year. Licensed customs brokers will gain these points by participating in activities across a number of separate “streams”. At least 10 points will be required from each of the Broker obligations, risks and ethics and Professional brokerage skills streams, which are mandatory streams for all customs brokers. Customs brokers could meet the balance from those streams or alternatively from activities in the Brokerage management stream, which is optional rather than mandatory.

Examples of the mix of activity points that brokers can undertake for the three streams follow:

Stream	Example 1	Example 2	Example 3	Example 4
Broker obligations, risks and ethics	10	20	10	12
Professional brokerage skills	20	10	10	12
Brokerage management	0	0	10	6

Licensed customs brokers are also able to meet their CPD obligations by preparing and presenting accredited CPD activities for attendance by other licensed customs brokers. In recognition of the effort required in such preparation and presentation, points will accrue at double the normal rate. That is, a licensed customs broker can meet their CPD obligations by preparing and presenting 5 hours of professional quality accredited activities in at least the two mandatory streams each year. Points could also accrue by a mix of preparation/presentation and attendance at activities presented by others.

Who will organise and present CPD activities?

We are not placing any limitations on the persons or organisations that might organise CPD activities. Rather, the focus will be on the quality of the information and learning outcomes of the particular activity. Having said that, we expect the following organisations to have an interest in developing (individually or with others) CPD activities for licensed customs brokers:

- industry associations, seeking to provide value-added services to their members
- registered training organisations, seeking to complement, leverage or increase the range of courses they already offer
- employers of licensed customs brokers, seeking to enhance the skills of their employees
- consultants to licensed corporate customs brokerages, such as tariff and dumping consultants and legal firms, seeking to increase market awareness of their services
- suppliers of practice management software, seeking to increase sales of their products, and
- trade regulators, seeking to promote a better understanding of the regulatory regimes they administer.

Similarly, we are not placing any limitation on the persons that could present CPD activities. Again, the focus will be on the quality of the information and learning outcomes of the particular activity, and therefore on the experience and qualifications of the presenter. Having said that, we expect that the following persons to have an interest in presenting CPD activities for licensed customs brokers:

- experienced licensed customs brokers
- qualified educators from registered training organisations
- experienced consultants and professional service providers to customs brokers
- experts in practice management tools, methods and software, and
- relevant officials of trade regulators.

Could attendance at units of the approved course of study be used to meet CPD obligations?

A licensed customs broker who completed their approved course of study some time ago might want to attend one or more units of the currently approved course of study in

order to refresh or update their knowledge in particular areas of expertise. We do not see any reason why we would not accredit such units for CPD purposes, within the relevant stream. However, notwithstanding the time spent attending such a unit might exceed that required to accrue the requisite number of points through other CPD activities, points gained through such unit attendance would be valid only for the year of attendance and could not be “banked” for future years. In addition, we would still require customs brokers to accrue points in each other relevant stream.

When will the CPD obligation commence?

The CPD obligation will commence 1 July 2013. However, in recognition of the need to allow time for organisations and presenters to prepare activity proposals, to have them accredited, and to market and present them, the following arrangements will apply:

- there will be no mandatory CPD requirements for 2012-2013
- CPD obligations in 2013-14 would be at 50% of the ongoing rate – that is 5 points in each mandatory stream and 5 points from any stream), and
- CPD obligations would only apply at the full annual rate of a minimum of 10 points in each mandatory stream and 10 points from any stream from 1 July 2014.

How much CPD will I have to do in my first year if I am a newly licensed customs broker?

From 1 July 2014, we require a newly licensed customs broker to undertake 5 points for every two months remaining in the financial year in which they received their licence. We then require the customs broker to undertake the standard CPD for other financial years in the licence period.

How much will it cost to meet the CPD obligation?

We are not imposing any minimum or maximum amount that CPD activity organisers might charge for attendance at, or participation in, CPD activities. We expect competition amongst providers should keep any charges to a reasonable level, reflective of the costs incurred and, as applicable, normal commercial expectations. While parties should take their own advice in this regard, we would expect the costs of meeting CPD obligations to be tax deductible.

Will the customs broker's employer be liable to meet the cost of CPD activities?

Whether the individual licensed customs broker or their employer should meet any cost incurred in a licensed customs broker's attendance at CPD activities would be entirely a matter between employer and employee. Some employers may choose to cover these costs; others may not.

How will a licensed customs broker demonstrate that they have met their CPD obligation?

To facilitate timely issuance of licences by 1 July 2015 for the 2015-2018 triennium, a licensed customs broker is required to report on non-compliance with their CPD obligations by 14 April 2015. We might also ask a licensed customs broker to demonstrate ongoing compliance within a licence triennium. In a non-renewal year, a failure to comply could lead to suspension or cancellation of the licence. In a renewal year, it could lead to non-renewal of the licence. For this reason, it would be prudent for brokers to obtain and retain receipts or other suitable documentation evidencing their attendance at, or participation in, CPD activities.

Should licence applicants or unlicensed customs brokerage employees attend CPD activities?

Customs and Border Protection has no authority to impose CPD obligations on persons other than licence holders. At the same time however, Customs and Border Protection seeks to promote increased awareness and skills development amongst all who work in the customs brokerage profession. Accordingly, we are happy to encourage attendance at CPD activities by those intending to apply for a licence in the future and other brokerage employees such as compiler/classifiers.

Should all licensed customs brokers attend CPD activities?

All licensed customs brokers must comply with CPD obligations regardless of whether the customs broker is an active customs broker or not. This includes customs brokers that are only involved in brokerage management.

How will the CPD obligation be imposed as a matter of law?

The Customs Act not only imposes a number of statutory licence conditions on a customs broker licence, but it also allows the CEO of Customs to impose additional conditions that he considers necessary or desirable for the protection of the revenue or for the purpose of ensuring compliance with Customs Acts.⁶

A delegate of the CEO imposed the following licence condition on all customs broker licences on 29 June 2012 (see Australian Customs and Border Protection Notice 2012/37):

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

- (a) 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:*
 - (i) for the period 1 July 2012 to 31 March 2013 - 0 points;*
 - (ii) 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*
 - (iii) 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).*
- (b) 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.*
- (c) 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.*

What will happen if a licensed customs broker did not meet their CPD obligation?

Under the Customs Act, where a license holder breaches a condition of the licence, the CEO or his delegate may suspend or cancel the licence, or they may refuse the

⁶ Section 183CG of the Customs Act

renewal of a licence.⁷ The CEO or his delegate may also issue directions to comply with a licence condition.

The action that the CEO or his delegate might take where a customs broker had failed to comply with a condition requiring participation in CPD activity would very much depend on the circumstances of the individual case. Special or exceptional circumstances may justify taking no action. In other circumstances, a simple direction to comply by undertaking “make-up” activity within a specified period may be appropriate. In more severe cases, the CEO or his delegate may suspend, cancel or not renew licences.

However, given that the CPD obligation could be met in only 10 hours per year, we hope that cases of non-compliance with that obligation would be exceptionally rare.

Will the CPD scheme outlined above apply permanently?

We expect that all future customs broker licences will include a CPD obligation. However, the detail of that obligation may change over time. We will review the scheme before the end of the 2012-2015 triennium, including in consultation with NCBLAC and representatives of licensed customs brokers, to see whether the scheme can be refined and improved in both the manner of its administration and the quality of the learning opportunities it provides.

⁷ Sections 183CS and 183CJ of the Customs Act.