



*Customs Brokers and Forwarders  
Council of Australia Inc.*

*By-Laws*

## **BY-LAW 1**

### **RULE 3**

#### **CONDITIONS OF MEMBERSHIP**

Other than Student members, each Individual member must satisfy the undermentioned criteria:

##### **Customs Brokerage Sector**

- be a natural person licensed under Part XI of the Customs Act
- be nominated and seconded by an individual member(s) of the association
- pay the necessary application fee (if applicable) and annual membership fee at the time of application
- be of good character and a person of integrity, and
- not be subject to any of the provisions of Section 183CQ(1) of the Customs Act.
- any other criteria that the Board deems necessary.

##### **International Freight Forwarding Sector**

- be nominated and seconded by an individual member(s) of the association
- pay the necessary application fee (if applicable) and annual membership fee at the time of application
- be of good character and a person of integrity
- hold a current International Air Transport Association (IATA) accredited Dangerous Goods Certificate and, if applicable, Department of Transport and Regional Communications, Aviation Security Accreditation, or
- any other criteria that the Board deems appropriate.

## **STATUS**

The status of individual members as referenced in Clause 3 (7) of the rules shall be as Associate, Senior Associate or Fellow. Provision also exists for Life Members. The qualifications for each status level is as follows:

- **Associate**

An Associate shall be a member admitted to membership and who complies with such other conditions as the Association may from time to time prescribe including payment of any requisite fee.

- **Senior Associate**

A Senior Associate shall be a member admitted to membership and who has been previously an Associate for at least seven (7) years and who complies with such requirements as the Association may from time to time prescribe including payment of any requisite fee.

- **Fellow**

A Fellow shall be a member admitted to membership who has been a sole trader on his own account, in partnership or as a director of a company carrying on business or in a senior management position covered by the Association membership criteria for not less than seven (7) years and who complies with such conditions as the Association may from time to time prescribe including payment of any requisite fee.

Advancement to Fellowship shall not be automatic and in addition to the above criteria the following will be considered in determining professional merit and/or sustained service to the Customs Brokers and Forwarders Council of Australia Inc. (and its predecessors the Customs Brokers Council of Australia Inc., the Customs Agents Institute of Australia (CAIA) the respective Customs Agents Associations (CAA) of the States and the Customs Agents Federation of Australia (CAFA), or other deemed industry associations. The service periods indicated are to be taken as a guide only and the Board of Directors in its absolute discretion may determine additional issues to be met.

### **Customs Agents Institute of Australia**

- service as a member of a divisional council for at least a complete term of three (3) years
- service as an elected officer to a Divisional Council, ie: Secretary, Director of Education, Activities Director, for a complete term of at least three (3) years

- service by a member Division as a lecturer on a subject relevant to the Institute Certificate course conducted under the auspices of a State education department, such service to be not less than three (3) years
- service by a member of the Institute serving as an appointee of the Institute on any committee (either within or without the Institute), such service to be not less three (3) years
- service by a member of the Institute acting on behalf of the Customs Agents Federation or the Customs Agents Association of any State in some official capacity for a period of not less three (3) years
- service by a member of the Institute on any committee appointed by the Australian Customs Service having regard to the nature of the committee and the length of time for which it was appointed
- by proven professional merit and/or sustained services to the Institute commensurate with the foregoing.

**Customs Agents Federation of Australia / Customs Agents Association (State)**

- service as a member of the Board of Management of CAFA or CAA (State) for a complete term
- service by an individual member of CAFA or CAA (State) acting on behalf of the respective association in some official capacity for a period of not less than three (3) years
- service by a member of CAFA or CAA (State) on any committee appointed by the Australian Customs Service having regard to the nature of the committee and the length of time for which it was appointed
- by proven professional merit and/or sustained service to CAFA or the CAA (State) commensurate with the foregoing.

**Customs Brokers Council of Australia Inc.**

- service as a member of the Board of Directors for a minimum of three (3) years
- service as a member of a Regional Committee of Management for a period of at least three (3) years
- service by a member of a Regional Committee as a lecturer in a subject relevant to the TAFE course (or its equivalent) for a period of not less than three (3) years
- service as a member of a Regional Committee serving as an appointee of the CBCA

on any committee (within or external to the CBCA), such service to have been not less than three (3) years

- service by a member of the CBCA on any committee appointed by the Australian Customs Service, other regulatory authority or Government, having regard to the nature of the committee and the length of time for which it was appointed
- by proven professional merit and/or sustained service to the CBCA commensurate with the foregoing.
- Other deemed industry association.

#### **Other Deemed Industry Association**

- service as a member of the Board of Directors of the Association for a minimum of three (3) years
  - service as a member of a Regional Committee of Management of the Association for a period of at least three (3) years
  - service by a member of a Regional Committee as a lecturer in a subject relevant to the TAFE course (or its equivalent) for a period of not less than three (3) years
  - service as a member of a Regional Committee serving as an appointee of the Association on any committee (within or external to the Association), such service to have been not less than three (3) years
  - service by a member of the Association on any committee appointed by the Australian Customs Service, other regulatory authority or Government, having regard to the nature of the committee and the length of time for which it was appointed
  - by proven professional merit and/or sustained service to the Association commensurate with the foregoing.
  - Other deemed industry association.
- **Life Member**

A Life Member shall be, or has been, a member who, at the discretion of the Board, is deemed to have provided meritorious service to the Association and the customs brokerage and/or international freight forwarding or associated industry sector. Such service would include, *inter alia*, holding of office on the Association together with service in the industry. Life membership may be bestowed by the Board on its own behest or that of a member nomination.

## **DISPENSATION**

The Association may by resolution of a majority of those present dispense with all or any of the requirements for admission as an Associate, Senior Associate or a Fellow for such reasons as the association shall deem sufficient, PROVIDED THAT no person shall be admitted as a Fellow unless he shall have been for at least seven (7) years an Associate or for that period in practice as a member or a sole trader, or in partnership, or as a director of a company. Every applicant for advancement to Associate or Senior Associate shall apply to the Association in such form and manner and company with such other conditions as the Association may from time to time prescribe. The Board of Directors shall nominate members for, and confer, advancement to Fellow.

## **BY-LAW 2**

### **RULE 3 (8)**

#### **CERTIFICATES**

Certificates of membership for both Business and Individual Members shall be issued by the Association according to the status of a member. Existing certificates issued by the Association shall be recognised by the Association and will remain in force while the respective member remains a financial member of the Association. Upon resignation or the member becoming unfinancial any certificate issued will be returned to the Association forthwith.

#### **TRADEMARK**

Business members are entitled to exclusive use of the Association trademark in relation to business letterhead, cards and signage. Use of the trademark must be in a manner consistent with the Association's Code of Professional Conduct (C.8) as it relates to stationery and sign boards which must be, *inter alia*, professional, in good taste and appropriate to the practice. The use of the trademark may prescribe a requisite fee.

## **BY-LAW 3**

### **RULE 3 (9)**

#### **PROFESSIONAL INDEMNITY AND OTHER APPROPRIATE INSURANCE**

In terms of Professional Indemnity and other insurance approved by the Board and determined according to the service provision capacity of business members, as a practical matter, minimal levels of insurance should be based upon the professional advice from insurance brokers or other advisers so as to ensure adequacy in the type and level of cover for each business circumstance. In terms of Professional Indemnity Insurance the following applies:

1. (a) Parties to be insured include:
  - (i) each principal, partner, director or employee of the insured;
  - (ii) any person who is, or becomes, or ceases to be, during the period of insurance, a principle or employee of the entity;
  - (iii) any person who has ever been a principal or employee of the entity;
  - (iv) in the event of the death or incapacity of any person in the above paragraphs, the legal representatives of that person;
  - (v) any corporate entity involved in the activities of the industry.
  
- (b) The insurer must be:
  - (i) authorised to carry on the insurance business under the Insurance Act 1973 (CWTH);
  - (ii) represented by a registered foreign agent under the Insurance (Agents and Brokers) Act 1984 (CWTH);
  - (iii) represented by a registered broker under a binder under the Insurance (Agents and Broker) Act 1984 (CWTH); or
  - (iv) authorised or licensed to carry on business in a foreign country.
  
- (c) The insured business:
  - (i) the insurance must cover all services for which any of the insured's referred to in paragraph (a) carries on a business;

- (ii) the expression the “Insured’s Profession” shall mean the practice of customs brokers, forwarding agents, carriers and/or portage contractors, and/or allied and/or ancillary services and insurance agents and includes advice given and services performed of whatever nature by the insured whether or not fees accrue for the performance of such work.
  
- (d) The period of insurance – the insurance must be for a period of not less than one year and must include the full year of membership of the Association.
  
- (e) The limits of indemnity and cover:
  - (i) the sum insured must give effect to the level of business activity and liability. A base of \$250,000 is recommended;
  - (ii) the sums referred to above must be for each and every claim;
  - (iii) the policy must provide for at least one reinstatement of the sum insured following a claim;
  - (iv) there must be indemnity for the costs and expenses, including legal costs and expenses of investigating, defending and settling claims against the insured. The excess applicable must be exclusive of these costs and expenses;
  - (v) if the policy covers retroactive claims then that retroactivity must be for a period of not less than seven (7) years;
  - (vi) the insurance shall provide indemnity for any negligent act, error or omission in relation to the services provided by the business;
  - (vii) the insurance shall provide indemnity for any fraudulent, malicious or illegal acts or omissions of the insured in the conduct of the business;
  - (viii) the policy must not be cancellable by the insured during the validity of the policy;

- (ix) run-off – the member must ensure that the insurance is maintained, through a period of not less than seven (7) years after ceasing a business.
2. (a) The member must provide to the Association any such information or documents about, or in evidence of, the member’s Professional Indemnity or other specified Insurance that it requests.
- (b) The member must inform the Association in writing seven (7) days of becoming aware that his Professional Indemnity or other specified Insurance has expired or been cancelled unless within that period:
- (i) it has been renewed; or
  - (ii) he has concluded a valid and binding contract of insurance complying with these Rules.
- (c) If, for a period of thirty (30) days, the member does not have insurance as required by these Rules then his membership will be automatically suspended until he arranges new insurance complying with these Rules.
3. The Board shall have discretion, under special circumstances, to accept an application for membership or to retain a member’s status even if the applicant’s or member’s insurance does not comply with these Rules.

#### **OTHER INSURANCE**

The above principles in relation to Professional Indemnity Insurance as they relate to parties to be insured, apply in relation to other appropriate insurance deemed by the Board as acceptable in relation to other business member service provisions capacity.

#### **BY-LAW 4**

## **RULE 3 (10)**

### **PROFESSIONAL DEVELOPMENT**

In order to maintain membership each individual member is required to undertake a minimum of 30 hours of professional development training within each 24 month period. Failure to comply with the minimum number of training hours may render the individual member subject to suspension after notice has been provided to the member as to failure to achieve the minimum hours of professional training. Such suspension shall be on the basis of reports received by the Board from the National Training Manager and the individual members' written response as to failure to achieve the minimum hours of professional development training.

## **BY-LAW 5**

### **RULE 7**

#### **STATUS VARIATION**

The demotion of an individual member from one class of membership to another shall be determined by the Board on the basis of relevant reports received as to the individual member's compliance with the provisions of these Rules for Incorporation.

### **RULE 7 (1)(iii)**

#### **CODE OF PROFESSIONAL CONDUCT**

##### **SECTION A**

- A.1 Introduction**
- A.2 Compliance**
- A.3 Format of the Code of Professional Conduct**
- A.4 Assistance to Members**

##### **SECTION B**

- B.1 The Public Interest**
- B.2 Integrity**
- B.3 Objectivity and Independence**
- B.4 Competence and Due Care**
- B.5 Confidentiality**
- B.6 The Image of the Industry and the Association**

## **SECTION C**

- C.1 Fees**
- C.2 Advisory Services - Fees and Commissions**
- C.3 Practice Names and Descriptions**
- C.4 Advertising and Publicity**
- C.5 Solicitation**
- C.6 Incompatible Business**
- C.7 Attention to Correspondence and Enquiries**
- C.8 Stationery and Signboards**

## **SECTION D**

- D.1 Service Fees**
- D.2 Clients' Money**

## **SECTION A**

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### **A.1 INTRODUCTION**

One of the hallmarks of a profession is the commitment by its members to high standards of professional conduct. Members of the Customs Brokers and Forwarders Council of Australia Inc. (the Council) should, at all times, maintain professional standards. By doing so, they will enhance their personal stature and help maintain the prestige of the barrier clearance and international freight forwarding industry. They will secure the continuing acknowledgment of their professional merits by the community as a whole.

The Council's Code of Professional Conduct ("the Code") is designed to provide members with authoritative guidance on acceptable standards of professional conduct. The Code focuses on essential matters and is not intended to include a multitude of Rules of Observance on minor issues. The Code should not, however, be narrowly interpreted. While it contains specific rules, it is equally important that the spirit of the rules should govern members' conduct.

The Code sets out minimum appropriate requirements. It is expected, however, that members will achieve a level of professionalism in excess of such minimum requirements.

### **A.2 COMPLIANCE**

Compliance with the Code is *mandatory for all members*. Non-compliance can lead to disciplinary proceedings as provided in the Council's Rules for Incorporation.

### **A.3 FORMAT OF THE CODE OF PROFESSIONAL CONDUCT**

The Code of Professional Conduct is presented in Sections as follows:

*Section A - Introduction*

*Section B - Fundamental Principles of Professional Conduct applicable to all members*

*Section C - Matters applicable mainly to members providing services*

*Section D - Professional Statements*

### **A.4 ASSISTANCE TO MEMBERS**

Members should, when in doubt as to the propriety of any course of action and if the doubt cannot be resolved by reference to the Code, seek the guidance of the Board or of the Executive Director. This is especially necessary if circumstances arise, for whatever reason, in which difficulties occur in complying with requirements or taking a professionally correct course of action.

## **SECTION B**

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### ***Fundamental Principles of Professional Conduct Applicable to All Members***

#### **B.1 THE PUBLIC INTEREST**

Members must at all times safeguard the interests of their clients and employers provided that they do not conflict with the duties owed to the community, laws, social and political institutions.

#### **B.2 INTEGRITY**

Members must not breach public trust in the profession or the specific trust of their clients and employers. Observance of accepted norms of honesty and integrity must underlie all professional decisions and actions.

#### **B.3 OBJECTIVITY AND INDEPENDENCE**

Members must be objective, impartial and free of conflicts of interest in the performance of their duties. They must be independent and be seen to be independent when providing auditing and other reporting or attestation services.

#### **B.4 COMPETENCE AND DUE CARE**

Members must strive continually to improve their technical services and to keep their knowledge up-to-date. They must bring due care and diligence to bear upon the discharge of their duties to clients and employers.

Members must not undertake work which they are not competent to perform and, when in doubt, must obtain such advice and assistance as will enable them to carry out the work competently.

## **B.5 CONFIDENTIALITY**

Members must not disclose information acquired in the course of their work except where consent has been obtained or where there is a legal or professional duty to disclose. Members must not use such information for their personal advantage or that of a third party.

## **B.6 THE IMAGE OF THE INDUSTRY AND THE ASSOCIATION**

Members must refrain from any conduct or action in their professional role which may tarnish the image of the industry or unjustifiably detract from the good name of the Council.

## **SECTION C**

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### ***Matters applicable mainly to members providing services***

#### **C.1 FEES**

Service fees must reflect fairly and equitably the value of work performed for the client. Members are referred to Section D.1 of this Code for the approved principles relating to the charging of fees.

#### **C.2 ADVISORY SERVICES - FEES AND COMMISSIONS**

Members may charge a client a fee for advisory services and/or may receive commissions from third parties in respect of advisory services provided to a client. Where an agency, commission or other form of arrangement has been entered into with a third party, the member shall inform the client of the existence of such arrangement, the identity of the other party or parties and the method of calculation of the agency fee, commission or other benefit accruing directly or indirectly to the member. The onus of proof that disclosure has been made is on the member.

#### **C.3 PRACTICE NAMES AND DESCRIPTIONS**

Members are prohibited from using a practice name which is false, misleading or deceptive. Practice names and descriptions must be in good taste and must not reflect adversely on the industry.

#### **C.4 ADVERTISING AND PUBLICITY**

Members are permitted to advertise or obtain publicity for their services provided that the content or nature of such advertising or publicity is not false, misleading or deceptive or in any other way reflects adversely on the industry. Advertising and publicity must be in good taste, informative and objective and consistent with the dignity of the industry.

#### **C.5 SOLICITATION**

The direct uninvited solicitation of a specific potential client for engagement from a client of another member providing similar services is prohibited.

#### **C.6 INCOMPATIBLE BUSINESS**

Members engaged in the provision of services must not at the same time engage in any business or occupation which may create a conflict of interest in rendering such services or which is detrimental to the public good or the dignity of the industry.

#### **C.7 ATTENTION TO CORRESPONDENCE AND ENQUIRIES**

Members must reply to professional correspondence and enquiries expeditiously.

#### **C.8 STATIONERY AND SIGNBOARDS**

Members' stationery and signboards must be professional, in good taste and appropriate to the industry.

## SECTION D

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### D.1 SERVICE FEES

#### *Principles of Charging*

1. **Service** fees must be a fair reflection of the value of the work performed for the client, taking into account:
  - (a) the skill and knowledge required for the type of work involved;
  - (b) the level of training and experience of the persons necessarily engaged on the work;
  - (c) the time necessarily occupied by each person engaged on the work; and
  - (d) the degree of responsibility that the work entails.
  
2. Service fees may be computed on the basis of appropriate rates per hour or per day for the time of each person engaged on the work. These rates should be based on the fundamental premise that the organisation and conduct of the member's office and client work are well planned, controlled and managed. They should take into account the factors set out in paragraph 1.
  
3.
  - (a) A member should not make a representation that specific services in current or future periods will be performed for either a stated fee, estimated fee, or fee range if it is likely at the time of the representation that such fees will be substantially increased and the prospective client is not advised on that likelihood.
  
  - (b) Before undertaking an assignment, a member must:
    - (i) advise the client of the basis on which fees will be computed; and
    - (ii) clearly define the billing arrangements.

The client must also be advised without delay of any changes to the fee structure or billing arrangements which may become necessary during the course of an assignment or between assignments.

4. When undertaking work for a client it may be necessary or expedient to charge a

pre-arranged fee, in which event the member should estimate a fee taking into account the matters referred to in paragraphs 1 to 3 above.

5. It is not important for a member to charge a lower fee than has been charged by another service provider for similar work, provided the fee has been calculated in accordance with the factors referred to in paragraphs 1 to 3 above.
6. Members should supply clients with accounts which are sufficiently detailed to enable them to verify their accuracy. Members must supply full details if requested.
7. The foregoing paragraphs relate to service fees as distinct from reimbursement of expenses. Out-of-pocket expenses, in particular travelling expenses, attributable directly to the work done for a particular client would normally be charged to that client in addition to the service fees.

## **D.2 CLIENTS' MONEYS**

1. In this Statement the following expressions have the meaning assigned to them in this paragraph:

"Clients' Moneys" means any moneys - including documents of title to money, eg: tax refund cheques, bills of exchange, promissory notes; and documents of title which can be converted into money, eg: bearer bonds - received by a member providing public accounting services to be held or paid out by the member on the instruction of the person from whom or on whose behalf they are received.

## *Principles*

2. When a member is entrusted with moneys belonging to others the member should:
  - (a) use such moneys only for the purpose for which they are entrusted to him or her; and
  - (b) at all times, be ready to account for those moneys to any persons entitled to such accounting.
3. A member should maintain one or more bank accounts for clients' moneys. Such bank accounts may include a general client account into which the moneys of a number of clients may be paid.
4. If in the form of moneys, including documents of title to money, clients' moneys received by a member should be deposited without delay to the credit of a client account.
5. If in the form of documents of title which can be converted into money, clients' moneys should be safeguarded against unauthorised use.
6. A member must keep such records as will enable the member at any time to establish clearly, dealings with clients' moneys in general and the moneys of each individual client in particular.