

16 October 2021

Department of Home Affairs
6 Chan St
Belconnen ACT 2617

By email: stsregulatoryreform@abf.gov.au

Dear Sir/Madam

Exposure Draft Customs Amendments (Controlled Trials) Bill 2021

1. The Customs & International Transactions Committee of the Business Law Section of the Law Council of Australia (the **Committee**) appreciates the opportunity to provide its views on the exposure draft for the Customs Amendments (Controlled Trials) Bill 2021 (**Exposure Bill**).
2. The Committee also supports the proposed legislative framework as a means to facilitate the trial of new practices under the *Customs Act 1901* (**Act**).
3. The primary comment of the Committee is that the scope of the Exposure Bill is unnecessarily narrow. The ability to trial new practices under the Act will be limited to the parts of the Act set out in the definition of “*controlled trial provision*” in the proposed amended section 4(1) of the Act.
4. Relevantly, the definition of “*controlled trial provision*” does not include the following provisions:
 - a. Part VIII – The Duties, including the following:
 - i. Rules of origin of preference claim goods such as free trade agreements;
 - ii. Valuation of goods;
 - iii. Refunds of duty; and
 - iv. Disputes as to duty; and
 - b. Part IX – Duty Drawback.
5. While Part VIII relating to “The Duties” may have some provisions that reflect Australia’s commitments as a World Trade Organisation member or under free trade agreements, it is also the case that some provisions do not reflect international commitments. Further, in some cases where there are international commitments, those commitments often do not relate to the administrative processes associated with those commitments.

6. It is submitted that an expansive approach should be taken to the definition of “*controlled trial provision*” for the following reasons:
 - a. Presumptions should not be made at this early stage as to which trials will be adopted;
 - b. Including provisions in the definition of “*controlled trial provision*” may prompt innovative ideas for reform;
 - c. The additional provisions that we have nominated have been, or are currently, the subject of administrative burdens experienced by importers. These provisions could benefit from the trial of new practices; and
 - d. No harm is occasioned by the inclusion of additional areas. The inclusion of an item in the definition of “*controlled trial provision*” does not mean that the Department of Home Affairs must conduct a trial in respect of that provision.
7. In addition, there is no ability to seek review of a decision under the proposed section 179J to vary, suspend or revoke an approval. It is possible that an entity will make a significant commitment in order to qualify for a trial and enjoy the associated benefits. Options that should be included are:
 - a. A requirement to give an affected party notice of the proposed variation, suspension or revocation;
 - b. The opportunity for the affected party to respond to the notice; and
 - c. A requirement for the Comptroller-General of Customs to consider that response prior to varying, suspending or revoking the trial.
8. These provisions could be limited to decisions made in respect of an individual entity’s participation in a trial as opposed to the trial in general.

Background of Committee

9. The Law Council of Australia (**LCA**) is the peak national representative body of the Australian legal profession. The LCA represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. It works for the improvement of the law and of the administration of justice.
10. The LCA is a federal organisation representing 65,000 Australian lawyers through their bar associations and law societies and Law Firms Australia.
11. The LCA is comprised of various sections and committees. Within the Business Law Section is the Customs & International Transactions Committee.
12. The Committee members have assisted local manufacturers, importers, exporters, customs brokers and freight forwarders in respect of a wide variety of customs and trade issued.

Conclusion and further contact

13. The Committee would be pleased to discuss any aspect of this submission.

14. Please contact the chair of the Committee, Russell Wiese, at rwiese@cgtlaw.com.au or on 0431 646 488 if you would like to do so.

Yours faithfully

A handwritten signature in black ink that reads "Greg Rodgers". The signature is written in a cursive style with a large, looped 'G' and 'R'.

Greg Rodgers
Chair, Business Law Section