



Australian Government
Department of Home Affairs



Australian Border Force submission to the Inquiry into the Customs Amendment (Controlled Trials) Bill 2021 [Provisions]

Senate Legal and Constitutional Affairs Legislation Committee

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1. Introduction

The Australian Border Force (ABF) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) inquiry into the Customs Amendment (Controlled Trials) Bill 2021 [Provisions] (the Bill), following its introduction into the House of Representatives on 24 November 2021.

The Bill will amend the *Customs Act 1901* (the Customs Act) to implement a new regulatory framework that will facilitate small-scale trials of new trade and customs processes in a controlled, time-limited regulatory environment, with appropriate safeguards.

This Bill, if passed, will allow the ABF to build a robust evidence base to inform the Government's future decisions on larger-scale regulatory reform under the Simplified Trade System (STS) agenda. The STS agenda is a micro-economic reform agenda that seeks to create a simpler, more efficient and digitised trade system, which will deliver tangible benefits for Australian businesses, enable trade growth and better protect the community.

This submission explains the purpose and key aspects of the Bill. It complements information contained in the Explanatory Memorandum to the Bill.

2. Customs Amendment (Controlled Trials) Bill 2021

2.1 Purpose of the Bill

The Customs Act sets out the legislative requirements for the importation and exportation of goods to and from Australia. This Bill would make amendments to the Customs Act to establish a 'Regulatory Sandbox' that encourages innovation in testing new business models, technologies and regulatory approaches, with appropriate safeguards. The ability to trial new regulatory approaches is essential to guide regulatory reform initiatives and ensure that the existing regulatory framework in the Customs legislation remains fit-for-purpose. The ability to undertake these trials and work with industry to test new regulatory approaches is an important component of the whole-of-Government STS reform agenda.

The scope of the Bill is intentionally limited to those areas in which controlled trials would be appropriate. Running controlled trials through a 'Regulatory Sandbox' within the customs legislation will allow the ABF to work closely with industry to develop and test streamlined and effective regulations in a controlled environment and with appropriate safeguards in place. A 'Regulatory Sandbox' is a contained area which provides flexibility within relevant legislation, within which existing regulatory requirements can be relaxed for a defined period to enable a trial.

This Bill, if passed, will establish a legislative and governance framework to conduct time limited trials of new trade practices with approved industry participants. It will allow the Comptroller-General of Customs (Comptroller-General) to establish these trials, that will vary, waive or create new obligations under the Customs Act for a limited time. Only approved industry participants would be eligible to participate in these trials. The standard duration of a trial will be no longer than 12 months with the option to extend once for up to 6 months only. A trial may also be varied or revoked if necessary.

The purpose of the Bill is to:

- Allow testing of new business models, technologies and streamlined and simplified regulatory approaches in a controlled environment, on a time-limited basis, and with appropriate safeguards.
- Build a robust evidence base to inform the Government's future decisions on larger-scale regulatory reform to deliver a material reduction in compliance burdens for traders.
- Support the STS regulatory reform agenda, delivering benefit to Government and business (i.e. streamline processes, and reduce administrative burden).
- Encourage innovation by breaking down unnecessary barriers to efficient cross-border trade while maintaining appropriate border security measures.
- Maintain border security and risk detection while creating opportunities for efficiency.

2.2 Background of the Bill

As technology, business models and risks at the border evolve, regulation must be reviewed to remain fit-for-purpose. Outdated regulations and processes impose significant compliance costs on businesses. These costs can outweigh the benefits the regulation is designed to support and the risk the regulation is designed to mitigate. These costs can constitute a significant barrier to the development and adoption of innovative technology, business models and service offerings.

The Bill, if passed, will enable existing regulatory requirements to be relaxed for a defined period to enable a trial so new business models, technologies and regulatory approaches can be tested in a controlled environment, on a time-limited basis, and with appropriate safeguards. This will assist Government in simplifying the Australian customs framework whilst maintaining, and achieving, Australia's border security objectives.

Trials undertaken under this Bill would build the evidence base for future, longer-term regulatory and information computer technology (ICT) reform, to ensure regulation does not become a barrier to innovation and productivity.

2.3 Summary of changes to customs legislation

The Bill, if passed, will amend the Customs Act to establish the framework for controlled trials, and make consequential amendments to that Act and the *Australian Border Force Act 2015*.

As noted above, the purpose of a controlled trial is to conduct small-scale trials of new trade and customs processes in a controlled, time-limited regulatory environment. These trials will often be of processes that are different to the processes set out in the Customs Act. To enable controlled trials to be conducted the Bill will enable entities participating in a controlled trial:

- to be released from certain obligations under the Customs Act; or
- to be required to satisfy certain obligations of the Customs Act in a different way to that is otherwise required under the Customs Act; or
- to be required to comply with additional obligations; or
- to receive benefits of a certain kind.

To participate in a controlled trial, an entity may apply to, or be invited by, the Comptroller-General to participate. An entity may then participate in the trial if approved by the Comptroller-General. The entity must meet any qualification criteria, which apply to all trials, and any eligibility criteria, which apply in relation to particular trials. An entity's participation in the trial may be varied, suspended or revoked by the Comptroller-General if the entity no longer meets the qualification criteria or eligibility criteria, contravenes a condition of the trial, or contravenes an obligation covered by the trial.

The framework for controlled trials will be included in new Part XB of the Customs Act. The framework is structured as follows:

- Division 1 provides a simplified outline of Part XB and the entities this Part applies to.
- Division 2 sets out an entity's obligations and the benefits an entity may receive if the entity is approved to participate in a controlled trial.
- Division 3 provides for the administration of participation in controlled trials. This includes the requirements for applications to participate in a controlled trial, elections to participate, the process for approving participation, conditions of approvals and, the variation, suspension or revocation of approvals.
- Division 4 gives the Comptroller-General rule-making powers with respect to controlled trials. The Comptroller General may make general rules that determine the qualification criteria to participate in any trial. The Comptroller-General may also make rules outlining the establishment, purpose, period of operation, eligibility criteria, conditions and affected obligations under the Customs Act for each controlled trial. The Comptroller-General may also extend or revoke a controlled trial through these rule making powers.

The Bill inserts key definitions to facilitate controlled trials into subsection 4(1) of the Customs Act. These definitions would establish the concept of a controlled trial, the parts of the Customs Act that a controlled trial can be used for, and update the definition of rules to also be in relation to controlled trials. Notably, a controlled trial will be able to be conducted with respect to the following parts of the Customs Act and associated regulations:

- Part IV Imports (excluding prohibited imports);
- Part VI Exports (excluding prohibited exports);
- Parts IVA - Depots;
- Part V - Warehouses;
- Part VIA - Electronic Communications;
- Part XI - Agents and Customs Brokers; and
- Part XVA – Tariff Concession Orders.

The Bill also amends the *Australian Border Force Act 2015* to ensure the Comptroller-General's power to make rules with respect to controlled trials cannot be delegated.

2.4 Benefits of the Bill

The Bill, if passed, sets a new regulatory framework, which would allow the ABF to collaborate with industry in conducting proof of concept trials of new trade practices. Conducting controlled trials through this framework will allow the ABF to trial new industry practices before committing to legislative changes and build a robust evidence base to inform the Government's future decisions on larger-scale reform under the STS agenda.

The new regulatory framework will encourage innovation by testing new business models, technologies and regulatory approaches in a defined area, with appropriate safeguards. This will allow Government to build the evidence base for future, larger-scale deregulatory and technology reforms and the development of best practice regulation.

A reduction in unnecessary compliance burdens will deliver benefits for business and consumers in the form of reduced costs, faster processing times at the border and more innovative service offerings. Ultimately, this would contribute to Australia's global standing as an attractive trading partner and assist in supporting Australia's economic recovery from the COVID-19 pandemic.

The Bill will assist Government in simplifying the Australian customs framework while maintaining, and achieving, Australia's border security objectives based on an intelligence-led approach to manage threats across the border continuum.

Trials conducted will also offer industry stakeholders an opportunity to conduct a live test of their innovations and gather valuable data and insights.

2.5 Consultation

ABF consulted key stakeholders from across the trade and travel sectors regarding the design of the Bill.

Discussions provided valuable insights into issues industry stakeholders are facing at the border and what trials industry might propose, and highlighted long-term deregulatory opportunities. Major themes included reporting obligations, the methods importers use to report to Government, information sharing between government and industry, ICT constraints and issues with the biosecurity enforcement. Industry has a keen interest in the implementation of controlled trials.

Home Affairs released an Exposure Draft (ED) of the Bill to provide industry stakeholders the opportunity to formally comment on the Bill and propose any amendments. Industry feedback was considered in the development of the Bill.

3. Conclusion

The Bill will encourage innovation in developing best practice regulation through testing new business practices and technologies before committing to legislative change. This will assist Government in simplifying the Australian customs framework while maintaining, and achieving, Australia's border security objectives.

The Bill is an important step towards simplifying Australia's trade system, in line with the Government's STS and Deregulation agendas.

A more streamlined and innovative border will lead to reduced costs and delays for businesses operating at the border, having flow on effects and benefits to consumers.