



Australian Government

**Department of Immigration
and Border Protection**

Review of customs licensing regimes

Discussion paper

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Introduction

Purpose

The Department of Immigration and Border Protection (the Department) is undertaking a review of all licensing regimes under the *Customs Act 1901* (the Customs Act) (the Review). It will be supported by the Australian Taxation Office (ATO) which administers the warehousing of excise equivalent goods (EEGs) under the Customs Act.

This Review provides an opportunity for industry and Government to work together to deliver improvements in licensing arrangements while ensuring the cost of maintaining the efficiency and integrity of our border is appropriately shared with those who use it.

It has been over 15 years since the last comprehensive review of depot licensing provisions and over 30 years since the warehouse and customs broker licensing provisions were enacted. During this time there have been significant changes to the context in which depots, warehouses and customs brokers are licensed including: advances in information technology, general business practices and the way in which international trade is conducted.

In addition, in 2014, the Centre for Customs and Excise Studies, Charles Sturt University (CCES), was commissioned by the Australian International Trade and Transport Industry Development Fund (AITTIDF) on behalf of industry to carry out a review of licensing arrangements under the Customs Act. The *Review of Licensing Provisions* made a number of suggestions in relation to the licensing of customs brokers, depots and warehouses.

The Review process will provide opportunities for industry and Government agencies to work together and contribute ideas on how the licensing regimes could be improved.

As part of the Review, this discussion paper invites submissions from all interested parties concerning the efficiency and effectiveness of the licensing regimes.

Scope of review

The Review will assess all licensing regimes under the Customs Act, including the licensing of customs brokers, depots and warehouses (including providores, catering bonds and duty free stores, and excise equivalent goods).

The objectives of the Review are to:

- review the role played by licensing in today's border management environment and consider whether there are other, more efficient ways to achieve the same objectives for border management;
- assess the efficiency and effectiveness of the current licensing regimes;
- assess the regulatory burden of the current licensing regimes and identify opportunities to reduce this burden and align application processes between administrations; and
- recommend whether the current licensing regimes should be retained with improvements/enhancements or replaced.

The Review will examine the legislation and administrative processes for the licensing regimes. This will necessitate an assessment of the:

- relevant provisions of the Customs Act and the *Customs Regulation 2015* to confirm that they remain necessary and appropriate and to identify any opportunities to streamline or simplify these arrangements;

- current application process for a licence from the perspective of an applicant in preparing the application;
- current application process for a licence from the perspective of the Department and the ATO in processing the application;
- current administration by the Department and the ATO of the licensing regimes, including available resources and the segregation of functions (policy and operations) and opportunities to increase consistency across the regimes; and
- functions, composition and processes of the National Customs Brokers Licensing Advisory Committee (NCBLAC) to identify possible improvements/enhancements or alternative models.

As part of the Review, the Department will consider whether:

- information required to be submitted with an application remains appropriate;
- conditions to which a licence is subject and the consequences for any breaches remain appropriate;
- securities should be taken from depot and warehouse licence holders to ensure compliance with the Customs Act and to protect the revenue, and, if so, the factors that should be taken into account in determining the amount of security; and
- there are consistent processes between administrations and licence types.

The Review will not review the:

- fees and charges applicable to customs brokers, depots or warehouses as those were the subject of a separate review - the *Joint Review of Border Fees, Charges and Taxes*, which was announced in September 2014, by the then Minister for Customs and Border Protection, the Hon. Scott Morrison MP. It is recognised however, that changes to the licensing regimes may result in changes to the cost base;
- Continuing Professional Development (CPD) Scheme for customs brokers as the CPD Scheme was reviewed by the Australian Customs and Border Protection Service (ACBPS) in 2014; or
- cargo reporting requirements.

Further details on the scope of the Review are provided in the Terms of Reference at **Attachment A**.

Consultation process

Invitation to make a submission

The Department invites all interested industry, individuals and organisations to lodge written submissions on how we could improve the current licensing regimes, or develop alternate models. Organisations and individuals with peak body representation are encouraged to direct their ideas through their respective industry body. We will be writing to peak industry bodies to inform them of the Review and how submissions can be made.

How to make a submission

Given the scope of the Review we request that **separate written submissions** be lodged for each licence type, that is, depot, warehouse, and customs broker licences.

Each submission should be accompanied by a separate [submission cover sheet](#) and be emailed to licensingreview@border.gov.au by **5pm AEDST Thursday 31 December 2015**.

The Department will send an acknowledgement email to confirm receipt of the submission.

How to prepare a submission

Submissions may range from a short letter outlining your views on a particular topic to a much more substantial document covering a range of issues. Where possible, you should provide evidence, such as relevant data and documentation, to support your views.

This is a public review and all submissions should be provided as public documents that may be placed on the Department's website for others to read and comment on.

However, information which is of a confidential nature or which is submitted in confidence can be treated as such by the Department, provided the cause for such treatment is shown. You are encouraged to contact the Department for further information and advice before submitting such material. Material supplied in confidence should be provided under separate cover and clearly marked 'IN CONFIDENCE'.

Next steps

Following the written submission process, any necessary industry consultation will continue by way of targeted discussions to explore and discuss ideas outlined in submissions.

There will also be an opportunity to provide comment on the draft recommendations prior to them being finalised.

The Review will be completed by mid-2016.

Overview of the licensing regimes

Types of licences

Under the Customs Act, the Comptroller-General of Customs (Comptroller-General) licenses:

- depots
- warehouses; and
- customs brokers.

Customs brokers

The role of a customs broker

The Customs Act provides that only the owner of goods or a customs broker licensed by the Comptroller-General can submit an import declaration to enter goods for home consumption.

Because of the complexity of the laws governing the importation of goods into Australia 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.

There are three categories of customs brokers:

- **Corporate** - a company or a partnership that is licensed to act on behalf of owners of imported goods. A corporate customs broker must employ nominee customs brokers to lodge customs declarations.
- **Sole trader** - an individual who is licensed to act on behalf of owners of imported goods. A sole trader may also employ nominee customs brokers. A sole trader cannot be employed by a corporate customs broker.
- **Nominee** - a natural person who is licensed to act as a customs broker but only as an employee of a corporate or a sole trader customs brokerage. A nominee may be employed by more than one corporate or sole trader brokerage at any one time.

Applying for a customs broker licence

Before the Comptroller-General may grant a customs broker licence, a number of requirements must be met.

The current requirements and application process for a customs broker licence are outlined in **Attachment B**. Additional information about the application process for a customs broker licence can be found on the Department website on the [Customs brokers page](#).

Depots and Warehouses

The role of licensed depots and warehouses

A **depot**, licensed under section 77G of the Customs Act, is where importers can move goods away from the port of entry for examination, unpacking, deconsolidation and short-term storage prior to their release from customs control or movement into a licensed warehouse for longer terms storage. Depots also pack and hold goods for export that are subject to customs control, prior to transportation to the port of departure for loading onto the vessel.

Once import formalities have been completed, goods may be moved from a depot and can be delivered to the importer or the goods can be entered for warehousing, if the importer wishes to defer payment of duty and/or Goods and Services Tax (GST).

A **warehouse**, licensed under section 79 of the Customs Act, permits the long-term storage of goods that have not yet been 'entered for home consumption' (that is, had any duty and/or GST paid). While the goods are stored in a licensed warehouse they are subject to customs control and the licensee is responsible for ensuring the physical security of the goods, accounting for the goods and satisfying all other licensing conditions.

Activities permitted in licensed warehouses are limited to ensuring security of goods and protecting the revenue of the Commonwealth. To this end, apart from approved storage, blending, unpacking and packing of certain types of goods, any activities that involve 'value adding' are not permitted.

Some warehouses are licensed for specific purposes such as catering bonds and providores. While most warehouses operate at the commercial level, some warehouses operate at the retail level and are licensed to sell underbond goods on a duty free basis to travellers departing from or arriving in Australia. Duty free stores that operate at international airports in Australia must hold a s79 warehouse licence.

Excise Equivalent Goods warehouses

Excise equivalent goods (EEGs) are imported alcohol (other than wine), tobacco and fuel that, if produced or manufactured in Australia, would be subject to excise duty. Warehouses that store excisable EEGs must also be licensed by the Australian Taxation Office (ATO).

From 1 July 2010, under a Memorandum of Understanding, responsibility for the administration of warehouses storing EEGs, with the exception of duty free stores, providores and catering bonds, moved from the Department to the Australian Taxation Office (ATO).

Applying for a depot or warehouse licence

Before the Comptroller-General may grant a depot or warehouse licence, a number of requirements must be met.

The current requirements and application processes for a depot or warehouse licence are outlined in **Attachment C**. Additional information about the application process for a depot or warehouse licence can be found on the Department website on the [Warehouse and Depot page](#).

Request for comments

At this stage of the review, the Department is seeking general input from stakeholders on elements raised within this discussion paper. Questions have been developed to focus input and assist the Department in analysing the views of a range of stakeholders. Given that many of the questions, and your responses, may overlap with others, you should feel free to structure your submission as appropriate to cover all the points you wish to make.

When answering the questions below, please provide **separate written submissions** for each type of licence, that is, depots, warehouses or customs brokers, to which your answers relate.

1. The Government's objectives

The licensing provisions in the Customs Act were designed to protect the revenue of the Commonwealth, ensure compliance with the legislation, and protect the interests of importers and the Australian community. Accordingly, the Department is considering whether the customs licensing regimes meet these Government objectives. To that end, the Department welcomes input on the following questions.

- Are the licensing regimes effective in achieving the Government's objectives of:
 - protecting the revenue of the Commonwealth;
 - ensuring compliance with the legislation; and
 - protecting the interests of importers, exporters and the community generally.
- Should the Government retain licences for depots, warehouses and customs brokers or consider an alternate model such as a registration or accreditation scheme? For example, there are many industries that have statutory committees, boards or commissions that regulate their professions in a manner of different ways. A comparison table of these bodies is provided at **Attachment D**.
- If it is considered that an alternate model to the licensing regimes should be developed, please provide specifics on:
 - a. whether all, or only some, of the current licensing arrangements should be replaced;
 - b. how the alternate model would operate;
 - c. what model of governance would be in place for the alternate model;
 - d. how the alternate model would ensure the achievement of the Government's objectives.
- If the current licensing regimes are retained should they be:
 - simplified and streamlined; and/or
 - extended beyond depots, warehouses and customs brokers to other stakeholders in the import-export chain?

If answering this question, please provide specific details.
- What legislative amendments may be necessary to achieve the Government's objectives of effectiveness and efficiency?

Fit and proper person

As part of the current licensing regimes, the Comptroller-General is required to be satisfied that the applicant, or persons who would participate in the work of the customs broker or management or control of a depot or warehouse, are fit and proper persons.

From 16 June 2016, the Department of Agriculture and Water Resources will introduce a 'fit and proper' requirement under the new *Biosecurity Act 2015* which will replace the *Quarantine Act 1908*. The introduction of the fit and proper requirement is intended to ensure that people or companies covered by approved arrangements or who have been granted import permits are able to appropriately and responsibly manage biosecurity risks¹.

Given that one of the Government's key objectives is to ensure the efficiency and integrity of our borders, the Department welcomes comments on:

- Whether the criteria to meet the 'fit and proper' requirements for customs licences are appropriate and meet the Government's objectives.
- Whether the requirement to meet fit and proper person requirements for both customs and biosecurity purposes is burdensome for persons or companies involved in the importation of goods into Australia.
- Whether a single or combined fit and proper person requirement could be developed and applied, which meets and is accepted, for both customs licensing and biosecurity purposes.
- If the current licensing regime is not retained, how any alternate model would ensure that fit and proper person requirements are met.

2. The regulatory burden of the licensing arrangements

The Government is committed to reducing the regulatory burden for individuals, businesses and community organisations. Cutting existing red tape and limiting new regulation is a high priority.

Accordingly, the Department is examining ways that the licensing arrangements could be simplified and streamlined, or an alternate model developed. To that end, the Department welcomes comment on the following matters.

Requirements for a licence

There are a number of requirements that must be met for a licence to be granted. The Department welcomes comments on:

- Whether any of the requirements for the grant of a licence are considered to be unnecessary or impose an unreasonable burden on the applicant.
- Whether the scope of a person considered as being in a position of 'management or control' of a proposed depot or warehouse, as outlined in [Australian Customs and Border Protection Notice No. 2014/23](#), is considered appropriate. A copy of ACN Notice 2014/23 is available from the Department website on the [Australian Customs Notices page](#).
- Whether guidelines on how to meet the relevant requirements are adequate.
- Whether there should be recognition of any other industry or government standards as alternatives to meeting the specified licensing requirements.

¹ Explanatory Memorandum for the *Biosecurity Act 2015* p46

- If answering the above questions, please specify the type of licence and specific requirements to which your answer relates.

Licence conditions

A licence imposes a number of ongoing licence conditions on the licence holder. The Department welcomes comments on:

- Whether there are any licence conditions considered to be unnecessary or impose an unreasonable burden on licence holders.
- Whether there should be any improvements or alternatives to the imposition of licence conditions. If so, please provide details on how any changes would operate to ensure that they are effective.
- If answering the above questions, please specify the licence to which your answer relates.

Securities

Securities may be required and taken for the purposes of compliance with the Customs legislation, for compliance with conditions or requirements to which the importation or exportation of goods is subject, and generally for the protection of the revenue.

At present, a security is requested and taken only from an applicant for a warehouse licence. A security may be bond, guarantee, cash deposit or any other method or by two or more different methods.

The Department welcomes comments on:

- Whether securities should also be required and taken from applicants for a depot licence and/or a customs broker licence.
- Whether from a business perspective, there is any particular form of security preferred.
- Whether the amount of security required take into account such factors as the financial viability of the applicant and in the case of a warehouse, the value of the goods to be stored and the revenue liability of those goods.

Duration of a licence

At present, depot and warehouse licences operate for one year while customs broker licences operate for three years. The Department welcomes comments on:

- Whether the duration of licences should remain the same, or be changed.
- Whether the duration of all licences should be standardised. If so, what the standard period should be.
- Whether licence renewals should be done in bulk rounds or on an ongoing basis.
- If answering the above questions, please specify the licence(s) to which your answer relates.

Timeliness of decisions

Under the Customs Act the Comptroller-General must decide whether or not to grant a depot or warehouse licence within 60 days after the receipt of an application or, where further information is required, the receipt of that information. There is no statutory timeframe for the granting of a customs broker licence.

The Department welcomes comments on:

- Whether in terms of depot and warehouse applications, the timeframes for decisions are appropriate.
- Whether there should be a statutory timeframe for the granting of a customs broker licence.

3. The administrative process of the licensing arrangements

The Department welcomes comments on whether there are any steps that the Department could take to simplify and streamline the current administrative practices to reduce the regulatory burden, or whether and an alternate model should be developed.

Application form

An application form for a depot, a warehouse and a customs broker licence requires the applicant to provide a range of information and documentation. The Department welcomes comments on:

- The amount of time required to provide the information and documentation requested in the application form.
- Whether the application form requires any information or documentation that is difficult to provide.
- Whether the application form requires any information or documentation that is considered to be unnecessary and/or of limited value.
- The format and means by which applications are required to be submitted.
- If answering the above questions, please specify the type of licence and specific aspects of the form to which your answer relates.

Manual Process

The application process for all licences is a paper-based manual system. The Department welcomes comments on:

- Whether the manual licence application and/or renewal process is a burden on applicants.
- Whether an on-line application and/or renewal system would be more efficient and preferable to the paper-based forms.
- Whether an increase in the fees and charges associated with applications and/or licence grants and renewals is appropriate to cover the cost of introducing an on-line application and renewal system.
- Any ways to improve or streamline the application and/or renewal process.
- If answering the above questions, please specify the type of licence and specific aspects of the renewal process to which your answers relate.

Information and advice

The Department provides information for licence applicants on its website and through its Information and Support Centre. In the interests of ensuring that information is provided in a simple but comprehensive way, the Department welcomes comments on:

- Whether the information on the website (for example, the application guide) is easy to understand and provides sufficient detail.

- Whether the Department provides advice to applicants on the application process for licences that is timely and easy to understand.
- Whether the NCBLAC secretariat provides advice to applicants on the application process and the outcomes of that process that is timely and easy to understand.
- Whether the reasons given for a decision not to grant a licence are easy to understand and provide sufficient detail.
- If answering the above questions, please specify the type of licence and specific method of information to which your answer relates.

Customs brokers - National Customs Brokers Licensing Advisory Committee (NCBLAC)

Part XI of the Customs Act provides for the licensing of customs brokers by the Comptroller-General. All applications for a customs broker's licence must be referred to the National Customs Brokers Licensing Advisory Committee (NCBLAC) for assessment and recommendation to the Comptroller-General on whether a customs broker licence should be granted (refer s183CB of the Customs Act). If necessary, an applicant may be interviewed prior to a recommendation being made to the Comptroller-General.

The NCBLAC consists of an independent chairperson, a representative of the customs broker industry, and a representative of the Commonwealth (refer 183DA of the Customs Act).

In terms of the licensing of customs brokers, the Department welcomes comments on the following:

- Whether the functions of NCBLAC as set out in the Customs Act are relevant and appropriate (refer Division 5, Part XI of the Customs Act).
- Whether the size and makeup of the membership of NCBLAC is appropriate (refer s183DA of the Customs Act).
- Whether the NCBLAC inquiry and review processes are efficient and effective.
- Whether the reasons for recommendation provided by NCBLAC are adequate and appropriate.

4. Multiple licensing

EEG warehouses

The Australian Taxation Office (ATO) is responsible for administering EEG warehouses. This includes the granting, renewal, variation, suspension and cancellation of licences for warehouses that store EEGs. The ATO also administer excise licensed premises, an administrative arrangement similar to a customs warehouse but under different legislation, that being the *Excise Act 1901* (Excise Act). The administration of excise licensed premise includes the granting, renewal, variation, suspension and cancellation of licences.

An entity that deals with excisable goods and EEGs will need to hold both excise and customs licences. As a consequence, this requires dealing with two sets of regulations and making of payments.

The Department welcomes comments on:

- How any duplication between the processes for excise and customs warehouse licences could be simplified or otherwise improved.

- Whether the requirement that importers of EEGs hold two licences under the Customs Act and Excise Act could be removed. For example whether a single licence could meet the requirements of both an excise and a customs licence, or whether there are any other alternatives that would reduce the regulatory burden.
- Whether there is unnecessary duplication of systems and communications between the Department and the ATO for the clearance of EEGs.
- Whether there are inconsistencies in the treatment of EEGs and excise goods by the Department and the ATO.
- If answering the above questions, please provide details, and what types of legislative amendments may be necessary to facilitate these outcomes.

5. Any other issues

The Department welcomes any other suggestions on how the licensing and administrative processes could be simplified and streamlined, or an alternate model developed.

Ports Policy Section

Traveller Branch

Traveller, Customs and Industry Policy Division

30 October 2015

Attachment A

CUSTOMS LICENSING REVIEW 2015-16

TERMS OF REFERENCE

The Department of Immigration and Border Protection (the Department) will undertake a comprehensive review of all licensing regimes under the *Customs Act 1901* (Customs Act) (the review). The review will be supported by the Australian Taxation Office which administers the warehousing of excise equivalent goods under the Customs Act.

Excise equivalent goods are imported alcohol (other than wine), tobacco and fuel that, if produced or manufactured in Australia, would be subject to excise. With the exception of providores, catering bonds and duty free stores, responsibility for the licensing and administration of warehouses that store excise equivalent goods moved to the Australian Taxation Office on 1 July 2010.

Purpose of the review

The objectives of the review are to:

- review the role played by licensing in today's border management environment, and consider whether there are other, more efficient, ways to achieve the same objectives for border management
- assess the efficiency and effectiveness of the current licensing regimes
- assess the regulatory burden of the current licensing regimes and identify opportunities to reduce this burden and align application processes between administrations
- recommend whether the current licensing regimes should be retained with improvements/enhancements or replaced.

Scope of the review

The review will assess all licensing regimes under the Customs Act, including the licensing of customs brokers, depots and warehouses (including providores, catering bonds and duty free stores and excise equivalent goods).

The review will examine the legislation and administrative processes for the licensing regimes. This will necessitate an assessment of the:

- relevant provisions of the Customs Act and the *Customs Regulation 2015* to confirm that they remain necessary and appropriate and to identify any opportunities to streamline or simplify these arrangements
- current application process for a licence from the perspective of an applicant in preparing the application
- current application process for a licence from the perspective of the Department and the Australian Taxation Office in processing the application
- current administration by the Department and the Australian Taxation Office of the licensing regimes, including available resources and the segregation of functions (policy and operations) and opportunities to increase consistency across the regimes
- functions, composition and processes of the National Customs Brokers Licensing Advisory Committee to identify possible improvements/enhancements or alternative models.

As part of the review, the Department will consider whether:

- information required to be submitted with an application remains appropriate

- conditions to which a licence is subject and the consequences for any breaches remain appropriate
- securities should be taken from depot and warehouse licence holders to ensure compliance with the Customs Act and to protect the revenue, and, if so, the factors that should be taken into account in determining the amount of security
- there are consistent processes between administrations and licence types.

The review will not review the:

- fees and charges applicable to customs brokers, depots or warehouses as those were the subject of a separate review - *the Joint Review of Border Fees, Charges and Taxes*, which was announced in September 2014, by the then Minister for Customs and Border Protection, the Hon. Scott Morrison MP. It is recognised however, that changes to the licensing regimes may result in changes to the cost base
- Continuing Professional Development (CPD) Scheme for customs brokers as the CPD Scheme was reviewed by the Australian Customs and Border Protection Service in 2014
- cargo reporting requirements.

In formulating recommendations, the current cost of licensing customs brokers, depots and Department-administered warehouses will be considered.

Any recommendations to improve the efficiency of the current licensing process will need to be fully costed.

Consultation process

During the review, the Department will consult with stakeholders, including industry, importers and exporters, non-government stakeholders, and relevant Government agencies.

The Department, and where appropriate the Australian Taxation Office, will engage in consultative discussions with stakeholders and seek their comments and feedback through submissions. Taking into account the comments provided through submissions and any consultative discussions, the Department will develop draft recommendations which will be circulated to stakeholders for comment. The Department will take into account comments on the draft recommendations when developing the final recommendations for consideration by the Government.

The review will be completed by 30 June 2016.

Timeframes

Dates	Details
2 November 2015	Terms of reference and discussion paper released
31 December 2015	Closing date for stakeholders to lodge submissions
4 March 2016	Review of submissions and any evaluation discussions complete
14 April 2016	Draft recommendations released for comment
27 May 2016	Closing date for stakeholders to lodge comments on draft recommendations
30 June 2016	Recommendations finalised

Enquiries

Any enquires concerning the Review should be directed by email to licensingreview@border.gov.au

REQUIREMENTS AND APPLICATION PROCESS FOR A CUSTOMS BROKER LICENCE

The requirements for a customs broker licence

Before the Comptroller-General may grant a customs broker licence, a number of requirements must be met.

To be issued with a **corporate** customs broker licence, a company or partnership must:

- be deemed 'fit and proper' for the purposes of section 183CC(4A); and
- all directors or partners, officers and shareholders of the company or partnership be deemed a 'fit and proper' person for the purposes of section 183CC(4) of the Customs Act.

To be issued with a **sole trader** customs broker licence, an individual must:

- be qualified to be a customs broker
- be deemed a 'fit and proper' person for the purposes of section 183CC(4) of the Customs Act; and
- if applicable, have employees who are deemed 'fit and proper' for the purposes of section 183CC(4) of the Customs Act.

To be issued with a **nominee** customs broker licence, a natural person must first:

- have completed an approved course of study, or be exempted from this requirement by the Comptroller-General
- have acquired sufficient industry experience that, in the opinion of the Comptroller-General, fits the applicant to be a customs broker; and
- be deemed a 'fit and proper' person for the purposes of section 183CC(4) of the Customs Act.

The application process for a customs broker licence

An applicant for a **corporate** customs broker licence must submit with their application:

- a consent to perform police and other background checks associated to establish whether the company and all directors, officers, shareholders or partners are 'fit and proper' in accordance with the legislation; and
- sufficient documentation to demonstrate that they have the working capital, professional indemnity and public liability insurance, and adequate comparable business experience to enable them to trade as a customs brokerage.

An applicant for a **sole trader** customs broker licence must submit with their application:

- a consent to perform police and other background checks associated to establish whether they are 'fit and proper' in accordance with the legislation; and
- sufficient documentation to demonstrate that they have the working capital, professional indemnity and public liability insurance, and adequate business experience to enable them to trade as a customs broker.

An applicant for a **nominee** customs broker licence must submit with their application:

- evidence of completion and/or exemptions from the approved course of study
- sufficient documentation detailing their employment experience relevant to the duties of a customs broker
- two professional and one personal reference; and
- consent to perform police and other background checks associated to establish whether they are 'fit and proper' in accordance with the legislation.

From 1 January 2016 an application fee must also accompany the application.

The legislation requires that all applications for a customs broker's licence must be referred to the National Customs Brokers Licensing Advisory Committee (NCBLAC) for assessment and recommendation to the Comptroller-General on whether a customs broker licence should be granted. If necessary, an applicant may be interviewed prior to a recommendation being made to the Comptroller-General.

Further information about the application process for a customs broker licence, can be found on the Department website on the [Customs brokers page](#), including links to [Guidelines for Acquired Experience](#), and information on the [approved course of study for a customs broker licence](#).

The National Customs Brokers Licensing Advisory Committee

The National Customs Brokers Licensing Advisory Committee (NCBLAC) is a statutory body that was established by the Customs Act in 1980. It consists of an independent chairperson, a representative of the customs broker industry and a representative of the Commonwealth.

The Customs Act outlines the functions of NCBLAC, which are to:

- investigate and report on applications for a customs broker's licence referred to it by the Comptroller-General
- investigate and report on matters referred to it by the Comptroller-General
- advise the Comptroller-General in relation to the approval of courses of study, which an applicant for a customs broker licence must complete or be granted an exemption from completing
- advise the Comptroller-General, when requested, on the standards that customs brokers should meet in the performance of their duties.

The conditions of a customs broker licence

A customs broker licence is issued for three years and is subject to a number of conditions which are designed to protect the revenue of the Commonwealth and to ensure compliance with the Customs Act and the *Customs Regulation 2015* (the Regulation). Statutory conditions are outlined in section 183CG of the Customs Act. Additional conditions may be imposed under section 183CGA of the Customs Act.

The current conditions imposed on a **nominee** customs broker's licence include:

- Notifying the Department within 30 days of –
 - convictions for a prescribed offence;
 - bankruptcy; and
 - the refusal, suspension or cancellation of an aviation or maritime security identification card.
- Not acting as a customs broker in the person's own right.

- Completing all Continuing Professional Development (CPD) Scheme requirements.
- Notifying the Department of any false, misleading or incomplete information, as soon as practicable, once they become aware of the anomaly.
- Not allowing the Department systems to be used for any unauthorised purpose.

The current conditions imposed on a **sole trader** customs broker's licence include:

- Notifying the Department within 30 days of –
 - convictions for a prescribed offence by the licensee, and also any such convictions of a person employed by the licensee in the work of a customs broker;
 - bankruptcy;
 - the appointment of a receiver, administrator or winding up of the company;
 - the commencement of a person in a position of management or control, not mentioned in the original application; and
 - the refusal, suspension or cancellation of an aviation or maritime security identification card.
- Not acting as a customs broker in the person's own right.
- Completing all CPD Scheme requirements.
- Notifying the Department of any false, misleading or incomplete information, as soon as practicable, once they become aware of the anomaly.
- Not allowing the Department's systems to be used for any unauthorised purpose.

The current conditions imposed on a **corporate** customs broker's licence include:

- Notifying the Department within 30 days of –
 - convictions for a prescribed offence by any person employed in the work of a customs broker;
 - the appointment of a receiver, administrator or winding up of the company; and
 - in the case of a partnership, the refusal, suspension or cancellation of an aviation or maritime security identification card for any partner.
- Notifying the Department of any false, misleading or incomplete information, as soon as practicable, once they become aware of the anomaly.
- Not allowing the Department systems to be used for any unauthorised purpose.

The Department may request fit and proper' checks to be conducted for the licence holder or any person employed in the operations of a customs brokerage at any time.

Continuing Professional Development Scheme

In July 2012, a Continuing Professional Development (CPD) Scheme was introduced for all individual licensed customs brokers and commenced operation on 1 April 2013. The aim of the CPD Scheme is to afford greater protection for the Commonwealth and the Australian public that licensed customs brokers are better able to provide their services with propriety, skill and expertise.

The CPD Scheme requires individual licensed customs brokers to undertake a number of accredited CPD educational activities in order to acquire a minimum number of CPD points each year. As the CPD Scheme was reviewed in 2014, it has not been included within the scope of this Review.

REQUIREMENTS AND APPLICATION PROCESS FOR A DEPOT OR WAREHOUSE LICENCE

The requirements for a depot or warehouse licence

Before the Comptroller-General may grant a **depot** licence, a number of statutory requirements must be met. These include:

- the applicant(s) and all persons (including employees) in positions of management or control of the company/partnership or depot must be deemed 'fit and proper' persons for the purposes of section 77K(2) of the Customs Act;
- the physical security of the premises must be deemed appropriate;
- the depot must be capable of communicating electronically with the Department via the Integrated Cargo System (ICS); and
- the record keeping system must be suitable for auditing by the Department.

Before the Comptroller-General may grant a **warehouse** licence, a number of statutory requirements must be met. These include:

- the applicant(s) and all persons (including employees) in positions of management or control of the company/partnership or warehouse must be deemed 'fit and proper' persons for the purposes of section 81 of the Customs Act;
- the physical security of the premises and any plant or equipment that would be used in relation to goods must be deemed appropriate; and
- the record keeping system must be suitable for auditing by the Department.

The application process for a depot or warehouse licence

Applicants for a **depot** licence must submit with their completed application form:

- the company's constitutional documents;
- an outline of the corporate membership structure;
- a company extract from the Australian Securities and Investment Commission (ASIC);
- financial information, such as the most recently audited financial statements;
- consent to conduct police and other background checks on all partners, directors and shareholders of the partnership/company;
- consent to conduct police and other background checks on all employees in positions of management or control;
- site plans and an outline of the construction and physical security of the premises
- an asbestos report;
- ownership or lease verification;
- details of the depot standard operating procedures and recording systems; and
- the application fee.

Applicants for a **warehouse** licence must submit with their application form:

- the company's constitutional documents;
- an outline of the corporate membership structure;
- a company extract from ASIC;
- financial information, such as the most recently audited financial statements;
- consent to conduct police and other background checks on all partners, directors and shareholders of the partnership/company;
- consent to conduct police and other background checks on all employees in positions of management or control;
- site plans and an outline of the construction and physical security of the premises;
- an asbestos report;
- insurance documents;
- details of examination equipment;
- ownership or lease verification; and
- details of the depot procedures and recording systems.

From 1 January 2016 an application fee must also accompany the application for a warehouse licence.

Further information about the application process for a depot or warehouse licence, can be found on the Department website on the [Warehouse and Depot page](#), including links to the depot and warehouse licence application packages which contain application guides.

The application process for varying a depot or warehouse licence

Under section 77LA of the Customs Act, the holder of a **depot** licence may apply to vary the licence by:

- omitting the description of the place that is currently described in the licence and substituting a description of another place; or
- altering the description of the place that is currently described in the licence.

Applications for variation of a depot licence must submit with their completed application form:

- an outline of the proposed changes, including site plans and an outline of the physical security of the premises;
- an asbestos report;
- ownership or lease verification;
- if the variation has resulted in changes to company directors, shareholders or partners, consent to conduct police and other background checks on all such persons;
- if the variation has resulted in changes to employees in positions of management or control, consent to conduct police and other background checks on all such persons; and
- the application fee.

Under section 81B of the Customs Act, the holder of a **warehouse** licence may apply to vary the licence by:

- omitting the description of the place that is currently described in the licence and substituting a description of another place; or
- altering the description of the place that is currently described in the licence.

Applications for variation of a warehouse licence must submit with their completed application form:

- an outline of the proposed changes, including site plans and an outline of the physical security of the premises;
- an asbestos report;
- ownership or lease verification;
- if the variation has resulted in changes to company directors, shareholders or partners, consent to conduct police and other background checks on all such persons; and
- if the variation has resulted in changes to employees in positions of management or control, consent to conduct police and other background checks on all such persons.

From 1 January 2016 an application fee must also accompany the application for variation of a warehouse licence.

Further information about the variation application process for a depot or warehouse licence, can be found on the Department website on the [Warehouse and Depot page](#), including links to the depot and warehouse licence variation application packages.

The conditions of a depot or warehouse licence

A depot or warehouse licence is issued for a period of up to one year and is subject to a number of ongoing conditions.

The current conditions imposed on a **depot** licence include:

- Notifying the Department within 30 days of –
 - The licensee, or, if a partnership, any partner, or any person employed in a position of management or control at the depot being convicted of prescribed offence;
 - The company being convicted of a prescribed offence;
 - The appointment of a receiver, administrator or winding up of the company;
 - The refusal, suspension or cancellation of an aviation or maritime security identification card for the licensee, any partner, if a partnership, or any person in a position of management or control; and
 - Changes to personnel in positions of management or control.
- The licensee must –
 - Not cause or permit substantial changes to be made in matters affecting the physical security of the depot or the record keeping of the depot;
 - Pay any prescribed travelling expenses;
 - Stack and arrange goods to allow reasonable access to the goods for examination;

- Provide adequate space and facilities to enable examination of the goods;
- Allow an authorised officer to enter and remain in the depot to examine the goods;
- Provide prescribed information to an authorised officer; and
- Retain all records created in accordance with the Customs Act for a period of five years and permit an authorised officer to access, inspect and make copies of such records if requested to do so.
- Goods imported into the depot in a particular month must not be stored past the end of the following month without written permission from the Comptroller-General, who may grant permission for the goods to remain in the depot for a further 30 days past the end of the month following importation.
- The Comptroller-General of Customs may also impose additional conditions on a depot licence under section 77Q of the Customs Act

The current conditions imposed on a **warehouse** licence include:

- Notifying the Department within 30 days of –
 - The licensee, or, if a partnership, any partner, or any person employed in a position of management or control at the depot being convicted of prescribed offence;
 - The company being convicted of a prescribed offence;
 - The appointment of a receiver, administrator or winding up of the company;
 - The refusal, suspension or cancellation of an aviation or maritime security identification card for the licensee, any partner, if a partnership, or any person in a position of management or control; and
 - Changes to personnel in positions of management or control.
 - Substantial changes to matters affecting the physical security of the depot, plant or equipment used in relation to the goods, or the record keeping of the depot;
 - The licence may stipulate the classes of persons whose goods may be warehoused in the warehouse and limit the operations that may be performed upon or in relation to the goods in the warehouse.
 - The Comptroller-General may also impose additional conditions on a depot licence under section 82A of the Customs Act.
- Securities
 - Section 42 of the Customs Act provides the right for the Commonwealth to require and take a security for a number of reasons, including for compliance with the Customs Act and for the protection of the revenue.
 - The Department currently requires all warehouse operators to submit a financial security against the duty liability of the goods stored within the warehouse, with their warehouse licence application. There is no such requirement for depot licence applications.

COMPARISON OF STATUTORY COMMITTEES

Comparison of Statutory Committees – authority, role & requirements

	Statutory Authority under	Role of the Committee / Group	Number and Composition of Members on the Committee	Requirements of Application	Appeal Rights	Information / Feedback to Applicant	CPD Requirement
National Customs Brokers Licensing Advisory Committee (NCBLAC)	<i>Customs Act 1901</i>	Assess an applicant's claims regarding a Customs Broker Licence and informing the delegate of the CEO of the findings.	Maximum of 3 Members at any time made up of a mix of government and industry representation	Fully submitted application, character check, interview with the Committee, application fees paid	Yes	Yes	Yes
Tax Practitioners Board (TPB)	<i>Tax Agent Services Act 2009</i>	Registration and regulation of Tax Practitioners in Australia. Compliance monitoring.	7 Committee members, cannot be employed under the <i>Public Service Act 1999</i>	18 years of age, fit and proper person, satisfy qualification and experience requirements, application fees paid	Yes	Yes	Yes
Office of the Migration Agents Registration Authority (OMARA)	<i>Migration Act 1958</i>	Registration and regulation of Migration Agents in Australia. Compliance monitoring.	9 Members made up of a mix of government and industry representation	Hold a current legal practising certificate/completed graduate certificate in Australian Migration Law and Practice	Yes	Yes	Yes
Australian Securities and Investments Commission (ASIC)	<i>Australian Securities and Investments Commission Act 2001</i>	Licensing and regulation of applicants of AFS Licence in Australia.	5 Members (1 Chair, 1 Deputy Chair, 3 Commissioners) made up of a mix of government and industry representation	Complete application form (FS01), pay application fee	Yes	Yes	No

	Statutory Authority under	Role of the Committee / Group	Number and Composition of Members on the Committee	Requirements of Application	Appeal Rights	Information / Feedback to Applicant	CPD Requirement
Australian Counselling Association (ACA)	N/A	Registration and regulation of Counsellors and Psychotherapists in Australia.	N/A	Must have <i>at least</i> graduated from an ACA Accredited Course	N/A	Yes	Yes
Dental Board of Australia	<i>Health Practitioner Regulation National Law (2009)</i>	Registration and regulation of Dental Practitioners in Australia on behalf of the AHPRA.	12 Members made up of a mix of government and industry representation	Character check, English language skills, Professional indemnity insurance arrangements, ongoing CPD, recent practice	Yes	Yes	Yes
Occupational Therapy Board of Australia	<i>Health Practitioner Regulation National Law (2009)</i>	Registration and regulation of Occupational Therapists in Australia on behalf of the AHPRA.	9 Members made up of a mix of industry and community representation	Minimum Bachelor level qualifications of at least 4 years duration, appropriate fieldwork, character check, English language skills, indemnity insurance.	Yes	Yes	Yes
National Accreditation Authority for Translators and Interpreters (NAATI)	Incorporated under the <i>Corporations Act 2001</i>	Accreditation and regulation of certified Translators and Interpreters in Australia.	5 Members on the board and 9 Ministers (may elect representative) made up of a mix of government and industry representation	Pass national test related to the professional vocation chosen	N/A Pass/ Fail	Yes	Yes

	Statutory Authority under	Role of the Committee / Group	Number and Composition of Members on the Committee	Requirements of Application	Appeal Rights	Information / Feedback to Applicant	CPD Requirement
Australian Children's Education and Care Quality Authority (ACECQA)	<i>Education and Care Services National Law Act 2010</i>	Guiding the implementation and administration of the National Quality Framework and promotion of quality standards.	Maximum of 13 Committee members at one time made up of a mix of government and industry representation	N/A ACECQA does not directly licence, it administers the frameworks and standards on providers	N/A	Yes	N/A
Export Meat Industry Advisory Committee (EMIAC)	Not granted statutory authority	Provides policy advice regarding the meat industry in Australia.	Maximum of 20 Committee members at one time, made up of representation from major export industry bodies	N/A	N/A	N/A	N/A
The Standing Committee on Economics	Appointed under Standing Order 215	Inquire into and report on Australian Government annual reports tabled in the House.	11 Members on the Committee, all Members of Parliament	N/A	N/A	N/A	N/A