



**Australian Government**  
**Department of Immigration  
and Border Protection**

# **Review of Customs Licensing Regimes**

Issues Paper: December 2016



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# 1. Introduction

## 1.1 Purpose

The Department of Immigration and Border Protection (DIBP) is undertaking a review of all licensing regimes under the *Customs Act 1901* (the Customs Act). *The Review of Customs Licensing Regimes* (the Review) is supported by the Australian Taxation Office (ATO), which administers the warehousing of Excise Equivalent Goods (EEGs) under the Customs Act.

The 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 customs brokers, depots and warehouses 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, was commissioned by the Australian International Trade and Transport Industry Development Fund on behalf of industry to conduct a review of licensing arrangements under the Customs Act. That document made a number of suggestions in relation to the licensing of customs brokers, depots and warehouses.

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

This issues paper summarises the key issues in submissions to the Review and allows for further input from all interested parties about the key issues identified. The Final Report which incorporates analysis of these issues and recommendations will be sent to the Comptroller-General of Customs in early 2017.

## 1.2 Scope

The objectives of the Review are set out in the [Terms of Reference – Appendix A](#) and are:

- review the role played by licensing in today's border management environment and consider whether there are 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, modified or replaced.

The scope of the Review is to examine all licensing regimes under the Customs Act, including the licensing of customs brokers, depots and warehouses. This includes providores, catering bonds, ship stores, duty free stores and excise equivalent goods. The Review sets out to examine applicable legislation and administrative processes for licensing regimes. Further information regarding this scope can be located at [Terms of Reference – Appendix A](#).

DIBP invited written submissions on how current licensing regimes could be improved or offer suggestions for alternative licensing regime models that would meet the legislative requirements in the Customs Act. A *Customs Licensing Review: Discussion Paper* was issued at the time that the Review was announced. It provided details on how written submissions could be prepared and submitted. Interested parties were invited to make a written submission by 31 December 2015.



In order to ensure a wide target audience was aware of the Review, invitations seeking industry involvement were published in November and December 2015 in *The Australian Financial Review* and *The Australian*, on a number of industry news boards, on the Integrated Cargo System (ICS) platforms and the DIBP website.

The Review received a total of 37 submissions from interested parties. Submissions commented on the customs broker, depot and warehouse licensing regimes. Non-confidential submissions are set out in the [List of Submissions - Appendix B](#) and have been made available on the DIBP website at [www.border.gov.au/licensing-review](http://www.border.gov.au/licensing-review).

During the Review, ongoing consultation occurred with industry representatives and individual customs brokers who provided submissions. The Review consulted with every submission author. A number of key themes across the Terms of Reference (TORs) were raised within submissions and during the consultation phase. There were also a number of submissions received that raised issues that are considered to be outside the scope of the TORs, such as:

- fees and charges
- Continuing Professional Development (CPD) arrangements
- clarification of legal issues and terminology.

The Review recognises the importance of the issues raised by stakeholders and is forwarding these concerns on to relevant sections within DIBP for further consideration.

The scope of the Review was broadened in August 2016 to specifically focus on the integrity of the licensing regimes and to identify further measures that will enable both DIBP and industry representatives to strengthen licensing regimes against corruption.

The *Workshop on Integrity of the Current Licensing System* between DIBP and key industry representatives (the Workshop) was held on 25 November 2016 to discuss the risks and vulnerabilities identified within the current licensing system. The Workshop focused on the integrity of the licensing regimes. The Workshop allowed participants to discuss options on how risks and vulnerabilities could be reduced and provided an opportunity to further explore mitigation strategies that will enhance and strengthen overall licensing regimes. Additionally, stakeholders were afforded the opportunity to provide written comment to the Review on integrity measures.

This issues paper seeks to clearly articulate the key issues identified in submissions and at the Workshop. It provides an opportunity for industry representatives and government stakeholders to offer further commentary on these key issues, before the Final Report, which will contain analysis of these issues and recommendations, is forwarded to the Comptroller-General of Customs in early 2017.

## 2. Key Issues Identified

The submissions and the Workshop raised a number of issues relating to current practices undertaken within DIBP licensing regimes. The key issues that emerged from the submissions have been grouped under the relevant TORs. There is also an additional section which encompasses issues raised on integrity of the current licensing process.

### 2.1 TOR1 – Role Played by Licensing

The first TOR requested stakeholders review the role played by licensing in today's border management environment and consider whether there were more efficient ways to achieve the same objectives for border management. In terms of Government priorities, TOR1 asked stakeholders to consider whether licensing regimes aided in the protection of Commonwealth revenue, ensured compliance under the Customs Act and enabled protection for importers, exporters and the community at large.

There was a clear view within submissions that licensing provides high levels of assurance for the Government about the protection of revenue, compliance with legislation and protecting the interests of importers, exporters and the community. Customs brokers were seen by submissions as *'the guardians of public safety and collecting revenue'*. There was also an important role for licence holders in *'ensuring the continuing integrity of the import system'* and in *'contributing to national security'*.

One submission stated that *'the current licensing regimes are effective and allow customs brokers to provide protection to the revenue of the Commonwealth while ensuring compliance with legislation through the current licensing arrangements...'*

There were also statements indicating that removal of licensing for customs brokers *'may, by the very nature of the work performed by them across multi-regulatory authorities, create a vacuum of unaccountability in which Government would have to seek remedies'*.

While most of the submissions offered commentary on improving the basic operating model, some submissions offered alternate regulatory approaches. Submissions suggested that a *'principles-based approach'* could be utilised for duty free stores to allow them to better align *'with the now accepted consumer experience of online shopping and flexible fulfilment'*. Another suggested that for duty free stores *'a model based on the NCBLAC could satisfy all parties' need[s] with representation consisting of ABF, ATO and industry leaders'*.

A number of submissions advocated *'the adoption of a Registered Customs Broker scheme based on the Australian Registered Tax Agents model'*. This was described in Recommendation 10 3(A) of Charles Sturt University's Centre for Customs and Excise Studies 2014 *'Review of Licensing Provisions'*. This scheme was described as *'the optimal solution to the much needed reform of Customs Broker Licensing in Australia'*.

There were also references to applicability in the customs sphere of the co-regulatory arrangements developed by the Department of Agriculture and Water Resources (DAWR) in consultation with industry. These arrangements allow accredited customs brokers or self-reporting importers to assess documentation associated with the importation of cargo under a compliance agreement arrangement. A submission also indicated that DIBP's plans to recognise secure and compliant supply chain practices and offer streamlined trade facilitation benefits to accredited business is *'a step in the right direction, in reducing the regulatory burden by encouraging a stronger partnership between government and law abiding businesses through shared responsibility and transparency'*.

## 2.2 TOR2 – Current Licensing Regimes

The second TOR requested stakeholders assess the efficiency and effectiveness of the current licensing regimes. Many stakeholders provided wide-ranging commentary on the effectiveness of the current licensing regimes. A number of suggestions were offered across many aspects for improving and streamlining current processes. Within the submissions, the following areas were covered:

- Alignment of different Government processes (DIBP, DAWR, ATO and the Office of Transport Safety (OTS));
  - Licensing /Registration/Accreditation
    - Licensing multiple sites for depots and warehouses
    - Classes of licences for customs brokers
  - Application process
    - Fit and proper provisions
    - Electronic submission of information
    - Documentation requirements
    - The role of NCBLAC
    - Applicability of additional licence conditions

- Timeframes for decision
- Renewal of licences
  - Duration of licence
- Compliance (including auditing)
  - Consistency of regulatory approach across regions
- Movement permissions
- Excisable goods and EEGs

One submission proposed ‘a wider review of methodologies as to regulatory oversight of all who communicate or interface with the DIBP as to information exchange and cargo control. Such methodologies may be by way of licensing, accreditation, registration, contract or other approved arrangements. The base line for such issues should be co-regulation rather than regulation.’

There was commentary in submissions about the differences in rigour of import processes against those used for export. One submission noted ‘a person lodging Export Entry Declarations does not require any such licence’. Another indicated that ‘Australia does not require export clearances to be handled by a customs broker, this area of customs formalities is very weak. It is known in the industry that some companies have retrenched or disposed of employing Australians for export clearances and taken the process offshore. It is in my opinion that export clearances which are being communicated to Customs should be performed onshore in Australia by a licensed customs broker.’

Another stated that ‘licensed customs brokers are now placed at a competitive business cost and regulatory disadvantage to others who interface with the DIBP and are not subject to similar obligations or the additional conditions’.

Further information regarding the above suggestions is outlined below.

### **Alignment of different Government processes (DIBP, DAWR, ATO and OTS)**

Many submissions stated that there is duplication in the processes undertaken by various agencies and there is considerable scope for alignment, consolidation and simplification of processes. Stakeholders illustrated licensing for EEG warehouses as an area of duplication. Additionally, duplication was identified in relation to licensing, approval and control of customs depots and warehouses. One submission stated ‘it is widely recognised by both government and industry that customs brokers are engaged by traders to ensure that goods meet both Customs and Quarantine requirements’.

There were linkages drawn between the approval process of DIBP and OTS, especially in the approval of persons working in air or seaports. One submission noted ‘the one point that is not considered within the Duty Free environment is the fact that most employees also are required to complete the same information for the issue of an Aviation Security Identification Card (ASIC). Therefore, under current requirement the same information has to be provided twice by an individual one for ABF and one for ASIC.’

One submission argued that there was no reason ‘why the one form can[not] be used by all Government Departments ...’

Submissions noted benefits for agencies and industry from better alignment of processes, approvals and control by agencies operating in this space. A submission noted that ‘alignment of systems (IT and application forms) between Customs and ATO particularly for movement of EEGs and the issuing of licenses would improve the client experience.’

Further detail on the individual aspects of better alignment of different Government processes is provided in the following sections.

## a. Licensing/Registration/Accreditation

Submissions expressed an understanding of the need to licence or register customs brokers, depots and warehouses and most indicated that the current system should be continued with significant changes and streamlining. Much of the commentary was directed towards removal of the duplication for premises that held EEGs and those that were licensed for customs and biosecurity purposes. This commentary is well summarised by one submission which indicated that customs brokers were also *‘Quarantine Brokers’*. Another submission stated that *‘if you hold a [Section] 77G Dept Licence, the grant by the ATO of an EEG warehouse licence should be automatic’*. Some submissions suggested that licensing for depots and warehouses be amalgamated. These submissions indicated *‘there is scope to condense legislation where rules duplicate themselves, often because of a preconceived idea that each entity (e.g. S77G and S79 warehouses) has to be treated on its own.’* One submission stated that *‘an alternative “approved arrangement” model would be preferred...note the Department of Agriculture and Water Resources is currently implementing an approved arrangement model...’*

### i. Licensing multiple sites for depots and warehouses

Some submissions argued that a single licence should cover multiple sites that are currently covered by separate licences. One submission stated that *‘all clients are currently licensed on a per establishment basis. In general terms an establishment is a site or address or location. Clients have reported holding multiple licenses as an irritant. They have indicated that they want to hold one licence, issued on a per Australian Business Number (ABN) basis.’* These submissions noted significant savings for licence holders whilst maintaining the same level of accountability.

### ii. Classes of licences for customs brokers

There was substantial and wide-ranging commentary on the issue of classes of licences for customs brokers. Suggestions included:

- retaining the status quo
- implementing P-Plate licences for customs brokers
- establishing additional classes of licences for specific sectors
- only licensing corporate licensees, and
- moving *‘away from sole trader licensing whilst maintaining individual and corporate licenses’*.

A number of submissions sought to retain the status quo, one submission noting *‘the two tiered licensing system of a Corporate licence and individual licensing should be retained’*.

There were also calls for greater scrutiny of specific classes of licences. One submission stated *‘in the case of Corporate licenses, greater Departmental scrutiny and involvement needs to happen. Many Corporate licenses are held by companies whose management have little or no knowledge of their responsibilities under the Customs Act nor to the Conditions attached to that licence.’*

A number of submissions sought the introduction of a provisional or P-Plate licence category for customs brokers. One submission urged DIBP to *‘examine the concept of “provisional” customs broker licensing upon completion of formal studies with full licence to be granted upon demonstration of acquired experience’*. Another submission stated that *‘once a licence application is submitted to Border Force that the applicant is placed on a probationary licence for a minimum period of 12 months where they work under the direct control and supervision of a senior customs broker who has themselves been*

licensed for a minimum period of five [5] years; during this time the probationary customs broker has enough time to develop a portfolio which can then be shown to Border Force when attempting to be fully licensed. Similar scenarios can be found in the accounting profession [CA / CPA] and solicitors who are required to go through a Practical Legal Training pathway.’ Another pathway was also suggested ‘a 3 tiered “P Plate” licence system which could consist of (a) Junior or “P Plate” Brokers... (b) Senior Brokers...(c) Principal Brokers...’

Other submissions considered the use of a ‘Professional Year’ during which time new customs brokers ‘must be working as a classifier/compiler and under the direct supervision of a licensed customs broker’.

Consideration was sought for the creation of a new category of broker licence specific to the air express sector. This would create a new pathway for customs brokers to commence working in a specific sector, with the understanding that a full licence could be achieved later, with relevant experience across all aspects of customs broking.

Submissions sought to extend licensing to other parts of the industry, such as ‘International Freight forwarding companies, shipping lines and air carriers’. Another stated ‘(Freight Forwarders & Bureaus) do not require a licence in order to undertake that important work’.

Submissions called for better understanding of roles and responsibility attached to licensees and the introduction of mandatory training and continuing professional development as a condition of licensing arrangements (covering customs brokers and licensees of depots and warehouses). One submission stated that ‘mandatory training / continuing professional development is introduced as a part of licensing arrangements (or some form of accreditation) for individuals / corporates completing export declarations and cargo reporting’.

A number of submissions argued that licences should only be given to Australian citizens or Australian permanent residents who actually reside in Australia. The key concern expressed related to the practice of ‘offshoring’ the various roles. One submission called for DIBP’s position on this matter particularly against a background of an aging customs broker workforce.

#### **b. The application process and documentation requirements**

A number of submissions provided commentary on the application process and documentation requirements. One submission stated ‘in general terms, the entire application process needs to be improved.’ Many commented on the need to streamline the application process with clear expectations of requirements, along with clear instructions and guidelines. The need to re-assess the supporting documentation required for each application is burdensome to agencies and industry.

Commentary was made on the need to have one application form for all licences rather than a specific application for each licence type. Some stated that there is considerable duplication between the application forms for various licences. Others suggested that warehouse and EEG licence application forms should be merged. Many argued that there should be a whole-of-government approach to licensing, including one application and renewal process. One submission noted ‘a streamlined system that removes the requirement to hold multiple licenses (excise and EEG) would be appropriate, even where they are administered by the same agency. This regulatory streamlining would improve efficiency by removing the need to comply with two sets of regulations and payment arrangements.’

Many submissions noted the current paper based application form is a manual process that should move to electronic submissions.

Another submission stated *'applicants for a depot or warehouse licence commented that the overall application process is documentary and labour intensive with little DIBP software or IT support options'*.

A further submission noted differences in the provision of information to the public on licensing, stating that *'...application information is in the public domain however, after any review by NCBLAC with any recommendation to the Comptroller General DIBP that a licence be granted no further public commentary or notification is provided...'*

Others indicated that *'the current form and time required to provide the information we found to be fair'*.

#### i. Fit and proper provisions

Submissions appreciated the importance of the current fit and proper provisions but sought ways to streamline the process and stressed the importance of a whole-of-government process for such assessments. One submission stated *'the current "fit and proper" requirements are in no way burdensome and should be retained. The integrity of those working in the Customs Broker industry is paramount. A combined requirement (for both customs licensing and biosecurity purposes) would be eminently sensible'*. Other submissions indicated *'the current requirements are appropriate and combining the requirements of the DIBP and the DAWR would be a good idea'* and *'the same "fit & proper" credentials should be freely transferable to DAWR.'* Similarly, others noted that *'another part of becoming a broker is the identity check for a fit and proper person, now also about to be conducted by DAWR. Ironically, as is understood, they are both slightly different and both will have to be completed to allow a broker to operate. Madness gone wrong, there has to be a one only approach to this matter that satisfies both ABF and DAWR! A great example of redundant red tape.'* A submission noted *'harmonization between DIBP and DAWR through a single FPP assessment processes where possible would seem to be a logical opportunity especially given much of the regulated audience is common to both agencies'*.

Another submission proposed *'a single form which covers all Federal Government Departments in regards to back ground checks a form which could be completed and submitted on-line. This single form and check would include checks for, but not limited to, ABF, ATO and ASIC.'*

Concerns were raised about a perceived lack of communication and information sharing between agencies when licences are denied or revoked based on fit and proper checks. This was seen as a matter requiring close agency cooperation and coordination.

One submission raised concerns about the scope of fit and proper tests and suggested that the requirement for whom within a business must undergo a fit and proper check is unclear. The submission contended that *'the definition of which jobs relate to staff having "management or control of customs controlled cargo" appears to differ significantly'*. The submission also sought clarification as to whether this includes all staff, including *'back officer administrative functions'* or whether the requirement is narrower.

There was commentary in submissions on the scope of the fit and proper checks and calls for greater transparency on factors used. One submission indicated *'it is unclear what place there is for general notions [of] unfitness or being an improper person. That is, are the set factors that must be considered exhaustive or inclusive.'* This view is supported by other submissions. There were further calls for greater *'clarity ... in terms of how the "fit and proper" person test is applied.'*

One submission indicated that *'placing reliance on the corporation's policy on employee Terms of Employment should be satisfactory as corporations would have gone through appropriate checks with their employees'*.

There was also a reference in one submission to the linkage between work done offshore and the reach of fit and proper provisions in licences.

## ii. Electronic submission of information

There was a very strong call among submissions for a move from paper based application processes to electronic submission of information. One submission stated that *'wherever possible lodgement of applications should be available online.'* A number indicated that the current paper based application process is slow and costly to both the applicant and agencies. One submission stated *'that the conversion to electronic / online process is desirable and should be pursued by the Department as a matter of priority.'* Another submission supported this opinion by highlighting that moving to an *'online process for applications and renewals would be more efficient and reduce the work load and cost'*. A submission was very supportive of making the *'renewal application process online'*. A further submission stated *'one of the biggest changes that could be made to improve licensing is to have the entire process done electronically with documents attached as required during the process. This can be done through secure registration/log in and would then create a data base that ABF would actually find useful.'*

A number of submissions saw electronic lodgement as the preferred means of providing information to agencies. They articulated that this covered all engagement, not just for licensing applications. One submission stated that *'it would then speed up renewals, changes to management, changes to staff, records of accreditation etc'*. Another stated that *'it would be beneficial if corporate details were held in a database accessible through a portal to enable changes to be made and licenses renewed'*.

## iii. Documentation requirements

There was less direct commentary on documentation requirements. One submission noted that details of what applicants for a warehouse licence must submit with their application form *'need to be reassessed as some of them may not be relevant in determining the suitability of the applicant for holding a licence, in particular:*

- i. an asbestos report*
- ii. company extract from ASIC*
- iii. company's constitutional documents.'*

Another submission indicated that duplicate information was requested in different questions and stated that an *'asbestos report should not be required on buildings built post 1999'*. Another stated the *'only burden is the time it takes to complete and the submitting documents which are already on ABF files'*.

## iv. The role of NCBLAC

Many submissions provided commentary on the role, membership and performance of NCBLAC. The submissions covered a very wide range of views from no change to NCBLAC's current arrangements to its abolition and replacement with a *'Licensing Authority'*. One submission suggested a number of other options for licence approval; the preferred option would allow industry to retain a *'formal role in the licensing process'* and a role for the Commonwealth. A further submission suggested *'the growing role played by NCBLAC in the application process in recent years may not necessarily be leading to optimum outcomes for all stakeholders, including industry and regulators'*.

Submissions noted a need for a clear outline of NCBLAC's role, with one submission stating that *'the functions of NCBLAC, as set out in the Customs Act, are still relevant and appropriate today'*. Another submission proposed that NCBLAC's role could be enhanced by making it the *'decision maker'* in the broker licensing realm. Another saw merit in DIBP making *'greater use of referrals to NCBLAC in relation to disciplinary measures.'* Other submissions saw little benefit to the current arrangements and put forward options to abolish NCBLAC and move the function entirely within DIBP or have an *'industry self-regulator'*. One submission recommended that *'NCBLAC be abolished. A National Registration or Licensing Authority should be set up to administer the character and police references and the applications.'*

Concerns were expressed with visibility of process where instances of non-compliance were sent to NCBLAC for review. There is limited understanding and documentation of NCBLAC and its internal processes according to some submissions.

The membership of NCBLAC attracted considerable comment. Submissions indicated that the current structure was suitable to its role. One stated *'the current size and makeup of the NCBLAC is most adequate and very effective'*.

Appointment of members to NCBLAC was also raised as an issue. One submission called for *'a revised NCBLAC industry representative appointment process with transparency and appropriate stakeholder engagement'*. Another indicated *'the membership of NCBLAC has not been representative of the breadth of the industry impacted by the functions performed by Customs Brokers'*. Other submissions saw that *'those wider interests of the Commonwealth should also be represented in assessing a person's suitability to be a customs broker, whether as a member of NCBLAC or otherwise'*. Similarly, another submission sought to *'enhance the representations on the current NCBLAC with the inclusion of additional experienced personnel; especially from Biosecurity and the logistics industry'*. Another submission considered that doing so would be *'unnecessary and needlessly expensive.'*

One submission sought that *'NCBLAC not be permitted to take into account the issuance [of] Infringement notices in determining whether to recommend to the Comptroller-General whether a Broker Licence Holder should retain or lose the Broker Licence.'* Another argued that NCBLAC *'should contact referees stated on nominee licence applications as a mandatory step'*.

The conduct of interviews by NCBLAC also raised conflicting commentary. Certain submissions argued a need to reduce the number of applicants that require a NCBLAC hearing. Some declared the NCBLAC interview *'to be a dated and unrealistic process'*. Others called for all applicants to be interviewed to gain the best possible understanding of the applicant's ability to meet the requirements for licensing. Another stated *'as a result of greater clarity in the application process, including insistence on applications being completed correctly, NCBLAC will be able to move from a default position of conducting a hearing in the first instance to one of an administrative review of the application and the need for a hearing only when doubts exist as to the bona fides of the application.'*

Standards used by NCBLAC were questioned. One submission stated that *'the minimum standards of skills and knowledge for a newly licensed nominee customs broker need to be determined'*. Submissions also sought for NCBLAC to clarify a number of matters, including providing a definition of *'acquired experience'*. This would allow applicants to be able to work to that expectation. Another indicated that the term *'needs reassessment and realignment to meet the requirements of both regulator and business as to long term human resource requirements'*.

One submission suggested that DIBP should make *'greater use of NCBLAC in relation to the standards that Customs Brokers should meet in the performance of their duties'*.

This would apply to all customs broker licence types. Referrals to NCBLAC could be utilised for disciplinary measures.

One submission stated that the review and inquiry powers of NCBLAC are *'both efficient and effective'* and that a face-to-face hearing is the only way to ascertain whether an applicant meets the relevant requirements.

It was suggested that NCBLAC be *'renamed the "National Customs Brokers Licensing Committee (NCBLC)" or similar, and reconstituted as the decision maker in lieu of the Comptroller-General.'* This submission suggested that unless there are *'compelling reasons'* for retaining the Comptroller-General as *'the decision maker'*, the reconstituted NCBLC should be adopted. It also indicated that *'if this is not desired, "the present arrangements should be retained"'*.

#### v. Applicability of additional licence conditions

There was some support for the use of additional conditions on licences, with one submission stating *'the current use of "additional" licence conditions is an effective way of dealing with the issue. The addition or removal of an additional condition is a fairly simple administrative procedure'*. However, another stated *'the licence conditions placed upon brokers are harsh'*.

There were some strong reservations about the applicability of certain conditions. One submission stated that *'the "dob-in" condition (Additional Condition 2) attached to a Customs Broker licence certainly does cause angst in the broker community.'* This view was supported by other submissions. The issue of strict liability was also raised. One submission indicated that *'existing strict liability offence regimes significantly diminish the rights of the licence holder in terms of due process, a defence of due care, and the ability to seek appropriate administrative review'*.

Questions were raised about the definition of the term *'client'* and one submission stated that *'guidelines should be issued to clarify this area'*.

Another submission argued that there is an unreasonable burden on licence holders with the condition stating a monitored alarm system must be installed *'is not necessary for On-Airport locations operating in a 24/7 environment. These systems are never used and are an expansive unused asset.'*

#### vi. Timeframes for decision

There was a variety of views expressed in submissions about timeframes for decision. One submission suggested the implementation of statutory timeframes, stating *'I believe that a statutory timeframe for the granting of a licence would be most beneficial ... With a statutory timeframe in place the department could take a harder line and knock back incomplete applications. I believe that 60 days is a reasonable timeframe.'*

In contrast, another submission suggested that the current timeframes of making a decision within 60 days is too lengthy and there should be a move to have decisions made within 30 days. Others suggested 15-30 days. A submission noted that *'60 days is too long and experience has shown that during this time construction plans for a new warehouse change. At other times sites can remain idle awaiting approval'*.

Timing was also linked to training DIBP staff. One submission noted that *'DIBP should ensure its licensing personnel have appropriate skills and resources to provide a service orientated outcome'*.

### c. Renewal of licences

Commentary from submissions centred on the lack of consistency of duration of licences and the possibility of aligning renewals between agencies, especially DIBP and ATO. This was seen as a way to reduce administrative burden and cost. There were mixed views on the duration of a licence. Some submissions advocated *'all licenses should have the same duration preferably 3 years'* while others stated that licences *'should be changed to 5 years with the provision that there is CPD each year attached to each particular licence'*. One submission noted *'the current triennium licensing/renewal period works well but ... could be extended to five years without causing major issues'*. In addition, one submission noted that *'if renewal periods are to be retained in the law, consistency in the licence period would allow for dual licensed clients to have one licence renewal period instead of 2 (or more, depending on the timing of the Excise licenses they hold).'*

An alternative regime was suggested in one submission. It suggested that *'consideration could be given to removing formal renewal periods. Customs licences could issue for an indefinite period with an annual administration fee rather than a 'licence renewal fee' (for symmetry Excise licences could also be issued indefinitely albeit without the fee). Noting that licence holders undergo regular monitoring. This would reduce the administrative burden to the legitimate clients who hold dual licenses (ATO and Customs) with different renewal periods.'*

### d. Compliance (including auditing)

Submissions noted that compliance (including auditing) is an area where there was significant overlap between agencies. This is a potential area for savings. One submission indicated that *'alignment of legislation (Customs Act and Excise Act) would provide consistency and reduce compliance costs and administrative burdens, particularly for dual licensed clients. One such example is the review of decisions.'*

A submission noted from a regulatory perspective compliance is a key focus. It cautioned that *'DIBP rarely inspects goods, whereas biosecurity inspections are far more often'*.

Agencies could also benefit from exchange of information on audit findings and compliance reporting. One submission noted that *'formal information exchange and compliance management mechanisms would help both agencies identify and manage undesirable broker behaviour and more effectively manage portfolio risk. Examples include product mis-description, product classification, under reporting etc.'*

Submissions questioned the consistency of the regulatory approaches across regions. Concerns were raised regarding inconsistency between regions regarding their interpretation of who is required to complete a background check. It was suggested that a consistent process be implemented that would ensure all regions are providing consistent information. One submission stated *'the nature of the "infringement notice scheme" sometimes lends itself to a one sided approach by the DIBP whereby the infringement is recognised and interpreted by an individual officer or officers who will issue the penalty notice, whether their interpretation of the "offense" is correct or not can sometimes only be verified by a higher decision maker(s). Would not a points system (similar to DAWR) be implemented....'*

Other concerns were raised about consistency of DIBP inspections and approvals of facilities.

### e. Movement permissions

One submission suggested that there would be benefit to industry and agencies if movement permissions could be harmonised between agencies to allow quicker flow of goods between licensed premises.

## f. Excisable Goods and Excise Equivalent Goods

In addition, the dual licensing requirements previously discussed, submissions sought *'consistency and alignment between excise and customs licence renewal periods, renewal dates and fees'*.

One submission proposed the introduction of one warehouse licensing system, given that *'the regulatory obligations and requirements in relation to excise and customs licenses, such as stock control, security, record keeping etc. are almost identical'*. This would result in *'no duplication in movement permissions i.e. one permission covers both local products and EEGs'*.

Another submission stated that *'streamlining paperwork, reporting and communications with Government, and a single licence, permission and audit regime for excise manufacture and EEGs...would deliver meaningful administrative savings and improved process timing without compromising the Government's objectives...'*

## 2.3 TOR3 – Regulatory Burden

The third TOR requested stakeholders to assess the regulatory burden of the current licensing regimes and identify opportunities to reduce this burden and align application processes between administrations. Many stakeholders indicated that the regulatory burden could be reduced and that the application process in general could be better aligned between agencies.

Many issues raised under this TOR in submissions were also discussed in depth in the previous section on TOR2. These included duplication across agencies and the electronic submission of information.

Submissions raised the use of bonds, securities and indemnities, and concerns about an aging customs broker workforce. They also specifically commented on the increased regulatory burden on DIBP if shorter timeframes for decisions or a stop-clock were to be implemented.

### Use of bonds, securities and indemnities

A number of submissions commented on regulators requiring the use of bonds, securities and indemnities. There was little, if any, support for the use of securities. One submission stated there was *'no advantage in requiring securities of Customs Brokers in general'*. It also stated that *'the only Customs Broker related area where a Security may be necessary is where a Broker defaults on a payment related to a FID. This should be a "one strike and you are out" scenario. It is my understanding that this is not currently the case and that the Department fails to take action against repeat offenders. If a Broker defaults, they should be either required to lodge a security to the tune of a value of \$100,000 or be removed from the system and forced to pay by bank cheque or similar.'*

Another stated that *'securities should [not] be a requirement for a customs brokers licence as there are sufficient powers in the Customs Act and Regulations to ensure compliance with these.'* One submission stated that the power to require securities *'appears to be ... adequate ... on an as-required basis.'* Another submission advised *'the need for financial securities are understood, however, where there is very little risk of duty loss (such as High Volume Specialist Operators handling personal effects) there appears to be no real basis for the requirement.'*

Other submissions did not endorse *'the proposal to apply an additional security/bond to Customs Depot licence holders.'* Another submission indicated that the requirement to maintain public liability insurance at all times should be included as an ongoing licence condition.

Alternate arrangements were suggested. One submission suggested *'the requiring of Trust Accounts for some Corporate Customs Brokers is another matter that could be explored.'* Another indicated that *'all licence holders should be required as a condition of licence to take out professional indemnity insurance and that the Department should facilitate the introduction of a fidelity fund'*.

Other submissions recommended that *'rather than mandatory imposition of a financial security for Sec 77G Depots, that DIBP consider whether the establishment is insured for duty imposed on it by authorities for breach of regulations. We understand that some policies could take additional steps in an attempt meet the security requirements by including DIBP as a 'Connected Interest Joint Assured' meaning that if the licensed entity had a liability then DIBP would be able to claim direct on the policy.'*

### Effect of the regulatory burden on attracting replacement customs brokers

A number of submissions linked the increased regulatory burden posed by the various licensing requirements with difficulty in attracting sufficient replacement customs brokers. Submissions noted that this is an issue for an aging workforce with low numbers of new entrants, but there were no specific suggestions to address this issue. A number of submissions noted the importance of maintaining standards of licensing, and the credibility of customs brokers.

While stating there are issues with attracting new customs brokers, one submission outlined the importance of a *'more demanding "course of study" [to ensure] the standard of young Customs Brokers is maintained.'*

One suggestion was the creation of *'provisional'* customs broker licensing upon completion of formal studies *'with a full licence granted upon demonstration of acquired experience.'*

### Implementing shorter timeframes for decisions on licensing

A number of submissions sought shorter timeframes for decisions on granting of licences for customs brokers. Other submissions noted that the introduction of shorter timeframes would increase the regulatory burden on agencies. Others thought it would empower NCBLAC to reject applications that were not complete. Similarly, the introduction of a stop-clock was also seen to increase the regulatory burden and cost to agencies.

## 2.4 TOR4 – Future of Licensing Regimes

The fourth TOR requested stakeholders to recommend whether the current licensing regimes should be retained with improvements, enhancements or be replaced. All stakeholders indicated that the current licensing regime should be retained. Many submissions made suggestions to improve and enhance its overall operation. Submissions stated that *'licensing of Customs Brokers should be retained'* and noted approval *'of the three core components of the customs broker licensing regime; namely personnel background checks, an approved academic pathway and appropriate acquired experience'*. Another submission stated *'it would seem the current system is working well but can always be improved'*.

There was a strong thread in submissions about maintaining the integrity of the system. Submissions stated that *'while acknowledging the need to reduce red tape, it is also critical that strict controls remain in place to try and protect our community and environment'* and *'there should not be a lessening of the rules governing licenses, if anything, given the findings of the Compliance Report [ABF Goods Compliance Update] for example; there should be a tightening and even an expansion of the system'*. Another submission indicated that *'in a world of terror threats and organised crime I also don't see it feasible to let our collective guard down in licensing of nominee brokers.'*

Industry noted that licensees are more inclined to act in accordance with regulations and law because they have more at stake and more to protect. One submission stated that *'the Act provides effective mechanisms for remedial actions to protect the public interest – licenses can be suspended, revoked or not renewed, reprimands may be issued, or additional conditions may be imposed on a continuing license'*.

Submissions explained the need for an extension of current controls. One submission stated that *'whilst strict licensing requirements are justifiably in place for depots and warehouses, there is little if any rigour placed on transport operators that physically handle and underbond move cargo between secure premises. This is in contrast to expectations on transport operators for the handling of export air cargo whereby regulation is imposed by the Office of Transport Security (OTS)'*. It further recommended that *'a review on licensing (or*

*some form of accreditation) on transport operators and where possible, align practices with those prescribed by the OTS’.*

Submissions also noted the importance of ensuring that the licensing system reflects the international context of free trade agreements, Trusted Trader schemes and other developments. Licensing processes should continue to be in line with the international system and trends.

Others indicated the current system is still effective noting *‘as the old expression goes; “if it isn’t broken why replace it?”’*

## 2.5 Revision of Scope – Integrity Issues

Many issues that were raised at the Workshop have already been captured from the submissions and have been addressed earlier in this paper. Additional issues seen as vulnerabilities by industry, including protecting Commonwealth revenue, are discussed below.

### Licensing

Industry representatives highlighted a number of concerns about the integrity of the current supply chain. Most of these limitations related to the fact that as it stands, a portion of people employed in the supply chain do not have to be licensed. Unlicensed elements of the supply chain, such as Freight Forwarders and Container Terminal Operators were seen as a potential vulnerability as they are not subject to the same controls as licensed entities.

There were also concerns with the increasing employment of casual staff who are not licensed and have not undergone background checks or audits prior to undertaking their role. Industry noted that entities involved in the importation of high value/risk products do not have to be licensed or registered.

There was a call from industry to strengthen and widen compliance activities. Examples raised were control of destruction warehouses and auditing of licence conditions.

### Limitations of fit and proper checks

Concern was raised over the application, extent of coverage and review procedures for fit and proper checks as a potential vulnerability.

In terms of application, industry expressed concern over who within the industry should be required to undertake fit and proper checks. Industry queried whether checks should be extended to apply to all individuals who have a role in the industry beyond where it currently stands.

Industry expressed that its in-house level of fit and proper checking should be taken into consideration. Some companies require police checks to be undertaken on all staff before commencement of employment while other areas rely solely on DIBP’s fit and proper process. However, DIBP’s process does not cover all staff in the industry however. Some people are therefore working in the industry without having been checked for suitability at all, which leaves the industry vulnerable. In particular, the use of casual staff presents a risk. A view was expressed that standardisation of approach across industry would be beneficial.

The lack of regular fit and proper checks was seen by industry as a potential vulnerability. A range of suggestions for review were made, including:

- every 3 months
- yearly, or
- upon licence renewal periods (3-5 years for customs brokers and annually for customs depots and warehouses).

The current system lacks clarity on what is considered in fit and proper person checks, in particular the extent that 'associations' are relevant is unclear. Industry representatives suggested that the application form for fit and proper be reviewed to include all pertinent details required for each applicant, such as criminal history and associations. Another concern expressed is that it is unclear what DIBP expects in relation to reporting change in circumstances in line with mandatory reporting protocols.

### Transport controls

Industry stated that there is an absence of control over the transportation of goods under bond movements. In addition, Workshop participants stated that truck drivers do not require the same level of scrutiny or background checking as other individuals in the industry. Industry considered this to be a vulnerability that needs to be addressed.

### Access to IT systems

A number of vulnerabilities were identified by industry on security of the ICS system. These included:

- it is not possible to determine which individual is using the system at any time. Logon IDs to ICS are not person specific and general logon IDs are available
- some generic logon IDs are misused
- the ICS allows one logon to be used from multiple sites at the same time
- there is minimal or no vetting process for gaining access to the ICS system.

### Data integrity

Industry identified a number of issues with data integrity such as no existing spellcheck mechanism in the ICS system. This resulted in unintentionally incorrectly declared, unmatched or incorrectly checked goods to go undetected and uncontrolled. It also has potential to be misused intentionally.

The use of Multiple Clearance Codes (MCC) should also be examined as bond registers and tracking equipment used by most customs warehouses renders MCCs redundant.

Interpretation of documents by industry employees was seen as an issue, especially with the increasing use of casual employees by industry. This may lead to incorrect data entry. Data entry may also not be done by licensed customs brokers.

The ability of customs warehouses to be able to track products that enter and leave their premises was of concern. While most customs warehouses have sophisticated tracking systems and electronic bond registers for goods, a view was expressed that this should be a condition of licensing.

There was a call for increased '*forensic auditing*' of those undertaking data entry, with fines issued to companies who are unable to undertake this function '*properly*' and do not have '*quality control procedures in place*'.

There are also issues on the completeness of information supplied for any given consignment, and the ability to import undeclared goods without any customs intervention. '*Offshoring*' of general non-declaration lodgement was seen as a vulnerability in a number of submissions. Pre-screening of consignment was considered a potential solution in some submissions.

A further concern is the lack of a direct link between an importer and a customs broker. A customs broker is able to enter goods in the name of an importer and quote its Australian Business Number. This could be done without direct authority from the importer. This may remain uncovered until anomalies are detected in the importer's Business Activity Statements. Conversely, scenarios of '*piggy backing*' may arise.

### Role of education/awareness training

There was a strong view from industry of the importance of industry specific and relevant education. Awareness training was seen as a means to build understanding among licence holders and their employees



of their regulatory obligations. A number of submissions noted that the lack of knowledge '*at the top of the business*' was an area of vulnerability.

Educational outreach could also build trust and mutual understanding that could lead to greater conformity with regulations and greater opportunity for identifying systemic weaknesses or instances of inappropriate or illegal practices. Industry saw this as a means of bridging the gap where the regulator expects a number of functions to be undertaken but the licensed entity is only aware of a subset of the regulator's expectations. Industry suggested that clearer articulation of DIBP's expectations would be beneficial to all parties.

Industry also valued face-to-face training by the regulator.

Industry called on improved educational or policy material to be made available to licensees regarding their responsibilities once a licence was obtained. Lack of skilled staff coming through was also seen as a vulnerability and additional training could assist in these circumstances.

### Auditing protocols

Industry noted that a lack of consistent auditing protocols might increase the risk of illicit activity or behaviour. Industry noted that under the current auditing regime, major companies, depots and warehouses located in major cities are regularly audited. However, smaller warehouses in remote areas are rarely audited. In some instances, companies only undergo self-audits and do not see the regulator.

Audit protocols were also seen as a means of combating the importation of undeclared goods.

There are also concerns about the minimum standard required for inventory control of prescribed or controlled goods and the ability to correctly enter data in ICS. This would affect the ability of the regulator to effectively undertake audits of premises. Some sections of industry expressed concerns at the effect of poor record keeping by businesses.

### Other issues

A number of other vulnerabilities were discussed at the Workshop. This included the risks associated with the standard exemption that applies to airfreight containers that allow them to move directly from the airport to a freight depot without screening. A contrary view was expressed that there are already sufficient controls in place for airfreight consignments.

There was also discussion on risks posed by the release of cargo/goods without appropriate authority. These integrity risks could be better mitigated by enhanced intelligence and control mechanisms. The role of industry in undertaking supply chain checks was also discussed.

## 3. Appendices

### 3.1 Appendix 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. 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 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
- There are consistent processes between administrations and licence types.

The review will not address 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.

### Enquiries

Any enquires about the review should be directed by email to [licensingreview@border.gov.au](mailto:licensingreview@border.gov.au)

## 3.2 Appendix B – List of Submissions

Table 1 List of Submissions

Number	Author	Category
01	Confidential	Warehouses
02	Freight & Trade Alliance (FTA) Pty Ltd.	Depots Warehouses
03	Confidential	Warehouses
04	Lion Pty Ltd.	Warehouses
05	Confidential	Warehouses
06	Confidential	Warehouses
07	Philip Morris Limited	Customs Brokers Warehouses
08	Confidential	Warehouses
09	Confidential	Warehouses
10	Confidential	Warehouses
11	Customs Brokers and Forwarders Council of Australia Inc.	Depots Warehouses
12	Customs Brokers and Forwarders Council of Australia Inc.	Customs Brokers
13	Australian Federation of International Forwarders	Customs Brokers Depot Warehouses
14	National Customs Broker Licensing Advisory Committee	Customs Brokers
15	International Trade Compliance Pty Ltd.	Customs Brokers
16	Freight & Trade Alliance (FTA) Pty Ltd.	Customs Brokers
17	Confidential	Customs Brokers
18	Myfreightcareer Pty limited	Customs Brokers
19	Private Individual	Customs Brokers

Number	Author	Category
20	Melbret Customs Agency Pty Ltd.	Customs Brokers
21	Private Individual - Original Submission - Further submission	Customs Brokers
22	Confidential	Customs Brokers
23	Confidential	Customs Brokers
24	3D Logistics Pty Ltd.	Customs Brokers
25	Private Individual	Customs Brokers
26	Hodder Logistics International	Customs Brokers
27	Consolidated Cargo & Customs Pty Ltd.	Customs Brokers
28	Confidential	Customs Brokers
29	Luk & Associates Solicitors	Customs Brokers Depots Warehouses
30	Powerhouse Logistics Pty Ltd.	Customs Brokers
31	Southern Cross Cargo	Customs Brokers Depots Warehouses
32	Confidential	Customs Brokers
33	Charles Sturt University, Centre for Customs and Excise Studies	Customs Brokers Depots Warehouses
34	Confidential	Customs Brokers Depots Warehouses
35	Confidential	Customs Brokers
36	Confidential	Depots
37	Australian Institute of Petroleum Ltd.	Warehouses