



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

# **Review of Customs Licensing Regimes**

Final Report

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# 1 Executive Summary

The Department of Immigration and Border Protection (DIBP) conducted a review of all licensing regimes under the Customs Act 1901 (the Customs Act). This included customs brokers, depots and warehouses.

The [Review of Customs Licensing Regimes \(the Review\)](#) was conducted against a backdrop of significant change. Globalisation, open borders, free trade agreements, advanced technology and consumer activities (particularly online spending) have all aided in reshaping the international trade market over recent years. Greater volumes of trade and travel have clear economic and security benefits for Australia, but there will be heightened challenges to border compliance and control.

The Review was cognisant of DIBP's objective of close cooperation with international and industry counterparts to pursue a seamless border management system that improves the flow of goods and the collection of revenue, while dealing with the threats of crime, terrorism and other enforcement interests.

The Review was supported by the Australian Taxation Office (ATO), which administers warehousing of Excise Equivalent Goods (EEGs) under the Customs Act. It has received considerable input from the Department of Agriculture and Water Resources (DAWR), which administers biosecurity arrangements on imported goods.

The Review was conducted in accordance with Terms of Reference (TORs) issued in November 2015. Thirty-seven submissions were received. The TORs were broadened in 2016. Further stakeholder input was received through engagement with all submitters and in a Workshop on the Integrity of the Current Licensing System held on 25 November 2016.

The [Review of Customs Licensing Regimes Issues Paper](#), publicly released on 16 December 2016, provided an opportunity for industry and Government stakeholders to offer further commentary on key issues. A DIBP-industry Workshop was held on 20 January 2017 to develop a clearer view on Three Key Issues identified during the Review. The Review's draft recommendations were published in March 2017.

The Review's principal recommendation is that licensing be retained for customs brokers, depots and warehouses. Other recommendations are intended to strengthen and streamline the current licensing regimes, with a primary purpose of implementing savings and efficiencies for DIBP and industry, and potentially across agencies that also license or register customs brokers, depots and warehouses under their respective Acts.

The recommendations offer better guidance across a range of issues that should result in quicker, clearer and improved outcomes for the regulator and licensees. There should also be a reduction in regulatory burden (and red tape) for industry and Government. The Review sees this as a necessary investment in a more modern and comprehensive licensing regime that could encompass a number of agencies.

The Final Report considers that the focus on the integrity of the licensing regime will only grow in importance in the future and that strengthening the integrity of the system will better protect the community.

The Review suggests that DIBP develop an Implementation Plan in close consultation with Government and industry. This will assist with the design of measures to implement the Final Report recommendations. Detailed costing will be included in the Implementation Plan.

The Review considers it is likely there will be significant change to international trade flows, trade policy and trade agreements in the next decade. As a consequence, the Review suggests that the licensing regime should be subject to regular reviews in the future. This will ensure that the licensing regime remains innovative and adaptive.

## 2 Recommendations

#	Title	Review Recommendations
1	Licensing	DIBP should retain a licensing regime for customs brokers, depots and warehouses.
2	Alignment with other agencies	DIBP should work with other agencies to better align licensing processes.
3	Fit and proper checks	DIBP should seek to align its fit and proper checks with other agencies, with a view to increasing efficiencies and reducing duplication.
4	Electronic lodgement of information	DIBP should seek to implement an electronic system for lodging information for licensing.
5	Application and documentation requirements	DIBP should review the application and documentation requirements for licensing customs brokers, depots and warehouses.
6	Licence renewal processes	DIBP should work with other agencies to align licence renewal processes.
7	Timeframes for decisions on customs broker, depot and warehouse licences	DIBP should retain the existing timeframe of 60 days for decisions on customs broker, depot and warehouse licensing applications.
8	Compliance (including auditing) processes	DIBP should explore aligning compliance (including auditing) processes with other Government agencies.
9	Permissions for movement of goods	DIBP should explore with other agencies whether there are opportunities to align permissions for movement of goods.
10	Classes of licences for customs brokers	DIBP should continue with existing licence categories for customs brokers.
11	National Customs Brokers Licensing Advisory Committee	<p>The Customs Act 1901 should be amended:</p> <ul style="list-style-type: none"> <li>to allow disciplinary decisions to be made by the Comptroller-General without the necessity for reference to NCBLAC where a broker has been prosecuted and found by a court (whether after a trial or following a plea of guilty) to have committed an offence against the Customs laws or against other laws in relation to an importation of goods and the elements of that offence require guilty intent</li> <li>to make clear that, in appointing Industry Members to NCBLAC, the Comptroller-General can seek nominations from multiple organisations that represent brokers.</li> </ul>

#	Title	Review Recommendations
12	Licences covering multiple facilities	DIBP should develop and implement a more flexible licensing system that would allow a single licence to cover multiple facilities controlled by the same entity under the <i>Customs Act 1901</i> .
13	Use of bonds, securities and indemnities	DIBP should retain the right to use bonds, securities and indemnities.
14	Licence conditions	DIBP should re-examine the additional conditions it includes on licences to ensure that they are sufficiently clear and provide guidance.
15	Integrity of the licensing regime	DIBP should continue to place the highest priority on maintaining the integrity of the customs licensing regime.

## 3 Reference Material

### 3.1 Abbreviations and Acronyms

AAT	Administrative Appeals Tribunal
ABN	Australian Business Number
ACBPS	Australian Customs and Border Protection Service
AFIF	Australian Federation of International Forwarders
ASIC	Aviation Security Identification Card
ATO	Australian Taxation Office
ATT	Australian Trusted Trader programme
CAPEC	Conference of Asia Pacific Express Carriers
CBFCA	Customs Brokers and Forwarders Council of Australia
CBSA	Canada Border Services Agency
CBW	Customs Bonded Warehouses
CCA	Customs Controlled Areas
Comptroller-General	Comptroller-General of Customs
CPD	Continuing Professional Development
Customs Act	<i>Customs Act 1901 (as amended)</i>
DAWR	Department of Agriculture and Water Resources
DIBP	Department of Immigration and Border Protection
Discussion Paper	<i>Review of Customs Licensing Regimes Discussion Paper - October 2015</i>
EEGs	Excise Equivalent Goods
FTA	Free Trade Agreement
ICS	Integrated Cargo System
ICT	Information and Communications Technology



Issues Paper	<i>Review of Customs Licensing Regimes Issues Paper - December 2016</i>
MSIC	Maritime Security Identification Card
NCBLAC	National Customs Brokers Licensing Advisory Committee
NZ	New Zealand
OTS	Office of Transport Security
RKC	Revised Kyoto Convention
The Review	The Review of Customs Licensing Regimes
The Workshop on Integrity	The Workshop on Integrity of the Current Licensing System – 25 November 2016
The Workshop on Three Issues	The Workshop on Three Key Issues – 20 January 2017
TORs	Terms of Reference
TPB	Tax Practitioners Board
US	United States
US CBP	United States Customs and Border Protection
WCO	World Customs Organization

## 3.2 Glossary of Terms

Term	Definition
Australian Business Number	The Australian Business Number (ABN) is a unique 11 digit identifier for all business dealings with the Australian Taxation Office (ATO) and other agencies.
Aviation Security Identification Card	An Aviation Security Identification Card (ASIC) is an identification card which is used to identify a person in the aviation environment who has been the subject of a background check and is cleared to work unescorted or unmonitored in an aviation security zone.
Bill of Lading	A document recording particulars of a contract for the carriage of goods by sea, serving also as a document of title to the goods.
Bonded Goods	Bonded goods are imported goods which have duty and/or taxes payable which has not yet been paid.
Cargo	All articles, goods, materials, merchandise, or wares carried on-board an aircraft, ship, train, or truck, and for which an air waybill, or bill of lading, or other receipt is issued by the carrier.
Categories of licences for customs brokers	The current licensing regime contains three categories of licence for customs brokers (nominee, corporate and sole trader).
Catering Bond	A catering bond is a special class of warehouse that supplies ships and/or aircraft with ships stores. It is licensed under the Customs Act and applicants are required to provide additional (to the standard warehouse licence application process) information if applying for a licence to store tobacco or alcohol.
Classes of licence for customs brokers	A class of licence for customs brokers would be a subset of an existing category of licence. There are currently no licence classes for customs brokers.
Compiler	A compiler is a person who brings together information or statistics regarding customs entries. This information is used by customs brokers in finalising entries or in reporting.
Customs Broker	A customs broker is an entity who holds a customs broker's licence granted in accordance with Part XI of the Customs Act. Under the Customs Act an owner of goods may authorise an agent to act on his or her behalf for the importation of goods into Australia.
Customs Depot	Depots are licensed under the Customs Act and allow importers to have goods moved away from the wharf or airport for short-term storage and unpacking/deconsolidation. Once all legislative requirements are met, the goods can be released for home consumption or moved to a licensed warehouse for storage.

Term	Definition
Customs Duty	Tax levied on imports (and sometimes on exports) by the customs authorities of a country to raise state revenue, and/or to protect domestic industries from more efficient or predatory competitors from abroad.
Customs Warehouse	Warehouses are licensed under the Customs Act. Goods entered for warehousing on Customs declaration might be held indefinitely at a warehouse without payment of any duties and taxes until the goods are entered for home consumption or they are exported.
Department of Immigration and Border Protection	The Department of Immigration and Border Protection (DIBP) is responsible for facilitating trade, travel and migration while protecting Australia from threats to the border. Its mission is to protect Australia's border and manage the movement of people and goods across it. The Australian Border Force is a front-line operational agency within DIBP reflecting a greater focus on the border as a strategic national asset.
Duty free stores	Duty free stores are a special class of warehouse licensed under the Customs Act. A duty free permission allows duty free shops to store and display imported goods on which customs duty has not been paid and to operate at the retail level to sell goods to relevant international travellers. As duty free shops engage in retail sales, they operate in a different environment from most other warehouses.
Entity	An 'entity' may be one of the following: <ul style="list-style-type: none"> <li>• a company;</li> <li>• a partnership;</li> <li>• a person in a particular capacity of trustee;</li> <li>• a body politic;</li> <li>• a corporation sole;</li> <li>• any other person.</li> </ul>
Examination	Examination of cargo by a DIBP officer.
Excise Equivalent Goods	Excise duty (excise) is a tax placed on excisable goods (tobacco, alcohol (excluding wine) and fuel and petroleum products) that are produced or manufactured in Australia. When imported, these commodities are treated as Excise Equivalent Goods (EEGs). Customs duty is imposed at a rate equivalent to excise to allow consistent treatment of the imported and Australian produced goods.
Inspection	May include use of non-intrusive examination through x-ray technology (static or mobile), trace particle detection, detector dogs or physical examination of cargo.
Integrated Cargo System	The Integrated Cargo System (ICS) is the method of electronically reporting the legitimate movement of goods across Australia's borders.
Intelligence-led approach	An approach that ensures strategic and operational decision-making is informed by intelligence.

Term	Definition
Licence	A permit from an authority to own or use something, do a particular thing, or perform a specific task or profession.
Maritime Security Identification Card	A Maritime Security Identification Card (MSIC) is a nationally consistent identification card that states the holder has undergone a background check and is cleared to work unescorted or unmonitored in a maritime security zone.
National Customs Brokers Licensing Advisory Committee	The National Customs Brokers Licensing Advisory Committee (NCBLAC) is an independent Statutory Body that assesses applicants and provides recommendations on individual licence applications to DIBP. NCBLAC also investigates customs brokers and/or brokerages which have been referred for issues such as non-compliance and makes recommendations to DIBP on further action to be taken in respect of the licensee.
Piggy Backing	A <i>piggy back</i> occurs when an unscrupulous entity uses the identifying details of a legitimate entity on the Cargo Report or Full Import Declaration for a consignment without the knowledge of the legitimate entity. In all identified cases, the relevant consignment contained illicit substances or smuggled goods.
Providores	Providores are a special class of warehouse that supplies ships and/or aircraft with ships stores. This special class of warehouse is licensed under the Customs Act and applicants are required to provide additional (to the standard warehouse licence application process) information if applying for a licence to store tobacco or alcohol.
Ships' Stores and Aircraft Stores	Ships' stores and aircraft stores are goods which are used or consumed on board ships and aircraft on international journeys.

## 4 Introduction

### 4.1 Purpose

The Department of Immigration and Border Protection (DIBP) undertook a review of all licensing regimes under the *Customs Act 1901* (the Customs Act). The [Review of all Customs Licensing Regimes](#) (the Review) was supported by the Australian Taxation Office (ATO), the administrator of warehousing of Excise Equivalent Goods (EEGs) under the Customs Act.

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

It had 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. In recent years, there have been significant changes to the context in which customs brokers, depots and warehouses are licensed. These include advances in information technology, general business practices and the way 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 an independent 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. These were considered as a part of the Review.

The [Review of Customs Licensing Regimes Issues Paper](#) was published on 16 December 2016. It summarised the key issues raised in stakeholder submissions, outcomes of the *Workshop on Integrity of the Current Licensing System* (Workshop on Integrity) and provided an opportunity for further input from interested parties concerning these key issues.

After extensive consultation and engagement with stakeholders, this Final Report outlines the findings of the Review and presents recommendations for the Comptroller-General of Customs (Comptroller-General) to consider.

### 4.2 Scope

The objectives of the Review, set out in the Terms of Reference (TORs), 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.

The scope of the Review was to examine all licensing regimes under the Customs Act, including the licensing of customs brokers, depots and warehouses. This also included providores, catering bonds, duty free stores and EEGs. The Review examined applicable legislation and administrative processes for

licensing regimes. Further information regarding this scope can be located at [Appendix A: Customs Licensing Review Terms of Reference](#).

DIBP invited stakeholders to provide written submissions on how current licensing regimes could be improved or to offer suggestions for alternative licensing models that would meet the legislative requirements in the Customs Act. The [Review of Customs Licensing Regimes Discussion Paper](#) was published at the time the Review was announced. The Discussion Paper 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 stakeholders were aware of the Review, invitations seeking industry involvement were published in November and December 2015 in *The Australian Financial Review* and *The Australian*, on industry news boards, on the Integrated Cargo System (ICS) and on the DIBP website.

The Review received a total of 37 submissions. Submissions commented on customs broker, depot and warehouse licensing regimes. Non-confidential submissions are publicly available on the DIBP website at [www.border.gov.au/licensing-review](http://www.border.gov.au/licensing-review).

The Review consulted with every submission author. Ongoing consultation occurred with industry representatives and individuals who provided submissions. A number of key themes across the TORs were raised in submissions and during consultation. A number of submissions raised issues that are considered to be outside the scope of the TORs, including:

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

The Review has recognised the importance of the issues raised by stakeholders and forwarded these concerns on to relevant sections within DIBP for further consideration.

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

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

As a result of feedback received during the Review, the [Review of Customs Licensing Regimes Issues Paper](#) was published on 16 December 2016. The Issues Paper articulated the key issues raised in submissions and at the Workshop on Integrity. The Issues Paper provided industry representatives and agencies with a further opportunity to provide commentary for incorporation into this Final Report.

Licensing issues were also discussed during meetings with individual stakeholders, notably the Customs Brokers and Forwarders Council of Australia (CBFCA) and National Customs Brokers Licensing Advisory Committee (NCBLAC).

A further Workshop was held with industry on 20 January 2017 to discuss Three Key Issues where there had been a wide divergence of views expressed in submissions. These issues were:

- whether one licence should cover multiple establishments
- whether to introduce classes of licences for customs brokers
- the role of NCBLAC.



The Review considered the key issues and overarching concerns raised in relation to DIBP's licensing regimes.

## 5 Licensing Regimes

### 5.1 Rationale for Licensing Arrangements under the Customs Act

The Government needs to regulate goods that are entering Australia. The Government does not have the capacity or resources to independently perform this function efficiently and effectively and needs others to assist with this role. Licensing individuals and entities under the Customs Act allows the Government to protect revenue and the community and to ensure the provision of technical information (such as customs entries) to professional standards.

Licensing arrangements are a well-known and widely utilised mechanism globally and across a variety of sectors for achieving similar objectives. Customs licensing provides assurance that the people performing customs related tasks are competent and able to fully discharge their duties.

Licensing provides an incentive for licensees (whether natural persons or companies) to ensure that their legal responsibilities are correctly performed. It also provides a mechanism for sanctions and compliance activities to be undertaken by DIBP, as the regulator, against licensees found to be in breach of licensing conditions or responsibilities.

Under the Customs Act, there are two broad rationales for licensing regimes: revenue and border protection/community safety.

Licensing was traditionally utilised to protect revenue and to ensure compliance with the Customs Act. Recently, protection of revenue as a priority has reduced because this revenue has fallen over the last few decades. This is due to Australia's general decrease in tariff rates and the implementation of various Free Trade Agreements (FTAs).

Similarly, the rationale for licensing has expanded beyond revenue protection to ensure:

- Government agencies can establish the true identity of parties involved in the trade of goods internationally and that data associated with the trade is accurately reported
- the expertise of customs brokers continues to be maintained despite significant changes due to FTAs and changing Government regulation
- customs brokers are acting ethically, professionally and legally
- potentially dangerous goods are not imported illegally into Australia or are correctly labelled if importation is legal
- integrity of the supply chain is maintained.

The Review notes that licensed persons and entities (and their employees) have a unique understanding of border operations. They have access to systems, intimate knowledge of procedures and access to goods outside of DIBP processes. These elements place licence holders in a position of trust. However, this knowledge and access is also a potential vulnerability as it could be used to facilitate illegal activity at the border. Hence there is a greater need for compliance monitoring and auditing of licensees.

## 5.2 Entities Licensed

DIBP licenses customs brokers, depots and warehouse, including providores, catering bonds and duty free stores. Details of the licensing regimes for each category are discussed below.

### 5.2.1 Customs Brokers

Only owners of goods, their employees or licensed customs brokers can submit an import declaration to enter goods for consumption within Australia.

Customs brokers act as agents between the importer and DIBP and are authorised to lodge import declarations on an importer's behalf. Customs brokers perform an important role on behalf of DIBP in ensuring the correct payment of customs duties and charges, aiding in community protection, ensuring compliance with laws and regulations for the management of goods entering Australia and maintaining the integrity of the supply chain.

There were 2259 active customs broker licensees on 30 January 2017 under one of the following three categories:

- **Corporate** – a company or a partnership 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 licensed to act on behalf of owners of imported goods. A sole trader may employ nominee customs brokers. A sole trader cannot be employed by a corporate customs broker but can be affiliated with other businesses such as freight forwarders.
- **Nominee** – a natural person 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 time.

In order to obtain a customs broker licence, an applicant must:

- submit an application form
- pay an application fee
- undergo a fit and proper check
- be assessed as qualified to perform these functions
- demonstrate sufficient acquired experience (nominees only)
- pay a licence fee.

### 5.2.2 Depots

Depots provide a secure environment where goods can be moved from wharves or airports for deconsolidation, unpacking, examination and short term storage. This is prior to being moved into a licensed warehouse for longer term storage or discharged into the Australian market once import formalities are completed, including payment of duty and/or taxes. Depots are also used to 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 or aircraft. As of 30 January 2017, there were 453 depots licensed under the Customs Act.

Depot licence holders must be aware of their responsibilities and be familiar with all relevant sections of the Customs Act. A breach of a depot licence condition is an offence and non-compliance with conditions could result in licence suspension or cancellation of the licence and/or further penalties.

### 5.2.3 Warehouses

Warehouses permit longer term storage of imported goods that have not been discharged into the Australian market. Goods stored in a licensed warehouse are subject to customs control until such time as the goods are entered for home consumption or are exported. As of 30 January 2017, there were 553 warehouses licensed under the Customs Act.

Licensees are responsible for ensuring the physical security of goods, accounting for goods and satisfying all other licensing conditions. Activities in a warehouse must ensure the security of goods and that revenue payable to the Australian Government is not at risk. Value adding activities within warehouses are not permitted besides approved storage, blending, unpacking, repacking and packaging of certain types of goods.

There are a number of categories of licences for warehouses:

- **Private Warehouse** - the licence holder is the owner of the warehoused goods.
- **General Warehouse** - the licence holder is storing goods on behalf of other owner(s).
- **Providores and Catering Bonds** - the licence holder stores goods which are then supplied to international aircraft or vessels as aircraft or ships stores.
- **Duty Free Store** - the licence holder is permitted to sell goods to relevant travellers in a retail-type environment.

Warehouse licence holders must comply with the obligations set out in the Customs Act. Non-compliance with the conditions of a licence could lead to the suspension or cancellation of the licence and/or further penalties. Where suspension or cancellation has occurred, movement of any goods under customs control must be authorised by DIBP.

### 5.2.4 Providores, Catering Bonds and Duty Free Stores

Some licensed warehouses store imported goods for re-export with the effect that duty and/or taxes do not have to be paid. Aircraft and ship stores are managed under the warehouse regime. These classes of goods are exported onto aircraft or vessels, such as small amounts of food, spare parts and lifeboats. Firms that manage these stores before they are released are commonly referred to as providores or catering bonds. The companies providing goods to international vessels must supply additional information regarding alcohol, tobacco and business models.

Providores and catering bonds are licensed through the same scheme as standard warehouses, although they must include permits relevant to the goods they carry (e.g. radioactive goods, dangerous goods etc.) within their application.

Duty free stores are also licensed by DIBP. A duty free permission allows duty free shops to store and display imported goods on which customs duty and/or taxes have not been paid and to operate at the retail level to sell goods to relevant international travellers. Consequently, duty free shops operate in a different environment from most other warehouses as they engage in retail sales.

Goods subject to customs control in these establishments must be accounted for or be sold to relevant international travellers. These requirements are set out in the Customs Act under the provisions that apply to the licensing, control and conduct of warehousing (including duty free stores). A company that has multiple licences, including licences for shops both in air terminals or landside may be subject to conditions on the licence that vary from site to site.

## 5.3 Licensing Process

An application must be made to DIBP to be licensed as a customs brokers or to operate a depot or warehouse. There is a separate application form for each licence category. The information requested within the various application forms are often similar.

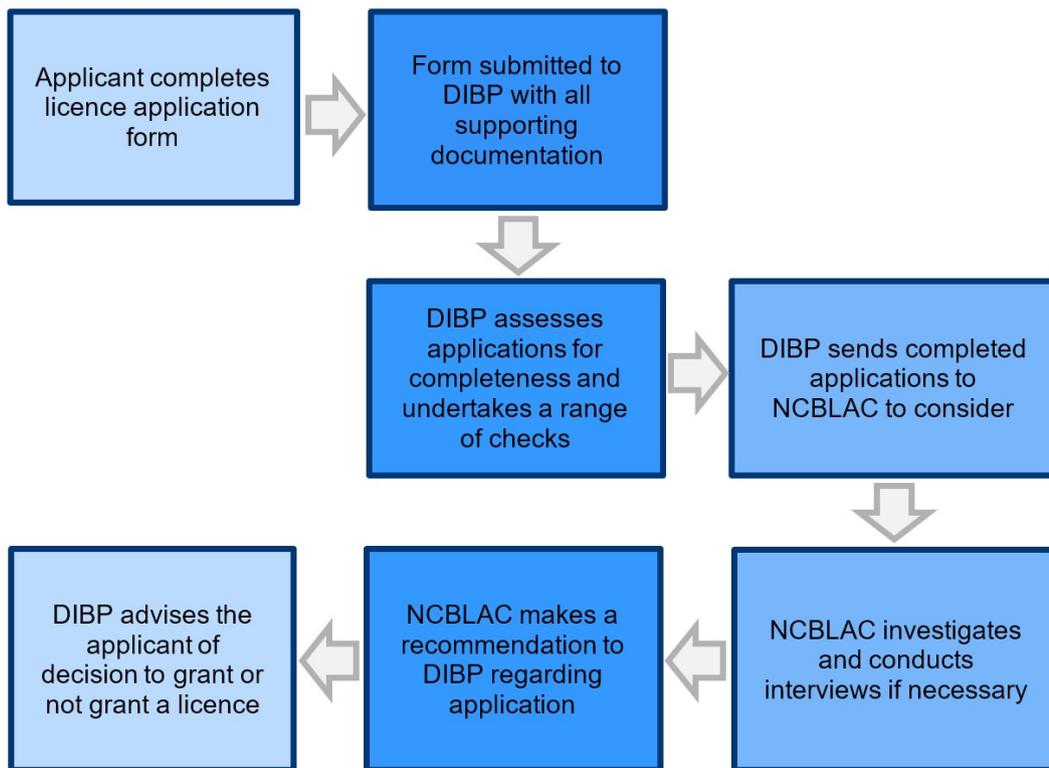
The applicant and all persons in positions of 'management or control' of corporate customs broker licensees, depots and warehouses are required to undergo a fit and proper check. These checks are currently undertaken by DIBP after a completed application form is received.

Upon receipt of an application, DIBP invoices applicants with an application fee. Processing and assessment of the application commences once the application fee has been paid. Any further information required to complete the application will be requested at this time. Applications can take up to 60 days to process from the time all required and completed information has been received. Processing of an application for a depot or warehouse licence requires at least one site visit by DIBP officers in order to assess the physical security of the premises, the business and information and communications technology (ICT) systems in place to manage the control and security of held cargo.

**Customs brokers:** Potential new customs brokers must submit an application and supporting documentation to DIBP. There are different application forms for the different categories of customs broker licences (corporate, sole trader or nominee).

Applications received by DIBP are checked for completeness and a range of background checks are conducted. Upon completion of background checks, DIBP forwards completed applications for NCBLAC to consider. NCBLAC comprises of an Australian Government representative (DIBP official), an industry representative (or an alternate) and a chair who is currently a former Secretary of the Australian Government Attorney-General's Department.

NCBLAC will investigate any matters of concern and conduct inquiries if necessary. NCBLAC will then make a recommendation to the Comptroller-General or his delegate as to whether the applicant should be granted a licence or not. Based on all available information, the Comptroller-General or his delegate will then make a final decision and advise the applicant of the outcome and decision whether to grant the licence or not.



**Figure 1 - Initial application process for customs brokers**

The application process for a customs broker licence takes approximately eight weeks to process, which aligns with the DIBP service charter. This timeframe commences from the receipt of a complete application. It may be delayed an additional eight weeks should an inquiry by NCBLAC be necessary. There is currently no renewal application process for customs broker licences. Licences are effectively renewed automatically upon receipt of payment and confirmation that CPD requirements are met.

Applicants who feel that a decision is unfair or flawed can contact DIBP to request an internal review. Whether or not an applicant initially requests an internal review, a decision not to grant a licence is appealable to the Administrative Appeals Tribunal (AAT). In order to have a decision reviewed by the AAT, an applicant must apply to the AAT within 28 days of the decision being made, or any such further time as allowed in accordance with the *Administrative Appeals Tribunal Act 1975*.

Further information regarding the application process for customs brokers is detailed on the DIBP website at: <http://www.border.gov.au/Busi/cargo-support-trade-and-goods/licensing/for-customs-brokers/application-process>.

**Depots and warehouses:** A depot and/or warehouse licence can be granted to an individual, a company or a partnership. Licences cannot be granted to a ‘trust’ but might be granted to a trustee. While a licence is issued to an individual, company or partnership, it is also issued for a specific place. Licensees who want to move premises or make substantial changes to an existing licensed site must be granted approval to ‘vary’ their licence before any changes are made. A fee is payable to DIBP for a licence variation.

Applications must also be made to the ATO for a warehouse licence for premises intending to store EEGs. Warehouses that will handle goods that are subject to control under the *Biosecurity Act 2015* (Biosecurity Act) must also apply to the Department of Agriculture and Water Resources (DAWR) for an approved arrangement.

Decisions on depot and warehouse licences are subject to the same internal and AAT review conditions as previously stated in the section on customs brokers.

Licence renewals for depots and warehouses are undertaken by DIBP. These are processed in bulk against specific timeframes. These processes do not support careful examination of the renewal applications and usually result in applications being automatically granted upon the renewal fee being paid. However, the ATO undertakes some checks on the renewals before applications are processed.

Further information regarding the application process for depots and warehouses are detailed on the DIBP website at: <http://www.border.gov.au/Busi/cargo-support-trade-and-goods/licensing/for-depots-and-warehouses>.

**Integrated Cargo System (ICS):** ICS is an electronic system used to facilitate and record the movement of goods into and out of Australia. All applicants are required to register as a client in ICS and purchase a digital certificate in order to communicate electronically with DIBP. ICS registration must be completed using the ABN under which the relevant licence application was made. Further information on registration and accessing ICS can be found on the DIBP website <http://www.border.gov.au/Busi/cargo-support-trade-and-goods/cargo-support/integrated-cargo-system>.

## 5.4 International Licensing Models

Licensing is a practice that is used globally. It is referenced in the relevant international standard setting organisation, the World Customs Organization (WCO), and used in like-minded countries such as Canada, New Zealand (NZ) and the United States (US).

**WCO on customs brokers:** The WCO published a Study Report on Customs Brokers in 2016. The Study Report stated that of the 99 WCO respondents, 95 administrations had *'some or other mechanism for Customs brokers, agents' representatives or third parties who act on behalf of traders to handle Customs clearance and related activities'*. It also stated that the Revised Kyoto Convention (RKC) *'obligates countries to make the use of Customs brokers' services optional'*. The RKC also stipulated that licensing requirements for customs brokers should be transparent, non-discriminatory and reasonable. Only four respondents stated they had no prerequisites or requirements to be a customs broker.

The WCO Study found that the use of customs brokers is optional in 72 countries and mandatory in nine. Fourteen reporting administrations had *'mandatory use of customs brokers, except for certain specified categories of Customs clearance transactions, threshold values and goods'*. Countries that do not have mandatory customs broker regimes follow free market principles where engagement of customs brokers services or otherwise is a commercial decision for traders. It notes that *'cost effectiveness and quality of professional service are key factors influencing such a decision'*.

The WCO Study stated that there *'are varied licensing and regulatory models adopted by Customs administrations to authorize legal and/or natural persons to act as Customs brokers. Many administrations have specific licensing requirements to act as a broker, while others simply allow anyone to establish a free business and take up the job of a clearing agent on behalf of others. There are also practices, for example in Asia, where some administrations make concessions from the use of licensed brokers when a person transacts any business solely on his own account.'*

It also argued that *'licensing/accreditation requirements vary, but in general include sound knowledge of Customs laws and other regulatory requirements; clean track records in terms of security and other compliance matters; financial solvency – surety bond, security deposit; minimum educational qualification; specified working experience; in some cases, a written and/or oral examination and even minimum hours of training. Some administrations also prescribe certain licensing obligations for brokers in respect of business ethics and professional conduct; due diligence on clients; and/or correctness of information provided.'*

The WCO Study acknowledged that *'licensing requirements, examinations, and training all support both Customs brokers and Customs administrations because a lack of professionalism and training often leads to delays in the goods declaration and Customs clearance processes. The lack of knowledge in Customs procedures, necessary documents, insufficient knowledge of harmonized systems, can lead to avoidable*

*errors that ultimately wastes limited Customs administrations' personnel and creates backlogs and delays. It is recommendable that any reform or modernization of Customs includes providing the necessary information and training to Customs brokers.*

The WCO Study found that most administrations required licensees to have some form of acquired knowledge, sound compliance record, citizenship or residency status and an electronic transmission capability. Additionally, there was a drive towards a more common customs framework across the global economy for the private sector to manage global trade compliance and risk through clear, consistent and common rules. There was also a drive for interagency cooperation, data sharing and public and private sector cooperation.

The WCO does not provide any guidance on the use of specialist or reference committees, such as NCBLAC. Key trading partners such as Canada, NZ and the US do not appear to have any NCBLAC-style specialist or reference committee.

The WCO Study concluded that *'most of those Members who regulate Customs brokers, do so to facilitate and protect the interests of traders and to ensure revenue collection, compliance and professionalism amongst brokers'*.

**WCO on customs depots:** Under the RKC, depot operators are regarded as one of several third parties that deal directly with a Customs administration relating to the importation, exportation, movement or storage of goods. RKC identifies that some Customs administrations require third parties to be licensed. Licensing requirements may vary between Customs administrations. RKC recommends that national legislation should specify the type of places which are approved for unloading. RKC also recommends as a standard practice, that Customs administrations authorise the establishment of temporary customs stores, when deemed necessary, to meet the requirements of international trade.

**WCO on customs warehouses:** The RKC defines customs warehousing as *'the Customs procedure under which imported goods are stored under Customs control in a designated place (a Customs warehouse) without payment of import duties and taxes'*. As with depots, warehouse operators are regarded as one of several third parties involved in the importation of goods and some Customs administrations require such parties to be licensed.

**Canada:** The Canada Border Services Agency (CBSA) has a licensing regime for customs brokers. A customs broker can be an individual, partnership or corporation that acts as an agent to transact business with CBSA on behalf of the owner or importer of goods. Customs broker licences are issued by CBSA to individuals who are Canadian citizens or permanent residents, who are at least 18 years of age and who are of good character. Individuals seeking a customs broker licence must have sufficient knowledge relating to imports and exports and pass a written exam of multiple choice questions with a pass of 60% or higher. CBSA has a similar fit and proper person test to Australia.

CBSA have Customs Bonded Warehouses (CBW) which are facilities that are licensed and regulated by CBSA and operated by the private sector. Goods in a CBW are considered to be imported into Canada but have not been released from CBSA. Deferral of payment of duties and taxes can be undertaken for up to four years, until the goods are released for Canadian consumption. CBWs may consist of private warehouses operated by individuals or companies for the storage of their own in bond goods or public warehouses operated by entrepreneurs for the storage of goods imported by various importers. Operators of a CBW must be licensed and supply a security bond of 60% of the maximum amount of duties and taxes that would otherwise be payable. Security bond amounts are reviewed on an annual basis. One security bond may be filed for all CBW operated by the same individual or company within the same area. Applicants for a CBW licence must be of good character.

**New Zealand (NZ):** NZ legislation does not require a person lodging a customs entry to be licensed or approved by Customs as a customs broker. In theory, anyone can complete an entry. However, NZ legislation requires that a person must be registered by Customs as a user to transmit to, or receive information from, the entry processing system. New Zealand Customs has the authority to assess applicants

for registration, to place conditions on existing users and to cancel a user's registration for poor performance, or conviction for either certain offences under its legislation, or when conditions are breached.

NZ has a system of Customs Controlled Areas (CCA). These are secure and controlled environments where activities are monitored by New Zealand Customs. CCA are used for the temporary holding of goods for the purposes of examination of those goods while they are awaiting inspection. Individuals operating a CCA must be licensed and it is an offence to operate a CCA without a licence. The Chief Executive (New Zealand Customs) may require and take securities for deferred payment of duties, such as, a bond; a guarantee to her Majesty the Queen; a written undertaking in such form as the Chief Executive may require; a deposit of cash; or a combination of those listed.

**Unites States (US):** The US requires customs brokers to have a valid licence to undertake customs broker functions within its territory. Customs brokers may be private individuals, partnerships, associations or corporations that are licensed, regulated and empowered by US Customs and Border Protection (US CBP). In order to obtain a customs broker licence, an individual must be a US citizen of at least 21 years of age and not be a current federal Government employee. Individuals must also undertake a written exam of 80 multiple choice questions and obtain a pass of 75% or higher. Individuals may apply for a customs broker licence within three years of receiving a letter notifying them that their exam was passed. If this time has lapsed, an individual must re-take the exam. Individuals must possess good moral character and must undergo a background investigation before they can be licensed. The US equivalent to the Australian fit and proper person check involves applicants undertaking finger print analysis, credit report checks, character reference checks and police record checks.

US customs brokers are expected to comply with the duties and responsibilities of licensing regimes or be subjected to financial penalties or internal sanctions that may include the cancellation, suspension, revocation of a customs broker licence or some other form of disciplinary action.

US CBP has bonded warehouses. A customs bonded warehouse is a building or other secured area where imported dutiable merchandise may be sorted, manipulated, or undergo manufacturing operations without payment of duty for up to five years from the date of importation. There are 11 different classes of bonded warehouses. An applicant seeking to establish a bonded warehouse must make a written application to the local US CBP port director. As a condition of approval of the application, the port director may request an inquiry by US CBP officers into the qualifications, character, and experience of the applicant (e.g. personal history, financial and business data, credit and personal references). If the background investigation discloses derogatory information about the applicant, or its officers or employees, the warehouse application may be denied.

## 6 Issues Paper and Subsequent Workshop

### 6.1 Issues Paper

The Issues Paper sought to clearly articulate the key issues identified in submissions and other issues raised through stakeholder engagement and at the Workshop on Integrity. This included integrity issues and other matters seen as vulnerabilities by industry.

The release of the Issues Paper provided an opportunity for industry and Government stakeholders to offer further commentary on the key issues, before this Final Report was forwarded to the Comptroller-General in early 2017.

A number of stakeholders provided commentary on the Issues Paper, which has been incorporated into this Final Report.

## 6.2 Workshop on Three Key Issues

There was a degree of convergence on many of the issues identified by stakeholders in the Issues Paper. However, a wide range of views were expressed on Three Key Issues:

- whether one licence should cover multiple facilities
- whether to introduce classes of licences for customs brokers
- the role of NCBLAC.

A DIBP-Industry Workshop was held on 20 January 2017 to develop a combined view on these Three Key Issues. The outcomes of the Workshop on the Three Key Issues have been included in this Final Report.

## 7 Key Findings

The Review's engagement with Government and industry stakeholders provided considerable information and a range of views on a number of key issues. This section provides an overview of each issue or group of related issues against each of the TORs. It provides additional analysis and key findings for each issue raised, as well as outline the outcomes and, if appropriate, recommendations for a future way forward. The current cost of licensing customs brokers, depots and warehouses was considered by the Review in formulating these recommendations. Recommendations to improve the efficiency of the current licensing process will be fully costed in the Implementation Plan.

This section also explores whether recommended changes would result in a legislative or administrative change for DIBP. It identifies opportunities to streamline or simplify these arrangements.

### 7.1 TOR1 – Roles Played by Licensing

TOR1 required the Review to examine two elements:

- the role played by licensing in today's border management environment
- whether there are more efficient ways to achieve the same objectives for border management.

TOR1 asked stakeholders to consider whether licensing regimes aided in the protection of Australian Government revenue, ensured compliance under the Customs Act and enabled protection for importers, exporters and the community at large.

The Review has considered the two elements that comprise TOR1 separately.

#### **TOR1 First element – Review the role played by licensing in today's border management environment**

DIBP is responsible for management of two-way trade across Australia's borders. The Review focuses on its import role under the Customs Act, rather than its export functions.

DIBP does not have, and realistically will never have, the immense human and technological resources required to examine all imported goods to the extent necessary to ensure that their importation was in compliance with all relevant laws. It does not have the vast technological resources to support importers seeking to enter goods into Australia. It requires others to assist it in meeting its aims. It utilises the expertise of customs brokers to undertake the role of submitting import declarations that are correct and timely. It licenses depots and warehouses to ensure that held goods are stored and managed in an appropriate



manner prior to examination and/or prior to payment of duties and taxes and formal release into Australia's domestic market.

Ensuring that a customs entry is legally and factually correct is a complex task. An incorrect entry or premature release of goods under control of a depot or warehouse could have adverse consequences to Australian Government revenue and/or public safety. There are also potential issues regarding industry protection and financial considerations for importers. An importer could be significantly disadvantaged if an incorrect entry results in payment of more duty than is legally necessary or importation takes place under less advantageous conditions.

Licensing is an indication that an authority requires a level of competence and trust from the licensed individual or entity, and that the authority is prepared to provide a statutory monopoly of submitting import declarations on behalf of other parties for this purpose.

Licensing is a mechanism used by DIBP to ensure the suitability of customs brokers, depot and warehouse operators to undertake their roles in accordance with relevant laws and regulations. This requires individuals and businesses performing these roles to be honest, competent and conversant with the current importation conditions (including changes to tariff schedules following the implementation of FTAs for customs brokers).

Licensing of customs brokers is a longstanding measure. Licensing (or registration) is a widely used measure by Australian federal, state and territory government agencies across many subject matters (including Customs) and professional fields (such as Veterinary Surgeons, Medical Practitioners, Pharmacists and Dentists). It is widely used internationally for customs brokers, depots and warehouses (see Section 5.4).

Licensing of facilities is used as a regulatory measure across multiple sectors in Australia. It is used to ensure that facilities, structures and management are able to undertake roles specified by the licence and any associated conditions. There are various risks to the security of goods subject to DIBP control when stored at establishments. These risks include the movement of goods without authority, the theft of goods, the loss of revenue, and criminal infiltration of the cargo supply chain. A robust licensing regime is an important risk mitigation measure.

The Review considers that licensing continues to be relevant in today's border management climate.

The role played by customs brokers continues to be important. Few importers possess the skills needed to perform this role, or can afford to maintain their own expert staff. For this reason, most importers engage the services of a customs broker to prepare and process their customs entries and related transactions. Equally, customs brokers have an important role in protecting the interests of their clients.

In addition to revenue protection, customs brokers play an important role in establishing the true identity of parties involved in international trade of goods and safeguarding the community through controlling goods whose unregulated movement across the border could pose a significant risk. Examples of such goods include products containing asbestos, firearms, illegal drugs and/or precursor chemicals.

The Review notes that the Customs Act does not clearly define the purpose of customs broker licensing. The purpose of customs broker licensing should be more clearly explained in the Customs Act and also on the DIBP website. This should be reflected in developing the Implementation Plan for this Report's recommendations.

The Review considers that licensing customs depots and warehouses is relevant in this border management climate. These facilities continue to play an important role in protecting revenue and preventing import of illegal goods.

The Review considered removing licensing altogether. However, ceasing licensing would, in the Review's opinion, make it much more difficult for DIBP as the regulator to demand and enforce the same level of performance from customs brokers and management of depots and warehouses. This may lead to increased risk of loss of control and revenue and increasing vulnerabilities at the border. Submissions accurately noted



that licensees are more inclined to act in accordance with regulations and law because they have more at stake and more to protect.

Removal of licensing would mean that the statutory monopoly for customs brokers, depots and warehouses would cease. Access to ICS would need to be made available to more parties that would be lodging import declarations previously done by customs brokers. The Review considers that this would likely result in a decrease in the quality of import declarations lodged with DIBP. There would be an increased likelihood of incorrect entries being lodged because the specialised knowledge of customs brokers would no longer be required or used.

Additionally, there would be more risk of fraudulent entries as there are less controls around those entering data. There would also be more risk to ICS due to the increased level of access. Criminal elements may find it easier to directly access ICS if the monopoly afforded to customs brokers was removed. There is also a flow-on effect on the ability of DIBP to use this data. This data is also used for compliance (including auditing) purposes.

Removal of licensing for depots and warehouses could result in held goods being stored in locations other than those currently licensed by DIBP. This would complicate the process of lawful importation and collection of revenue from these goods. It would complicate DIBP's compliance role as the number of individuals, companies and facilities involved would increase.

There would be similar issues with removal of licensing provisions for providores, catering bonds and duty free warehouses.

The Review considered the option of self-regulation. Self-regulation would also be difficult to consider at this stage given recent integrity concerns surrounding a small number of customs brokers. It is not clear how all parties would maintain the requisite level of performance.

Removal of licensing is not supported by licensed customs brokers. A number of submissions noted the importance placed by customs brokers on the concept of being '*licensed*' by Government. Licensing is a point of difference from other parties involved in the import-export business.

The Review considers that licence renewal should not be automatic. This should be reflected in developing the Implementation Plan for this Report's recommendations.

The Review notes that customs brokers do not need to lodge an application for licence renewal. There are pre-set three-year licence expiry dates. Licensees are advised of the requirement to pay a renewal fee. The licence is reissued upon receipt of payment.

A renewal process would offer an additional opportunity for DIBP to review the entity, an important integrity consideration as part of an on-going, continuing checking process. The Review notes that legislative change may be required to give effect to non-automatic licensing.

Stakeholders commented on extending licensing beyond customs brokers, depots and warehouses to other stakeholders in the import-export chain. This included '*International Freight forwarding companies, shipping lines and air carriers*'. Unlicensed elements of the supply chain, such as freight forwarders and cargo terminal operators are seen as potential vulnerabilities as they are not subject to the same controls as licensed entities.

Freight forwarders are not subject to the same controls as licensed entities. The Review does not consider that there is a case at this stage for licensing freight forwarders. Freight forwarders are not able to perform the role of a customs broker, licensed depot or warehouse. The Review notes that there are other measures, such as increased auditing by DIBP that would provide a greater level of assurance without the additional regulatory burden of licensing.

The Review has been advised that DIBP has scheduled a Post-Implementation Review that will examine the implementation of the *Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013*, on cargo terminals and/or cargo terminal operators. The effectiveness of the current

legislation, which at present does not include licensing, will be part of that process. Accordingly, the issue of licensing of cargo terminals or cargo terminal operators will not be examined further by this Review.

### **TOR1 Second element – Consider whether there are more efficient ways to achieve the same objectives for border management**

Submissions indicated there are more efficient ways to meet the same objectives for border management. Most submissions offered commentary on improving the basic operating model. Some submissions offered alternate regulatory approaches. Improvements to the existing system are further considered in the section under TOR2.

Submissions suggested a *'principles-based approach'* could be utilised for duty free stores: others suggested implementing a scheme based on the Australian Registered Tax Agents model. There was a suggestion of utilising co-regulatory arrangements developed by DAWR in consultation with industry.

**Duty free stores – Principles-based approach:** There were suggestions that a principles-based approach to duty free warehouses/stores would be a more appropriate regulatory approach than the current rules-based model. This approach, which is not permitted at present, would enable licensees to determine the most efficient and appropriate way to respond given their objectives and operating environments. This could permit a licensed warehouse to contract out supplying goods directly to airlines and to the relevant traveller behind the departure gate.

Suggestions and concerns raised within submissions went far beyond the scope of the Review. Issues relating to duty free stores extended to the business model of duty free stores and the way they are able to sell to international passengers on and off terminals. The Review recognises that these are important concerns that need to be addressed. The Review considers that given the extended scope of the issues relating to duty free stores these are better suited to be addressed as a separate matter. It is suggested that these issues are reviewed in their own right. Accordingly, there will be no further comment in this Report on issues relating to duty free stores.

**Australian Registered Tax Agents model:** Some submissions suggested replacing the existing customs licensing regimes with a registration system similar to the one used by the Tax Practitioners Board (TPB). An accreditation system is another alternative approach.

To register with the TPB an individual must:

- be at least 18 years of age
- be a fit and proper person
- satisfy the qualification and experience requirements
- maintain or be able to maintain professional indemnity insurance
- complete an online application.

For a company or partnership to register:

- each director or individual partner must be at least 18 years of age and be a fit and proper person
- the company or partnership must maintain or be able to maintain professional indemnity insurance and have a sufficient number of registered individual tax agents to provide services
- the company must not be under external administration or have been convicted of a serious offence involving fraud or dishonesty during the previous five years.

The Review notes that the key consideration is whether there are any substantial differences in the model presented and the existing licensing system. The Review has examined the basis for the statutory monopoly that each model provides and how entry into the system is achieved and how it is maintained. It explored



how individuals or companies found to be unsuitable (for whatever reason) are excluded and how the system is overseen.

It would appear that the Registered Tax Agent model contains many of the elements of, and is largely similar to, customs licensing. While there are differences between customs licensing and TPB registration, these are not major differences that render the customs licensing system less effective.

The Review considers that introducing a registration system/process based on the Australian Registered Tax Agents model offers no meaningful difference or improvement to customs licensing. The Review notes that the introduction of a new system that is not considerably different would add unnecessary costs without any significant benefits.

The Review notes that there are a wider range of risks attached to operating in the customs space compared with the taxation space. Goods such as asbestos, drugs and firearms being handled in the customs space pose different risks to the Australian community.

The Review considers that due to the risks attached to operating in the customs space it is necessary to implement recommendations which strengthen the integrity and compliance mechanisms in the system and not mirror a system which deals with low risk subject matter.

The Review further considers that there may be issues with the use of the terms 'licensing', 'registration' and 'accreditation'. A 'licence' is a formal permission granted by a relevant authority to perform a specific function, action or task. Absence of such permission excludes those who are not licensed from performing the specific functions, actions or tasks. Licensing is often associated administratively with a list or listing of licensees as a means to record licence holders.

'Registration' is defined as the act of registering or an entry in a register. In this instance, 'register' may be defined as a record of entries of names or the like; an entry in such a book, record or list.

'Accredit' is defined as to provide an officially recognised agent with credentials; to certify as meeting official requirements.

These methods of recognition are all means of allowing an entity to perform a certain activity/function that others without that recognition are unable to perform.

Licensing and registration are systems or methods of recognition of suitability and competency to perform a certain role or function. They are widely used by regulators. For example, Veterinary Surgeons, Pharmacists and Dentists are all registered by State and Territory governments in Australia and by government authorities in other countries.

In the Review's opinion, there is no significant difference between the terms 'licensing', 'registration' and 'accreditation', although some may consider that accreditation is a lesser form of registration or licensing. Changing to a system of customs registration or accreditation would be merely a change for the purpose of language without any significant benefit to industry or government.

**Co-regulatory Arrangements:** Co-regulatory arrangements, especially those developed by DAWR, were mentioned in some submissions. One submission stated that *'the base line for such issues [regulatory arrangements] should be co-regulation rather than regulation'*.

DAWR has well-developed approved arrangements across a number of export and import programmes. These include arrangements that allow accredited customs brokers or self-reporting importers to assess documentation associated with the importation of cargo under a compliance agreement arrangement.

DIBP does use co-regulatory arrangements. It has expressed its intention to work with traders and their agents to implement clearance processes ahead of the border where possible. An increased focus on co-regulation and partnership with traders and their service providers is being adopted through initiatives such as the Australian Trusted Trader programme (ATT). Fully operational since 1 July 2016, ATT is a voluntary trade facilitation programme that recognises secure and compliant industry supply chain and trade practices. It seeks to ensure Australia's security and the growth of legitimate trade through incentivising industry self-

compliance, and offering a range of trade facilitation benefits to accredited businesses. A key benefit for Australian Trusted Traders is the ability to pay duties at regular intervals rather than on a consignment basis. The introduction of ATT increases supply chain integrity and efficiency, and allows DIBP to better focus resources on areas of high and unknown risk, in order to better detect illegitimate trade.

However, the requirement for licensing will not be changed. Businesses participating in the ATT initiative still use or employ the services of licensed customs brokers to facilitate the entry of goods into Australia. They may use licensed customs depots or warehouses to store goods prior to entry into the Australian market.

In summary, the Review considers that no suggested model would be more efficient in meeting the objectives for border management. However, there are more effective ways to operate the existing system. Improvements to the existing system are further considered in the subsequent section under TOR2.

## Recommendation 1

**DIBP should retain a licensing regime for customs brokers, depots and warehouses.**

### 7.2 TOR2 – Current Licensing Regimes

TOR2 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 for improving and streamlining current processes. Within TOR2 the following key themes have been explored in further detail to include stakeholder views, key findings, outcomes, recommendations and commentary on implementation. The key themes are:

- Application Process
  - Fit and Proper Checks
  - Electronic Submission of Information
  - Document Requirements
  - Licence Renewals
  - Timeframe for Decision
- Compliance (Including Auditing)
- Excisable Goods and Excise Equivalent Goods (EEGs)
- Movement Permissions
- Licensing Issues
  - Classes of Licences for Customs Brokers
  - NCBLAC
  - Licensing Multiple Facilities

#### 7.2.1 Application Process

A number of agencies across Government have responsibility for licensing (or registering) customs brokers, depots and warehouses. This includes DIBP, DAWR and ATO. Each agency has its own application process. These differ depending on each regulator's requirements. Stakeholders suggested that aligning Government licensing processes, including application processes, could improve transparency, integrity, consistency and reduce duplication of effort and cost.



Across customs licensing, there is no a single application process. There are separate application forms for various licence types - yet the same type of information is requested across most applications.

The application process for licensing customs brokers, depots and warehouses contains a number of elements that are discussed elsewhere in this Report. These include: fit and proper provisions, electronic submission of information, documentation requirements and timeframes for decisions. These matters are considered separately in later sections of this Report.

**Stakeholder Views:** Stakeholders recognised the importance of licensing regimes for customs brokers, depots and warehouses, but expressed the need for changes to streamline these processes. Stakeholders stated there is duplication in current licensing regimes relating to customs brokers, depots and warehouses across different areas of Government under different Acts. Stakeholders illustrated a link between DIBP and ATO licensing for EEG warehouses as a specific area of duplication. In addition, stakeholders highlighted similar duplications between DIBP and DAWR processes for licensing, approval and control of customs depots and warehouses. Furthermore, stakeholders illustrated a connection between the processes of DIBP and the Office of Transport Security (OTS) in the air and seaports space.

Industry commented that there should be one application form for all licences, rather than multiple types of forms for different licences. Stakeholders raised concerns regarding the duplication of information provided across applications as an example. There were requests for clearer requirements, instructions and guidelines (particularly where there are none).

Stakeholders stated that there is considerable scope for aligning, consolidating and simplifying a range of processes across DIBP, DAWR, ATO and OTS. There is a significant opportunity for reducing regulation and red tape.

Industry considered that improvements to the application process should be considered for both initial applications and renewal applications.

**Key Findings:** Historically, different processes were developed by different agencies for those respective areas without significant reference to, or collaboration with, other agencies operating in this space. An activity controlled under the Customs Act is one such area. The Review is an opportunity to align different Government agencies' processes where possible and practicable. Aligning Government application processes for customs brokers, depots and warehouses would provide a more efficient and streamlined system that would reduce the touch points for end users. It would also bring substantial benefit to agencies.

A better aligned system would provide a more effective and efficient licensing regime across all areas of licensing. It could also lead to a more focused and coordinated approach to compliance than the current system, which has agencies considering applications in isolation of other processes.

Alignment reduces the number of applications that have to be made by industry, thus reducing costs and regulatory burden. It would also provide greater assurance to agencies regulating in this space that licence holders (or registered parties) are able to meet the varying requirements in the area. Alignment of DIBP licensing processes would allow a more productive use of DIBP resources and ensure applicants are considered consistently across all licensing activities under the Customs Act.

Alignment would also reflect DIBP's strategic interest in exploring opportunities for technological innovation and enhanced service delivery with its partners. DIBP has also indicated that it will automate routine functions and processes where possible.

**Outcomes:** The Review considers that there are significant time and cost savings to applicants, licensees and agencies from aligning licensing (or registration) processes between agencies.

Accordingly, DIBP should seek to work in collaboration with other relevant agencies, such as ATO, DAWR and OTS to collectively and cooperatively develop a strategy to align current processes. This should provide a more efficient, effective and streamlined licensing regime with higher levels of integrity.

## Recommendation 2

**DIBP should work with other agencies to better align licensing processes.**

**Implementation:** The Review notes that discussions between agencies have already commenced where areas of overlap and potential alignment exist. This recommendation should add impetus to these discussions and provide a framework for discussion of all elements of the licensing regime.

Details of each specific component of the licensing system will be included when each separate issue is considered below.

### 7.2.1.1 Fit and Proper Checks

The requirement for fit and proper checks exists across multiple agencies. They differ in scope and application processes as there are different underlying rationales for the fit and proper checks. For example, DIBP focuses on integrity of individuals and the absence of links to criminals. OTS focuses on transport security. The Aviation Security Identification Cards (ASIC) and Maritime Security Identification Cards (MSIC) schemes are an important element in this.

DIBP conducts fit and proper checks as part of its licensing regimes for customs brokers, depots and warehouses. Fit and proper checks are currently conducted at the initial time of licence application to ensure suitability. No additional formal fit and proper checks are routinely conducted on an individual after the initial fit and proper status has been granted. However, licence holders must maintain their fit and proper status to continue to be licensed. Additional checks can be requested by DIBP to verify this status.

There are limitations with DIBP legislation, which does not allow a sufficiently rigorous and comprehensive consideration of the conduct and history of the applicant's associates. This is a significant impediment when seeking to exclude criminal influence from activities controlled under the Customs Act. This Review notes that DAWR does have an associates test as part of its determination that applicants are fit and proper to carry out biosecurity activities under the Biosecurity Act. There is also a clear statement by DAWR that any changes to the applicant's risk assessment that emerge during its routine compliance checks '*may trigger the need to reconsider the applicant's fitness and propriety*'.

**Stakeholder Views:** Fit and proper checks, and their application across agencies, were raised by stakeholders as an inconsistent practice. Stakeholders were concerned with:

- duplication of processes across agencies
- lack of regular fit and proper checks
- lack of clarity over what is considered during fit and proper checks
- the extent to which fit and proper checks are undertaken by companies and what is required under these company checks.

Stakeholders were firmly of the view that duplication of fit and proper checks across agencies leads to increased costs to Government and industry.

There was consensus among stakeholders that fit and proper checks across agencies should be aligned and there should be a single check to cover all relevant agencies. Stakeholders considered that this would reduce the regulatory burden for industry and agencies, and result in reduced costs and greater efficiencies. There was support from industry for fit and proper applications to be submitted electronically.

Industry was of the view that formal fit and proper checks should be undertaken at regular intervals rather than DIBP's once only at time of application situation. There is some understanding from industry that agency processes that potentially impact on fit and proper checks continue to operate in the background.



Stakeholders considered absence of information sharing between agencies conducting fit and proper checks as a major integrity gap. This could potentially create vulnerabilities.

There is value, according to stakeholders, in DIBP utilising existing fit and proper checks that companies use for their employees. Industry expressed the view that only requiring fit and proper checks for those in positions of management and/or control for custom depots and warehouses leaves the industry vulnerable. Industry queried whether this requirement should be extended to apply to all individuals who have a role in the industry or where the line should be drawn on conducting checks of permanent and casual employees.

**Key Findings:** Aligning fit and proper checks across agencies would streamline the application process, eliminate duplication, reduce costs and increase approval efficiency for Government and industry. It would also decrease regulatory burden for agencies and allow a more efficient use of time and resources.

Having one fit and proper check covering all relevant agencies would provide greater assurance to Government and industry. Alignment would improve the licensing regime's integrity. It would increase each agency's awareness of new information pertaining to licensees or any change in circumstances of licensees reported to other agencies that may cause an individual or company to be reviewed and potentially deemed to be no longer suitable to be licensed. It would provide a holistic view of an entity across all agencies.

There will be cost savings should one set of fit and proper checks be conducted across Government. These costs are not fully cost recovered at present, although this may be further reviewed in the future. Harmonisation of fit and proper checks would reduce costs to DIBP, other agencies and licensees.

A consistent approach by industry to fit and proper checks of all staff including casual employees would improve integrity, decrease vulnerability risks to industry and provide a greater degree of certainty for licence holders that they are complying with their commitments and are upholding industry standards. The Review also notes that while customs brokers are licensed, those working with them, or providing a service to them, are not. These individuals should be subject to some screening to assist with ensuring the integrity of the system, particularly if they have access to ICS. The Review notes NCBLAC's advice that a possible solution includes requesting licensees to provide documented processes identifying the roles of their employees.

Better alignment of Government and commercial checks undertaken by industry would also have integrity benefits, as Government could gain more assurance from checks done on workers who would normally not be in management or control positions but could act in these roles for short periods of time. This could include casual employees.

DIBP and industry may need to carefully consider how to develop a system that provides assurance to all parties that all participants in the industry, not just those in management or control, have been subjected to a defined level of checking.

The Review notes that a fit and proper check is conducted at a point in time and, therefore, cannot remain valid indefinitely. There is a need for continuous review particularly following a change in circumstances of the licensee. There is merit in individuals and companies being selected for fit and proper checks on an intelligence-led, risk-based approach, with audit assurance. DIBP should ensure that the legislative framework is fully supportive of this intelligence-led approach and the ability to utilise third party information in assessment and decision-making processes. There may also be a need to change information requirements requested from applicants to ensure that appropriate information can be collected for assessment by DIBP.

More regular fit and proper checks would provide certainty for licensees that their circumstances will be reviewed in proportion to risk. Responsibility is on individuals to report any significant change in their circumstances as a condition of holding a licence. Mandating licence holders to report changes in circumstances affecting their eligibility could be adopted. This would be enforced through a sanction regime of suspension of status when licence holders fail to report changes. There is also a clear understanding from industry that fit and proper checks continue to be undertaken by Government agencies in the background.

Clarity of fit and proper requirements would similarly provide greater certainty for applicants and licensees. Increased clarity would also make the fit and proper process more streamlined. It should result in

applications having all necessary information and therefore being processed more efficiently and quickly. More importantly, there needs to be the correct scope for ensuring that individuals that present a risk can be better targeted.

Finally, the Review notes that there are more difficulties with undertaking fit and proper checks on persons that do not reside in Australia. This will be further discussed in TOR 5 (see section 7.5).

**Outcomes:** There are advantages from sharing information between agencies and this should be pursued. However, there may be a need to examine current legislative permissions. There are also advantages from formally undertaking fit and proper checks of licensees at regular intervals, in line with risks posed. Further, clarity over who should be assessed by DIBP for fit and proper and what information applicants are required to produce will create a more streamlined system and provide benefits to integrity.

There are savings for Government and industry from DIBP working to align fit and proper checks with other agencies.

## Recommendation 3

**DIBP should seek to align its fit and proper checks with other agencies, with a view to increasing efficiencies and reducing duplication.**

**Implementation:** In implementing this recommendation, DIBP should explore the intent and extent of fit and proper checks undertaken by other relevant agencies. It should look for similarities and differences and simplify and standardise wherever possible. The longer term aim would be a single fit and proper check to cover all agencies. In the interim, DIBP should seek to change its legislation to allow a sufficiently rigorous and comprehensive consideration of the conduct and history of the applicant's associates. DIBP should also ensure in the interim that the legislative framework is fully supportive of this intelligence-led approach and the ability to utilise third party information in assessment and decision-making processes.

In the short term, DIBP should look for synergies and complementarities of fit and proper checks conducted by other agencies. This could allow DIBP to accept and recognise other agencies' fit and proper processes as providing input into (and potentially substantial components of) DIBP checks. Mutual recognition of fit and proper check should be a potential medium term aim. These processes are likely to require legislative change to amend existing fit and proper processes.

A key element of any revised fit and proper check system would be for DIBP to ascertain whether any applicant has not been granted a fit and proper assessment by another agency.

The Review notes the work of the Future Traveller Initiatives forum that incorporates DAWR, OTS and DIBP on alignment of fit and proper checks. The Review encourages this forum to complete its work programme on fit and proper checks.

Implementation should explore whether there are existing Memoranda of Understanding (MOUs) in place between agencies that allows the sharing of personal information of applicants or licensed individuals or entities for administrative purposes. It is recommended that if there are no existing MOUs in this space that DIBP develop one with other relevant agencies. This may assist in ensuring that third party information can be fully incorporated and utilised in assessment and decision-making processes. Any change to fit and proper checks will most likely require legislative amendments to be passed.

DIBP should undertake formal fit and proper checks at defined intervals rather than only once when the customs broker, depot or warehouse licence is initially granted. It should undertake fit and proper checks at least every time an application is made for renewal for customs brokers and as required for depots and warehouses where licences are renewed annually. Triggers for conducting fit and proper checks at other times should also be defined by DIBP to allow its officers to better factor in new information. Legislation would need to be amended to introduce renewal periods and triggers for out of cycle fit and proper checks.



The Review suggests the development of additional guidance material for industry and licence applicants on the scope and the extent of fit and proper checks. This would provide greater understanding from industry and potentially better information flow from industry to DIBP on integrity matters. Analysis of existing fit and proper requirements should be undertaken by DIBP. The guidance derived from this analysis should clearly explain what will be examined and what information and documentation applicants are required to supply at the time the application is made. It should also clearly state what change of circumstance DIBP should be advised what information licensees are required to provide. This guidance could be enhanced with an industry outreach programme to its members and their employees.

A standardised approach to fit and proper checks across the industry of all staff including casual employees would ensure integrity, decrease vulnerability risks to industry and provide a greater degree of certainty for licence holders that they are complying with their commitments and are upholding industry standards. DIBP should explore with industry the extent of fit and proper checks undertaken. Consideration should be given to aligning the various fit and proper checks undertaken by individual companies.

### 7.2.1.2 Electronic Submission of Information

Licence application forms are currently available on the DIBP website. Applications must be completed by applicants in hard copy and sent via mail to ensure original signatures are obtained on applicable documentation. DIBP has no capacity to currently accept licence application forms via an electronic system.

**Stakeholder Views:** There was a very strong call amongst submissions to move to an electronic system for lodging information across the licensing regimes. Stakeholders considered the duplication of licensing process across Government was burdensome and should be aligned. A number of submissions saw electronic lodgement as the preferred means of providing information to Government, not just for licensing.

**Key Findings:** There is strong support from DIBP to move to an electronic system for lodging information for licensing. An electronic system would not only reduce the burden on applicants and licensees, it would reduce the burden on Government processing applications. A further benefit to agencies of alignment would be the ability to promptly obtain statistical data relating to all licensed entities and the work they are performing. This would improve efficiency, streamline processes and reduce timeframes. For example, DIBP's licensing regime is separate from ICS.

Better alignment of electronic systems for lodging information for licensing across agencies would reduce duplication and allow real-time information sharing and notification arrangements. Statistics could also be recorded in real-time through an electronic system. Increased transparency would have integrity benefits.

Electronic submission of information would provide a more streamlined and quicker system, reducing the regulatory burden on industry. DIBP would also benefit from quicker submission of information. It could also apply to fit and proper checks, registration and licensing renewals. It would facilitate future alignment of these processes. This would provide security and protection for personal and business information and provide a means for storage of data which can be used for additional enquires, fit and proper checks and renewal processes.

DIBP has previously indicated that it will focus on maximising and maintaining levels of compliance at the border, and will harness technology to implement efficient and effective business processes through automated ICT solutions. An increased focus on digital and online platforms will support streamlined facilitation of legitimate trade for industry and traders. The introduction of an electronic lodgement system would be a part of this initiative.

**Outcomes:** DIBP should seek to implement an electronic submission system for licensing of customs brokers, depots and warehouses. It should extend this to related processes, such as fit and proper checks.

The electronic system would best serve its purpose if extended to include other agencies to reduce touch points for end users. This would ensure the greatest benefit to applicants, licensees and Government. Alternately, an existing Government system could be extended or modified to suit this purpose.

The development of any electronic system would need to consider other reforms to the licensing system arising from the Review.

## Recommendation 4

**DIBP should seek to implement an electronic system for lodging information for licensing.**

**Implementation:** DIBP should look at best practice when seeking to design and implement an electronic submission system. The system should be able to manage the receipt and processing of applications, along with the results of (approved and refused) fit and proper checks.

A future system should be easier to use than the current application process, have searchable content and be able to link directly, or be part of a compliance system. The system should be able to pre-populate information when multiple facilities are controlled by the same company. It should be able to automatically pre-populate correspondence with licensees on standard matters.

Development and implementation will require comprehensive analysis and an appropriate business plan. DIBP should work closely with other agencies in developing this system to maximise the positive impact of this recommendation. Industry advice and experience will also be useful in designing and implementing an electronic system. Adequate funding for developing an appropriate modern system is a key consideration.

While initially it may be only applicable to DIBP, the system should be scalable to other agencies or be able to interact with other agencies' systems.

Alternately, DIBP could use another agency's system if it meets DIBP requirements and shared use is mutually acceptable.

A change in arrangements is likely to require changes to the current legislative base. Involvement with other agencies may require changes to legislation. Privacy concerns will also require addressing.

### 7.2.1.3 Documentation Requirements

DIBP has several application forms for customs brokers, depots and warehouses.

**Stakeholder Views:** Stakeholders raised concerns over duplication of required information. They questioned whether information currently required is relevant to assessing licence suitability. Stakeholders also commented that reassessing supporting documentation for each application was burdensome to Government and industry. Stakeholders considered that some of the information/documentation requested in the application is not relevant, or necessary.

**Key Findings:** The Review notes that information submitted should provide sufficient opportunity for scrutiny of the entity that it seeking to be licensed, whether this is a first time application or a renewal.

The Review agrees that unnecessary or irrelevant information and duplication of requirements can create a burden on all involved in the process. It considers that documentation requirements should be standardised as much as possible across customs brokers, depots and warehouses. The number of forms should be reduced through consolidation. The Review welcomes advice that DIBP is developing and implementing a revised application form for customs brokers that would cover the three existing licence categories. Revised guidance will be provided to applicants on these developments. This may assist in facilitating applications for customs brokers, as currently, most applications received are incomplete.

This revision will facilitate streamlining of the application preparation, collation and assessment processes. Its purpose is to reduce the number of incomplete applications received by DIBP, and the resulting delays in processing these applications and costs incurred by DIBP and applicants.

The Review considers that licence renewal should not be automatic. As mentioned in Section 7.1, this should be reflected in developing the Implementation Plan for this Report's recommendations. The Review

suggests that a renewal application form should be developed for customs brokers. Renewals should focus on the provision of updated information rather than information that has already been provided to DIBP.

A renewal process would offer an additional opportunity to confirm the accuracy of existing licensee information. The Review notes that timely updating of this information is a licence condition under the Customs Act. It would provide an additional opportunity to check the information according to the compliance profile of the applicant.

There would be benefits in re-examining application forms and documentation requirements for initial and renewal of licences for customs depots and warehouses, noting that unlike customs brokers there is an existing renewal application process for customs depots and warehouses. Ideally the renewal process would be assisted by an automated process that updated information. This would ensure that applicants provide information that is relevant to undertaking an effective and holistic review of the licensee as part of the granting/renewal (or otherwise) of a licence.

DIBP should consider combining depot and warehouse licence application forms as a further step in streamlining licence application processes.

The Review notes that a number of other recommendations such as electronic lodgement of information, classes of licensing for customs brokers and streamlining processes across agencies will impact on documentation requirements.

The Review notes that revising application forms and documentation requirements would address DIBP concerns that the information received at present constrains its ability to assess the suitability of an applicant and, in the case of an entity, personnel in control or management positions. It would offer an opportunity to ensure that information requested was sufficient to allow a complete, holistic assessment of the applicant, including any revisions to the fit and proper checks.

Streamlining the application process between agencies that regulate the activities of customs brokers, depots and warehouses would assist in addressing these matters.

**Outcomes:** DIBP should review the application and documentation requirements and consider the implications these have on regulatory burden, integrity and suitability.

## Recommendation 5

**DIBP should review application and documentation requirements for licensing customs brokers, depots and warehouses.**

**Implementation:** The Review considers that in implementing this recommendation, DIBP should review the documentation required for making a licence application. This should include reviewing all existing content or documentation requirements in regards to this process and assessing what is duplicated, what is out-dated, what is unnecessary and what can be condensed and simplified. In the Review's opinion, this would provide a simpler process for applicants and agencies.

DIBP should review the way application information is presented. Information should be condensed and simplified to allow a more streamlined and efficient process.

The Review suggests that DIBP analyse whether it is possible to combine licence application forms for customs brokers, depots and warehouses to streamline the process. Considerable overlap exists between depot and warehouse applications forms and this should, at a minimum, be addressed.

This recommendation would be impacted by other recommendations, notably the introduction of electronic lodgement of information. The Review suggests that any change to documentation requirements should better position DIBP for the advent of electronic lodgement of information. This would include pre-population of corporate and other forms as this would assist in reducing burden for all parties involved in licensing.

The Review notes that changes to applications or documentation requirements may require legislative amendment. The Customs Act should be reviewed to ensure it covers the correct scope, extent and intent of application and documentation requirements. This should ensure consistency with other published documents that detail application and documentation requirements.

The Review notes that existing guidance material would require amendment and refinement to assist officers and industry to enact any change.

The Review suggests that DIBP seek to recover costs accrued from having to manage incomplete applications as a further step in reducing their frequency.

#### 7.2.1.4 Licence Renewals

DIBP currently licenses customs brokers for up to a three-year period and licenses depots and warehouse for up to a one-year period. The licence renewal process for DIBP does not always align with other agencies undertaking similar renewal processes.

**Stakeholder Views:** There was consensus amongst stakeholders that licence renewal periods and processes should be standardised. However, a wide range of views were presented regarding the duration of licences and frequency of renewals.

Stakeholders considered that the duplication of DIBP and ATO processes for depot and warehouses licences are overly complex and burdensome and should be aligned. Stakeholders further called for consistency in licence periods across Government agencies, which would allow dual/multi-licence holders to have one licence renewal period and process.

**Key Findings:** There is a strong case for aligning the renewal of licences between agencies, including both duration and processes undertaken to renew licences. Standardising duration and renewal periods ensures continuity, improves efficiency, and decreases costs and regulatory burden on industry and agencies.

Too short a timeframe and regulatory burden on all parties increases. Conversely, if timeframes are too long this could have implications on integrity and suitability as considered in the section on fit and proper checks. There is scope for a middle ground between ensuring integrity and suitability to be licensed and effects on regulatory burden and efficient allocation of resources.

Under current DIBP arrangements all customs broker licences are due for renewal at the same time every three years. Customs depot and warehouse licences are due at the same time annually. This causes pressure on DIBP to process licence renewals quickly to meet its customer service obligations. DIBP should consider mechanisms to allow more time to carefully consider each application. This would be beneficial if fit and proper checks are to be undertaken at the time of licence renewals as well as other times according to risks posed.

There are cost recovery implications of any changes to licensing timeframes, as revenue to all relevant agencies may be affected.

Aligning processes may take time to be completed. In the interim, existing timeframes should be maintained.

**Outcomes:** DIBP should explore with other agencies the ability to align licence processes and renewals with other Government agencies. It should also examine the impact on cost recovery of any changes. In the interim, existing licence periods should continue to apply. This should not preclude DIBP from taking unilateral action in the interim.

## Recommendation 6

**DIBP should work with other agencies to align licence renewal processes.**

**Implementation:** The Review notes that a number of other recommendations, such as electronic lodgement of information, will impact on the alignment of licence renewal processes with other agencies.

DIBP will need to revise its application processes and in the interim retain the current three-year licence duration for customs brokers should remain in place. It should retain the current one-year duration for customs depot and warehouse licences.

The Review suggests that DIBP should allow greater consideration to be given to licence renewals for customs brokers, depots and warehouses. The Review notes that changes in documentation requirements are closely linked to licence renewals.

In seeking alignment with other agencies, DIBP will need to gain a detailed understanding of processes utilised by other agencies and look for similarities and differences. It would seek to determine the most efficient manner to integrate the licensing regime.

### 7.2.1.5 Timeframe for Decisions

The current timeframe afforded to DIBP for processing customs broker licence, depot and warehouse applications is 60 days. In the case of customs brokers the time reflects the existing service charter, and is not legislated.

However, an application is deemed to have been refused under current legislation if a decision is not taken within 60 days for customs depots and warehouses.

**Stakeholder Views:** Industry representatives expressed a wide range of views on timeframes for application decisions. These ranged from 15-30 days, 30 days and 60 days. Reasons given for the suggested timeframes diverged, but included allowing DIBP to be stricter with applications and that 60 days is too long and can lead to delays in business activity.

**Key Findings:** The current licensing process for customs brokers requires NCBLAC to provide its advice to the Comptroller-General (or delegate) within 60 days of receipt of a completed application. The process of considering applications comprises a number of steps including:

1. receipt of applications
2. assessment of applications for completeness
3. fit and proper checks
4. examination of applications by NCBLAC members
5. meetings may be arranged between applicants and NCBLAC members
6. referees may be contacted
7. NCBLAC recommendations to the Comptroller-General (or delegate)
8. final decision by Comptroller-General (or delegate).

Other recommendations such as electronic lodgement of information will assist with the timeframes for lodging and receiving applications. It could also assist with completeness as applicants may not be able to lodge an application until all relevant fields are completed.

The Review notes NCBLAC Secretariat advice that there are a number of potential points that cause delays. Many applications are not complete when initially submitted and the Secretariat is required to engage with applicants on a number of occasions to secure a complete application. There are instances when NCBLAC members are not available, but this rarely occurs and alternate arrangements can be made. NCBLAC meetings are often called at short notice to fit with the timeframe. However, some applicants do request a delay in proceedings. Timeframes for fit and proper checks are dependent on resource availability in agencies other than DIBP that contribute to these checks. As these checks are an important part of determining whether an applicant is suitable, delays in completing these processes can delay the provision of NCBLAC advice to the Comptroller-General or his delegate.

Timeframes for contacting referees and preparation of advice to the Comptroller-General (or delegate) should generally be of short duration.

Accordingly, there appears to be little scope to reduce existing timeframes.

The Review does not support calls for a set time-limit. A time clock would of itself be an administrative burden as well as a source of additional cost. It would require sufficient time for all necessary processes to be undertaken within the ordinary course of business, and the consequence of a failure to meet that time limit would need to be specified. One of these consequences would be a request for review of decisions or litigation if the timeframe was not met.

Finally, the Review opposes calls for a provision that deemed a licence to be granted if a decision were not taken within the specified time. It would present a level of intolerable risk to Government, the community and to any entity undertaking this process. It would be contrary to the existing provision for customs depots and warehouses which stipulates that if a decision is not taken within 60 days, the application is deemed to have been refused.

**Outcomes:** DIBP should retain existing arrangements, but should modify the conditions attached to these to ensure a cohesive and succinct process. There is no additional cost for industry associated with this recommendation.

## Recommendation 7

**DIBP should retain the existing timeframe of 60 days for decisions on customs broker, depot and warehouse licensing applications.**

### 7.2.2 Compliance (Including Auditing)

DIBP ensures licensees meet the requirement of the Customs Act by undertaking compliance activities. This includes audits of licensed premises, entities and persons. Other agencies conduct compliance activities against licensees to ensure compliance with relevant legislation.

**Stakeholder Views:** There was consensus from industry that there is significant overlap between agencies in relation to auditing and compliance activities. Stakeholders considered that information sharing between agencies relating to compliance issues should occur.

Stakeholders raised concerns that DIBP and ATO licensed depots and warehouses are infrequently inspected, as compared with DAWR. Stakeholders were concerned about the risks and vulnerabilities this could create. Industry further considered that there is inconsistency throughout regions relating to auditing and compliance activities. Concerns were raised that facilities based outside of metropolitan areas were audited less often and that larger facilities were audited and subjected to closer scrutiny than smaller facilities, even though they may be in the same geographical location.

The consensus from stakeholders is that agencies should conduct joint audits of facilities or customs brokers wherever possible. Joint audits should cover all legislative requirements.

**Key Findings:** Each Government agency conducts audits to ensure that the individual or facility is able to meet all requirements under specific Acts. However, there are differences in the specific criteria used by agencies for auditing facilities or individuals, as well as audit frequencies. This is due to the differing focus of agencies and different legislative requirements. For example, DIBP's focus is on integrity of the individual and absence of links to criminals. The focus from OTS is on transport security.

Government agencies may also have different risk profiles. This may result in them placing a facility in a different risk profile to other agencies who control the same facility.

The Review notes that there are possible areas of overlap between audits undertaken by different agencies. There would be benefits where a single audit could cover the requirements of more than one agency, and ideally for all agencies. Combining audits for more than one agency would reduce burden on industry and Government, ensure compliance and manage vulnerabilities and risks in customs depots and warehouses.

A combined system of audits would streamline the process and ensure the best system for those conducting audits and compliance checks. There would also be savings from combined compliance activities. The Review notes that joint activities are currently being conducted between DIBP and the ATO on dual licensed establishments to ensure compliance by these establishments.

A key concern for all regulators is ensuring consistency of actions, staff, and licensees and licensed premises. The Review notes that DIBP aims to ensure a consistent approach is taken across all regions. The Review suggests that DIBP should examine instances mentioned in submissions, and take corrective action where appropriate.

The Review notes DIBP's advice that it is changing its approach to compliance (including auditing). To ensure a suite of compliance activities and actions can be employed proportionate to the compliance behaviours experienced and the level of risk posed, DIBP's compliance approach is focused on fostering a high level of voluntary compliance while also dealing effectively with those who do not comply with the law.

DIBP achieves this through the following:

- **Nationally Consistent Approach**  
Establish a sustainable transparent, fair, consistent approach to Trade and Goods Compliance.
- **Increase Voluntary Compliance**  
Create an environment that encourages and supports voluntary compliant behaviours for facilitators and traders as participants within the regulatory system.
- **Minimise Revenue Leakage**  
Be an effective collector of revenue. This means an enduring commitment and effort to addressing all factors contributing to revenue shortfall.
- **Improve Trade and Goods Reporting**  
Drive improvement in the collection of information and data about the movement of Trade and Goods across Australia's border. The collections sources include: Trade and Goods Compliance activities, partner agencies, and Industry (facilitators and traders)

The Review strongly supports these initiatives, particularly the development of a holistic view of licensees that includes compliance issues.

**Outcomes:** DIBP should explore aligning compliance processes with other agencies who act in this area. This should not preclude DIBP from taking unilateral action in the interim.

## Recommendation 8

**DIBP should explore aligning compliance (including auditing) processes with other Government agencies.**

**Implementation:** The Review considers that implementation of this recommendation contains four main elements:

- alignment of compliance activities with other agencies
- the need for an effective ICT support for compliance activities
- development of additional guidance material

- examining instances of inconsistent auditing/compliance approaches raised by industry during this Review.

The Review notes that compliance activities are undertaken against a specific legislative base. Discussions between DIBP and other agencies should focus on determining the scope and purpose of each agency's compliance actions. They should explore who undertakes the compliance role and the frequency of compliance activities, scheduling of audits and guidance currently provided to industry and officials, as well as triggers for action in each agency and the consequences from adverse findings. Information storage and utilisation is another important consideration as well as existing and future mechanisms for information sharing between agencies.

The Review notes that compliance activities need adequate ICT support. An ICT system would include a fully integrated and compliant case management system in order to improve the quality and standardisation of data entry. It would enable a viewable history of compliance activities and the resulting impact of the changes on risk ratings. This would assist with ensuring business continuity; strengthening the integrity of the licensing regime; facilitating reporting; allowing for targeted audit and compliance work; and enabling efficient resource management.

Any system would ideally be scalable. At minimum it could be utilised within DIBP, but optimally could be utilised across Government and industry. This would require legislative change and the addressing of privacy concerns.

The Review notes that the development of guidance material suggested under other issues in this Review will assist in developing a better understanding of licensee obligations. It suggests that DIBP consider the development of a specific course for industry on compliance or the inclusion of such material in other course material and specific outreach material for inclusion on its website or direct distribution to licensees.

Finally, the Review suggests that DIBP should consider and examine instances of inconsistent auditing/compliance approaches raised by industry during this Review.

A number of these initiatives would require amendment of the Customs Act and potentially to Acts administered by other agencies.

### 7.2.3 Excisable Goods and Excise Equivalent Goods (EEGs)

EEGs are imported alcohol, tobacco and fuel that, if produced or manufactured in Australia, would be subject to excise duty. From 1 July 2010, responsibility for the administration of EEGs that are warehoused moved from DIBP to ATO.

**Stakeholder Views:** Industry consensus is that there should be one regime to cover excisable goods and EEGs, as there are currently duplications and inconsistencies. Stakeholders suggested the need for consistency and alignment of regimes in the DIBP and ATO spaces. Stakeholders considered that there should be one licensing system and one regime for reporting and compliance.

**Key Findings:** The Review acknowledges the opportunity to streamline and align processes for licensing of EEGs and Excise warehouses. These processes are currently being considered. Accordingly, there will be no further comment in this Report on issues relating to EEGs and Excise warehouses.

### 7.2.4 Movement Permissions

A number of agencies have legislative authority that requires permissions to be granted before imported goods can be moved from one location to another or cleared for entry into the Australian market. There are several categories of movement permissions and varying processes across Government agencies regarding movement applications in which industry are required to adhere to.

**Stakeholder Views:** Industry have suggested that movement permissions should be combined between agencies to allow for faster flow of goods between licensed premises or for entry into the Australian market.

**Key Findings:** The rationale for granting movement permissions can vary quite markedly between agencies. There are different drivers for granting biosecurity and customs permissions. For example, the ATO provides permission for the movement of excisable goods on which excise has not been paid. Under the Customs Act, a movement application, or movement permissions, can be made by an owner, or a customs broker acting on behalf of an owner, to move goods that are subject to customs control.

There is scope to explore whether in some instances granting permissions can be combined or automated. Combined movement permissions would provide an increase in efficiencies across Government agencies and allow for quicker flow of goods between licensed premises. This would reduce regulatory burden and create a more productive, efficient system overall. However, agencies do use different electronic systems and there may be difficulties in ensuring that permissions can flow from one system to another to allow for effective clearance of goods whilst ensuring the location and security of cargo.

**Outcomes:** DIBP should explore aligning movement permission processes with other Government agencies. If possible, DIBP should seek to work with those agencies to develop the most efficient and compliant system possible. This should not preclude DIBP from taking unilateral action in the interim.

## Recommendation 9

**DIBP should explore with other agencies whether there are opportunities to align permissions for movement of goods.**

**Implementation:** The Review notes the need for the identification of permissions granted by various agencies and their respective triggers. Discussions would then follow on the possibilities for alignment of these permissions. In seeking to align permissions, DIBP should ensure that there are no additional costs to industry from implementing this recommendation.

Automation of permissions should be considered by DIBP and other agencies.

Changing permission structures may require legislative amendment. The Review notes that guidance material would be required to assist officers and industry to enact any change.

### 7.2.5 Licensing Issues

This section covers Three Key Issues associated with licensing: classes of licences for customs brokers; NCBLAC; and whether multiple establishments could be covered by a single licence rather than the multiple licences currently required.

#### 7.2.5.1 Classes of Licence for Customs Brokers

There are three customs broker licence categories: Nominee, Sole Trader and Corporate.

**Stakeholder Views:** There were as number of suggestions in submissions on customs broker licence categories and classes including:

- retaining the status quo
- implementing P-Plate licences for customs brokers
- introducing a professional year
- moving ‘away from sole trader licensing whilst maintaining individual and corporate licenses’
- creating three classes of licence for customs brokers (Junior/P Plate, Senior and Principal)

- only licensing corporate licensees.

There were calls for greater scrutiny of specific licence categories. Commentary was made that many corporate licences are held by companies whose management have little or no knowledge of their responsibilities under the Customs Act or the conditions attached to that licence.

A number of submissions argued that licences should only be given to Australian citizens or Australian permanent residents who reside in Australia. The key concern expressed related to 'offshoring'. One submission called for DIBP to clarify this issue particularly against a background of an ageing customs broker workforce.

During the Workshop on Three Key Issues, industry stressed that a key concern was that future licence classification had to be able to attract and retain new entrants to customs broking. Recruitment companies are finding it difficult to encourage people to enter the industry. These comments were made against a background of industry appearing to move away from utilising customs brokers for a wide range of tasks. Compilers are used in larger numbers to undertake the majority of work with a nominee customs broker 'pushing the button' on a customs entry.

Several participants expressed concerns that a significant number of applicants that have completed their approved course are not recommended by NCBLAC for a licence. Some industry representatives thought the expectation by NCBLAC regarding an applicant's level of acquired experience was considered to be higher than what an applicant was able to obtain via formal training. Workshop participants agreed that the status quo would not resolve these matters and that change is required. However, there was no clear consensus on what action should be taken.

Some Workshop participants supported the introduction of a provisional or P-Plate licence system as a means of addressing the knowledge and experience gap identified by NCBLAC and improving the transition from industry entrant to fully licensed customs broker. Issues with the current NCBLAC system are discussed under the following section on NCBLAC (see section 7.2.5.2). However, other stakeholders did not support this view.

**Key Findings:** Each option was analysed by the Review.

The Review notes that all options other than the status quo would require policy development and changes to the Customs Act to be implemented. There could also be an impact on cost recovery charges following any change.

The status quo would allow the retention of a system that is generally well understood. There is also a strong sense that the current customs broker licence categories are working adequately. Proponents of the status quo argued that there was no consensus of how to change customs broker licence categories.

However, maintaining the status quo does not address industry concerns of attracting and retaining new customs brokers. Other options that better address concerns have been put forward and there are still concerns about the level of understanding and knowledge of customs broking by management of corporate entities under the existing system. Other industry parties disagreed that it was necessary for managers of large organisations to have a very detailed knowledge of customs broking.

Provisional, or P-Plate, licences for customs brokers could provide a clear pathway into customs broking. It could potentially increase the number of new entrants to customs broking by providing a lower hurdle than attempting to gain a full licence. Provisional customs brokers would be better placed because of additional industry experience gained during the provisional licensing period to become fully licensed at the end of the provisional period. It was supported some participants in the Workshop on Three Key Issues, while others saw considerable issues with this concept.

There would be a need to effectively manage any perceived conflicts of interest that could arise from situations where a company that has sponsored an applicant may be seen to have a vested interest in the success of that applicant in finalising a provisional period.

There remains the possibility that the use of a provisional licence may not result in increased numbers of new entrants. There are concerns about what roles could be fulfilled by provisional customs brokers *vis a vis* fully licensed customs brokers. For example, requiring that all entries prepared by a probationary licensee be approved by a full licence holder before lodgement would simply replicate the present regime under which unlicensed compiler/classifiers can enter data which are then lodged by a licensed customs broker after checking. This could be mitigated by transferring responsibility and accountability as the probationary licensee gains experience.

A provisional licence model requires increased assessment by the regulator. This model could be costlier to administer. An applicant is first assessed to be granted a provisional licence and again at the end of the provisional period. There is also the issue of the future of provisional licence holders who are assessed as not meeting the required standards while holding a provisional licence.

The introduction of a professional year has many similar advantages and disadvantages to the introduction of a provisional licence. There was less support of this concept in submissions and during the Workshop on Three Key Issues.

Removing the sole trader licence category would streamline the system with existing sole traders moving to the corporate category. However, there may be a reduction in competition if sole traders leave the industry and there may be fewer opportunities for future customs brokers with the removal of that licence category.

Creating three classes of licence for customs brokers (Junior/P-Plate, Senior and Principal) would create a pathway for customs brokers and a potential mechanism for recognition of customs broker capability and experience. A provisional licence category would have additional benefits and disadvantages listed above. The three class system would also be costlier for new entrants, existing participants and DIBP. It would require an assessment by NCBLAC at each stage – for entry into customs broking as a provisional licensee, to gain a full ‘*Senior*’ licence and assessment of ability to be classified as a ‘*Principal*’ customs broker. There also may be limited benefits to nominee customs brokers after a ‘*Senior*’ licence is obtained.

The final option is licensing corporate entities only, with all other customs brokers subject to a registration process. Under this option, responsibility would reside with licensed entities to ensure that individuals employed to lodge entries on their behalf are fit and proper persons and appropriately educated and experienced. This option would allow DIBP to focus compliance activities on major entities and place additional responsibilities on corporates. Whilst customs brokers would no longer be licensed, a registration process would still ensure that an appropriate standard is maintained for customs brokers. However, the Review agrees with industry views that this is not a preferred option. It notes its comments (see section 7.1) that, there is no significant difference between the terms ‘*licensing*’ and ‘*registration*’, and this option would result in an alternate licensing regime for customs brokers that has no significant benefits.

**Outcomes:** The Review considers that in the absence of consensus, and with polarised views, the status quo should continue. Proponents of concepts such as the introduction of a provisional or P-Plate licence should seek to further explore and develop these concepts. The Review envisages that these concepts will be discussed in detail in subsequent industry-DIBP meetings.

The Review notes that some candidates will be ready to obtain a ‘full’ customs broker licence without the need for a provisional licence.

## Recommendation 10

**DIBP should continue with existing licence categories for customs brokers.**

### 7.2.5.2 NCBLAC

NCBLAC is comprised of three members. It has an independent Chair who has special knowledge or skill in relation to the matters on which NCBLAC advises. This assists in ensuring that NCBLAC processes and



advice are in accordance with all legal requirements for procedural fairness and statutory compliance. An Industry Member ensures that NCBLAC advice is informed by and takes into account an industry perspective of contemporary customs broking practice. The Industry Member is appointed on the nomination of an organisation that represents customs brokers. There is also a Commonwealth Member, whose role is to ensure that NCBLAC advice is similarly informed by and takes into consideration the counterpart perspective of contemporary customs administration.

NCBLAC has four statutory functions under the Customs Act:

- to investigate and report on applications referred to it by the Comptroller-General
- to investigate and report on questions referred to it by the Comptroller-General
- to advise the Comptroller-General in relation to the approval of courses of study
- to advise the Comptroller-General, on request, on the standards that customs brokers should meet in the performance of their duties and obligations as customs brokers.

The two core functions of NCBLAC are to investigate and report on applications for a customs broker's licence and misconduct matters referred to it by the Comptroller-General. These are matters, which if proved and depending on seriousness, might lead to a decision by the Comptroller-General to reprimand, suspend or cancel a custom broker's licence.

The current legislative framework is very clear that the Comptroller-General cannot grant or refuse to grant a licence unless the licence application has been referred to NCBLAC for investigation and report, and the Comptroller-General has considered that report.

The Comptroller-General is not beholden to NCBLAC to take action on issues involving licensing of customs brokers. Without any requirement for any prior involvement of or advice from NCBLAC, the Comptroller-General can:

- monitor conduct to detect potential non-compliance with the law by a customs broker or brokerage
- investigate such matters to ascertain whether there has in fact been such non-compliance
- issue an infringement notice where he or she is satisfied that non-compliance has been detected
- prepare a prosecution brief where he or she is satisfied that detected non-compliance is so serious that action beyond an infringement notice is warranted
- issue a demand for any duty short paid as a result of that non-compliance
- initiate debt recovery action where such a demand is not paid
- impose additional conditions on a customs broker licence designed to prevent a repetition of non-compliance
- where he or she considers it appropriate having regard to the seriousness of the non-compliance, suspend the licence of a customs broker or brokerage.

The Customs Act requires a referral to NCBLAC in relation to customs broker non-compliance where a customs broker's licence has been suspended or when the Comptroller-General seeks advice as to whether disciplinary action is warranted.

In reality, DIBP investigates non-compliance issues. NCBLAC does not. NCBLAC examines whether non-compliance issues warrant action being taken against licensees. NCBLAC reports to the Comptroller-General, who can then decide whether to:

- reprimand a customs broker
- suspend or further suspend a customs broker licence
- not renew a customs broker licence on expiration

- revoke a customs broker licence
- allow a customs broker licence to remain in force.

Any adverse decision by the Comptroller-General is appellable to the AAT.

**Stakeholder Views:** There was substantial and wide-ranging commentary on the role, membership and performance of NCBLAC. A number of options for NCBLAC were suggested by stakeholders:

- retaining existing arrangements and responsibilities for NCBLAC
- expanding NCBLAC's membership
- expanding NCBLAC's role to include customs brokers, depots and warehouses
- replacing NCBLAC with another mechanism (including industry self-regulation)
- dissolving NCBLAC and resuming its functions into DIBP.

Some submissions noted the need for a clear outline of NCBLAC's role, its assessment standards and its use of interviews. Concern was expressed regarding visibility of NCBLAC processes. Other submissions questioned what should be considered when instances of non-compliance are sent to NCBLAC for review. There was a call by some to make greater use of referrals to NCBLAC in relation to disciplinary measures.

Suggestions were made in some submissions on the expansion of its membership, although some stakeholders considered that the current structure is suitable to its role. Some submissions suggested the inclusion of additional experienced industry representative, to be drawn from the logistics industry. Others sought the addition of another experienced customs broker. There were calls for DAWR to be represented given that customs brokers have to comply with biosecurity legislation.

The method of seeking nominations for industry members to NCBLAC was also raised as an issue. Industry participants at the Workshop on Three Key Issues noted that both the regulator and industry have an interest in ensuring that the best individuals are selected as committee members. There was a call for a wider range of industry (e.g. AFIF, CBFCA, Freight Trade Alliance, CAPEC) to have input into the selection of the industry representative.

The Workshop on Three Key Issues discussed a number of possible options regarding the future of NCBLAC. Workshop participants expressed a preference for the retention of existing NCBLAC arrangements which they considered '*not to be broken*'. It was generally felt that NCBLAC's current scope (i.e. customs broker licensing only) should not be expanded because of a likely adverse effect on timeframes for decision. A majority generally agreed that little, if any, benefit would be gained by giving NCBLAC decision-making powers on licences.

Workshop participants reiterated calls to streamline processes in order to limit the need for interviews of licence applicants. Participants indicated that the effectiveness of current arrangements could be improved. This could include gaining a better understanding of why applicants are unsuccessful and providing better information to potential applicants to manage their expectations about when they should apply and what acquired experience they need to be able to demonstrate. There was recognition of the need for improvement in the quality of written applications and referee reports received by the NCBLAC Secretariat.

**Key Findings:** Each option was analysed by the Review. The Review notes that all options other than the status quo would require policy development and changes to the Customs Act to be implemented. There could also be an impact on cost recovery charges following any change.

Retaining existing arrangements for NCBLAC would acknowledge the views of some stakeholders that the mechanism is well understood and has worked to date. It was the preferred outcome of the Workshop on Three Key Issues. The Review notes that these arrangements are longstanding. A Committee of Inquiry, with the same composition as NCBLAC, was first established in 1959. It dealt with disciplinary matters. In 1980, provisions regarding agent licensing were introduced in much their current form, including a Licensing Advisory Committee with essentially the same functions, composition and powers as NCBLAC.



At the same time many submissions conveyed widespread concern with aspects of the practical implementation of existing NCBLAC arrangements. These concerns were echoed during the Workshop on Three Key Issues. The Review considers that these concerns need to be addressed.

The Review notes DIBP advice that existing NCBLAC arrangements are not fully cost recovered. For example, NCBLAC travel costs and sitting fees in the second half of 2016 were of the order of \$80,000. Applications over the same period raised approximately \$21,000. Costs of DIBP officers in the NCBLAC Secretariat and the Australian Government representative, venue and security costs for NCBLAC interviews and costs of fit and proper checks undertaken on applicants were not included.

There were limited calls for NCBLAC to be the decision maker on licence applications. Reconstituting NCBLAC as the decision maker rather than as a recommendatory body would eliminate some “red-tape” and speed up and streamline the licensing process, albeit only a little. Submissions noted that the vast majority of NCBLAC recommendations have been accepted by the Comptroller-General or delegate. However, the Review notes that there is little to be gained and potentially benefit to be lost from the Comptroller-General losing the ability to make decisions about licensing, particularly against a background of increased focus on integrity of the licensing regime.

The second option would involve the expansion of NCBLAC’s membership to include additional industry expertise, DAWR representation or both. Submissions noted that the inclusion of industry experience across the whole of the import sector would be beneficial. However, the Review notes that there was no conclusive argument put forward why customs brokers should have a greater number of representatives on NCBLAC than the Australian Government.

The Review considers that the present composition ensures that both Government and industry are represented. It notes that NCBLAC’s decisions are made by consensus without sectional disagreement. An expansion of membership could potentially slow decisions further with no real improvement in the quality of decision making.

The constitution of NCBLAC ensures that all relevant matters are adequately taken into consideration. The industry perspective may include insight into the practical requirements of customs broking when considering licence applications and when considering issues relating to compliance and disciplinary matters. The industry perspective is useful in understanding whether there are mitigating factors when examining non-compliance. Alternatively, it may clarify if non-compliance was readily avoidable and therefore more serious than may otherwise have appeared.

Submissions noted that adding a biosecurity perspective would reflect the fact that customs brokers are required to comply with the Biosecurity Act as well as the Customs Act. However, many other agencies are stakeholders in the functions performed by customs brokers and there would be little benefit from having every agency represented on NCBLAC. The Review notes NCBLAC’s submission that it actively and routinely assesses licence applicants for their knowledge and experience across all areas of import-related regulation, and not just those administered directly by DIBP. Further, NCBLAC has the option of seeking specific expertise should it be required.

The Review notes that an expansion of the membership of NCBLAC would not address all stakeholder concerns about how NCBLAC operates. It would be costlier to run, and these costs would need to be recovered from industry. Decision making could take longer as it may be more difficult to assemble a larger number of representatives. It could also be seen to decrease DIBP’s role at a time of increased Government focus on the licensing regime’s integrity.

The third option considered would expand NCBLAC’s role to include customs brokers, depots and warehouses. This would result in a single customs licensing mechanism. It could bring a consistent approach across licensing in the import sector and provide a greater focus on integrity in assessing depots and warehouses. However, NCBLAC would need additional expertise in managing depots and warehouses to assess applications and these changes would result in increased costs to industry and Government. Finally,

this change would not address stakeholder concerns about aspects of the present practical implementation of NCBLAC processes.

The fourth option considered was replacing NCBLAC with a new mechanism. This would allow a fresh start for Government and industry and address current concerns with NCBLAC. Any new mechanism would have establishment costs and take some time to operate effectively. The new mechanism may lead to the same issues currently experienced with NCBLAC. There is no widespread support for a new mechanism.

The final option considered was for NCBLAC to be dissolved and its functions resumed into DIBP. This would be the lowest cost option and would provide the quickest possible timeframes for decision making. However, there would be a loss of independence and industry representation, unless industry advice could be obtained through specific consultation mechanisms.

Further, NCBLAC has certain coercive powers that the Comptroller-General does not have that would be lost if NCBLAC was dissolved. NCBLAC has the power to summons witnesses, compel the production of documents and require witnesses to answer questions. Providing false or misleading evidence to NCBLAC is an offence under the Criminal Code Act.

There is a question, however, whether all detected cases of non-compliance by customs broker should require referral to NCBLAC. There would be circumstances that are so egregious and so obviously deserving of disciplinary action that referral to NCBLAC should not be required.

The Review considers that referral to NCBLAC should not be required where a customs broker has been convicted of an offence against the Customs Act or other relevant laws. In such a situation, the Comptroller-General would be sufficiently informed to make a decision on licence revocation or other disciplinary action without the need for further evidence or advice.

In other circumstances, the Review considers that referral to NCBLAC remains appropriate.

**Outcomes:** The Review agrees with Workshop participants that existing NCBLAC arrangements should continue for considering licence applications for customs brokers. It considers that the scope should continue to be restricted to customs brokers and not extended to customs depots or warehouses.

The Review further considers that there would be benefits to industry and DIBP from increased clarity and transparency of existing NCBLAC licensing processes and procedures.

There is a need to clarify and more effectively document the referral process to NCBLAC and the demarcation of roles between DIBP (in particular the ABF) and NCBLAC. This would focus on the investigative function and the expectation around the provision of documents when referring to NCBLAC.

The Review suggests that DIBP discuss with industry arrangements for selection of future industry NCBLAC representatives and that the Customs Act be amended to make clear that the Comptroller-General can seek nominations from multiple organisations that represent customs brokers.

The Review considers that the Customs Act should be amended to remove the necessity for the Comptroller-General to seek NCBLAC advice on disciplinary matters where a customs broker has been convicted of an offence against the Customs Act or other relevant laws.

## Recommendation 11

**The *Customs Act 1901* should be amended:**

- **to allow disciplinary decisions to be made by the Comptroller-General without the necessity for reference to NCBLAC where a broker has been prosecuted and found by a court (whether after a trial or following a plea of guilty) to have committed an offence against the Customs laws or against other laws in relation to an importation of goods and the elements of that offence require guilty intent**

- to make clear that, in appointing Industry Members to NCBLAC, the Comptroller-General can seek nominations from multiple organisations that represent brokers.

**Implementation:** The Review considers that additional guidance may address concerns that new customs brokers do not understand the depth of the position and that better education and awareness regarding the actual role would help to improve the quality of applications and to reduce the number of applicants that require to be interviewed. This guidance should be developed by DIBP in consultation with NCBLAC.

The Review notes NCBLAC's commentary that referee reports provided by present or past employers in support of applicants are not reliable as a test of relevant experience. The Review notes that NCBLAC has issued guidelines for referees to assist them in preparing references in support of licence applicants. However, in light of NCBLAC's comments on the quality of references, the Review suggests that NCBLAC work with DIBP to provide further guidance to industry on expectations of references for applicants. It also suggests that NCBLAC directly contact any referees to clarify any vagaries in references.

Consideration should be given to the way NCBLAC's industry member or deputy industry member is utilised. At present, the alternate industry member is utilised when the primary member is unavailable but does not take into account factors such as proximity of either member to the meeting venue. This may allow cost savings to be made, for example, when hearings are held in a location where one industry member is based. An amendment to the Customs Act would be required to clarify whether the NCBLAC Chair can direct whether the industry member or deputy industry member is to act at any time.

DIBP will need to work closely with NCBLAC to clarify and more effectively document the referral process. DIBP should clearly indicate the demarcation of its role (in particular the ABF) and NCBLAC. The investigative function and the expectation around the provision of documents when referring to NCBLAC should be covered in the work.

DIBP would need to engage with industry associations to determine a merit-based industry representative selection process. This may require further refinement of the Customs Act.

The Customs Act would need to be amended to remove the necessity for the Comptroller-General to seek NCBLAC advice on disciplinary matters where a customs broker has been convicted of an offence against the Customs Act or other relevant laws.

DIBP would need to update its website and provide guidance to industry on these changes and their effects on licensed customs brokers.

### 7.2.5.3 Licensing Multiple Facilities

**Stakeholder Views:** Some submissions argued that a single licence should cover multiple facilities controlled by the same entity. Currently each facility is covered by a separate licence.

According to submissions, a single licence would include companies that are vertically integrated (customs brokers, depots and warehouses) as well as those that operate a number of depots or warehouses (including duty free store chains). Submissions noted significant savings for licence holders.

This issue was discussed at length during the Workshop on Three Key Issues. Stakeholders considered that the ideal future state would be for a 'Single Window to Government' model covering all regulatory requirements. It would be risk-based, modularised and tailored to the nature of each business. It would encompass necessary permissions from DAWR, OTS, DIBP and ATO according to the intent and coverage of each business. There would be a single process to apply or renew a single licence. Participants in the Workshop noted that the licensing of one facility by multiple agencies resulted in regulatory burden. There are opportunities to have a single licence to cover approval by multiple agencies.

Workshop participants agreed that in the interim, there are potential benefits to merging custom depot and warehouse licences. Industry identified potential efficiency and compliance gains for the management of 'time-up' goods. This would require mandatory reporting of 'time-up' goods and operators taking ownership

and being responsible for the destruction of goods. There was no support for merging these licenses if it resulted in customs depot operators being exposed to additional requirements or costs associated with customs warehouse licences.

The Workshop noted that administration of existing licensing arrangements could be simplified by reviewing how warehouses are defined. For example, warehouses for the same entity located within the boundaries of the same port (approved under the Customs Act) are currently considered to be separate warehouses.

Industry participants strongly supported removing the duplication of licensing requirements for excise goods i.e. one establishment needs to be licensed under both the Customs and Excise Acts (store/manufacture goods). The requirements under each Act are essentially the same.

**Key Findings:** The Review notes that the current requirement to list each establishment separately regardless of circumstances is too rigid. The Review considers that there would be benefits to DIBP and industry from introducing more flexible licensing arrangements.

The Review notes industry comments made at the Workshop on Three Key Issues about changes in business practices regarding the storage of goods under customs control and that the distinction between customs depots and warehouses has become more blurred in recent times. It notes that in some instances the separation can be as little as a painted line on the floor in a large facility.

DIBP should work closely with industry to develop options that would allow a single licence covering multiple facilities controlled by the same entity under the Customs Act. There is merit in DIBP reviewing whether there continues to be a need for distinguishing between customs depots and warehouses, given current industry practices.

Facilities covered by a licence should be listed along with any establishment-specific conditions. These conditions associated with the licence could be used to determine which activities can be conducted at the premises, operating much as driver's licence vehicle classes do.

The Review notes that this change would not remove the need for each individual facility to be inspected. It would not be subject to different compliance activity or audit schedules as a consequence of being part of a single licence arrangement. Complexities in reporting in ICS will need to be further explored.

The Review agrees with industry that the longer term aim should be the development of a single licence system that would cover all agencies involved in managing the border and notes that the current review of EEGs may impact on this point.

## Recommendation 12

**DIBP should develop and implement a more flexible licensing system that would allow a single licence to cover multiple facilities controlled by the same entity under the *Customs Act 1901*.**

**Implementation:** The Review notes that there is considerable policy development work to be done to fully develop the concept of a more flexible licensing system that would allow a single licence to cover multiple facilities controlled by the same entity under the Customs Act.

This development work would include a clear indication of the situations and circumstances where a single licence could cover multiple facilities. It should also indicate the circumstances where this would not be permitted. It would need to articulate compliance arrangements and in broad terms the consequences for individual facilities and the licence holder of adverse findings at a facility level.

The Review notes that legislative change would be required to implement this recommendation.

The Review has been advised that the system currently operated by DIBP would prevent a single licence covering multiple sites. To remove duplication and consolidate multiple sites under a single licence, a new ICT system is required or significant enhancements would be required to the existing system.



The Review notes that a more flexible licensing system that would allow a single licence to cover multiple facilities controlled by the same entity under the Customs Act in only an initial step in developing whole of government arrangements. Accordingly, the Review considers that as a long term aim, consideration should be given to creating a single licence that would allow recognition by agencies under their respective legislation. There are considerable similarities in ATO, DAWR and DIBP requirements but there are additional/varied requirements that need to be considered during site inspections.

Although a single licence may be achievable for the majority of warehouse/depot licence holders, there may still be a number of high risk premises. These would require additional attention to ensure compliance with other legislation, such as the Biosecurity Act.

Application requirements, electronic processing and alignment of compliance arrangements are important considerations to achieve a single licence that meets whole of government requirements.

## 7.3 TOR3 – Regulatory Burden

The third TOR requested stakeholders to assess the regulatory burden of the current licensing regimes and to 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.

The Review agrees that there is significant opportunity to reduce regulatory burden for both industry and Government. These have been identified in the previous section on TOR2.

Submissions raised the use of bonds, securities and indemnities and concerns about an ageing customs broker workforce. They also specifically commented on the increased regulatory burden on DIBP if shorter timeframes for decisions or a stop-clock are implemented. These issues have been addressed below.

### 7.3.1 Use of Bonds, Securities and Indemnities

The use of bonds, securities and indemnities assists the protection of revenue and compliance with the Customs Act by ensuring DIBP has some guarantee that goods will be stored/used as intended and according to prescribed conditions.

**Stakeholder Views:** Stakeholders offered minimal support for the continued use of securities, bonds and indemnities. Stakeholders considered that their use to be out-dated and unnecessary. A *'one strike and you are out'* scenario where a licence to be suspended following failure to pay was suggested to replace the current system and use of bonds, securities and indemnities. There was also a view that there were sufficient powers in the Customs Act to manage instances of non-compliance.

Alternate arrangements were suggested, such as the use of trust accounts and professional indemnity insurance. One submission indicated that the requirement to maintain public liability insurance at all times should be included as an ongoing licence condition.

**Key Findings:** Prior to the introduction of the *Customs Regulations 2015*, warehouse licence holders were required to provide monetary security to DIBP for the protection of revenue. Post introduction of the *Customs Regulations 2015*, this requirement was removed. DIBP has retained the right to take securities where necessary in the Customs Act. The Review considers this to be a necessary power and recommends that DIBP should continue to retain the right to request a monetary security.

During the Review, agencies supported retaining the right to take securities when deemed necessary.

The Review identified a lack of process regarding depots in relation to securities and indemnities. It is suggested that DIBP explore whether securities should be taken from depots as well as warehouses.

**Outcomes:** DIBP should retain the right to take bonds, securities and indemnities on a case-by-case basis. DIBP should consider whether to include the use of trust accounts and/or professional indemnity insurance.

DIBP should examine whether depots should be subjected to the same processes as warehouses in regards to bonds, securities and indemnities.

There is no additional cost associated with this recommendation.

## Recommendation 13

**DIBP should retain the right to use bonds, securities and indemnities.**

### 7.3.2 Number of Customs Brokers

There is consensus across industry for a need to increase the number of individual licensed customs brokers. According to industry, a perceived decline in individual licensed customs brokers, along with a lack of experience due to an ageing workforce, will result in less experienced brokers over the next five years.

**Stakeholder Views:** Stakeholders presented the view that increased regulatory burden placed on licensees caused difficulty in finding replacement customs brokers. Stakeholders did not offer solutions to this issue, but did note the importance of maintaining integrity and compliance and training standards.

**Key Findings:** The two viewpoints provided by stakeholders would appear to be contradictory – the licensing system is too burdensome but licensing standards should be maintained.

The Review did not examine the age profile of customs brokers but notes that the number of licensed customs brokers at 30 December 2016 (2415) was greater than at 1 July 2015 (2329). It further notes that stakeholder commentary in other sections of this Report has indicated that changing the categories of customs broker licensing may result in increased opportunity for new entrants into customs broking, without a dilution of current standards. The Review considers that these changes would address any issues related to regulatory burden. The changes would offer an opportunity for new entrants to learn from and be mentored by more senior customs brokers, to help meet the future supply of customs brokers.

**Outcomes:** Actions suggested in other sections of the Report should address the regulatory burden on customs brokers. There is no additional action required on this point.

### 7.3.3 Applicability of Additional Licence Conditions

In July 2012 DIBP added additional licence conditions for all customs brokers. Questions have been raised during the Review regarding the applicability of additional licensing conditions.

**Stakeholder Views:** Stakeholders expressed diverging views on additional licence conditions. Some stakeholders were supportive of additional licence conditions and argued they are an effective means of dealing with issues, while others consider them to be harsh and restrictive on customs brokers. Stakeholders expressed a view that some additional conditions are contradictory to the Customs Act. Stakeholders considered that some additional conditions are not relevant to the circumstances of licence holders.

**Key Findings:** The application of additional conditions on licences is a standard regulatory tool. These conditions can be applied to individual or specific groups of licensees or to all licensees. Additional licence conditions were imposed on all customs brokers in July 2012. The imposed conditions are:

- ACBPS (now DIBP) may request fit and proper checks to be conducted for the licence holder or any person that participates in the operations of the customs brokerage, at any time
- a licence holder must notify ACBPS of any false, misleading or incomplete information, as soon as practicable, once they become aware of the anomaly

- a licence holder must not allow ACPBS systems or information to be used for any unauthorised purpose
- introduction of Continuing Professional Development (CPD).

The imposition of additional conditions stemmed from demonstrated failings in the trust relationship between customs brokers and Australian Customs and Border Protection Service (now DIBP) at the time and a lack of an enforcement mechanism. This change was part of a suite of initiatives intended to reduce vulnerabilities.

Most of the commentary from stakeholders centred on the second additional requirement. It indicated that customs brokers find it difficult to inform on clients and on fellow employees or supervisors. However, the expectations associated with the role of a customs broker include that they will act as an extension of DIBP. In these instances, the Review understands that the primary obligation of a licensed customs broker is to provide advice to agencies on irregularities. Failure to do so would be a breach of licence conditions.

There was commentary on the wording of various conditions and the Review considers it timely for all additional conditions to be reviewed by DIBP to ensure relevance. These additional conditions should be clear, concise and easily understandable. Guidance material should be reviewed at the same time to ensure it is current and easily understood.

The Review notes that a statutory requirement exists that licensees need to update information relating to their licence within 30 days. This requirement, according to DIBP, is not always met by licensees. There appears to be little regular monitoring or enforcement action on this important integrity measure. The Review urges licensees to fulfil this requirement and welcomes DIBP advice that monitoring and enforcement activities will increase on licensees to ensure that information is regularly updated.

**Outcomes:** DIBP should examine existing licence conditions to ensure they are either consistent or relevant to intended aims, and are clear and easily understood. DIBP should examine and, if necessary, provide additional or clearer guidance on the existing additional licence conditions.

There are no additional costs to industry from the following recommendation.

## Recommendation 14

**DIBP should re-examine the additional conditions it includes on licences to ensure that they are sufficiently clear and provide guidance**

**Implementation:** In re-examining the additional conditions, DIBP should also ensure that additional licence conditions are written in plain English and can be easily understood and interpreted.

To assist with this understanding, DIBP should prepare further guidance material for licensees on additional licence conditions.

### 7.4 TOR4 – Future of Licensing Regimes

The Review considers that a licensing regime, or equivalent system, will be required by Government in the foreseeable future to meet its aims across the Customs Act. It is also likely to continue to be required for other Government legislation.

There is no ability, nor appetite, for agencies to stop and closely inspect all goods that cross the border. There is also an understanding that individuals such as customs brokers and managers in customs depots and warehouses play an increasingly important role in supply chain security.

In the long term industry should position itself to develop, trial and implement an assurance system that would undertake the licensing role for customs brokers, depots and warehouses. The assurance system would be auditable by relevant agencies to ensure that it continues to meet all legislative requirements.

This would allow industry maximum flexibility in how it meets the legislative framework as well as an opportunity to further reduce regulatory burden and costs. The Assurance System could also incorporate the transport arrangements for controlled cargo between licensed facilities.

In the interim, the current customs licensing regimes should be retained, not replaced. Improvements and enhancements to the licensing regime should be implemented to ensure its continuing effectiveness, integrity and relevance. These improvements and enhancements have been described in previous sections.

The Review notes that all stakeholders indicated that the current licensing regime should be retained, but streamlined and simplified where it is possible. There is a strong sense from stakeholders that the three core components of the customs broker licensing regime (fit and proper checks, approved academic pathway and appropriate acquired experience) is the right balance.

The Review suggests that in the longer term depot and warehouse management will be subject to conditions stipulating an approved academic pathway and appropriate acquired experience as part of the involvement in this industry. This would be in addition to the current fit and proper checks.

Finally, this Review is the first for some time. Given the amount of dynamic change in international trade flows, trade policy and trade agreements that is likely to occur in the next decade, the Review suggests that the customs licensing regime should be subject to regular reviews. The Review notes that reviews could be initiated following constructive suggestions from industry and be done on an ad hoc basis rather than through a formal process.

## 7.5 TOR5 – Integrity of Licensing Regimes

The integrity of the licensing regime and its individual components are of paramount importance to Government, industry and the general public. This TOR considers issues raised on the integrity of the licensing regime.

**Stakeholder Views:** The Workshop on Integrity identified a need to strengthen regulations and compliance activities. Concerns were also raised relating to fit and proper checks, ICS and security, the opportunity for ‘piggy backing’ activities, and risks associated with the improper use of licensed customs brokers’ credentials. It raised the notion of improved education and awareness, along with greater emphasis on compliance activities aimed at securing the overall supply chain. Other concerns were raised that fall outside the Review’s scope. These included the lack of compliance activities undertaken at destruction of goods sites and the contrast between destruction processes for domestic and internationally sourced products. The Review has referred these matters to the relevant areas of DIBP and will not comment further.

**Key Findings:** The Review notes that many of the above-mentioned recommendations would strengthen the integrity of the licensing regime, as do a number of current DIBP initiatives, such as the ATT programme. The Review notes feedback from stakeholders that ATT encourages a stronger partnership between Government and law abiding businesses through shared responsibility and transparency. The programme was designed in accordance with the WCO Framework of Standards to Secure and Facilitate Global Trade. Businesses that meet or exceed international supply chain and trade compliance standards present less risk at the border.

On integrity issues, the licensing regime would interact with ATT through the use of licensed, Australian-based customs brokers and potentially through licensed customs depots and warehouses. Integrity measures such as fit and proper checks on licensed customs brokers and those in management and control positions in licensed entities would strengthen ATT pathways. The Review notes that there are no specific fit and proper tests in the ATT programme, however DIBP is currently exploring whether such a test is required for ATT purposes, and if so, whether there is an opportunity to align this with requirements of similar border programmes such as OTS’ Known Consignor Scheme and DAWR arrangements.

The Review notes that ATT is anticipated to grow and evolve as DIBP works with partner agencies to integrate and harmonise whole of government requirements at the border. This development will contribute in a significant manner to the greater integrity and efficiency of the import control system.

There are, however, a number of further measures that should be undertaken to further strengthen the licensing regime's integrity. Better processes for dealing with misconduct will be established. This will assist in assessing the range of available treatments to ensure these are used effectively and appropriately in response to those few licensed entities that do not do the right thing.

The Review considers that the values and role of customs brokers could be encapsulated in a charter or code of conduct for customs brokers. It would send an important message of the importance of the role of customs brokers and the values and integrity that are associated with that role. It would reinforce the professional nature of customs broking and be consistent with practices in a number of regulated professions. The Review suggests that industry develop such a document. The Review notes that endorsement by Government would also increase its importance and relevance. One submission indicated that this could be done by the Comptroller-General rather than through changes to the Customs Act.

Supply chain security management relies on both industry and agencies to effectively implement security measures. A robust system of security awareness training and mandatory reporting protocols are vital to the integrity of the overall licensing regime.

The Review notes that the current legislative framework requires customs brokers to undertake their role from within Australia. The Review considers that the requirement that customs brokers are effectively residents of Australia should continue. The integrity of persons can most easily be verified if they are residents. The Review notes that Canada requires customs brokers to be residents and the US requires them to be US citizens. The Review further suggests that the legislative framework be examined to ensure technological developments do not allow '*offshoring*' to be accepted. The Review also suggests that DIBP consider how to best undertake checks on the residency of licensed individuals.

The Review considers that management or control positions in depots and warehouses should be undertaken from within Australia, as in the case for customs brokers.

The Review supports improving education and awareness of licensees of their obligations. It agrees with industry views that the regulator should increase its outreach and educational efforts, especially on core requirements and obligations as well as the implementation of new changes associated with this Review. This will assist in strengthening the integrity of the system.

## Recommendation 15

### **DIBP should continue to place the highest priority on maintaining the integrity of the customs licensing regime**

**Implementation:** The Review considers that one of the key elements in maintaining the licensing regime's integrity is to ensure that a holistic, end to end approach is taken to licensed individuals and entities. A nationally coordinated approach would cover from the point of application to the licence's cessation.

A fully integrated and compliant case management system would improve the quality and standardisation of data entry, enable a viewable history of compliance activities and the impact of the changes on risk ratings. It would assist with ensuring business continuity, strengthening the integrity of the licensing regime, facilitating reporting, allowing targeted audit and compliance work, and enabling efficient resource management.

The case management system would need to align with other DIBP-led initiatives such as ATT. It would allow and promote whole of government solutions to border-related issues, recognising that a number of agencies have interest in border activities.



DIBP should work with industry to develop additional guidance material that will assist in explaining the responsibilities and obligations of licensed individuals and entities. Industry Codes of Practice and charters or codes of conduct for customs brokers and other roles would be a worthwhile development.

## 8 Conclusions

The Review considers that there continues to be a sound rationale for licensing customs brokers, depots and warehouses. The core recommendation reflects this. Licensing continues to be relevant in meeting the Government's objectives under the Customs Act and should be retained.

Stakeholders did not make a significant case for change and most indicated that the existing licensing regimes can be streamlined and improved.

The Review found that there are clear opportunities to modernise the licensing regime. There are savings and efficiencies to be harvested in DIBP and potentially across agencies that also license or register customs brokers, depots and warehouses under their respective Acts.

Better guidance across a range of issues should result in quicker, clearer and improved outcomes for the regulator and licensees.

The Review's recommendations, if implemented, should result in reduced overheads for licensees. There would be a reduction in Government administrative costs, which would be fully recovered in due course. There should be a reduction in regulatory burden (and red tape) for industry and Government.

The focus on the integrity of the licensing system will only grow in importance in the future. The Review has indicated that there are opportunities to strengthen the integrity of the licensing system through a range of enhancements. Strengthening the integrity of the regime will better protect the community. Reputations of licensees should also be enhanced as improvements to the licensing regime are implemented.

There will be considerable change in international trade flows, trade policy and trade agreements in the next decade. As a consequence, the Review suggests that the licensing regime should be subject to regular review in the future. This will assist in ensuring the regime remains innovative and adaptive.

## 9 Implementation and Next Steps

Effective implementation of the Review's recommendations will be critical to the success of the licensing regime in the future. The Review's recommendations are interrelated and interdependent. The strategic intent and long term benefits are best achieved through methodical, coherent and well-coordinated implementation of the recommendations.

Implementing the Review's recommendations, if accepted by the Comptroller-General, will require changes to either or all of:

- policy direction
- administrative processes and guidance documents
- legislation
- ICT systems.

Most of the recommendations made by the Review will require changes to all four of the above elements, especially where there is a need to align Government processes. While much preliminary work has already been done in this space by agencies, these changes will take time to be implemented.



The Review therefore suggests that DIBP develop an Implementation Plan in close consultation with agencies and industry to assist with the design and implementation of these recommendations and to ensure that sufficient funding and resources be made available to complete this process.

## 10 Appendix

### 10.1 Appendix A: Customs Licensing Review 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 concerning the review should be directed by email to [licensingreview@border.gov.au](mailto:licensingreview@border.gov.au).