



# Customs Brokers and Forwarders Council of Australia Inc.

## COMMENTARY

Review of Customs licensing  
arrangements:  
Depot and Warehouse

23 December 2015

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# 1. INDUSTRY REPRESENTATION

## 1.1 Customs Brokers and Forwarders Council of Australia Inc.

The Customs Brokers and Forwarders Council of Australia Inc. (CBFCA) is the peak national not-for-profit industry Association representing over 274 licensed corporate customs brokerages and 1594 individual licensed customs brokers (operating in the capacity of a nominee or sole trader) engaged in the provision of integrated service to international trade logistics and supply chain management, in the main, to Australian and other international traders. The CBFCA and its predecessor associations have acted in this representative and advocacy capacity since 1904 and the CBFCA is the only industry entity that has as its key reference (within its Constitution) advocacy of its members who are either licensed individual customs brokers or licensed corporate brokerages. This position is stated unequivocally to the Department of Immigration and Border Protection (DIBP) as regards the CBFCA position in representation of the industry sector covering these individual and corporate entities licensed by the DIBP. In addition, from a business perspective, many CBFCA members (licensed corporate brokerages) operate premises licensed by the DIBP under Section 77G (depots) and/or Section 79 (warehouses).

Members of the CBFCA provide the critical interface at the border between their respective clients with the DIBP, and a significant number of other regulatory agencies including but not limited to the Department of Agriculture and Water Resources, Australian Taxation Office and the Office of Transport Security.

The CBFCA and its predecessor associations have been actively involved in the evolution, implementation and administration of Government public policy, i.e. customs law and regulatory process, as it relates to these licensing provisions and welcomes the DIBP *Review of Customs licensing regimes (DIBP Review)*.

## 1.2 Response

The CBFCA's response has been structured to address the Scope of the Review, in particular, the objectives referenced in the Scope. It also notes the July 2014 *Review of licensing provisions*, Centre for Customs and Excise Studies (*the CCES Review*). This Commentary on depots and warehouses should be read in conjunction with the CBFCA Commentary *Review of Customs licensing arrangements Licensed Customs Brokers*.

### 1.3 Contact Details

All enquiries and responses may be directed as follows:



Customs Brokers and Forwarders Council of Australia Inc.

PO Box 303

Hamilton QLD 4007



## 2. REQUIREMENTS FOR DEPOT AND WAREHOUSE LICENCE

### 2.1 Depot

As to depots (Section 77G) and warehouses (Section 79) while acknowledging the need to reduce red tape, the CBFCA believes existing controls meet customs, biosecurity and transport security requirements.

The CBFCA supports retaining a regulatory regime for depot(s) and warehouse(s) so as to facilitate the movement of goods away from the place of unloading for examination, unpacking, deconsolidation and short-term storage prior to their release from customs control or further movement.

To mitigate regulatory burden, to improve efficiency and effectiveness, there is scope to improve the application process.

### 2.2 Licence Conditions

The existing requirements as to a person/s considered being in the “*management or control*” of a proposed depot or warehouse (outlined in ACN 2014/23) is considered appropriate to meet the aspects of security, compliance and enforcement.

One of the key requirements for a depot or warehouse licence is that:

*“...the applicant(s) and all persons (including employees) in positions of management or control of the company/partnership or depot must be deemed ‘fit and proper’ persons for the purposes of section 77K(2) of the Customs Act”.*

The criteria of a “*fit and proper person*” requirement for DIBP licences are seen as being consistent with Government and other regulatory requirements.

The CBFCA strongly supports the concept that depot and warehouse licence holders including nominated person/s (management or control), have and maintain, a standard, benchmark or accreditation as to regulatory requirements (and ongoing re-accreditation similar to licensed customs brokers). In addition to DIBP obligations and as many S77G depots are Quarantine Approved Premises (QAP) [Department of Agriculture and Water Resources] (DAWR) and by way of Approved Arrangements (Non-Commodity Containerised Cargo Clearance/Automatic Entry Processing for Commodities Scheme which enables customs brokers to assess documentations and direct goods for inspection and treatment) a need exists to align regulatory intervention and controls from a DIBP and DAWR perspective.

The CBFCA commends the development of a whole of Government ‘*fit and proper person*’ test and, as the DAWR is introducing a ‘*fit and proper person*’ test under the new *Biosecurity Act 2015* that the current DIBP ‘*fit and proper person*’ test should be accepted by both regulators to avoid duplication of process.

The CBFCA is of the view that DIBP is best placed to manage the licensing regimes of depots, warehouses and QAP arrangements in the absence of any other industry or government standards. As referenced earlier in the *Commentary*, the CBFCA commends a co-regulatory rather than regulation approach to ensure supply chain security.

### **2.3 Strict Liability Offences**

Holders of a depot or warehouse licence are now impacted by the recent changes to *the Act* through the *Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013*. These measures and changes brought non-compliance of depot and warehouse licence conditions into the purview of strict liability offences and/or revocation of the licence. These changes have increased the licence holder obligations and liabilities by including new offences and increased penalties.

As previously commented as to rights and liabilities, while the CBFCA supports the changes to strengthen the cargo supply chain as to criminal intent, due process and applicable defences must be applicable.

## 2.4 Application Process

The information provided for licence applicants in the DIBP Application Guide (website) enables clarity as to understanding and detail required for an application. However, applicants for a depot or warehouse licence commented that the overall application process is documentary and labour intensive with little DIBP software or IT support options.

Depot and warehouse licensing is specific particularly as to Site Plan and Endorsements, making it difficult for any applicant to produce the required format and details on one Site Plan. Often applicants need to refer to architectural plans and have access to software applications to enable changes to application specificity, i.e. dead house construction, positioning and dimensions, location of mobile x-ray units, security cameras, work bench dimensions of non-standard size (requiring a custom made design and construction of stainless steel). There is also a need to show the location of the car park for DIBP staff, removal of descriptive words on Site Plans such as 'Customs' and 'Warehouse'. The applicant is also required to provide three (3) copies of endorsed documents.

Considering the time and effort required for the applicant to prepare and submit the application the current DIBP timeframes for decision making (60 days after receipt of an application) needs review to a more appropriate industry standard of 15-30 days.

To that end, the DIBP should ensure its licensing personnel have appropriate skills and resources to provide a service orientated outcome. Feedback indicates some DIBP staff are not adequately trained and request information not required in new applications or when applicants apply for re-location of a depot or warehouse are asked to provide full details as required for a new application. Changes to DIBP work place instructions appear appropriate to reflect the fee for service position on applications or renewals.

Based on the DIBP *Blueprint for Reform 2013 – 2018*, and in meeting shifts in technology focused on trade modernisation and efficient business systems, it is suggested the DIBP, for cost effective and cost efficient needs, move from the current manual licence and/or renewal process and implement an on-line application and/or renewal system (which would support attachment of supporting documentation). Such a process could encompass a secure registration/login to create a database for DIBP and licensed entity/s access.

Such an on-line system will provide a secure platform for record maintenance as to details of person/s in a position of “*management or control*” and would speed up new applications, requests for depot relocation, renewals, changes to management, and employee record details of accreditation etc. and reduce the administrative burden for industry and DIBP.

New fees and charges effective 1 January 2016 should meet existing administration arrangements and hopefully the introduction of an on-line application and renewal system. If not, then these changes may be appropriate for budget funding to meet compliance demands.

## **2.5 Multiple Licensing Consolidations**

In addressing multiple conditions of licences, most depot operators indicated that approval to operate as both a DIBP licensed depot and a DAWR QAP was considered essential from a commercial perspective in offering a full range of business services. Feedback received indicates that, from a regulatory perspective compliance is a key focus with: “*DIBP rarely inspects goods, whereas biosecurity inspections are far more often.*”

As such, the DIBP and DAWR requirements could be coordinated, leading to less duplication, conflicting requirements, ambiguity, uncertainty, inefficiency and a more positive environment to achieve compliance. In this regard, it was suggested that consideration should be given to including QAP Class 1.1 to 1.3 approval for all DIBP depots as a matter of course. In this way, it is suggested, all DIBP approved depots would be authorised for the deconsolidation of sea and air cargo, inspection and treatment of goods, containers and ULDs for both DIBP and DAWR purposes.

The CBFCA recommends that a joint review be undertaken by DIBP, DAWR and industry, with a view to achieving optimisation in compliance in the relevant regulatory sectors while minimising the impact on operators. This arrangement would seek to review licensing policy applicable to 77G depots to provide QAP Class 1.1 to 1.3 approval for all depots. This process would support the National Committee on Trade Facilitation’s focus of a “*single window to government*” to foster trade facilitation.

It should also be noted in the current operation environment that the biosecurity risk is not addressed when goods are moved, *under bond*, to a 77G depot, i.e. break bulk machinery can be moved from the place of unloading to a 77G depot that is not QAP Class 1.1 or 1.3 without biosecurity clearance, which then may require another move from 77G depot to a QAP Class 1.1 or 1.3 for unpack inspect or treatment.