



AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE PRACTICE STATEMENT

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Title: Licensing - Warehouses, Depots and Brokers
Purpose: To provide an overview of the policy and legislative framework of warehouse, depot and broker licensing
Owner: National Director Trade and Compliance
Category: Operational Procedures
Contact: Compliance Assurance Branch

Summary of main points

Customs and Border Protection Practice Statements are endorsed Customs and Border Protection policy and must be followed by all Customs and Border Protection employees. This Practice Statement outlines:

- What is a warehouse, depot and broker licence.
- The legislative provisions for warehouse, depot and broker licensing.

The electronic version published on the intranet is the current Practice Statement.

Introduction Statement

The role of Customs and Border Protection is to provide effective border protection for the Australian community. There are strict controls in place that govern the import and export of goods. To enable Customs and Border Protection to be satisfied that the legislative provisions relating to the import and export of goods are being met, Customs and Border Protection need to know the location of those goods up to the point they are entered into home consumption or exported.

Scope

This practice statement outlines the policies used by, and functions performed by, Customs and Border Protection in relation to the licensing of warehouses, depots and brokers.

It does not provide information on how to apply for a license or the powers and penalty schemes available to Customs and Border Protection Officers for the licensing functions.

Policy Statement

The Customs and Border Protection licensing framework provides for a quality control mechanism over the movement and storage of goods through the licensing of warehouses and depots, and compliance with customs reporting requirements for the movement, importation and exportation of goods through the licensing of customs brokers.

What is a Warehouse Licence

Under Part V of the *Customs Act 1901* (the Act), a person, company or partnership can be licensed to operate a licensed warehouse. Section 79 of the Act allows licensed warehouses to store imported goods that attract customs duty, which has not been paid. Such goods remain subject to Customs control until the duty is paid and the goods are entered for home consumption or until they are exported.

The holder of a warehouse licence is responsible for the safe custody and accounting of these goods to the satisfaction of Customs and Border Protection. Moving or interfering with these goods without the permission of Customs and Border Protection is an offence under s33 of the Act. Failure to account for these goods will result in the warehouse licence holder being liable for any unpaid revenue.

Activities permitted in licensed warehouses are limited to ensure the security of the goods and the revenue payable to the Commonwealth is protected.

There are a number of categories of warehouse licences:

- 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 Flight 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.

Since 1 July 2010, the Australian Taxation Office (ATO) has been responsible for the administration of warehoused excise equivalent goods under delegation from Customs and Border Protection. Goods subject to excise duties only must be stored in a warehouse licensed by the ATO.

Legislative provisions for Warehouse licensing

Sections 80 and 81 of the Act outline the requirements of an application for a warehouse licence and the matters that the Chief Executive Officer (CEO) of Customs must consider in making a decision to grant a licence.

The Act only allows for the licensing of a natural person, company or partnership. A trust is not eligible to be licensed to operate a warehouse. A trustee may be licensed if the nominated entity in the Deed of Trust is a natural person, company or partnership.

All personnel who hold a position of management or control within the licensed warehouse must be 'fit and proper' persons for the purposes of s81 of the Act.

Under s82 of the Act, every warehouse licence is subject to general conditions. In addition, Customs and Border Protection may stipulate other conditions for the protection of revenue or to ensure compliance with the Act. Warehouse licence holders must also comply with the obligations set out in the Act and *Customs Regulations 1926* (the Regulations).

Non-compliance with the conditions of a licence could lead to the suspension and cancellation of the licence and/or further penalties.

The CEO of Customs may suspend and subsequently cancel a warehouse licence under s86 and s87 of the Act. Section 86(5) allows the suspension to be revoked. Where suspension or cancellation has occurred, movement of any goods under Customs control must be authorised by Customs and Border Protection.

Warehouse licence fees are determined in accordance with s85 of the Act and regulation 50 of the Regulations. Non-payment of licence fees can lead to the suspension and cancellation of the licence.

Decisions made by the CEO of Customs under Part V of the Act, such as the refusal to grant a warehouse licence or the suspension or cancellation of a licence, are reviewable by the Administrative Appeals Tribunal (the Tribunal) in accordance with s273GA(1)(b) of the Act.

What is a Depot Licence

Under Part IVA of the Customs Act, a person, company or partnership can be licensed to operate a depot. Section 77G of the Act allows licensed depots to store imported goods and goods for export subject to Customs control for the purposes of unpacking and deconsolidation of imported goods, and consolidation of goods to be exported.

Once all legislative requirements are met, the goods can be released into home consumption, exported or moved to a warehouse licensed under s79 of the Act.

Depot licence holders may only use the premises for any of the following purposes:

- Holding of imported goods subject to the control of Customs;
- Unpacking of imported goods subject to the control of Customs;
- Holding of goods for export subject to the control of Customs; and/or
- Packing of goods for export subject to the control of Customs into containers.

Storage of goods subject to Customs control in a licensed depot is allowable to the end of the month after the month of receipt in the depot. The depot may seek an extension under s77P of the Act to hold the goods for a further 30 days. If legislative import requirements have not been met and this period has elapsed, the goods must be transferred to a licensed warehouse, or arrangements made for the disposal/destruction of the goods.

Legislative provisions for Depot licensing

Sections 77H, 77J, 77K and 77L of the Act outline the requirements of an application for a depot licence and the matters the CEO of Customs must consider in making a decision to grant a licence.

All personnel who hold a position of management or control within the depot must be 'fit and proper' persons for the purposes of s77K of the Act.

The Act allows for the licensing of individuals, companies or partnerships. A trust is not eligible to be licensed to operate as a depot. A trustee may be licensed if the nominated entity in the Deed of Trust is a natural person, company or partnership.

Under s77N and s77P of the Act, every depot licence is subject to general conditions. Under s77Q of the Act, Customs and Border Protection may also stipulate other conditions for the protection of revenue or to ensure compliance with the Act, at the time of the initial issue of the licence and may vary conditions. Depot licence holders must also comply with the obligations set out in the Act and the Regulations.

Non-compliance with the conditions of a licence could lead to the revocation of the licence and/or further penalties.

The CEO of Customs may revoke a depot licence under s77V of the Act. Customs and Border Protection must inform the owners of goods held in the depot that the depot licence has been revoked

Depot licence fees are determined by the *Customs Depot Licensing Charges Act 1997*. Non-payment of licence fees could lead to the revocation of the depot licence.

Decisions made by the CEO of Customs under Part IVA of the Act, such as the refusal to grant a depot licence or the revocation of a depot licence, are reviewable by the Administrative Appeals Tribunal (the Tribunal) in accordance with s273GA(1)(b) of the Act.

What is a Broker Licence

Under Part XI Divisions 1 - 3 of the Act, a natural person, company or partnership can be licensed to act as a customs broker. A customs broker is an agent appointed by the owner of goods to facilitate the importation of goods and ensure compliance with all requirements of the Act, the Regulations and other legislative requirements.

There are two categories of licensed customs brokers:

1. Corporate customs broker:
 - A company or partnership.
2. A natural person, licensed broker:
 - An individual licensed broker who intends to act in his or her own right (a sole trader) and
 - An individual licensed broker, who does not intend to act in his or her own right and is employed by either a sole trader or a corporate customs broker.

Legislative provisions for Broker Licensing

Section 183 of the Act outlines the requirements for an application for a broker's licence and the matters the CEO of Customs must consider in making a decision to grant a licence.

The Act allows for the licensing of a natural person, companies or partnerships. A trust is not eligible to be licensed as a broker. A trustee may be licensed if the nominated entity in the Deed of Trust is a natural person, company or partnership.

Section 183CC of the Act details the requirements of a brokers licence.

Applications for broker licenses are referred to the National Customs Brokers Licensing Advisory Committee (the Committee) for investigation and to report the findings to the CEO of Customs. The Committee is comprised of a representative from Customs and Border Protection, a representative of customs brokers and a chair who in the opinion of the CEO possesses the knowledge or skills in relation to the matters that the Committee reports on.

A broker's licence, once granted, is subject to conditions stipulated in s183CG of the Act.

Licenses are renewed in accordance with s183CJ of the Act, every three years. All current licences have an expiry date of 30 June 2012.

Licence fees are in accordance with s183CL of the Act and regulation 156-160 of Regulations.

Under s183CM, s183CN and s183CP of the Act licence holders are to inform Customs and Border Protection of any changes to endorsements on restricted licences.

Part XI, Division 4 of the Act details the suspension, cancellation or matters for investigation, in relation to licences and licence holders.

Decisions made by the CEO of Customs under Part XI of the Act, such as the refusal to grant a broker licence or the suspension or cancellation of a licence, are reviewable by the Administrative Appeals Tribunal (the Tribunal) in accordance with s273GA(1)(k) of the Act.

Related Instructions and Guideline

- *Unentered Goods and Certain Abandoned Goods'*
- *s79 Warehouse Licenses*
- *s77G Depot Licenses*
- *Customs Broker Licenses*

Related Policies and References

Practice Statements

- *PS2009/28 Compliance Powers and Penalty Schemes*

References

- *Customs Act 1901 (and associated Regulations)*
- *Customs Regulations 1926*
- *Infringement Notice Guidelines*
- *Licensing Warehouse Application Package*
- *Depot Application Package*
- *Customs Broker Application Package*

Consultation

Internal

The following internal stakeholders have been consulted in the development of this Practice Statement:

- Trade and Compliance Division
- Cargo Division

External

- Customs Brokers and Forwarders Council of Australia Inc.
- Australian Federation of International Forwarders
- Conference of Asia Pacific Express Carriers
- Various warehouse and depot licence holders

Approval

Approved on	19 September 2011	
By	Craig Sommerville A/g National Director Trade and Compliance	
Endorsed on	20 September 2011	
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