



AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2013/56

New obligations on Customs Depot and Warehouse Licence Holders

The *Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013 (Organised Crime Act)* received Royal Assent on 28 May 2013 (Australian Customs and Border Protection Notices 2013/12 and 2013/25 refer). These amendments place new obligations on depot and warehouse licence holders, which will commence on 28 November 2013.

The following amendments to the Customs Act affect holders of depot and warehouse licences:

- additional criteria for 'fit and proper person' tests, e.g. whether the person has been refused an aviation or maritime security identification card (ASIC or MSIC)
- additional notification requirements for depot and warehouse licence holders
- a new permission regime for constructive warehousing, and
- other amendments that affect all members of the international trade and transport industry, including new offences for misusing or disclosing information held by Customs, changes to the Infringement Notice Scheme, increased record keeping obligations and increased penalties for certain offences.

Complying with notification requirements:

- All customs depot and warehouse licence holders are required under the Customs Act to notify the CEO in writing, within 30 days, where certain events occur. This includes a requirement to notify the CEO when certain persons are convicted of certain offences or become bankrupt.
- The changes to the Customs Act introduce an additional condition on the holder of a customs depot and warehouse licence to notify the CEO in writing, within 30 days, where the licence holder, or certain persons where the licence holder is a company or partnership, have been refused an ASIC or MSIC or had an ASIC or MSIC suspended or cancelled.
- Where the suspension, cancellation or refusal of an ASIC or MSIC occurred in the 10 years prior to the commencement of these changes, a licence holder must notify the CEO within 90 days of the commencement date.

The amendments apply to all warehouses licenced under the Customs Act regardless of whether the Australian Customs and Border Protection Service (ACBPS) and/or the Australian Taxation Office (ATO) administers them.

You can send notifications to the CEO for warehouse licences administered by ACBPS to licensing@customs.gov.au.

You can send notifications for warehouse licences administered by the Australian Taxation Office (ATO) to EXC-LicensingGroup@ato.gov.au.

You can send notifications to the CEO for depot licences to licensing@customs.gov.au.

Licence Conditions

Depot and warehouse licences are subject to the statutory conditions specified in the *Customs Act 1901*, which will change on 28 November 2013 as outlined above. ACBPS will write to licence holders after the commencement of the legislation, notifying them of the change to their licence conditions. These updated statutory conditions and additional conditions are set out below in *Attachment A – Customs Depot Licence* and *Attachment B – Customs Warehouse Licence*. **Please note** – The statutory licence conditions for a warehouse are the same, whether it is administered by the ACBPS or the ATO. However, the additional conditions are not; the additional conditions shown in Attachment B reflect those for a warehouse administered by the ACBPS.

Further details about these changes are contained in ACBPS fact sheets *Notification of changes to the warehouse licensing regime* and *Notification of changes to the depot licensing regime* and are available on the ACBPS website at <http://www.customs.gov.au/site/page4271.asp>. You can find further information about the *Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013 (Organised Crime Act)* on the ACBPS internet site.

[Signed]

Anthony Seebach
National Manager, Compliance Assurance Branch
12 November 2013

Attachment A – Customs Depot Licence Conditions from 28 November 2013

Statutory Conditions

This licence is subject to the statutory conditions set out in the *Customs Act 1901* as amended from time to time. The statutory conditions of this licence are:

Section 77N – Conditions of a depot licence – General

- (1) A depot licence is subject to the conditions set out in subsections (2) to (10).
- (2) The holder of a licence must, within 30 days after the occurrence of an event referred to in any of the following paragraphs, give the CEO particulars in writing of that event:
- (a) a person not described in the application for the licence as participating in the management or control of the depot commences so to participate;
 - (b) in the case of a licence held by a partnership—there is a change in the membership of the partnership;
 - (c) in the case of a licence held by a company:
 - (i) the company is convicted of an offence of a kind referred to in paragraph 77K(3)(a) or (b); or
 - (ii) a receiver of the property, or part of the property, of the company is appointed; or
 - (iii) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*; or
 - (iv) the company executes a deed of company arrangement under Part 5.3A of that Act;
 - (d) a person who participates in the management or control of the depot, the holder of the licence or, if a licence is held by a partnership, a member of the partnership:
 - (i) is convicted of an offence referred to in paragraph 77K(2)(a) or (b); or
 - (ii) becomes an insolvent under administration; or
 - (iii) has been refused a transport security identification card, or has had such a card suspended or cancelled, within the applicable period referred to in paragraph 77V(2)(e).
- (2A) The holder of a licence must not cause or permit a substantial change to be made in:
- (a) a matter affecting the physical security of the depot; or
 - (b) the keeping of records in relation to the depot;
- unless the holder has given to the CEO 30 days' notice of the proposed change.
- (3) The holder of the licence must pay to Customs any prescribed travelling expenses payable by the holder under the regulations in relation to travelling to and from the

depot by a Collector for the purposes of the Customs Acts. For that purpose, the regulations may prescribe particular rates of travelling expenses in relation to particular circumstances concerning travelling to and from a depot by a Collector for the purposes of the Customs Acts.

- (4) The holder of the licence must stack and arrange goods in the depot so that authorised officers have reasonable access to, and are able to examine, the goods.
- (5) The holders of the licence must provide authorised officers with:
 - (a) adequate space and facilities for the examination of goods in the depot; and
 - (b) secure storage space for holding those goods.
- (6) The holder of the licence must, when requested to do so, allow an authorised officer to enter and remain in the depot to examine goods:
 - (a) which are subject to the control of the Customs; or
 - (b) which an authorised officer has reasonable grounds to believe are subject to the control of the Customs.
- (7) The holder of the licence must, when requested to do so, provide an authorised officer with information, which is in the holder's possession or within the holder's knowledge, in relation to determining whether or not goods in the depot are subject to the control of the Customs.
- (8) The holder of the licence must retain all commercial records and records created in accordance with the Customs Acts that:
 - (a) relate to goods received into a depot; and
 - (b) come into the possession or control of the holder of the licence;for 5 years beginning on the day on which the goods were received into the depot.
- (9) The holder of the licence must keep the records referred to in subsection (8) at:
 - (a) the depot; or
 - (b) if the holder has notified Customs in writing of the location of any other places occupied and controlled by the holder where the records are to be kept—those other places.
- (10) At any reasonable time within the 5 years referred to in subsection (8), the holder of the licence must, when requested to do so:
 - (a) permit an authorised officer:
 - (i) to enter and remain in a place that is occupied and controlled by the holder and which the officer has reasonable grounds to believe to be a place where records referred to in subsection (8) are kept; and
 - (ii) to have full and free access to any such records in that place; and
 - (iii) to inspect, examine, make copies of, or take extracts from any such records in that place; and

- (b) provide the officer with all reasonable facilities and assistance for the purpose of doing all of the things referred to in subparagraphs (a)(i) to (iii) (including providing access to any electronic equipment in the place for those purposes).

- (11) The holder of the licence is not obliged to comply with a request referred to in subsection (6), (7) or (10) unless the request is made by a person who produces written evidence of the fact that the person is an authorised officer.

Section 77P – Conditions of a depot licence – Imported goods

- (1) If imported goods were received into a depot during a particular month, it is a condition of the licence that the holder of the licence must:
 - (a) if paragraph (b) does not apply—cause the removal of those goods into a warehouse before the end of the following month; or
 - (b) if the CEO, on written request by the holder made before the end of that following month, grants an extension under this section—cause the removal of the goods into a warehouse within 30 days after the end of that following month.

- (2) In this section:

month means month of a year.

NOTES:

- 1. A substantial change in a matter affecting the physical security of the depot includes a change to the approved site plan.
- 2. Adequate facilities for the examination of goods in the depot includes designated car park space(s) for the exclusive use of Customs and Border Protection.

Additional Conditions

This licence is also subject to the following additional conditions pursuant to section 77Q of the *Customs Act 1901*:

- (1) The holder of the licence must not attempt to transfer the licence to any other person or corporate body. The holder of the licence must surrender their licence if they cease to occupy or control the place covered by the licence.
- (2) The holder of the licence must, when requested by Customs and Border Protection, ensure that the holder of the licence and all staff in positions of management or control complete a Customs and Border Protection *Consent to Obtain Personal Information* form to allow Customs and Border Protection to undertake and make a fit and proper person determination for each relevant person.
- (3) The holder of the licence must, when requested by Customs and Border Protection and subject to privacy legislation or other law, provide a comprehensive staff list containing full name, gender, date of birth, position in the depot and the details of a valid form of identification including, but not limited to, ASIC/MSIC card, drivers licence, passport, or proof of age card.
- (4) A holder of the licence must not allow for any person to enter the licensed depot without the holder of the licence making a record of their entry to the licensed depot. The record

shall include full name, address, driver's licence number (if applicable) and the name of person being visited. The holder of the licence must ensure that the person whose personal information is being collected has provided sufficient acknowledgment on consent to allow the release of the information to Customs and Border Protection under Commonwealth privacy laws. This condition does not apply to Commonwealth, State or Territory officials.

- (5) In the event of the holder of the licence becoming aware of an event causing theft, loss, breakage, damage and/or pillage of goods, including break-ins and attempted break-ins, the holder of the licence must provide written particulars of the incident to the CEO of Customs as soon as practicable.
- (6) The holder of the licence must not remove or move any Customs and Border Protection signage without prior written approval from Customs and Border Protection.
- (7) If directed by Customs and Border Protection, the holder of the licence must install and maintain CCTV coverage of the licensed area, including all entry and exit points and keep the footage for a period of 30 days. The holder of the licence will provide the footage to Customs and Border Protection when requested.
- (8) The holder of the licence must install and maintain monitored alarm systems.
- (9) The holder of the licence must inform Customs and Border Protection of any suspected breaches or offences of Customs related laws, by any persons, related to the licensed premises.
- (10) The holder of the licence must inform Customs and Border Protection of any breaches of security at the premises, whether or not it is related to the licensed area.
- (11) The holder of the licence must ensure that the deadhouse is locked.
- (12) The holder of the licence must not dispose of any goods subject to the control of Customs without prior written permission from Customs and Border Protection.
- (13) The holder of the licence must monitor the security of the premises, notify Customs and Border Protection on becoming aware of a substantial change affecting the physical security of the depot and take such remedial action as directed by Customs and Border Protection.
- (14) The holder of the licence must not handle types of goods that are not specified in the licence unless prior written authorisation is obtained from Customs and Border Protection.
- (15) The holder of the licence must not:
 - (a) change the location of the depot; or
 - (b) make substantial changes to or within the current licensed area unless they have the written approval and variation of licence from the CEO of Customs.
- (16) The holder of the licence must not unpack, move or store any goods subject to the control of Customs outside the licensed area unless prior written authorisation is obtained from Customs and Border Protection.
- (17) The holder of the licence must allow officers to take into the depot any equipment or material reasonably necessary to assist any Customs related activities (including the

examination of any goods subject to the control of Customs). The holder of the licence must provide the officers with all reasonable assistance to carry out their duties.

- (18) The holder of the licence must implement and maintain an effective accounting system for all goods within the holder of the licence's control and subject to the control of Customs at all times.
- (19) The holder of the licence must use the ICS for communication with Customs unless alternative arrangements have been documented and approved by Customs. This includes the communication of information from the holder of the licence to Customs relating to the receipt and acquittal of all goods under Customs control at the depot, and communication of information from Customs to the holder of the licence in relation to the release of all goods under Customs control at the depot.
- (20) The holder of the licence must not allow Customs and Border Protection systems or information provided by Customs and Border Protection to be used for an unauthorised purpose or to assist, aid, facilitate or participate in any unlawful or illegal activity.
- (21) The holder of the licence must not move, alter or interfere with goods unless the requirements of the Customs Acts have been complied with.
- (22) The holder of the licence must ensure that cargo outturn reports are lodged electronically to Customs and Border Protection in the timeframes set out in s64ABAB(4) of the Act. If there is a declared outage of the Integrated Cargo System (ICS), a Cargo Outturn Report must be communicated electronically to Customs and Border Protection within 24 hours after notice is given that the system is operative again. The cargo Outturn Report must include details of all surplus, short landed and pillaged cargo.
- (23) The holder of the licence must supply to the cargo reporter, or the person responsible for adjusting the report of cargo in respect of s64AB of the Act, the details of goods surplus to or short landed from expected receipts that are needed in order to report the cargo fully. Those details must be supplied no later than 1 working day after the check-in or unpack of the goods at the premises.
- (24) When Prescribed Warehoused Goods are received at a depot the holder of the licence must communicate to Customs and Border Protection a Depot Receipt Notice within 3 hours of receipt of that cargo. (Note: Prescribed Warehouse Goods cannot be consolidated unless the holder of the licence is in possession of an appropriate movement status.) When Prescribed Warehouse Goods are delivered from a depot the holder of the licence must communicate a Depot Release Notice to Customs and Border Protection within 3 hours of the cargo being released from the depot.
- (25) Goods not subject to the control of Customs must be kept in a separate and distinct area from goods subject to Customs control.
- (26) The holder of the licence must ensure that any high risk items (such as firearms, prohibited imports, damaged cargo or packages which have become opened during transport, surplus goods, or high value goods) are stored in a deadhouse.
- (27) The holder of the licence must not facilitate transshipment or export of goods where there is a held status on the import declaration or cargo report that the goods are subject to.
- (28) The holder of the licence must provide adequate training to make staff aware of their obligations in dealing with goods subject to the control of Customs and must

demonstrate ongoing quality assurance processes in place when requested by Customs and Border Protection.

Specific Conditions

This licence is also subject to the following additional conditions pursuant to section 77Q of the *Customs Act 1901*:

- The holder of the licence must not allow the unpacking of FCL containers in container parks.
- The holder of the licence must ensure that goods stored in FCL containers are stacked door-to-door.
- The holder of the licence must ensure that all international mail is presented to Customs for screening.
- The holder of the licence must ensure that International mail is not delivered into home consumption until it has been screened and approved for delivery by Customs and Border Protection.

Attachment B – Customs Warehouse Licence Conditions from 28 November 2013

Statutory Conditions

This licence is subject to the statutory conditions set out in Part V of the *Customs Act 1901* as amended from time to time. The statutory conditions of this licence are:

Section 82 – Conditions of a warehouse licences

- (1) A warehouse licence is subject to the condition that, if:
- (a) a person not described in the application for the licence as participating in the management or control of the warehouse commences so to participate; or
 - (b) in the case of a licence held by a partnership—there is a change in the membership of the partnership; or
 - (ba) in the case of a licence held by a company—any of the following events occurs:
 - (i) the company is convicted of an offence of a kind referred to in paragraph 81(3)(a) or (b);
 - (ii) a receiver of the property, or part of the property, of the company is appointed;
 - (iii) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*;
 - (iv) the company executes a deed of company arrangement under Part 5.3A of that Act;
 - (v) the company begins to be wound up; or
 - (c) a person who participates in the management or control of the warehouse, the holder of the licence or, in the case of a licence held by a partnership, a member of the partnership:
 - (i) is convicted of an offence referred to in paragraph 81(2)(a) or (b); or
 - (ii) becomes bankrupt; or
 - (iii) has been refused a transport security identification card, or has had such a card suspended or cancelled, within the applicable period referred to in paragraph 86(1A)(d); or
 - (d) there is a substantial change in a matter affecting the physical security of the warehouse; or
 - (e) there is a substantial change in plant or equipment used in relation to goods in the warehouse; or

- (f) there is a substantial change in the keeping of accounts or records kept in relation to the warehouse;

the holder of the licence shall, within 30 days after the occurrence of the event referred to in whichever of the preceding paragraphs applies give the CEO particulars in writing of that event.

- (3) A warehouse licence is subject to such other conditions (if any) as are specified in the licence that the CEO considers to be necessary or desirable:
 - (a) for the protection of the revenue; or
 - (b) for ensuring compliance with the Customs Acts, any other law of the Commonwealth prescribed by the regulations or a law of a State or Territory prescribed by the regulations; or
 - (c) for any other purpose.
- (4) The conditions specified in a warehouse licence may include:
 - (a) conditions specifying the persons or classes of persons whose goods may be warehoused in the warehouse; and
 - (b) conditions limiting the operations that may be performed upon, or in relation to, goods in the warehouse.
- (5) The CEO may, upon application by the holder of a warehouse licence and production of the licence, vary the conditions specified in the licence by making an alteration to, or an endorsement on, the licence.
- (6) Subsection (5) does not limit section 82B.

NOTE: A substantial change in a matter affecting the physical security of the warehouse includes a change to the approved site plan.

Additional Conditions

This licence is also subject to the following additional conditions pursuant to section 82A of the *Customs Act 1901*:

- (1) The holder of the licence must not attempt to transfer the licence to any other person or corporate body. The holder of the licence must surrender their licence if they cease to occupy or control the place covered by the licence.
- (2) The holder of the licence must, when requested by Customs and Border Protection, ensure that the holder of the licence and all staff in positions of management or control complete a Customs and Border Protection Consent to Obtain Personal Information form to allow Customs and Border Protection to undertake and make a fit and proper person determination for each relevant person.
- (3) The holder of the licence must, when requested by Customs and Border Protection and subject to privacy legislation or other law, provide a comprehensive staff list containing full name, gender, date of birth, position in the warehouse and the details of a valid form of identification including, but not limited to, ASIC/MSIC card, drivers licence, passport, or proof of age card.

- (4) The holder of the licence must, when requested to do so, provide an authorised officer with information, which is in the holder's possession or within the holder's knowledge, in relation to determining whether or not goods in the warehouse are subject to the control of Customs.
- (5) In the event of the holder of the licence becoming aware of an event causing theft, loss, breakage, damage and/or pillage of goods, including break-ins and attempted break-ins, the holder of the licence must provide written particulars of the incident to the CEO of Customs and Border Protection as soon as practicable.
- (6) The holder of the licence must not remove or move any Customs and Border Protection signage without prior written approval from Customs and Border Protection.
- (7) If directed by Customs and Border Protection, the holder of the licence must install and maintain CCTV coverage of the licensed area, including all entry and exit points and keep the footage for a period of 30 days. The holder of the licence will provide the footage to Customs and Border Protection when requested.
- (8) The holder of the licence must install and maintain monitored alarm systems.
- (9) The holder of the licence must inform Customs and Border Protection of any suspected breaches or offences of the Customs Acts, by any persons, related to the licensed premises.
- (10) The holder of the licence must inform Customs and Border Protection of any breaches of security at the premises, whether or not it is related to the licensed area.
- (11) The holder of the licence must not dispose of any goods subject to the control of Customs without prior written permission from Customs and Border Protection.
- (12) The holder of the licence must monitor the security of the premises, notify Customs and Border Protection on becoming aware of a substantial change affecting the physical security of the warehouse and take such remedial action as directed by Customs and Border Protection.
- (13) The holder of the licence must not handle types of goods that are not specified in the licence unless prior written authorisation is obtained from Customs and Border Protection.
- (14) The holder of the licence must not:
 - (a) change the location of the warehouse; or
 - (b) make substantial changes to or within the current licensed area unless they have the written approval and variation of licence from the CEO of Customs and Border Protection.
- (15) The holder of the licence must not move or store any goods subject to the control of Customs outside the licensed area unless prior written authorisation is obtained from Customs and Border Protection.
- (16) The holder of the licence must stack and arrange goods in the warehouse so that authorised officers have reasonable access to, and are able to examine, the goods.

- (17) The holder of the licence must provide authorised officers with adequate space, office accommodation, car parking and facilities for use by authorised officers while undertaking their duties (including the examination of goods) at the licensed premises.
- (18) The holder of the licence must, when requested to do so, allow an authorised officer to enter and remain in the warehouse to conduct Customs and Border Protection related activities (including the examination of goods which are subject to the control of Customs or which an authorised officer has reasonable grounds to believe are subject to the control of Customs).
- (19) The holder of the licence must allow authorised officers to take into the warehouse any equipment or material reasonably necessary to assist any Customs and Border Protection related activities (including the examination of any goods subject to the control of Customs). The holder of the licence must provide the officers with all reasonable assistance to carry out their duties.
- (20) The holder of the licence must:
- (a) retain all commercial records and records created in accordance with the Customs Acts that relate to goods received into a warehouse and come into the possession or control of the holder of the licence beginning on the day on which the goods were received into the warehouse until five years after the authorised release of the goods from the warehouse;
 - (b) make and retain accountable and auditable records of the condition and quantity of cargo received, the movement and unpacking of the cargo; and
 - (c) keep the records referred to at the warehouse or if the holder has notified Customs and Border Protection in writing of the location of any other places occupied and controlled by the holder where the records are to be kept—those other places.
- (21) At any reasonable time within the time period referred to in the above condition, the holder of the licence must, when requested to do so:
- (a) permit an authorised officer:
 - (i) to enter and remain in a place that is occupied and controlled by the holder and which the authorised officer has reasonable grounds to believe to be a place where records referred to are kept;
 - (ii) to have full and free access to any such records in that place; and
 - (iii) to inspect, examine, make copies of, or take extracts from any such records in that place; and
 - (b) provide the officer with all reasonable facilities and assistance for the purpose of doing all of the things referred to above (including providing access to any electronic equipment in the place for those purposes).
- (22) The holder of the licence must implement and maintain an effective accounting system for all goods within the control of the holder of the licence and subject to the control of Customs at all times.
- (23) The holder of the licence must not allow Customs and Border Protection systems or information provided by Customs and Border Protection to be used for an unauthorised purpose or to assist, aid, facilitate or participate in any unlawful or illegal activity.

- (24) The holder of the licence must communicate to Customs and Border Protection any substantial change in the type of goods or the amount of goods to be stored within the warehouse as soon as practicable.
- (25) The holder of the licence must report to Customs and Border Protection any unentered goods held for more than 6 months. The reports must include the date the goods were received, a description of the goods and any other relevant information. Unentered goods must not be unpacked or repacked.
- (26) The holder of the licence shall report to Customs and Border Protection on a monthly basis:
 - (a) any goods or property not belonging to the Holder of the licence, other than unclaimed passenger or crew baggage, where rent or charges have been in arrears for more than 6 months; and
 - (b) any unclaimed passenger or crew baggage where rent or charges have been in arrears for 30 days or more.

The reports shall include the date the goods were received, a description of the goods, and information on whether an application to Customs and Border Protection to sell the goods has been made.

- (27) The holder of the licence must conduct a stocktake at least once per financial year or when requested by Customs and Border Protection. Any discrepancies must be reported to Customs and Border Protection as soon as practicable.
- (28) The holder of the licence must not move, alter or interfere with goods unless the requirements of the Customs Acts have been complied with.
- (29) The holder of the licence must not allow the unpacking of goods unless prior approval has been obtained from Customs and Border Protection. Note: Approval may be given on a single or continuing basis.
- (30) Goods subject to the control of Customs must be kept in a separate and distinct area within the licensed area.
- (31) For warehouses that have approval to move goods on a Continuing Permission, the holder of the licence must comply with the conditions of the Continuing Permission.
- (32) The holder of the licence must not facilitate transshipment or export of goods where there is a held status on the import declaration or cargo report that the goods are subject to.
- (33) The holder of the licence must provide adequate training to make staff aware of their obligations in dealing with goods subject to the control of Customs and must demonstrate ongoing quality assurance processes in place when requested by Customs and Border Protection.

Specific Conditions

This licence is also subject to the following additional conditions pursuant to section 82A of the *Customs Act 1901*:

- The holder of the licence must ensure that goods stored in FCL containers are stacked door-to-door.
- A holder of the licence must not allow for any person to enter the licensed warehouse without the holder of the licence making a record of their entry to the licensed warehouse. The record shall include full name, address, driver's licence number (if applicable) and the name of person being visited. The holder of the licence must ensure that the person whose personal information is being collected has provided sufficient acknowledgment on consent to allow the release of the information to Customs and Border Protection under Commonwealth privacy laws. This condition does not apply to Commonwealth, State or Territory officials.