



**AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE
NO. 2014/23**

**Definition of ‘Management or Control’ for Customs licensed depots and
warehouses**

The purpose of this Notice is to provide guidance on the interpretation by the Australian Customs and Border Protection Service (ACBPS) of the term ‘management or control’ in the *Customs Act 1901* (Customs Act), as it applies to licensed depots and warehouses.

The Customs Act requires all persons in management or control of a Customs licensed depot or warehouse to be fit and proper persons (refer to section 77K(1)(d) for depots and to section 81(1)(d) for warehouses).

The ACBPS considers a person to be in management or control if they:

- have authority to direct operations or activities at a depot or warehouse; or
- are involved in, or have an influence over, the policies and procedures of the depot or warehouse; or
- direct the receipt or release of goods at a depot or warehouse.

A person is considered to be in management irrespective of whether:

- their role is active or passive; and
- they are physically located at the depot or warehouse.

The *Depot Application Guide* and the *Warehouse Application Guide* state that the following people are required to be fit and proper persons in order for a licence to be granted:

- the applicant for the licence (where the application is an individual person);
- all partners (where the applicant is a partnership); and
- all persons who will participate in the management or control of the depot or warehouse, including all company directors, officers, shareholders, managers, supervisors, and all staff who have control over the recording and movement of goods when they enter and leave the depot or warehouse.

Examples of employees considered to be in management or control include, but are not limited to, those who:

- are responsible for releasing dutiable goods from a duty free store (such as a cashier);
- are entrusted with the physical security of the depot or warehouse (for example, they have keys to the premises, keys to the deadhouse, alarm deactivation/activation codes, out-of-hours access); or
- record, and move, goods entering and or leaving the depot or warehouse.

The holder of a Customs depot or warehouse licence is responsible for ensuring that each employee working in a position of management or control at the depot or warehouse is fit and proper.

It is a condition of a depot or warehouse licence that the holder of the licence must advise the ACBPS, in writing and within 30 days, of a person commencing in a position of management or control at the depot or warehouse. Such advice should be directed to the Licensing mailbox at licensing@customs.gov.au.

The ACBPS will advise the licence holder whether that new person will be required to submit a *Consent to Obtain Personal Information* form so that the ACBPS can undertake and make a fit and proper person determination.

The ACBPS may require a person who is in management or control of a depot or warehouse to submit additional *Consent to Obtain Personal Information* forms at any time in the future. The ACBPS will advise the licence holder when this is necessary.

Consistent with current practice, the ACBPS will not notify an employee who is deemed to be a fit and proper person under the Customs Act. Where an employee is assessed as not being a fit and proper person under the Customs Act, the ACBPS will notify the employee as well as the holder of the licence.

Failure to meet a licence condition is serious and constitutes a breach under section 77R or section 82C of the Customs Act (depots and warehouses respectively). Depending on the facts of any case, the ACBPS response to a breach could range from further education and a warning, administrative action such as the suspension and revocation of a licence and the application of an infringement notice, through to prosecution. Relevant factors that officers consider when weighing up treatment options include, for example, the significance of the breach, efforts to comply, any relevant remedial or risk mitigation action, compliance history, reliance on ACBPS advice and reasons beyond the person's control.

Enquiries concerning this Notice may be directed to the Licensing mailbox at licensing@customs.gov.au.

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