



Australian
BORDER FORCE

Australian Customs Notice No. 2022/46

New Obligations on Customs Depot and Warehouse Licences

The purpose of this Notice is to inform existing customs depot and warehouse licence holders that additional conditions will come into effect on 01 November 2022. The additional conditions do not apply to Australian Taxation Office-administered warehouses.

The additional conditions are imposed by the Comptroller-General of Customs and will apply to all depot licences under section 77Q of the *Customs Act 1901* (the Act) and will apply to all warehouse licences (including duty free shops) under section 82A of the Act.

Updated additional conditions are available at:

- Customs Depot Licences – Attachment A
- Customs Warehouse Licences – Attachment B

This Notice supersedes all previous Notices that outline obligations on customs depot and warehouse licences.

Background

The Australian Border Force (ABF) has undertaken an annual review of all additional conditions on customs depot and warehouse licences in order to:

- Strengthen existing controls within the supply chain.
- Inclusion of the expanded fit and proper regime
- Alignment of compliance controls for licence holders with the *Excise Act 1901*.

Types of Conditions

The additional conditions are categorised into the following:

Statutory Conditions

These conditions are outlined in the Act, under section 77N and section 77P for customs depot licences and under section 82 for customs warehouse licences. They are applicable to all customs depot and warehouse licence holders.

Additional Conditions

These conditions are imposed under section 77Q of the Act for customs depot licences and section 82A of the Act for customs warehouse licences. They are applicable to all customs depot and warehouse licence holders.

Specific Conditions

These conditions are imposed under section 77Q of the Act for customs depot licences and section 82A of the Act for customs warehouse licences. Specific conditions are only applicable to certain categories of licences.

Depending on the customs licence type, certain specific conditions may apply to reflect the operating environment. In the respective attachments to this Notice, specific conditions are marked to each licence type.

Examples of licence types are below:

- Duty Free Shops
- Provedores
- Catering Bonds
- Off-Airport Cargo Terminal Operators

Notifying the Australian Border Force

Communications from customs depot and warehouse licence holders to the ABF in relation to any matters referenced to in the obligations outlined in this Notice can be addressed to licensing@abf.gov.au quoting the respective licence number.

Complying with notification requirements

Failure to meet any condition(s) of the licence constitutes a breach under section 77R or section 82C of the Act (depots and warehouses respectively). Breaching these sections of the Act can result in an infringement notice being issued, prosecution in court, further conditions being placed on the licence or the cancellation of the licence.

[Signed]

Gavin Metcalfe
A/g Commander
Trusted Trader and Trade Compliance Branch
Customs Group
Australian Border Force
01 November 2022

Attachment A – Customs Depot Licence Conditions from 01 November 2022

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 Comptroller-General of Customs 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 Comptroller-General of Customs 30 days' notice of the proposed change.
- 3) The holder of the licence must pay to the Commonwealth 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 customs control; or
 - b) which an authorised officer has reasonable grounds to believe are subject to customs control.
- 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 customs control.
- 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 the Department 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 Comptroller-General of Customs, 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 the Australian Border Force.

Additional Conditions

The holder of the licence is hereby referred to as the "Licensee".

The Australian Border Force is hereby referred to as the "ABF".

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

- 1) The licensee must not attempt to transfer the licence to any other person or corporate body. The licensee must surrender their licence within 14 days, if they cease to occupy or control the place covered by the licence. In cases where the licence holder cannot continue to operate the licensed place the licence holder must ensure goods under customs control (includes goods that have an authorised authority to deal) are entered into home consumption or moved to another licensed place immediately and surrender the licence within 14 days.
- 2) The licensee must ensure that all persons in positions of management or control of the licensed premises provide to the ABF a completed 'Consent to Obtain Personal Information' form (Consent Form) within 14 days of the person occupying a position of management or control, or if there is a change in circumstances relevant to matters covered in the form. The Consent Form may be found at (<https://www.abf.gov.au/form-listing/forms/b301.pdf>). The licensee will use their best endeavours to enable the ABF to undertake inquiries and complete a fit and proper person determination for each person in a position of management or control of the licensed premises.
 - a. The ABF may at any time and from time to time direct the licensee to require all persons in positions of management or control of the licensed premises to provide to the ABF a further completed Consent Form.
 - b. The Consent Form is to be provided to the ABF within 14 days of the request by the ABF.

- c. 'Consent Forms are valid for 5 years from the date the relevant person signed the Consent Form and automatically lapses after that date.
 - d. The licensee must ensure that the licensee and all persons in positions of management or control of the licensed premises complete a new 'Consent Form within 14 days prior to the expiry day of the previous Consent Form.
- 3) The licensee must within 7 days of any request by the ABF provide to the ABF a comprehensive list of all staff and other persons with access to the licensed place. The ABF may request the list at any time and from time to time. The list must contain the full name, full residential address, date of birth, position in the licensed place, residency status, including any questions to determine they are in a position of management or control and if they have submitted a 'Consent to Personal Information' form, and the details of a current and valid form of photo identification including, but not limited to, ASIC/MSIC card, driver's licence, passport or proof of age card.
- a. For the purposes of this condition all persons who have access to the licensed place includes and is not limited to security personnel, contractors and casual staff, whether or not employed by the licensee, but does not include visitors to the licensed place who are recorded in the visitor log.
 - b. The licensee must ensure that the person whose personal information is collected provides written consent to permit the release of the information to the ABF for use and disclosure in accordance with the *Privacy Act 1988*.
- 4) A licensee must not allow any person to enter the licensed place as a visitor without making a record of their entry and exit in the Visitor log. The template for the Visitor Log may be found at (<https://www.abf.gov.au/licensing-subsite/files/s77G-Visitor-log.pdf>). The Visitor Log must include the visitor's full name, date of birth, full residential address, current photo identification (sighted by the licensee or authorised employee) and the details recorded (such as current number of a State or Territory driver's licence, proof of age card or passport), the reason the visitor is visiting the licensed place and the name of person being visited). Without limiting the category of visitors required to record their entry and exist in the Visitor Log, this includes, and is not limited to truck and delivery drivers, contractors and maintenance crew not employed by the licensee.
- a. The licensee is responsible for and required to escort, monitor and clearly identify as a visitor the visitor from the time in which the visitor enters the licensed place until the visitor exits the licensed place. Visitors who have a valid ID issued by the licensee for the licensed place and approved by the licensee to have on-going access to the licensed place are not required to be escorted but their entry into the licensed place must be recorded in the Visitor Log. For the avoidance of doubt persons operating at the licensed place day to day must be recorded on the staff list.
 - b. The licensee must ensure that the person whose personal information is collected provides written consent to permit the release of the information to the ABF for use and disclosure in accordance with the *Privacy Act 1988*.
 - c. The Visitor Log is to be kept for a minimum of five years, unless the licensee has written approval from the ABF to retain the Visitor Log for a shorter period.
 - d. If directed the licensee must within 14 days of the request make the Visitor Log available to the ABF.

- e. This condition does not apply to Commonwealth, State or Territory officials.
- 5) In the event of the licensee becoming aware of an event causing theft, loss, breakage, damage and/or pillage of goods including break-ins and attempted break-ins, fires or accidental destruction within the licensed place, the licensee must provide written particulars of the incident to the ABF as soon as practicable and always within 24 hours.
- a. This condition applies to customs controlled goods (including goods that have an authorised authority to deal) whether they are located inside or outside of the licensed place.
 - b. If the licensed place has been affected to the extent that the integrity or security of the place has been compromised, the goods under customs control must be moved to either a secure area within the licensed place, moved underbond to another licensed place, entered for warehousing (if applicable) or entered for home consumption.
- 6) It is a requirement of the licensee to display the ABF signage as directed by ABF.
- a. The licensee must not remove, reproduce or move any ABF signage without prior written approval from the ABF. If any ABF signage is damaged or stolen, the licensee must notify the ABF as soon as practicable but no later than 14 days of the licensee becoming aware the signage is damaged or stolen.
- 7) The licensee must install and maintain at their own cost a closed circuit television (CCTV) that provides continuous unobstructed view of the whole of the licensed place. For the avoidance of doubt, continuous unobstructed view of the whole of the licensed place, includes:
- a. continuous monitoring 24 hours a day 7 days a week; monitoring of all access points to the licensed place
 - b. a dedicated unobstructed CCTV that monitors the deadhouse;
 - c. CCTV must be of high definition quality (minimum of 720p), digital, hard wired and protected from possible tampering.
 - d. CCTV must be backed up offsite or within the licensed place in a fire proof and secure cabinet.
 - e. The licensee must keep the CCTV footage for a period of not less than 30 days. The ABF may direct a longer retention time of up to 90 days, in writing at any time and from time to time.
 - f. The licensee must grant ABF immediate access to CCTV footage on site at any time to review, copy and retain. For the avoidance of doubt the ABF may orally or in writing at any time and from time to time require access to the CCTV footage for the purpose of reviewing and copying. The licensee will immediately grant such access. The licensee will in addition provide to the ABF within 24 hours of an oral or written request and at the licensee's cost a clear copy of any CCTV footage.
 - g. All recording file details and any data recorded with the CCTV footage such as time, date and file name(s) must be in English.
 - h. The ABF may direct the licensee that motion sensor cameras are not suitable.
 - i. The ABF may direct the licensee to install additional CCTV capability in any place required within the licensed place.
 - j. The licensee must comply with all laws in relation to the installation and use of CCTVs as apply in the State or Territory in which the licensed place is located.

- 8) The licensee must install and maintain monitored alarm systems at its own cost for the entire licensed place, and ensure it is operational at all times. In case of an unavoidable temporary outage, the licence holder must ensure suitable alternative security arrangements are put in place until the monitored alarm system is operational. The ABF can direct additional monitored alarm systems where necessary to ensure the integrity and security of the licensed place.
- 9) The licensee must inform the ABF of any suspected breaches or offences of Customs-related law, by any persons related to the premises, whether or not it is related to the licensed place, as soon as practicable or always within 24 hours.

Note: Customs-related law is defined in section 4B of the *Customs Act 1901*.

- 10) The licensee must inform the ABF of any breaches of security at the premises at which the licensed place is located, whether or not it is related to the licensed place, as soon as practicable or always within 24 hours.
- 11) The licensee must ensure that the deadhouse is locked at all times with a suitable secure mechanism (such as a digital lock or chain and padlock) that aligns with the standard directed by the ABF unless the deadhouse is being accessed to store or remove goods.
- 12) The licensee must not alter or dispose of any goods subject to customs control without prior written permission from the ABF. If requested by the ABF, the licence holder is to provide adequate resources and staff to complete any disposal activity under ABF supervision.
- 13) The licensee must monitor the security of the licensed place and notify the ABF within 24 hours of becoming aware of a substantial change affecting the security of the licensed place and take such remedial action as directed by the ABF as soon as practicable or always within 24 hours.
- 14) The licensee must not handle types of goods that are not specified in the licence unless prior written authorisation is obtained from the ABF.
- 15) The licensee must not;
 - a. purport to change the physical location of the licensed place (within the licensed address or to another address); or
 - b. make substantial changes within the current licensed place; or
 - c. make substantial changes to the security of the licensed place;unless they have lodged an application for variation and received written approval from the ABF.
- 16) The licensee must not unpack, move or store any goods subject to customs control outside the licensed place unless the licence holder has obtained prior written authorisation from the ABF.
- 17) The licensee must allow the ABF to take into the licensed place any equipment or material reasonably necessary to assist any ABF related activities (including the examination of any goods subject to customs control). The licensee must provide the ABF with all reasonable assistance to carry out their duties.
- 18) The licensee must implement and maintain an effective cargo accounting system for all goods within the licence holder's control and subject to customs control at all times. If requested by the ABF, the licence holder is to make requested records available within 7 days of a written request and as soon as practicable if requested by the ABF at the licensed place.

- 19) The licensee must use the Integrated Cargo System (ICS) for communication with the ABF, unless alternative arrangements such as third party reporting arrangements have been documented and approved by the ABF. This includes the communication of information from the licensee to the Department of Home Affairs relating to the receipt and acquittal of all goods under Customs control at the licensed place, and communication of information from the ABF to the licensee in relation to the release of all goods under Customs control at the licensed place.
- 20) The licensee must not allow ABF systems or any information provided by the ABF to be used for any unauthorised purpose or to assist, aid, facilitate or participate in any unlawful or illegal activity.
- 21) The licensee must not move, alter or interfere with goods unless the requirements of Customs-related law have been complied with.

Note: Customs-related law is defined in section 4B of the *Customs Act 1901*.

- 22) The licensee must ensure that cargo outturn reports are lodged electronically to the ABF in the timeframes set out in s 64ABAB(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 the ABF 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 licensee must supply to the ABF, the cargo reporter, or the person responsible for adjusting the report of cargo in respect of s64AAC and 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 24 hours after the check-in or unpack of the goods at the premises.
- 24) When Prescribed Warehoused Goods (PWGs) for export are received at a depot the holder of the depot licence must communicate to the ABF a Depot Receival Notice within 3 hours of receipt of that cargo. (Note: Prescribed Warehouse Goods cannot be consolidated unless the licensee is in possession of an appropriate movement status.) When Prescribed Warehouse Goods for export are delivered from a depot the licensee must communicate a Depot Release Notice to the ABF within 3 hours of the cargo being released from the depot.

Note: PWGs may be dutiable or excisable goods. Dutiable and excisable goods are often referred to as underbond goods. Requirements to give notice of the movement of PWGs are outlined in sections 102A and 117AA of the *Customs Act 1901*.

- 25) Goods subject to customs control must be kept in a marked (i.e. painted line or fenced) and distinct area within the licensed place and separate from goods not subject to Customs control.
- 26) The licensee must ensure the deadhouse is of sufficient size in relation to the volume of goods being received. All high risk goods under customs control (including, but not limited to firearms, restricted and prohibited imports, or high value goods) must be stored in the deadhouse.
 - a. Where there is not enough room in the deadhouse, the licence holder must provide additional security measures to secure the goods.
- 27) The licensee 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 licensee must provide suitable and ongoing training to make staff aware of their obligations in dealing with goods subject to customs control and must ensure ongoing quality assurance processes are in place. The licence holder must demonstrate ongoing training and an ongoing review of processes to ensure compliance and provide evidence annually or as requested by the ABF.

- 29) Un-entered goods and goods found in a licensed place that are not required to be entered or that cannot be entered, can be disposed of after 90 days or immediately if there is reasonable grounds to believe the owner has abandoned them, with permission from the ABF.
- 30) A licence holder shall at all times comply with its obligations under the *Aviation Transport Security Act 2004* and the *Aviation Transport Security Regulations 2005*.
- 31) A licence holder shall at all times comply with its obligations under the Biosecurity Act 2015.
- 32) The licensee must at all times comply with the terms and conditions of accessing the Department of Home Affairs's Integrated Cargo System.
- 33) The licensee must secure the licensed area at all times (including all access points).

Fit and Proper Persons

- 34) The licence holder shall ensure that a person who the Comptroller-General of Customs (Comptroller-General) is satisfied is not a fit and proper person does not participate in any of the operations of the licensed place.

For the avoidance of doubt, participation by a person in any of the operations of the licensed place is not limited to persons physically present at the licensed place and includes any person who participates in the operations of the licensed place from a remote location and without limiting the foregoing includes any person who:

- a. has the power to direct (directly or indirectly), whether the power is exercised or not, any other person in any of the operations of the licensed place;
- b. issues instructions or expresses wishes (whether based on a legal right or otherwise) that others are accustomed to following, or compelled to follow, in relation to any of the operations of the licensed place;
- c. the Comptroller-General is satisfied participates in any of the operations of the licensed place in any manner whatsoever and whether in the day to day operations of the licensed place or intermittently or otherwise.

Participation in the operations of the licensed place is not established as a result of a person following directions or instructions given by the Comptroller-General.

The word "person" as used in this condition includes a body politic or body corporate as well as an individual, and includes any officer or member of a body politic or body corporate that participates in any of the operations of the licensed place and any person who has the power to direct, directly or indirectly, any such body politic or body corporate.

- 35) Without limiting the factors that the Comptroller-General may take into account to determine whether a person is a fit and proper person to participate in the operations of a licensed place, the Comptroller-General may have regard to:
 - a. whether the person has been convicted of an offence against a law of the Commonwealth, or of a State or Territory, or of any other country or part of a country.
 - b. whether the person has been refused a transport security identification card (defined in section 4 of the *Customs Act 1901* – which may be found at <https://www.legislation.gov.au/Details/C2022C00061>), or has had such a card suspended or cancelled; and

- c. if the person is not an Australian citizen, whether the person has breached any condition of their visa to reside in Australia.
- 36) The licence holder must ensure that any person who the licence holder is aware or informed by the Comptroller-General is an unlawful non-citizen (which has the same meaning as in the Migration Act 1958 – which may be found at <https://www.legislation.gov.au/Details/C2021C00357>) does not participate in any of the operations of the licensed place.
- 37) The licence holder must notify the Comptroller-General within twenty-four (24) hours if the licence holder becomes aware that a person who participates in any of the operations of the licenced place:
- a. has been convicted of an offence against a law of the Commonwealth, or of a State or Territory, or of any other country or part of a country;
 - b. has been refused a transport security identification card (defined in section 4 of the Customs Act 1901), or has had such a card suspended or cancelled;
 - c. has breached any condition of their visa to reside in Australia, if the person is not an Australian citizen; or
 - d. is an unlawful non-citizen.
- 38) In response to a request by the Comptroller-General, the licence holder must co-operate with and within twenty-four (24) hours provide to the Comptroller-General any information in the possession of the licence holder regarding a person who participates or has participated in any of the operations of the licensed place that may be relevant to an assessment of whether that person is a fit and proper person.
- 39) Without limiting any other provision of these conditions, the licence holder must:
- a. within ninety days (90) of the publication of this condition, with respect to any person who at the date of publication participates in any of the operations of the licensed place; and
 - b. within seven (7) days of any other person commencing to participate in any of the operations of the licensed place,

obtain from all such persons a duly completed and signed B1555 'Consent Form - Fit and Proper Checks' (B1555 Form) which can be found at <https://www.abf.gov.au/form-listing/forms/b1555.pdf>. The B1555 Form will contain a Declaration by the person that:

- c. the person has not been convicted of an offence against a law of the Commonwealth, or of a State or Territory, or of any other country or part of a country;
 - d. the person has not been refused a transport security identification card (as defined in section 4 of the Customs Act 1901), or has had such a card suspended or cancelled;
 - e. if the person is not an Australian citizen, the person has not breached any condition of their visa to reside in Australia; and
 - f. the person is not an unlawful non-citizen
- or, to the extent that the relevant person is unable to attest to the circumstances outlined at paragraph 39)c) - (f), a Statutory Declaration that:
- g. explains the circumstances relating to any of the matters outlined at paragraph 39)c) - (f) and sets out, as relevant:
 - i. the offences of which the person has been convicted and the date of the convictions;

- ii. the date a transport security identification card was refused or suspended or cancelled; and
- iii. a list of all visa conditions breached by the person.

For the purpose of these conditions the term convicted of an offence has the same meaning as in s85ZM(1) of the Crimes Act 1914 (Cth) – which may be found at <https://www.legislation.gov.au/Details/C2022C00147>.

40) The licence holder must:

- a. within ninety days of the publication of this condition, with respect to any person who as at that date participates in any of the operations of the licensed place; and
- b. within seven days of any other person commencing to participate in any of the operations of the licensed place,

verify the identity of all such persons by ensuring that those persons provide to the licence holder a legible copy of their identification documents in the English language (or, where the original document is in a foreign language, accompanied by an attested English language translation) that satisfy the proof of identity requirements outlined in the ABF's Form 1538i "Proof of Identity Requirements" (Identification Documents)¹.

41) The licence holder must retain a legible copy of the Form and Identification Documents referred to in the preceding conditions for a period of not less than 5 years from the date on which those documents were provided to the licence holder.

42) If directed by the Comptroller-General, the licence holder must within fourteen (14) days provide to the Comptroller-General in respect of any person who participates in any of the operations of the licensed place and who is specified by the Comptroller-General, the following documents:

- a. National Police Check; and
- b. Right to Work Check.

For the purpose of these conditions:

- c. a National Police Check means a criminal history check conducted by the Australian Federal Police², a State Police Force or an Australian Criminal Intelligence Commission (ACIC) Accredited body³; and
- d. a Right to Work Check means an Entitlement to Work Check of a Visa Holder utilising the Visa Entitlement Verification Online⁴ system (VEVO) or through an accredited agency that can access VEVO to verify the applicant's VISA conditions are not being breached.

43) Within seven (7) days of a request by the Comptroller-General, the licence holder must provide to the Comptroller-General the original of the Form and the Identification Documents with respect to any person specified by the Comptroller-General and who participates or has previously participated in any of the operations of the licensed place.

¹ Form can be found at here: <https://www.abf.gov.au/form-listing/forms/1538i.pdf>.

² An Australian Federal Police National Check can be made online at <https://www.afp.gov.au/what-we-do/services/criminal-records/national-police-checks>, citing "people requiring a check under Commonwealth legislation" as the reason for the check.

³ ACIC Accredited bodies can be found here: <https://www.acic.gov.au/services/national-police-checking-service/find-out-more-information/accredited-bodies>.

⁴ Further information can be found at: Check visa details and conditions (homeaffairs.gov.au).

Note: The Form approved by the Comptroller-General will include the relevant person's consent for the licence holder to obtain and retain a copy of the Form and Identification Documents and to obtain a National Police Check and Right to Work Check with respect to that person and for the licence holder to provide a copy of those documents to the Comptroller-General.

- 44) The licence holder must ensure that any person who does not complete the Form, or provide the Identification Documents, or provide the necessary information for a National Police Check or Right to Work Check, or withdraws their consent in the Form, does not participate in any of the operations of the licensed place.
- 45) The licence holder shall issue to all persons who participate in the operations of the licensed place a tamper proof Warehouse and Depot Security Identification Card (WADSIC) in a form approved by the Comptroller-General. The WADSIC is to be issued within seven (7) days of the date the licence holder verifies the identity of the person⁵. The WADSIC shall bear the photo and name of the person and the day, month and year of issue or expiry.
- 46) The licence holder must ensure that any person who is physically present at the licensed place and participating in any of the operations of the licensed place properly displays:
- a. the WADSIC issued to them by the licence holder, or
 - b. an aviation security identification card⁶ (ASIC) or maritime security identification card⁷ (MSIC).

For the purposes of this condition, a person is properly displaying a WADSIC, ASIC or MSIC only if the WADSIC, ASIC or MSIC is attached to the person's outer clothing:

- c. above waist height; and
- d. at the front or side of his or her body; and
- e. with the whole front of the WADSIC, ASIC or MSIC clearly visible.

A person is not properly displaying the WADSIC, ASIC or MSIC if anything adhering to it obscures a photograph or any other part of the front of the card.

Specific Conditions

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

General

- 47) The licensee must ensure the CCTV provides that all individuals are capable of identification in all light conditions so as to ensure facial recognition at all times. Motion sensor cameras are not suitable.
- a. The licensee will install at their own cost additional or alternative CCTV as directed by the ABF where such additional or alternate CCTV capability is necessary or desirable having regard to the nature of the goods being stored at the licensed place.

⁵ See paragraph 7 of this condition.

⁶ Defined in regulation 1.03 of the *Aviation Transport Security Regulations 2005* which may be found at <https://www.legislation.gov.au/Details/F2022C00459>.

⁷ Defined in regulation 6.07B of the *Maritime Transport and Offshore Facilities Security Regulations 2003* which may be found at <https://www.legislation.gov.au/Details/F2022C00462>.

Container Parks

- 48) The licensee must not allow the unpacking of containers under customs control in container parks.
- 49) The licensee must ensure that goods stored in containers under customs control are stacked door-to-door.

Post

- 50) The licensee must ensure that all international mail is available to be presented to the ABF for screening.
- 51) The licensee must ensure that International mail is not delivered into home consumption until it has been approved for delivery by the ABF.

Off-Airport Cargo Terminal Operators

- 52) The applicant must hold a current contract with an international airline to provide CTO services at the specified airport (shared contractual arrangements may be considered, however in the case of freighters it must be demonstrated that a minimum of one entire fortnightly flight will be serviced by the applicant and in the case of below deck freight on a passenger aircraft, a minimum of one entire weekly flight will be serviced).
- 53) The applicant must ensure that all cargo discharged at the airport is reported at the master air waybill level prior to movement from the airport and that the report is transmitted electronically to the ABF via the ICS.
- 54) The applicant must establish contingency arrangements to ensure ICS cargo reporting and status acceptance in cases of IT systems failure.
- 55) The applicant must establish a procedure to ensure that the condition and quantity of cargo (including pallets and loose pieces) is checked and that an accountable record is made when the applicant receives the cargo and before that cargo departs the airport.
- 56) The applicant must ensure that all approved cargo movements from the airport are completed promptly and by a direct route to the off-airport licensed site.
- 57) An applicant must also provide the ABF with an outline of the application (e.g. temporary or ongoing facility), a detailed description of the proposed cargo movement process and a list of all third party service providers who will have access to the cargo (e.g. ramp handlers, land side transport providers etc.).
- 58) All records regarding the condition and quantity of cargo are accountable and must be retained by the licence holder for a period of five years or such other period as the ABF determines. Accountable records may be stored in either electronic or paper format. They must be made available for the ABF examination when requested.

Attachment B – Customs Warehouse Licence Conditions from 01 November 2022

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 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 Comptroller-General of Customs particulars in writing of that event.
- 2) A warehouse licence is subject to the condition that no tobacco products will be warehoused in the warehouse.
- 3) A warehouse licence is subject to such other conditions (if any) as are specified in the licence that the Comptroller-General of Customs 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 Comptroller-General of Customs 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:

- 1) A substantial change in a matter affecting the physical security of the warehouse includes a change to the approved site plan.
- 2) Warehouse condition 82(2) does not apply until 1 January 2020 to:
 - a) an outwards duty free shop (within the meaning of section 96A of the *Customs Act 1901*).
 - b) an inwards duty free shop (within the meaning of section 96B of that Act).
 - c) a warehouse that only warehouses either or both of the following:
 - i) ship's stores (within the meaning of section 130C of that Act);
 - ii) aircraft's stores (within the meaning of section 130C of that Act).
- 3) Warehouse condition 82(2) does not prevent a duty free operator, or a warehouse licence authorised by the Comptroller-General of Customs to provide aircraft's and ship's stores as defined in s.130C of the *Customs Act 1901* from storing duty refunded tobacco.

Section 90 – Obligations of holders of warehouse licences

- 1) The holder of a warehouse licence shall:
- a) stack and arrange goods in the warehouse so that officers have reasonable access to, and are able to examine, the goods;
 - b) provide officers with adequate space and facilities for the examination of goods in the warehouse and with devices for accurately measuring and weighing such goods;
 - c) if required by a Collector, provide adequate office space and furniture and a telephone service, for the official use of officers performing duties at the warehouse; and
 - d) provide sufficient labour and materials for use by a Collector in dealing with goods in the warehouse for the purposes of this Act.

Penalty: 30 penalty units.

1A) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

2) A requirement imposed on the holder of a warehouse licence under paragraph (1)(c) shall be set out in a notice in writing served, either personally or by post, on the holder of the licence.

Additional Conditions

The holder of the licence is hereby referred to as the "Licensee".

The Australian Border Force is hereby referred to as the "ABF".

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

- 1) The licensee must not attempt to transfer the licence to any other person or corporate body. The licensee must surrender their licence within 14 days, if they cease to occupy or control the place covered by the licence. In cases where the licence holder cannot continue to operate the licensed place the licence holder must ensure goods under customs control (includes goods that have an authorised authority to deal) are entered into home consumption or moved to another licensed place immediately and surrender the licence within 14 days.
- 2) The licensee must ensure that all persons in positions of management or control of the licensed premises provide to the ABF a completed 'Consent to Obtain Personal Information' form (Consent Form) within 14 days of the person occupying a position of management or control, or if there is a change in circumstances relevant to matters covered in the form. The Consent Form may be found at (<https://www.abf.gov.au/form-listing/forms/b301.pdf>). The licensee will use their best endeavours to enable the ABF to undertake inquiries and complete a fit and proper person determination for each person in a position of management or control of the licensed premises.
 - a. The ABF may at any time and from time to time direct the licensee to require all persons in positions of management or control of the licensed premises to provide to the ABF a further completed Consent Form.
 - b. The Consent Form is to be provided to the ABF within 14 days of the request by the ABF.
 - c. 'Consent Forms are valid for 5 years from the date the relevant person signed the Consent Form and automatically lapses after that date.
 - d. The licensee must ensure that the licensee and all persons in positions of management or control of the licensed premises complete a new 'Consent Form within 14 days prior to the expiry day of the previous Consent Form.
- 3) The licensee must within 7 days of any request by the ABF provide to the ABF a comprehensive list of all staff and other persons with access to the licensed place. The ABF may request the list at any time and from time to time. The list must contain the full name, full residential address, date of birth, position in the licensed place, residency status, including any questions to determine they are in a position of management or control and if they have submitted a 'Consent to Personal Information' form, and the details of a current and valid form of photo identification including, but not limited to, ASIC/MSIC card, driver's licence, passport or proof of age card.

- a. For the purposes of this condition all persons who have access to the licensed place includes and is not limited to security personnel, contractors and casual staff, whether or not employed by the licensee, but does not include visitors to the licensed place who are recorded in the visitor log.
 - b. The licensee must ensure that the person whose personal information is collected provides written consent to permit the release of the information to the ABF for use and disclosure in accordance with the *Privacy Act 1988*.
- 4) The licensee must, when requested to do so, provide the ABF 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 customs control.
- 5) In the event of the licensee becoming aware of an event causing theft, loss, breakage, damage and/or pillage of goods including break-ins and attempted break-ins, fires or accidental destruction within the licensed place, the licensee must provide written particulars of the incident to the ABF as soon as practicable and always within 24 hours.
 - a. This condition applies to customs controlled goods (including goods that have an authorised authority to deal) whether they are located inside or outside of the licensed place.
 - b. If the licensed place has been affected to the extent that the integrity or security of the place has been compromised, the goods under customs control must be moved to either a secure area within the licensed place, moved underbond to another licensed place, entered for warehousing (if applicable) or entered for home consumption.
 - c. Licence holders may seek written approval from the ABF to submit quarterly incident reports for theft, loss, and breakages.
- 6) It is a requirement of the licensee to display the ABF signage as directed by ABF.
 - a. The licensee must not remove, reproduce or move any ABF signage without prior written approval from the ABF. If any ABF signage is damaged or stolen, the licensee must notify the ABF as soon as practicable but no later than 14 days of the licensee becoming aware the signage is damaged or stolen.
- 7) The licensee must install and maintain at their own cost a closed circuit television (CCTV) that provides continuous unobstructed view of the whole of the licensed place. For the avoidance of doubt, continuous unobstructed view of the whole of the licensed place, includes:
 - a. continuous monitoring 24 hours a day 7 days a week; monitoring of all access points to the licensed place
 - b. a dedicated unobstructed CCTV that monitors the deadhouse;
 - c. CCTV must be of high definition quality (minimum of 720p), digital, hard wired and protected from possible tampering.
 - d. CCTV must be backed up offsite or within the licensed place in a fire proof and secure cabinet.
 - e. The licensee must keep the CCTV footage for a period of not less than 30 days. The ABF may direct a longer retention time of up to 90 days, in writing at any time and from time to time.
 - f. The licensee must grant ABF immediate access to CCTV footage on site at any time to review, copy and retain. For the avoidance of doubt the ABF may orally or in writing at any time and

from time to time require access to the CCTV footage for the purpose of reviewing and copying. The licensee will immediately grant such access. The licensee will in addition provide to the ABF within 24 hours of an oral or written request and at the licensee's cost a clear copy of any CCTV footage.

- g. All recording file details and any data recorded with the CCTV footage such as time, date and file name(s) must be in English.
- h. The ABF may direct the licensee that motion sensor cameras are not suitable.
- i. The ABF may direct the licensee to install additional CCTV capability in any place required within the licensed place.
- j. The licensee must comply with all laws in relation to the installation and use of CCTVs as apply in the State or Territory in which the licensed place is located.

- 8) The licensee must install and maintain monitored alarm systems at its own cost for the entire licensed place, and ensure it is operational at all times. In case of an unavoidable temporary outage, the licence holder must ensure suitable alternative security arrangements are put in place until the monitored alarm system is operational. The ABF can direct additional monitored alarm systems where necessary to ensure the integrity and security of the licensed place.
- 9) The licensee must inform the ABF of any suspected breaches or offences of Customs-related law, by any persons related to the premises, whether or not it is related to the licensed place, as soon as practicable or always within 24 hours.

Note: Customs-related law is defined in section 4B of the *Customs Act 1901*.

- 10) The licensee must inform the ABF of any breaches of security at the premises at which the licensed place is located, whether or not it is related to the licensed place, as soon as practicable or always within 24 hours.
- 11) The licensee must not alter or dispose of any goods subject to customs control without prior written permission from the ABF. If requested by the ABF, the licence holder is to provide adequate resources and staff to complete any disposal activity under ABF supervision.
- 12) The licensee must monitor the security of the licensed place and notify the ABF within 24 hours of becoming aware of a substantial change affecting the security of the licensed place and take such remedial action as directed by the ABF as soon as practicable or always within 24 hours.
- 13) The licensee must not handle types of goods that are not specified in the licence unless prior written authorisation is obtained from the ABF.
- 14) The licensee must not;
 - a. purport to change the physical location of the licensed place (within the licensed address or to another address); or
 - b. make substantial changes within the current licensed place; or
 - c. make substantial changes to the security of the licensed place.

unless they have lodged an application for variation and received written approval from the ABF.

- 15) The licensee must not unpack, move or store any goods subject to customs control outside the licensed place unless the licence holder has obtained prior written authorisation from the ABF.

- 16) Under section 90 of the *Customs Act 1901* the licensee must stack and arrange goods in the warehouse so that the ABF have reasonable access to, and are able to examine, the goods.
- 17) Under section 90 of the *Customs Act 1901* the licensee must provide the ABF with adequate space, office accommodation, car parking and facilities (such as an examination bench, audit office and other relevant facilities at the standards directed by the ABF) for use by the ABF to undertake their duties (including the examination of goods) at the licensed place.
- 18) Under section 91 of the *Customs Act 1901* the licensee must, when requested to do so, allow the ABF to enter and remain in the warehouse to conduct ABF related activities (including the examination of goods which are subject to customs control or which the ABF has reasonable grounds to believe are subject to customs control).
- 19) The licensee must allow the ABF to take into the licensed place any equipment or material reasonably necessary to assist any ABF related activities (including the examination of any goods subject to customs control). The licensee must provide the ABF with all reasonable assistance to carry out their duties.
- 20) The licensee must;
 - a. retain all commercial records and records created in accordance with *Customs Act 1901* that relate to goods received into, or found in the warehouse 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 goods received, released, the movement and unpacking of the goods until five years after the authorised release of the goods from the warehouse; and
 - c. keep the records referred to at the warehouse or if the holder has notified the ABF 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 licensee must, when requested to do so:
 - a. Permit the ABF;
 - i. to enter and remain in a place that is occupied and controlled by the holder and which the ABF 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.
 - b. Provide the ABF 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 licensee must implement and maintain an effective cargo accounting system for all goods within the licence holder's control and subject to customs control at all times. If requested by the ABF, the licence holder is to make requested records available within 7 days of a written request and as soon as practicable if requested by the ABF at the licensed place.

- 23) The licensee must not allow ABF systems or any information provided by the ABF to be used for any unauthorised purpose or to assist, aid, facilitate or participate in any unlawful or illegal activity.
- 24) The licensee must communicate to the ABF any substantial change (i.e. not specified in the licence) in the type of goods or the amount of goods to be stored within the warehouse as soon as practicable or always within 7 days of the change.
- 25) The licensee must report to the ABF any un-entered 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. Un-entered goods must not be unpacked or repacked without the permission of the ABF.
- 26) The holder of the warehouse licence shall report to the ABF on a monthly basis;
 - a. any goods or property not belonging to the licensee, other than unclaimed passenger or crew baggage, where rent or charges have been in arrears for more than 6 months;
 - b. any unclaimed passenger or crew baggage where rent or charges have been in arrears for 30 days or more; and
 - c. any goods that have been destroyed and where the duty has been remitted.

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

- 27) The holder of the warehouse licence must conduct a full stocktake at least once per financial year or when requested by the ABF. Any discrepancies must be reported to the ABF as soon as practicable or always within 28 days. The holder of the warehouse licence can seek an alternative reporting time with the written approval from the ABF.
- 28) The licensee must not move, alter or interfere with goods unless the requirements of Customs-related law have been complied with.

Note: Customs-related law is defined in section 4B of the *Customs Act 1901*.
- 29) The holder of the warehouse licence must not allow the unpacking of goods unless prior approval has been obtained from the ABF.

Note: Written approval may be given on a single or continuing basis from the ABF.
- 30) Goods subject to customs control must be kept in a marked (i.e. painted line or fenced) and distinct area within the licensed place and separate from goods not subject to Customs control.
- 31) For licensed warehouses that have written approval from the ABF to move goods on a Continuing Permission. The licensee must comply with the conditions of the Continuing Permission:
 - a. The permission holder is required to account to the ABF for all goods removed under a permission until such time as the goods are received into and recorded at the nominated destination.
 - b. Goods which have been warehoused on a Nature 20 Warehouse Declaration which carries a Customs impediment may not be removed under a Continuing Permission. Approval must be sought from the ABF before removing such goods.
 - c. A company document being one of a consecutively numbered system of documents, showing at least the following particulars is to be forwarded by the permission holder to the proprietor of the nominated destination with the goods:

- i. N20 Entry and Line Number
 - ii. The place from where the goods were dispatched and where destined
 - iii. Date of dispatch
 - iv. The number and type of packages
 - v. Description of the goods
 - vi. A statement that the goods are underbond
 - vii. Importing vessels, or aircraft particulars and lodgement number where appropriate
 - viii. Any other information necessary to permit the goods to be further dealt with on receipt at the destination
- d. Notwithstanding anything contained in the preceding requirement where the permission holder fails to keep the specified goods safely or when so requested by the Collector does not account for the said goods to the satisfaction of the Collector, the permission holder shall on demand in writing made by the Collector, pay to the Commonwealth an amount equal to the amount of Customs duty which would have been payable on those goods if they had been entered for home consumption on the day on which the demand was made.
- e. The licence holder must notify the ABF of any change in circumstances that impact the conditions of the Continuing Permission as soon as practicable or always within 14 days.
- 32) The licensee 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 licensee must provide suitable and ongoing training to make staff aware of their obligations in dealing with goods subject to customs control and must ensure ongoing quality assurance processes are in place. The licence holder must demonstrate ongoing training and an ongoing review of processes to ensure compliance and provide evidence annually or as requested by the ABF.
- 34) A licence holder shall at all times comply with its obligations under the Aviation Transport Security Act 2004 and the Aviation Transport Security Regulations 2005.
- 35) A licence holder shall at all times comply with its obligations under the Biosecurity Act 2015.
- 36) The licensee must at all times comply with its obligations under the Excise Act 1901.
- 37) The licensee must at all times comply with the terms and conditions of accessing the Department of Home Affairs' Integrated Cargo System.
- 38) The licensee must secure the licensed area at all times (including all access points).

Fit and Proper Persons

- 39) The licence holder shall ensure that a person who the Comptroller-General of Customs (Comptroller-General) is satisfied is not a fit and proper person does not participate in any of the operations of the licensed place.

For the avoidance of doubt, participation by a person in any of the operations of the licensed place is not limited to persons physically present at the licensed place and includes any person who participates in the operations of the licensed place from a remote location and without limiting the foregoing includes any person who:

- a. has the power to direct (directly or indirectly), whether the power is exercised or not, any other person in any of the operations of the licensed place;
- b. issues instructions or expresses wishes (whether based on a legal right or otherwise) that others are accustomed to following, or compelled to follow, in relation to any of the operations of the licensed place;
- c. the Comptroller-General is satisfied participates in any of the operations of the licensed place in any manner whatsoever and whether in the day to day operations of the licensed place or intermittently or otherwise.

Participation in the operations of the licensed place is not established as a result of a person following directions or instructions given by the Comptroller-General.

The word “person” as used in this condition includes a body politic or body corporate as well as an individual, and includes any officer or member of a body politic or body corporate that participates in any of the operations of the licensed place and any person who has the power to direct, directly or indirectly, any such body politic or body corporate.

- 40) Without limiting the factors that the Comptroller-General may take into account to determine whether a person is a fit and proper person to participate in the operations of a licensed place, the Comptroller-General may have regard to:
- a. whether the person has been convicted of an offence against a law of the Commonwealth, or of a State or Territory, or of any other country or part of a country.
 - b. whether the person has been refused a transport security identification card (defined in section 4 of the *Customs Act 1901* – which may be found at <https://www.legislation.gov.au/Details/C2022C00061>), or has had such a card suspended or cancelled; and
 - c. if the person is not an Australian citizen, whether the person has breached any condition of their visa to reside in Australia.
- 41) The licence holder must ensure that any person who the licence holder is aware or informed by the Comptroller-General is an unlawful non-citizen (which has the same meaning as in the Migration Act 1958 – which may be found at <https://www.legislation.gov.au/Details/C2021C00357>) does not participate in any of the operations of the licensed place.
- 42) The licence holder must notify the Comptroller-General within twenty-four (24) hours if the licence holder becomes aware that a person who participates in any of the operations of the licensed place:
- a. has been convicted of an offence against a law of the Commonwealth, or of a State or Territory, or of any other country or part of a country;
 - b. has been refused a transport security identification card (defined in section 4 of the Customs Act 1901), or has had such a card suspended or cancelled;
 - c. has breached any condition of their visa to reside in Australia, if the person is not an Australian citizen; or
 - d. is an unlawful non-citizen.
- 43) In response to a request by the Comptroller-General, the licence holder must co-operate with and within twenty-four (24) hours provide to the Comptroller-General any information in the possession of the

licence holder regarding a person who participates or has participated in any of the operations of the licensed place that may be relevant to an assessment of whether that person is a fit and proper person.

44) Without limiting any other provision of these conditions, the licence holder must:

- a. within ninety days (90) of the publication of this condition, with respect to any person who at the date of publication participates in any of the operations of the licensed place; and
- b. within seven (7) days of any other person commencing to participate in any of the operations of the licensed place,

obtain from all such persons a duly completed and signed B1555 'Consent Form - Fit and Proper Checks' (B1555 Form) which can be found at <https://www.abf.gov.au/form-listing/forms/b1555.pdf>. The B1555 Form will contain a Declaration by the person that:

- c. the person has not been convicted of an offence against a law of the Commonwealth, or of a State or Territory, or of any other country or part of a country;
- d. the person has not been refused a transport security identification card (as defined in section 4 of the Customs Act 1901), or has had such a card suspended or cancelled;
- e. if the person is not an Australian citizen, the person has not breached any condition of their visa to reside in Australia; and
- f. the person is not an unlawful non-citizen

or, to the extent that the relevant person is unable to attest to the circumstances outlined at paragraph 39)c) - (f), a Statutory Declaration that:

- g. explains the circumstances relating to any of the matters outlined at paragraph 39)c) - (f) and sets out, as relevant:
 - i. the offences of which the person has been convicted and the date of the convictions;
 - ii. the date a transport security identification card was refused or suspended or cancelled; and
 - iii. a list of all visa conditions breached by the person.

For the purpose of these conditions the term convicted of an offence has the same meaning as in s85ZM(1) of the Crimes Act 1914 (Cth) – which may be found at <https://www.legislation.gov.au/Details/C2022C00147>.

45) The licence holder must:

- a. within ninety days of the publication of this condition, with respect to any person who as at that date participates in any of the operations of the licensed place; and
- b. within seven days of any other person commencing to participate in any of the operations of the licensed place,

verify the identity of all such persons by ensuring that those persons provide to the licence holder a legible copy of their identification documents in the English language (or, where the original document is in a foreign language, accompanied by an attested English language translation) that satisfy the proof of

identity requirements outlined in the ABF's Form 1538i "Proof of Identity Requirements" (Identification Documents)⁸.

- 46) The licence holder must retain a legible copy of the Form and Identification Documents referred to in the preceding conditions for a period of not less than 5 years from the date on which those documents were provided to the licence holder.
- 47) If directed by the Comptroller-General, the licence holder must within fourteen (14) days provide to the Comptroller-General in respect of any person who participates in any of the operations of the licensed place and who is specified by the Comptroller-General, the following documents:
- a. National Police Check; and
 - b. Right to Work Check.

For the purpose of these conditions:

- c. a National Police Check means a criminal history check conducted by the Australian Federal Police⁹, a State Police Force or an Australian Criminal Intelligence Commission (ACIC) Accredited body¹⁰; and
 - d. a Right to Work Check means an Entitlement to Work Check of a Visa Holder utilising the Visa Entitlement Verification Online¹¹ system (VEVO) or through an accredited agency that can access VEVO to verify the applicant's VISA conditions are not being breached.
- 48) Within seven (7) days of a request by the Comptroller-General, the licence holder must provide to the Comptroller-General the original of the Form and the Identification Documents with respect to any person specified by the Comptroller-General and who participates or has previously participated in any of the operations of the licensed place.
- Note: The Form approved by the Comptroller-General will include the relevant person's consent for the licence holder to obtain and retain a copy of the Form and Identification Documents and to obtain a National Police Check and Right to Work Check with respect to that person and for the licence holder to provide a copy of those documents to the Comptroller-General.
- 49) The licence holder must ensure that any person who does not complete the Form, or provide the Identification Documents, or provide the necessary information for a National Police Check or Right to Work Check, or withdraws their consent in the Form, does not participate in any of the operations of the licensed place.
- 50) The licence holder shall issue to all persons who participate in the operations of the licensed place a tamper proof Warehouse and Depot Security Identification Card (WADSIC) in a form approved by the Comptroller-General. The WADSIC is to be issued within seven (7) days of the date the licence holder verifies the identity of the person¹². The WADSIC shall bear the photo and name of the person and the day, month and year of issue or expiry.
- 51) The licence holder must ensure that any person who is physically present at the licensed place and participating in any of the operations of the licensed place properly displays:

⁸ Form can be found at here: <https://www.abf.gov.au/form-listing/forms/1538i.pdf>.

⁹ An Australian Federal Police National Check can be made online at <https://www.afp.gov.au/what-we-do/services/criminal-records/national-police-checks>, citing "people requiring a check under Commonwealth legislation" as the reason for the check.

¹⁰ ACIC Accredited bodies can be found here: <https://www.acic.gov.au/services/national-police-checking-service/find-out-more-information/accredited-bodies>.

¹¹ Further information can be found at: Check visa details and conditions (homeaffairs.gov.au).

¹² See paragraph 7 of this condition.

- a. the WADSIC issued to them by the licence holder, or
- b. an aviation security identification card¹³ (ASIC) or maritime security identification card¹⁴ (MSIC).

For the purposes of this condition, a person is properly displaying a WADSIC, ASIC or MSIC only if the WADSIC, ASIC or MSIC is attached to the person's outer clothing:

- c. above waist height; and
- d. at the front or side of his or her body; and
- e. with the whole front of the WADSIC, ASIC or MSIC clearly visible.

A person is not properly displaying the WADSIC, ASIC or MSIC if anything adhering to it obscures a photograph or any other part of the front of the card.

Specific Conditions

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

General

52) The licensee must ensure that goods stored in FCL containers are stacked door-to-door.

53) A licensee must not allow any person to enter the licensed place as a visitor without making a record of their entry and exit in the Visitor log. The template for the Visitor Log may be found at (<https://www.abf.gov.au/licensing-subsite/files/s79-Visitor-log.pdf>). The Visitor Log must include the visitor's full name, date of birth, full residential address, current photo identification (sighted by the licensee or authorised employee) and the details recorded (such as current number of a State or Territory driver's licence, proof of age card or passport), the reason the visitor is visiting the licensed place and the name of person being visited). Without limiting the category of visitors required to record their entry and exist in the Visitor Log, this includes, and is not limited to truck and delivery drivers, contractors and maintenance crew not employed by the licensee.

- a. The licence holder is responsible for and required to escort, monitor and clearly identify as a visitor the visitor from the time in which the visitor enters the licensed place until the visitor exits the licensed place. Visitors who have a valid ID issued by the licensee for the licensed place and approved by the licensee to have on-going access to the licensed place are not required to be escorted but their entry into the licensed place must be recorded in the Visitor Log. For the avoidance of doubt persons operating at the licensed place day to day must be recorded on the staff list.
- b. The licensee must ensure that the person whose personal information is collected provides written consent to permit the release of the information to the ABF for use and disclosure in accordance with the *Privacy Act 1988*.
- c. The Visitor Log is to be kept for a minimum of five years, unless the licensee has written approval from the ABF to retain the Visitor Log for a shorter period.

¹³ Defined in regulation 1.03 of the *Aviation Transport Security Regulations 2005* which may be found at <https://www.legislation.gov.au/Details/F2022C00459>.

¹⁴ Defined in regulation 6.07B of the *Maritime Transport and Offshore Facilities Security Regulations 2003* which may be found at <https://www.legislation.gov.au/Details/F2022C00462>.

- d. If directed the licensee must within 14 days of the request make the Visitor Log available to the ABF.
- e. This condition does not apply to Commonwealth, State or Territory officials.

54) The licensee must ensure the CCTV provides that all individuals are capable of identification in all light conditions so as to ensure facial recognition at all times. Motion sensor cameras are not suitable.

- a. The licensee will install at their own cost additional or alternative CCTV as directed by the ABF where such additional or alternate CCTV capability is necessary or desirable having regard to the nature of the goods being stored at the licensed place.

Duty Free Shops, Provedores and Catering Bonds

55) The holder of a warehouse licence is authorised by the Comptroller-General of Customs to provide aircraft's and ship's stores as defined in s.130C *Customs Act 1901* must:

- a. If duty refunded tobacco is provided as aircraft's stores or ship's stores, but the licence holder cannot prove that tobacco was taken on board as authorised ship's or aircraft's stores, the licence holder must pay on demand in writing by a Collector, an amount equal to the duty refunded and the unpaid GST with respect to that duty refunded tobacco.

56) The holder of a warehouse licence used as a duty free shop must ensure:

- a. For inwards on-airport duty free shops, the maximum amount of duty refunded tobacco sold to a relevant traveller is no more than the duty free concessional amount.
- b. For outwards on-airport duty free shops, if the licensee cannot prove to the Collector's satisfaction that any duty refunded tobacco sold to a relevant traveller has been exported, the licence holder must pay on demand in writing by the Collector, an amount equal to the refunded duty and unpaid GST in relation to that duty refunded tobacco.
- c. For off-airport duty free shops, duty refunded tobacco must be exported in a transparent bag or container so the contents of the bag or container can be easily identified and with a docket to be plucked for proof of export.

57) The holder of a warehouse licence that operate as a duty free shop, or is authorised by the Comptroller-General of Customs to provide ship's stores or aircraft's stores as defined in the *Customs Act 1901*:

- a. Must not accept, hold, store or on-sell tobacco products that have not been entered for delivery into home consumption.
- b. Any uncleared tobacco product must be entered into home consumption with relevant duties and taxes paid or otherwise exported. Proof of export must be provided to the ABF within 7 days.

58) The ABF may at any time specify a maximum amount of duty refunded tobacco the licence holder can store within the licensed warehouse.

59) The licence holder must:

- a. Not purchase tobacco products on which duty has been or will be refunded (duty refunded tobacco) unless;
 - i. it has a warehouse that is licensed as a duty free shop; or

- ii. has been authorised by the Comptroller-General in a condition of the warehouse licence to provide ship's stores or aircraft's stores as those terms are defined in s.130C of the *Customs Act 1901*.
- b. Ensure duty refunded tobacco is only: sold to a "relevant traveller" as defined in section 96A(1) and section 96B(1) of the *Customs Act 1901* if the warehouse is a duty free shop; or provided as aircraft's stores and ship's stores as those terms are defined in section 130C of the *Customs Act 1901*, if authorised to do so.
- c. Ensure duty refunded tobacco is only stored in a warehouse licensed by the Comptroller-General of Customs as a duty free shop, or in other licenced premises approved by the Comptroller General of Customs to store duty refunded tobacco.
- d. Ensure duty refunded tobacco is securely stored within the permitted licensed warehouse.
- e. Not allow any duty refunded tobacco to be moved from or to a licensed warehouse without an approval sought and provided by the same means as for a s.71E *Customs Act 1901* approval.
- f. Maintain an electronic register of all duty refunded tobacco that is received and that is on-sold to a relevant traveller or provided as aircraft's or ship's stores. Records are to be provided to the ABF quarterly and forthwith at any other time or times upon request by a Collector. Within the register, the licence holder should make a record of;
 - i. any duty refunded tobacco that cannot be accounted for or has been obtained by a person who is not a relevant traveller or provided otherwise than as aircraft's stores or ship's stores; and
 - ii. any loss, theft, diversion, or unauthorised removal of duty refunded tobacco.
- g. Pay on demand in writing by the Collector an amount equal to the duty refunded on any duty refunded tobacco that has not been kept safely or is unable to be accounted for to the satisfaction of the Collector.

60) The licensee must not enter into, allow or facilitate an arrangement that would infringe the *Customs Act 1901* or any other law of the Commonwealth of Australia.

Duty Free Shops

- 61) The licensee must ensure that duty free items are only displayed in the licensed premises. Demonstration of consumables is permitted only if the goods have been entered into home consumption.
- 62) The licensee must inform a relevant traveller of their concession allowances. Signs must be displayed in the duty free shop, as per the 'Duty Free Operators Guide'. The licensee must not knowingly facilitate any transaction that would permit a relevant traveller to exceed their duty free allowance.
- 63) For off-airport duty free shops, duty free items must be exported in a transparent bag or container so the goods can be easily identified and with a docket to be plucked for proof of export.
- 64) The licensee must ensure that the duty free shop lodges a return to the ABF within 21 days of the end of the month, outlining the duty payable to the ABF. This return must include the name of the duty free shop, the invoice number of each invoice and a payment equal to the duty payable on the return.
- 65) This licence constitutes permission under section 96A of the *Customs Act 1901*. The permission relates to all goods specified in this licence. The permission may be revoked, suspended, varied, cancelled or

suspended from time to time in accordance with section 33 of the Acts Interpretation Act 1901 or section 96A of the *Customs Act 1901*. The licensee must comply with the conditions of the permission.

- 66) This licence constitutes permission under section 96B of the *Customs Act 1901*. The permission relates to all goods specified in this licence. The permission may be revoked, suspended, varied, cancelled or suspended from time to time in accordance with section 33 of the Acts Interpretation Act 1901 or section 96B of the *Customs Act 1901*. The licensee must comply with the conditions of the permission.
- 67) The licensee must not enter into, allow or facilitate an arrangement that would facilitate or result in the avoidance of duty. For example, without limiting the foregoing, the licensee must not enter into an arrangement with a relevant traveller to deliver goods to a relevant traveller with the intent that the goods would be exported then returned to the licensee.

Providores and Catering Bonds

- 68) Warehoused goods must not be provided as aircraft's stores or ship's stores as defined in s.130C of the *Customs Act 1901*, unless the licence holder is authorised in writing by the Comptroller-General of Customs to do so in another condition of the licence.
- 69) Upon being requested to do so by the Collector, the licence holder must provide additional information to the Collector on the movement, storage and record keeping of the warehoused goods sold as aircraft's stores or ship's stores. This can include but not limited to; any contract in place between the warehouse and catering companies, airlines and or shipping agencies.

Providores

- 70) Prescribed goods (alcohol and duty refund tobacco) must be stored in a secure area within the licensed area.