

# CRACKDOWN!

## THE AUSTRALIAN BORDER FORCE CRACKS DOWN ON LICENCED DEPOTS

**O**ur borders have been undermined by internal conspiracies linked with organised crime, which has infiltrated the ranks of both government and industry.

Two reports have also highlighted organised crime threats and vulnerabilities across our industry, these being the Parliamentary Joint Committee on Law Enforcement (PJCLE) 2011 and a 2012 report prepared by Joint Task Force Polaris, which examined criminality in the Sydney maritime environment.

These reports highlighted that:

- Individuals with access to restricted zones at airports and seaports have been identified on law enforcement high-threat, priority target lists.
- Individuals have accessed cargo movement information to track illicit goods and have provided that information to criminal groups.
- Individuals have accessed containers in terminals to collect illicit goods for criminal groups.

In response, we have seen the introduction of the AusCheck Legislation Amendment (Organised Crime and Other Measures) Bill 2013 to amend the Customs Act 1901, and the AusCheck Act 2007 to mitigate vulnerabilities at Australia's borders and focusing on stevedores, air cargo terminal operators, licenced customs brokers, depot and warehouse operators.

It is a timely reminder to look at the obligations emerging from this legislation, including mandatory reporting of unlawful activity, ensuring the physical security of relevant premises and cargo, and fit-and-proper-person checks on management at Custom's request. Non-compliance will attract criminal or administrative sanctions.

### Offence for using information held by Customs

All users of the Integrated Cargo System (ICS) also need to beware of penalties for sharing 'cargo status' and other restricted information to aid a criminal organisation.

Penalties include imprisonment for two years or 120 penalty units (a penalty unit being \$180) ... or both.

### Fit-and-proper person

As part of the existing depot licensing regime, the Customs chief executive officer (CEO) or his delegate must be satisfied that the applicant or

### PAUL ZALAI

persons who would participate in the management or control of a depot is a "fit-and-proper" person.

Where a company or partnership applies for a licence, this means any director, officer or shareholder of the company who would participate in the management and control of the place, to be covered by the licence or any partner of the partnership.

In addition to the existing matters in determining whether a person is fit and proper, the changes require the CEO to consider whether the person has been refused an aviation or maritime security identification card (ASIC or MSIC) or had an ASIC or MSIC suspended or cancelled in the previous ten years.

**"The course provides learning outcomes to complete day-to-day activities with confidence that participants are compliant with legal requirements."**

### Change to depot licence holder's notification requirements

All depot licence holders are required to notify the CEO in writing, within 30 days, where certain events occur. This includes a requirement to notify the CEO when persons are convicted of certain offences or become bankrupt.

The changes to the Customs Act introduce an additional condition on the holder of a depot 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.

### Record keeping

Amendments made to the Customs Act have increased the time period for which a person must keep a record that verifies the contents of a communication made to Customs, from one to five years. This ensures consistency with other Customs Act record-keeping obligations.

### Infringement Notice Scheme

The Infringement Notice Scheme (INS) is an alternative to prosecutions allowing

for 'on the spot fines' across Customs' activities in passenger processing and cargo management. Changes to the scheme have been implemented following recommendations from the Australian National Audit Office (ANAO) review.

Regulations now prescribe the maximum penalty at 25% of a court penalty (cap of 15 units for an individual and 75 units for a company).

As reported in the latest Goods Compliance Update issued in April 2017, concerning data was produced for the 1 July to 28 February 2017 period outlining a range of offences for breaches of depot licence, failure to meet outturn requirements and failure to account for goods. On hundred and twenty-five (125) Infringement Notices were issued for breaches of Section 33 (6) of the Customs Act "Moving, altering or interfering with goods subject

to customs control without authority", with total fines being \$990,900.

### Understanding obligations

Section 77G Depot licence holders must provide adequate training to make staff aware of their obligations in dealing with goods subject to the control of Customs - please refer to Australian Customs and Border Protection Notice 2013/56 (condition 28).

In order to satisfy this requirement, Freight & Trade Alliance (FTA) has developed a training package titled "SEC 77G DEPOTS - Obligations in dealing with goods subject to ABF control".

This e-learning course is available at [www.ComplianceNetFTA.com](http://www.ComplianceNetFTA.com) and takes approximately 1 to 1.5 hours to complete - upon passing the online assessment a certificate with two years' validity will be automatically generated.

Importantly, the course provides operational staff with learning outcomes to be able to complete day to day activities with confidence that they are compliant with legal requirements.

**Paul Zalai is an advocate for the Australian freight and trade sectors. For more information visit [www.FTAlliance.com.au](http://www.FTAlliance.com.au). mhd**