



**In response to question (i) from the Committee** BY:.....

As previously indicated, the Minister for Justice and Customs wrote to the then Attorney-General on 6 June 2003 to suggest that the Government could accept the recommendations made by the ALRC in relation to the Customs Act. As the Excise Act, which is also the subject of these recommendations, is administered by the Treasury he also wrote to the Treasurer seeking his agreement.

At the time the Treasurer suggested that it would be preferable to await the High Court's decision in Labrador, a case concerned with the characterization of Customs Prosecutions, which are also the subject of ALRC recommendations.

The High Court handed its decision down on 5 September 2003. After conducting some analysis to ascertain any potential impacts of the decision on the Government's position in relation to the ALRC Recommendations as a whole, it was decided that accepting the recommendations is still the soundest course of action. This analysis was not specifically concerned with averments as the High Court did not rule on their use, but was concerned with recommendations 13.1(a), 13.1(b) and 13.3 relating to the abolition of Customs Prosecutions, the classification of Customs offences and the establishment of consistency in procedure.

Further exchange of correspondence among Senior Ministers is underway.

**In response to question (ii) from the Committee:**

Customs has re-examined the content of paragraph 41 on page 9 of its first written submission and requests the Committee to replace it with the following.

41. As well as in proceedings for the recovery of penalties for offences against the Act, averments can be used in Customs prosecutions for the condemnation of ships, aircraft or goods seized as forfeited (section 244(b)). Such proceedings are commonly commenced by Customs in relation to prohibited imports such as firearms and child pornography. Section 255 applies to averments made in such proceedings.

41A. Averments are also used in section 35A debt recovery proceedings. This provision of the Act allows proceedings to be brought in the name of the Collector for the recovery of an amount equal to the duty that would otherwise be payable on customable goods that are not properly accounted for.

Subsection 35A(3) allows averments in those debt recovery proceedings. Section 255 does not apply to the conduct of section 35A proceedings. Common law principles in relation to averments would govern their use in such circumstances.