

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
AUSTRALIAN CUSTOMS SERVICE

**Question No. 133**

**Senator Bishop asked the following question:**

**Townsville**

- a) What was the cost of establishing the new Customs base in Townsville?
- b) Is this a new base or just a new building?
- c) How many staff does the office have?
- d) Where were the funds obtained, given the existing shortfall?
- e) Have additional vessels been procured as well, or are existing vessels being used?
- f) What were the previous arrangements in Townsville?
- g) To what extent will waterfront patrols be increased, by how much, and from what base?
- h) How many additional ships visiting Townsville will be boarded as part of this initiative?

**The answer to the honourable senator's question is as follows:**

- a) The relocation from the old Customs House to the current premises cost \$675,000.
- b) The Customs Office has been relocated from the old Customs House building to a new location. It is not the establishment of a new base.
- c) There are fourteen staff in the Townsville office.
- d) The Townsville relocation project was capital expenditure and was funded from appropriation revenues.
- e) No, there is a tactical response vessel in Townsville for use in patrolling in waterfront areas in the Townsville office's area of responsibility, which stretches from Tully Heads to Bowen. For other operational needs, Townsville is able to submit a tasking request to the National Marine Unit for the use of a vessel however this is subject to the priorities of other taskings for Customs and other agencies.
- f) Relocation has not changed the way Customs undertakes its activities with Customs vessels.
- g) Relocation to the current location has not changed the way Customs undertakes its normal activities in Townsville. Better communication and improved monitoring facilities at the new office have enabled more regular checks to identify activity on the wharves that may be of interest to Customs. As a result of first port boarding initiatives, one additional person will be located in Townsville when budget costings and a recruitment strategy have been finalised.
- h) No additional ships visiting Townsville will be boarded as part of the move to the new building as the move did not coincide with increased staffing levels. However, as a result of first port boarding initiatives, one additional person will be located in Townsville to increase the rate of first port boarding.

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**Question No. 134**

**Senator Bishop asked the following question:**

**Cost Recovery**

- a) What plans are there also for increasing the import processing charge which is currently \$44 per entry?
- b) What proportion of Customs' costs does the \$44 cover?
- c) Previous evidence indicated that at \$14 per entry, Customs was recovering \$16.3 million of the total \$24 million cost for Container Examination Facilities (CEF). What is Customs recovering now and what is the total cost for CEF?

**The answer to the honourable senator's question is as follows:**

- a) The government is not proposing to increase the import processing charge at this time.
- b) In May 2003 the Import Processing Charge (IPC) was increased by \$14.35 to \$44 per entry to help cover the logistics costs of the CEF's operations. It was anticipated that this component of the IPC would cover three quarters of the CEF's logistics costs when they were all fully operational.
- c) It is estimated that the \$14.35 of the IPC associated with CEF logistics would recover \$17.85 million in the 2003-04 financial year. Customs was allocated \$16.3 million in 2003-04 and CEF logistics costs were projected to be approximately \$18.35 million.

The government continues to meet all property, staffing and operational costs for the CEFs.

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**Question No. 135**

**Senator Bishop asked the following question:**

**Container Inspection**

- a) What would it cost to extend to 24 hour operations in Sydney and Melbourne?
- b) What consideration is being given to extending the operational hours of the current CEF in Australia?
- c) What is the current hourly and weekly throughput of each CEF?
- d) What proportion of manifest information by port is still not in electronic form?
- e) What is being done to ensure that manifest information is provided on time – and electronically?
- f) How much of a security risk does Customs consider the hundreds of thousands of supposedly “empty” containers which are transhipped through Australia each year?
- g) How many of these containers are visually checked? What measures are in place to ensure that no risk is contained within these containers – that they are in fact empty? Many of these containers are brought to Australia empty, sent to a container park and left there until another ship arrives to take them away and, in some instances, the container parks are very close to capital cities. At any time are they checked?
- h) Could you please outline how empty containers are dealt with under the ISPS code and/or the Maritime Transport Security Act?
- i) Does Customs see a need to include inspection of empty containers as part of the ISPS regime? If not, how can informed risk assessments be made in this area?

**The answers to the honourable senator’s questions are as follows:**

- (a) Customs estimates that given recent increased funding for extended operations, it would cost a further \$22.2 million per annum to operate the Sydney and Melbourne CEFs for 24 hours per day, 7 days per week.
- (b) On 20 July 2004, as part of its enhancements of maritime security, the government provided additional funding for the CEFs, including funding to extend the hours of operation to include one shift on Saturdays at all CEFs and the Brisbane CEF increasing its hours of operation to include afternoon shifts on Monday to Friday
- (c) CEF weekly hours of operation and throughput is detailed in the response to Senator Ludwig’s Question on Notice No 113.

(d) Sea Cargo Manifest Data from 1 July 2003 to 31 March 2004

State	Port	Manual	Total Manifests	Proportion
NSW	(Sydney)	9098	470037	1.94%
VIC	(Melbourne)	2948	459960	0.64%
QLD	(Brisbane)	2760	187848	1.47%
SA	(Adelaide)	1336	61403	2.18%
WA	(Perth)	7413	99404	7.46%
TAS	(Hobart)	318	6475	4.91%
NT	(Darwin)	1490	1657	89.92%

- (e) Only a small proportion of cargo reports are processed manually. In the nine-month period to 31 March 2003, less than 2 per cent of cargo reports to Customs were received manually. With the introduction of the electronic Integrated Cargo System for processing all Customs data in 2005, there will be a six-month moratorium for manual cargo reports. After that time, it is expected that all cargo reporting will occur electronically.

However, there will be a limited further extension of the moratorium available where existing manual cargo reporters are able to demonstrate special circumstances requiring additional time to complete the conversion to electronic reporting of cargo manifests.

- (f) All operations examining empty containers over the last five years have resulted in no significant finds, however, Customs continues to examine a number of empty containers. On an ongoing basis, Customs reviews Customs and shipping company procedures for dealing with empty containers, identifies the entities involved in the movement of empty containers, identifies current overseas trends in relation to empty containers and assesses the risks from the movement of empty containers.

Customs periodically formally reviews the risk posed by containers manifested as empty and develops strategies to address the identified risk.

- (g) From November 2002 to early June 2004, at least 160 empty containers had been inspected at Customs container examination facilities. Inspections of empty containers may also be undertaken by other Customs staff as part of their responsibilities on the waterfront.

AQIS do an external examination of all containers leaving all container terminals, regardless of whether they are empty or loaded. Internal AQIS inspection and cleaning of empty containers is done by container park and depot operators, generally within two days of the container arriving there. AQIS conducts audits one week post arrival to ensure that all empty containers have been accounted for, and inspection/clean has been completed.

- (h) The ISPS Code and the *Maritime Transport Security Act 2003* do not contain any detail on the handling of empty containers.

- (i) The inspection of empty containers is not a specific part of the ISPS regime. Customs has addressed the issue of risk assessment of empty containers in its answer to Question No. 135 (f) and (g) above.

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**Question No.136**

**Senator Bishop asked the following questions at the hearing on 25 May 2004**

**Accredited Client Program (ACP)**

- a. Can it be confirmed that Price Waterhouse built a computer system to help their ACP clients meet the audit requirements of the scheme?
- b. If the scheme does not proceed, has Price Waterhouse wasted its money?
- c. Is Treasury concerned at the loss of revenue, and if so what is the estimated cost of duty deferral?
- d. What is the proposed deferral period, and does the proposal simply give a month's grace before payment of duty post goods clearance?
- e. How many meetings have been held with this group of companies, and what undertakings have been given to them with respect to the commencement of the program, and the operational start date?

**The answers to the honourable senator's questions are as follows:**

- a. Pricewaterhouse has developed a computer system to assist clients meet the audit requirements of the ACP. Customs was given the opportunity to examine the software package and, while explicitly refraining from formally endorsing the package, provided positive feedback to Pricewaterhouse on its suitability for auditing potential accredited clients.
- b. This is a business consideration by Pricewaterhouse Coopers and not one that Customs can answer.
- c. Customs understands that issues about duty deferral relate to how it would impact on the fiscal position. In the first year of joining the scheme, in broad terms, a company will pay only 11 months of duty, therefore revenue collections in that year will be less by the amount of duty deferred into the next financial year. In subsequent years the company pays 12 months of duty. If the scheme were to terminate, the company would pay 13 months of duty in the final year. Questions relating to Treasury's analysis of the financial implications should be directed to that Department.
- d. The proposed deferral period is a maximum of 38 days. That is, duty would have to be paid by the 7<sup>th</sup> day of the month following importation. For example, if importation occurred on the 1<sup>st</sup> day of a month, a company would have the full 38 days in which to make the duty payment. However, if a company imported on the last day of the month, they would only have seven days in which to make the duty payment.
- e. Over the course of the last seven years, Customs has facilitated regular meetings with the Business Partner Group (BPG) (amongst others). These have been held broadly two-three times per year over this seven year period. Customs has also held numerous informal meetings with the BPG either as a complete entity or individually. The Minister for Justice and Customs has also met with the BPG.

It has been Customs position that the ACP will formally commence once the Integrated Cargo System (ICS) is available. To date preliminary work has occurred in readiness for the implementation of the ICS. It is expected that a number of companies will be ready to formally participate in the exports component of ACP in line with, or soon after, the ICS Exports cutover in early October 2004.

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**Question No. 137**

**Senator Bishop asked the following question on notice:**

**Cargo Management Re-engineering (CMR)**

- a) Are there any new dates in regard to CMR that industry should be aware of?
- b) When is it likely to roll out the imports module?

**The answer to the honourable senator's question is as follows:**

a) b) There are no new dates that industry should be aware of. A media release of 14 May 2004 from the CEO of Customs ("Cargo Management Re-engineering – exports cutover date announced") stated that "... the exports component of the Customs Integrated Cargo System (ICS) will 'cut over' in early October, replacing Customs existing system, EXIT."

In consultation with key software developers an agreed date of 6 October 2004 at 2am has been set for the cut over.

As also stated in the media release the cut over for the imports component of the ICS is planned for early 2005.

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**Question No. 138**

**Senator Bishop asked the following question at the hearing on 25 May 2004:**

**Airport Staffing**

- a) Can it be confirmed that the ATO funds Customs for the operation of the tourist duty refund function at airports?
- b) How many staff positions are funded at each international airport?
- c) Is that arrangement covered by an MOU?
- d) Does the ATO fund the positions by an annual payment or by regular payment and acquittal?
- e) What has been the actual weekly staffing level at each airport this year to date?
- f) What other functions does Customs perform for the ATO, and for each what sum is provided to cover Customs' costs?
- g) How are such collections acquitted?

**The answer to the honourable senator's question is as follows:**

- a) Yes.
- b) The ATO funds a large proportion of GST Administration services provided by Customs. The TRS forms part of the total GST Administration service package provided to the ATO. Funding is not based on "number of positions" but rather on the whole function performed by Customs. While employee expenses are a significant component of TRS costs, TRS funding is also required to cover costs relating to systems, property and other support activities required to deliver the TRS function.

Customs produces an endorsed activity snapshot on a quarterly basis and full-time equivalent staffing numbers are reported for all Customs activities. Staff performing TRS functions at the last snapshot dated February 2004 totalled 89.23, split up as follows:

Sydney	40.93
Melbourne	12.97
Brisbane	11.26
Gold Coast	1.24
Cairns	5.45
Adelaide	0.31
Perth	9.45
Darwin	0.79

In addition, an administrative cell of 6.75 staff work in the Canberra Office.

- c) Yes.
- d) The ATO is billed by Customs on a monthly basis. Acquittal is provided to the ATO every six months.
- e) Actual weekly staffing statistics of TRS facilities are not collected. Officers who work in the TRS facilities are rostered from a larger pool of staff performing a broad range of airport processing functions. The activity snapshot is the best indication of full-time equivalent staffing numbers.
- f) In addition to TRS, Customs performs the following functions which involve GST-specific activities for the ATO:
- import processing which includes the assessment and collection of GST, the reporting of GST to the ATO, and the payment of GST refunds;
  - export processing which includes the reporting of export transactions to the ATO; and
  - import and export compliance which includes audits, examinations and enforcement activities designed to ensure the correct assessment and collection of GST and the correct reporting of exports.

The ATO provides funding for all of the GST functions performed by Customs on its behalf; separate funding is not provided for each GST function. The ATO provided \$37.0 million for the 2003-04 financial year and will provide \$41.0 million for the 2004-05 financial year.

- g) Customs undertakes a GST, LCT, WET Price Review every six months and provides a report on the outcome of each Review to the ATO. The report is subject to external review.

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**Question No. 139**

**Senator Bishop asked the following question:**

Can you provide an update as to where the rollout of SmartGate technology is up to beyond the Qantas trial, and in light of the Budget funding?

**The answer to the honourable senator's question is as follows:**

The current SmartGate trial will be expanded to one other international airport this year, which will allow enrolled Qantas aircrew to transact at either airport.

Discussions will commence with other potential airlines in July so that other aircrew can have access to SmartGate.

A new passenger interface will be introduced for SmartGate to allow the trial to be extended to selected passengers.

A passport chip reader will be incorporated into SmartGate later this year, which will allow the use of prototype chip passports. This will allow a trial to commence in 2005 in conjunction with Passports Australia, US Department of State and the US Department of Homeland Security.

This trial will inform each country of any issues in the use of the biometric chip in the passport, including the application of draft International standards for chip based passports.

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**Question No. 140**

**Senator Bishop asked the following questions at the hearing on 25 May 2004**

- a) Now that the full text of the agreement is available, what are the implications for Customs?
- b) What proportion of current items will be affected by changes in duty?
- c) How many is that, and how long will it take to do the data entry?
- d) How will Customs check imports from the US which might be subject to the rules of origin?
- e) What compliance regime will be put in place?
- f) Will Customs receive any budget supplementation for their added responsibility?
- g) Can it be confirmed that US Customs will have a presence in Australia to check Australian exports?
- h) Who will have responsibility for issuing certificates for the rules of origin?
- i) What legislative amendments will be required to the Customs Act?
- j) What changes will be necessary to computer systems, and in particular, the ICS which is still being developed?
- k) Will ICS be delayed further as a result?
- l) What consultation has Customs had with industry so far, and what processes have been put in place if any?
- m) What will be the processes for the consideration and advice on advance rulings as provided for in Clause 6.3?
- n) With respect to the processes set out in Article 6.5, which of those do not already exist in existing processes of intelligence sharing and a common approach to law enforcement?
- o) Will the existing fields of information in the ICS be adequate to satisfy these requirements?
- p) With reference to Article 6.5 1. (b), what proportion of imports currently is cleared and released within 48 hours?

**The answers to the honourable senator's question is as follows:**

- a) The Free Trade Agreement (FTA) will involve Customs, particularly in administering the reductions in rates of customs duty and the new rules of origin, and in checking that goods claiming preferential tariffs originate in the US.
- b) Upon the FTA entering into force, the customs duty will be reduced to a rate of Free for around 39 per cent of all classifications in the Customs Tariff Act 1995 (the Tariff). The customs duty will be phased to a rate of Free for a further 13.6 per cent of all classifications in the Tariff.
- c) Schedule 3 to the Tariff contains approximately 6,100 tariff classifications. Upon the FTA entering into force, the rate of customs duty will be reduced to Free for around 2,390 classifications while the rate of customs duty will be phased to Free for around 830 classifications. It is anticipated that it will take approximately 20 working days to enter the data.

- d) Customs has a number of options open to it depending on the circumstances.

For identified high-risk shipments, Customs can profile goods upon arrival and request that documentation supporting the claimed origin of the goods be presented before the goods are cleared for entry. For other less risky shipments, Customs can call for documentation supporting the claimed origin after the goods have been imported. If the origin is found to have been incorrectly claimed, the Customs duty that would have been payable is then called up.

- e) Customs already has in place compliance assurance tools to manage compliance with origin and preference legislative requirements generally. Customs conducts preference inquiries, sometimes at the request of Australian industry, to establish that a claimed origin on an imported product can be supported. Customs also checks origin and preference claims as part of its general audit and real time compliance activities.

Customs will expand these assurance measures to more strongly focus on goods exiting the USA and taking into account likely new risks emerging from the FTA, for example, transhipped goods from Mexico.

- f) The Minister for Justice and Customs has lodged a request for additional funding for Customs to implement and to administer the FTA with the Minister for Finance and Administration.
- g) The US Customs Service has no plans to place officers in Australia to check Australian exports.
- h) Certificates of origin are not required under the FTA. Article 5.12 of the FTA provides that an importer may make a claim for preferential treatment under the FTA based on the importer's knowledge or on information in the importer's possession that the goods qualify as an originating good.
- i) To give effect to the FTA, the Customs Act 1901 and the Customs Tariff Act 1995 will need to be amended, and regulations will need to be created. In summary, the legislation will:
- outline the rules of origin;
  - provide preferential rates of duty for goods originating in the US;
  - give powers to Customs to question and to audit Australian exporters, producers or any person involved in the movement of textile and apparel goods that are exported to the US; and
  - authorise Customs to disclose any records obtained during an audit to an instrumentality or agency of the US Government.
- j) Changes will be required to the existing computer system and to the ICS to:
- create a special code for goods that originate in the US in accordance with the FTA;
  - attach that code and an appropriate duty rate to each tariff classification, as necessary.
- k) No. The ICS has been developed with sufficient flexibility to allow new preferential tariff initiatives, like the FTA with the US, to be introduced without the need for additional programming.
- l) In conjunction with the Department of Foreign Affairs and Trade, Customs has delivered information sessions on the rules of origin for industry and Customs Brokers. Those

information sessions occurred in Brisbane, Sydney, Melbourne and Adelaide. Customs is preparing further information on the FTA for clients. That information will be available on the Customs web site and through Customs offices in each capital city.

- m) Customs is developing the procedures that will apply to requests for binding advance rulings. It is expected that those procedures will be similar to those applying to requests for binding advance rulings on tariff classification and valuation. Customs will issue an Australian Customs Notice on the new procedures, once finished.
- n) The processes set out in Article 6.5 already exist in existing processes for information sharing, which are conducted under the Customs to Customs Memorandum of Understanding (currently being renegotiated to reflect changes in United States administrative structures) and Australian legislation (most notably section 16 of the Customs Administration Act 1985).
- o) Customs collects information about consignments at several stages along the cargo chain. Not all consignments are reported to Customs in the same detail. In most cases, the information collected by the ICS would meet the requirements set out in Article 6.5.3. In some other cases, Customs would have to make additional inquiries, but the required information would usually be readily available.

Customs anticipates a rise in the volume of inquiries from the United States relating to intellectual property and origin, and has requested additional resources to meet this additional workload.

- p) 99.1%

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**Question No. 141**

**Senator Bishop asked the following question:**

**Southern Fisheries**

- a) What is the current position on the lease of a new vessel, with machine gun, for Southern Ocean patrols?
- b) Has a vessel been identified:
- c) What are the terms of the proposed lease – cost, term of lease, etc?
- d) What training will be given to crew in the use of the machine gun?
- e) Would a machine gun on the *Southern Supporter* have been effective in stopping the *Viarsa*?
- f) What protection will crew have from return fire?

**The answer to the honourable senator's question is as follows:**

- a) Customs is currently undertaking a competitive tender process to lease a suitable ship equipped with a crew, and steaming party (civilian sailors capable of crewing an apprehended fishing vessel) for ongoing patrols in the Southern Ocean for a two-year period from 1 July 2004. The Royal Australian Navy (RAN) is supplying the weapons system and will fit the 0.50 calibre machine guns to the selected vessel.

Customs is using a two-stage procurement process to identify a suitable service provider: a general Registration of Expressions of Interest (REOI) that closed on 30 March 2004, followed by a formal Request for Tender (RFT). This process is the most appropriate method to meet the Government's procurement principles of obtaining value for money, open and effective competition, and sourcing a service provider who represents minimal risk.

Three companies submitted formal tender proposals by the closing date of 25 May 2004 in response to the RFT. This information is now being evaluated with inspections of vessels and berthing facilities to be conducted during June and July.

- b) Contract negotiations and a final decision on the new vessel capability are not expected to be finalised until mid-August 2004.
- c) The exact terms of the lease and final contract price will be the subject of negotiations with the successful tenderer. In broad terms, the REOI called for a patrol vessel capable of operating at any time throughout the year up to a maximum of 300 days a year. The initial contract period sought was two years commencing as soon as possible after 1 July 2004, with the final contract possibly stipulating the option of extensions, depending on future government requirements.
- d) Selected members of the Customs Southern Ocean boarding party will be provided with training in the use of the machine gun by the RAN.

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- e) It is the professional opinion of the Customs Group Commander on board the vessel at the time that, taking into account all of the circumstances, a machine gun on the *Southern Supporter* would have been effective in stopping the *Viarsa* by offering a show of force and demonstration of will.
- f) To date, no IUU (illegal, unregulated and unreported) fishing vessel that has been encountered or boarded in the Southern Ocean has fired upon any Customs & Fisheries patrol. However, if it becomes evident that there will be return fire, this will be a clear indication of an “opposed boarding”. Customs policy is that it will not attempt to board a vessel if it is clear that the boarding will be opposed. In those circumstances, the Customs vessel has the capacity to manoeuvre well out of range.

Customs Boarding Party officers are supplied with anti-ballistic vests and helmets to wear should the situation call for this requirement.

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**Question 142**

**Senator Bishop asked the following question:**

- a) Has a Government position been arrived at yet with respect to the Labrador Liquor decision? If so, what action will be taken?
- b) Will there be any legislative amendment to effectively overturn the High Court decision?
- c) How many other cases involving the standard of proof are currently on foot?

**The answer to the Honourable Senator's question is as follows:**

- a) The Government response to Australian Law Reform Commission Report 95 of December 2002 *'Principled Regulation: Federal Civil and Administrative Penalties in Australia'* will contain the Government's position in respect of the Labrador Liquor decision regarding how Customs prosecutions should proceed and the standard of proof applicable in such prosecutions.
- b) Any legislative amendment will be made in the context of the Government's response to Australian Law Reform Commission Report 95 of December 2002 *'Principled Regulation: Federal Civil and Administrative Penalties in Australia'*.
- c) Prior to the Labrador decision, the 'lower' Magistrates Court considered whether or not an accused person was guilty *'beyond a reasonable doubt'* of the offence charged (the criminal standard of proof), while the 'superior' County Court considered whether or not the accused was guilty *'on the balance of probabilities'* (the civil standard).

The decision in Labrador established that the standard of proof for all Customs prosecutions, instituted in either a 'lower' or 'superior' court is the criminal standard of proof. Consequently, there are no cases currently on foot where the standard of proof is in dispute.