

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(50) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 54-55) asked:

- (1) How many MOUs exist and how many airports are there where this occurs?
- (2) What is the number of passengers that might end up being processed by Customs officials in this way under the MOU at those particular airports?
- (3) Which are the airports where DIMIA does not hold a presence or where, even if you do hold a presence, you will use Customs as well?

Answer:

- (1) There is a Memorandum of Understanding (MOU) between the Australian Customs Service (ACS) and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) for the Provision of Passenger Clearance Services Australia wide.
- (2) The MOU covers all passenger clearance at all airports.
- (3) DIMIA has a presence at all Australian capital city commercial international airports (including Canberra from 1 July 2004 with the introduction of regular international flights), Coolangatta and Cairns. The ACS undertakes immigration clearance on behalf of DIMIA at other airports with remote support provided by DIMIA including specialised document services.

Other airports with international status are variously classified as restricted use international airports, alternate international airports, international non-scheduled flight airports, and external territory airports which might receive frequent scheduled services eg weekly, seasonal charter scheduled flights, one off charters, or specific short duration charters or incentive tours. These include Avalon, Broome, Coffs Harbour, Hobart, Learmouth, Lord Howe Island, Newcastle, Port Hedland, Townsville, Alice Springs, Dubbo, Kalgoorlie, Launceston, Rockhampton, Tindal, Horn Island, Norfolk Island, Christmas Island, and Cocos (Keeling) Island.

There are other airports without international status, for example Karratha, where Customs undertakes immigration clearance where carriers receive prior approval to operate international flights/charters from the relevant Government agencies on a flight by flight basis. ACS clearances also occur at designated military airports where required and non-international airports on application, by an operator but only where appropriate border agency controls and facilities are available for the flight.

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(51) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 55) asked:

(a) Does DIMIA have an MOU with quarantine in the Torres Strait? (b) If there is a written arrangement, provide a copy. (c) How are immigration powers transferred and exercised and what scope do quarantine officers have in exercising immigration powers?

Answer:

(a) Yes.

(b) Attached.

(c) AQIS officers are not delegated to perform immigration functions but identify and refer relevant issues to DIMIA or its delegated officers.



MEMORANDUM OF UNDERSTANDING

BETWEEN THE

**AUSTRALIAN QUARANTINE & INSPECTION SERVICE
(AQIS)**

AND THE

**COMMONWEALTH DEPARTMENT OF IMMIGRATION
AND MULTICULTURAL AFFAIRS
(DIMA)**

August 2000

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ATTACHMENT A: DIMA WORK INSTRUCTION

ATTACHMENT B: AQIS WORK INSTRUCTIONS

**Memorandum of Understanding Between
the Australian Quarantine and Inspection Service, and
the Commonwealth Department of Immigration and
Multicultural Affairs
Relating to Cooperative Arrangements in the Torres Strait.**

1. DEFINITIONS

In this MOU:

" Treaty" - refers to the Treaty between Australia and the Independent State of Papua New Guinea, concerning Sovereignty and Maritime Boundaries in the area between the two countries including the area known as the Torres Strait and Related Matters, which entered into force on 15 February 1985.

" Protected Zone" - means the zone established under Article 10 of the Treaty.

" Free Movement" - means movement by the traditional inhabitants for or in the course of traditional activities.

" Traditional Inhabitants" and " Traditional Activities" - as defined in the Treaty.

" Outer Islands" - refers to the islands in the Protected Zone.

" Absence" - refers to physical absence for health, recreation, training activities.

2. PURPOSE

2.1 This Memorandum of Understanding (MOU) constitutes an agreement between the Australian Quarantine and Inspection Service (AQIS) and the Commonwealth Department of Immigration and Multicultural and Indigenous Affairs (DIMA) defining the cooperative arrangements between the two agencies on outer islands within the Torres Strait Protected Zone (TSPZ).

3. AGENCY ROLES AND OBJECTIVES

3.1 AQIS

AQIS is an operating Group within the Department of Agriculture, Fisheries and Forestry - Australia (AFFA). The Department's vision is 'rising national prosperity and quality of life through competitive and sustainable mining, agricultural, fisheries, forest, energy and processing industries'.

The AQIS Corporate Mission is 'AQIS, in partnership with industry and the community, will deliver quality services which improve Australia's competitive position, and protect its animal, plant and human health and the environment'.

AQIS is responsible for preventing the introduction and spread of diseases and pests affecting humans, animals and plants. This responsibility extends to all potential areas of disease entry into Australia.

3.1.1 Northern Australia Quarantine Strategy (NAQS)

NAQS consists of three sub-programs funded and managed by AQIS to address quarantine challenges in northern Australia - NAQS-Scientific, NAQS-Operations and NAQS-Public Awareness. Attributes of northern Australia which are of particular quarantine interest are:

- relative proximity to foreign countries which have a different pest and disease profile and agricultural health status from Australia
- treaty arrangements with Australia's northern neighbours which allow for the free movement of traditional inhabitants into and out of the Torres Strait Protected Zone
- unauthorised entry into northern Australia by foreign nationals and fishing vessels
- low population density
- difficult terrain, with populations of cattle and feral animals and very extensive land use systems
- attractiveness to international yachting tourism.

3.1.2 The mission of NAQS is to protect Australia's animal, plant and human health and the environment by improving the integrity of the quarantine border in Torres Strait and Cape York Peninsula, identification and awareness of quarantine risks to northern Australia and provision of early warning of quarantine pest incursions.

NAQS provides early warning and detection of targeted pests, animal diseases, plant diseases and weeds through a program of monitoring and surveillance both within Australia and offshore.

3.2 Department of Immigration and Multicultural Affairs (DIMA)

The Department of Immigration and Multicultural and Indigenous Affairs has a responsibility for ensuring the border integrity of Australia in regard to people movement. Section 4(1) of the *Migration Act 1958* empowers DIMA to regulate, in the national interest, the coming into and presence in Australia of non-citizens. In addition, Section 168 of the *Migration Act 1958* exempts traditional inhabitants from the requirement to comply with the clearance provisions of Section 166.

4. LEGISLATION

- 4.1 AQIS is responsible for the administration of the *Quarantine Act 1908* and the establishment and maintenance of operational policies and procedures which relate to the animal and plant health under the Act. These policies and procedures govern the protection against entry into Australia of pests, diseases and weeds while facilitating the international movement of goods and people. This includes responsibility for the quarantine clearance of aircraft, ships, persons and cargo entering Australia.
- 4.2 DIMA is responsible for the *Migration Act 1958, the Memorandum of Understanding on Migration, Refugees, Irregular Migration and People Smuggling* between Australia and PNG signed on 1st July 2003, in the Torres Strait and operational aspects of the Treaty.
- 4.3 Both AQIS and DIMA acknowledge their obligation under the *Privacy Act 1988* to protect any personal information that may be exchanged between the two agencies due to the performance of quarantine or immigration activities.

5. DUTIES PERFORMED BY AQIS AND DIMA ON OUTER ISLANDS

5.1 AQIS Duties

- 5.1.1 AQIS will assess the health of all persons entering or returning to the Torres Strait Protected Zone (TSPZ) under provisions of the Treaty. AQIS officers will assess all goods carried by people entering the TSPZ from the Western Province of Papua New Guinea, or moving from the TSPZ to areas further south, to minimise the risk of introducing exotic pests, diseases or weeds to Australia.
- 5.1.2 In the absence of the MMO, AQIS officers will perform the MMO's duties in relation to traditional movements in accordance with the DIMA Work Instruction. (Attachment A to the MOU). Arrangements to notify AQIS of the absence of an MMO will be one week notice in writing to the NAQS Manager, Regional Office on Thursday Island, stating leave requirements, date departing and arriving back to respective island.
- 5.1.3 When performing MMO duties, AQIS officers will complete and forward to DIMA all relevant documentation associated with movements under provisions of the Torres Strait Treaty.

5.2 DIMA Duties

- 5.2.1 The Movement Monitoring Officers (MMOs) have responsibility to DIMA to:
- monitor and record the details of traditional inhabitants from Papua New Guinea arriving and

departing under the Free Movement Provisions of the Treaty,

- patrol by sea or land within their area of responsibility to ensure no PNG traditional visitors living on islands away from community check-in areas and
- report on any other suspicious activity.

5.2.2 In the absence of the Quarantine officer, MMOs will perform the Quarantine officer's duties in relation to the movement of people under provisions of the

Torres Strait Treaty or people moving from the TSPZ to areas further south, in accordance with the AQIS Work Instruction (Attachment B to the MOU). Arrangements to notify DIMA of the absence of an AQIS Officer will be one week notice in writing to the DIMA Regional Manager, Thursday Island, stating leave requirements, date departing and arriving back to respective island.

5.2.3 When performing Quarantine duties, MMOs will complete and forward to AQIS all relevant documentation associated with traditional movements or people moving out of the Torres Strait Protected Zone.

6. AUTHORISATION

6.1.1 AQIS will ensure that MMOs are authorised under the *Quarantine Act 1908* to carry out certain powers and functions of a quarantine officer.

7. RESOURCES

7.1 AQIS will, by prior arrangement between the Regional Manager, DIMA and the NAQS Operations Coordinator, and without compromising AQIS objectives, make vehicles and vessels available for use by MMOs and DIMA staff from the Thursday Island Regional Office.

7.2 AQIS will make telephones, facsimile machines and photocopiers available for use by MMOs whilst performing their duties.

7.3 DIMA will, by prior arrangement between the NAQS Operations Co-ordinator and the Regional Manager, DIMA, and without compromising DIMA objectives, make DIMA boat units and 4wd bikes available for use by AQIS staff.

7.4 Staff from each agency will adhere to Commonwealth guidelines regarding the use of vehicles, vessels and office equipment.

7.5 The AQIS /DIMA Management Committee will consider the strategic deployment of Commonwealth assets to maximise effectiveness.

8. TRAINING AND INSTRUCTIONS

- 8.1 DIMA will provide relevant information concerning MMO roles and responsibilities, to enable AQIS to train their officers to perform MMO functions. DIMA will provide relevant training material to enable AQIS to conduct training programs as necessary.
- 8.2 In consultation with DIMA, AQIS will prepare written work instructions to cover the MMO functions undertaken by AQIS officers. DIMA will provide advice and assistance in the development of work instructions and other relevant training material for the MMO related functions undertaken by AQIS.
- 8.2 DIMA will also provide advice and guidance to AQIS officers on all issues and questions relating to the administration of the *Migration Act 1958, Migration Regulations 1994* and associated policy.
- 8.4 AQIS will provide relevant information concerning Quarantine Officer roles and responsibilities, to enable DIMA to train their officers to perform Quarantine Officer functions. AQIS will provide relevant training material to enable DIMA to conduct training programs as necessary.
- 8.5 In consultation with AQIS, DIMA will prepare written work instructions to cover the quarantine functions undertaken by MMOs. AQIS will provide advice and assistance in the development of work instructions and other relevant training material for the quarantine related functions undertaken by AQIS.
- 8.6 AQIS will also provide advice and guidance to DIMA on all issues and questions relating to the administration of quarantine legislation, policy and regulations.

9. CONSULTATIVE ARRANGEMENTS

- 9.1.1 An AQIS / DIMA Management Committee will be formed to facilitate consultation on immigration and quarantine related issues in the Torres Strait. The Committee will meet at least twice per year. Either agency may call additional meetings if considered necessary.

10. SALARIES AND EXPENSES

- 10.1 Each agency will pay the salaries of its officers and all directly related expenses in carrying out the functions covered by the MOU.
- 10.2 Overtime costs may be recouped by the relevant agency by prior agreement between the Manager, NAQS Operations and the Regional Manager, DIMA.

11. ADMINISTRATIVE ARRANGEMENTS

- 11.1 To facilitate the operation of the MOU each agency will develop and distribute to the other agency, contact lists (including 24 hour access numbers) for key personnel involved in immigration and quarantine

functions in the Torres Strait.

- 11.2 This MOU may be amended by mutual agreement. The agency proposing the amendment will advise the other party through the Management Committee to facilitate full consultation on the relevant issues.
- 11.3 Where either agency wishes to withdraw from any or all of their responsibilities under the MOU they will provide notice in writing at least three months prior to the action taking effect.
- 11.4 Should either agency contemplate changes in operational policies and procedures which would have an impact on the operations of the other, the proposed changes would be subject to consultation and agreement between both agencies.
- 11.5 This Memorandum will come into effect on the date of signing. The content and performance of the MOU will be reviewed by both agencies every two years.

.....
Brian Read
Sykes
Regional Manager
Australian Quarantine
& Inspection Service
August 2000

.....
Christine

State Director
Department of Immigration
& Multicultural Affairs
17 August 2000

ATTACHMENT A

DIMA

WORK INSTRUCTIONS

WORK INSTRUCTION

ROLE AND RESPONSIBILITY OF MOVEMENT MONITORING OFFICERS

Responsibility

Movement Monitoring Officers have responsibility to the Department of Immigration and Multicultural Affairs to –

- Monitor and record the details of traditional inhabitants from Papua New Guinea arriving and departing under the Free Movement Provisions of the Torres Strait Treaty, and
- Report on any other suspicious activity

Role

- Have a knowledge of vessel movements in and around the vicinity of the Island –
 - (i) Be aware of all boat movements
 - (ii) Report any suspicious boats to Immigration/Customs/Queensland Police Service immediately.
- Conduct regular patrols of the island, by land or sea –
 - (i) You are to conduct regular patrols of your island, in particular, areas that traditional visitors tend to land at or those areas not normally inhabited, at intervals of not less than once weekly.
 - (ii) These patrols are to be by both land or sea
 - (iii) If possible the patrols are to consist of at least two persons. If it is a sea patrol, it is a requirement for 2 persons to be on the boat as per Standard Operating Procedures (SOPs) for DIMA boats.
 - (iv) Check the back of island or the main areas that traditional visitor's land.
 - (v) If you see any persons out there and you are alone, go back and take the community police back out with you; and
 - (vi) Ask the person their identity, what they are doing there and where they are going to.
- Meet all traditional visitor vessels on arrival at the island-
 - (i) Make sure that the Quarantine Officer inspects vessel before you take passes
 - (ii) Names of visitors on pass must match the number of persons on the vessel
 - (iii) You then inform the traditional visitors that you will take their passes to the Island Council's office to obtain the Council's approval for the visit.

- (iv) Take pass to Chairman/Deputy/Councillor for their decision and ensure the respective Council person approving or not approving the visit signs the pass.
 - (v) Take response back to visitors, if permission granted, you are to also advise the visitors that their passes will be kept in a secure DIMA cabinet and that a record of their movement will be kept by DIMA.
 - (vi) Allow visitor into community after advising them of reporting back to an MMO before departing.
 - (vii) Do a follow up on visitors that have stayed more than one night
 - (viii) Give them prior warning to their pass expiring
 - (ix) If the response is no, advise visitor of the decision and who was responsible for that decision
 - (x) Advise Thursday Island office of this fact, and
 - (xi) Ensure visitor departs as monitored departure i.e. watch the dinghy take fuel and leaves the island.
- Ensure arrival and departure sheets are completed and sent to Thursday Island Office
 - (i) Record visitors on arrival sheets, take phot-copy of pass and attach the pass to the arrival sheet.
 - (ii) Record visitors departing on the departure sheet and
 - (iii) Ensure that both the arrival and departure sheets are forwarded to Thursday Island Office as soon as possible by mail.
 - Ensure any suspicious activity or breach of traditional visits are reported immediately to the Thursday Island Office (note the telephone is manned on a 24hour basis)
 - (i) The Thursday Island Office or Customs, Federal Police, State Police are to be advised immediately if any non-Australian person, apart from traditional visitors turn up on your island.
 - (ii) Advice should include as many details as possible. For example
 -
 - a) Full name
 - b) Date of birth
 - c) Country of birth
 - d) What language is spoken
 - e) Route taken
 - f) Document details if any
 - g) Whose vessel were they in/who brought them here, and
 - h) Names of persons they intended to visit
 - (iii) Do make sure that you keep a record of the event, making sure that you have the correct time and location of where these people are found on your island.

AQIS

WORK INSTRUCTIONS

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1. PURPOSE

The purpose of this Work Instruction is to describe the procedures for quarantine clearance of traditional vessels and people involved in traditional activities within the Torres Strait Protected Zone (TSPZ).

2. SCOPE

The procedures set out in this document apply only to those vessels and traditional inhabitants that are involved with traditional activities, as set out in the Torres Strait Treaty. It includes Papua New Guinea (PNG) nationals, and returning Torres Strait Islanders.

3. USE THIS WORK INSTRUCTION IN CONJUNCTION WITH THE FOLLOWING LEGISLATION

This Work Instruction should be read in conjunction with the following:

- *Quarantine Act 1908*
- Quarantine Proclamation 1998
- Quarantine Regulations 2000
- Torres Strait Treaty.

4. RESPONSIBILITIES OF KEY PERSONNEL

4.1 NAQS PROGRAM MANAGER

4.1.1 The NAQS Program Manager, in consultation with the NAQS Operations Coordinator, shall ensure that the following are trained in the procedures of this Work Instruction:

- All Quarantine Officers, and officers from other agencies, who are involved in Quarantine clearance of vessels undertaking traditional activities in the TSPZ.

5. DEFINITIONS OF TERMS USED IN THIS WORK INSTRUCTION

<i>DIMA:</i>	Department of Immigration and Multicultural Affairs
<i>Special Quarantine Zone (SQZ):</i>	A quarantine zone, as defined within Quarantine Proclamation 1998
<i>Torres Strait Treaty:</i>	<i>Treaty</i> between Australia and the Independent State of Papua New Guinea concerning: <ul style="list-style-type: none">• the sovereignty and Maritime Boundaries in the area between the two countries known as Torres Strait, and• Related matters.
<i>Torres Strait Protected (TSPZ)</i>	As defined in the Torres Strait Treaty
<i>Traditional inhabitants/people</i>	Traditional inhabitants is defined in the Torres Strait Treaty. In relation to Australia, it means persons who: <ul style="list-style-type: none">• are Torres Strait Islanders who live in the Protected Zone or the adjacent coastal area of Australia,• are citizens of Australia, and• maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their substance or livelihood or social, cultural or religious activities. In relation to Papua New Guinea, it means persons who: <ul style="list-style-type: none">• live in the Protected Zone or the adjacent area of Papua New Guinea,• are citizens of Papua New Guinea, and• maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their substance or livelihood or social, cultural or religious activities.
<i>Traditional Activities:</i>	Traditional activities are those activities performed by the traditional inhabitants in accordance with local tradition, and includes, when so performed: <ul style="list-style-type: none">• activities on land, including gardening, collection of food and hunting;• activities on water, including traditional fishing;• religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and• barter and market trade. The Torres Strait Treaty also states that in the application of this definition, except in relation to activities of a commercial nature, “traditional” shall be interpreted liberally and in the light of prevailing custom.

6. WORK ACTIVITIES

6.1 Background

The close proximity of our northern neighbours, traditional visits between PNG and northern Australia, low population and difficult terrain combine to make northern Australia our front line of quarantine defence.

NAQS' broad aim is to protect northern Australia (between Broome in the west and Cairns in the east) from exotic pests, weeds and diseases through monitoring, surveillance and public awareness across northern Australia and in neighbouring areas of PNG and Indonesia.

Under provisions of the Torres Strait Treaty, traditional inhabitants are permitted to move freely between the islands in the TSPZ and specified villages in the western province of PNG without undergoing the normal Customs, Quarantine and Immigration formalities.

These procedures involve the inspection of people and goods when PNG traditional visitors arrive in the TSPZ and when Torres Strait Islanders return to the TSPZ, from PNG.

6.2 Preparation

6.2.1 You will need the following equipment:

- Officers Notebook
- "Hold Quarantine" tape
- Pocket knife
- Heavy duty plastic bag for seized items

6.2.2 Check with respective Island Council each weekday morning to determine whether traditional visitors are expected. On Fridays check whether arrivals are expected over the weekend.

6.3 Inspection Procedures

Note: Inspection is to take place as soon as possible after the arrival of a vessel, and preferably before anyone on board the vessel has disembarked.

6.3.1 Ensure there are no obvious human health concerns with those on board. If symptoms such as fever, stomach cramps, diarrhoea, or vomiting are present, isolate all passengers and contact NAQS Co-ordinator, on Thursday Island for further instructions.

6.3.2 Conduct an inspection of the vessel. Ensure inspection includes:

- any baggage on board,
- under false floors
- water containers

Prohibited Goods:	
Living Plants	Apart of a plant of any of the following genera or species (whether or not capable of being used for propagation): <ul style="list-style-type: none"> • Musa (bananas) • Saccharum (sugar cane); • Zea (maize); • Manihot esculenta Crantz (cassava); • Citrus; • Gossypium (cotton).
A part of a plant of any other species or genus that is capable of being used for propagation	
Fresh Fruit and Vegetables	
Live animals – except seafood, turtles & dugong	
Dead animals, meat or parts of animals – except seafood, turtles and dugong	
Feathers (unless clean and free of tissue) and eggs	
Soil	

6.3.3 Inspect all goods on board, seizing prohibited items.

6.4 WHEN PROHIBITED GOODS ARE SEIZED

6.4.1 Secure any prohibited items in a heavy-duty plastic bag, and seal with “Hold Quarantine” tape, for later disposal.

6.4.2 Prohibited goods are to be destroyed, except:

- When the goods are of high value and the owner wishes, the goods may be secured on the vessel and returned to PNG within 24 hours of arrival.

6.4.3 When prohibited goods have been seized (including waste), a notice must be issued:

- For goods of a minor value, issue a Standard Notice (see *Attachment 1*)
- For goods of significant value, or where a large volume of goods have been seized, a Seizure Notice must be issued (see *Attachment 2: AQIS Form 002 – Seizure of Animals Plants and Goods* for a completed example).

6.5 RECORDING

6.5.1 Record the following details in your notebook;

- Date of arrival
- Number of people on vessel
- Name of vessel master
- Village where vessel departed

- Type of goods inspected
 - Prohibited items carried
 - Any further action taken by officer, e.g. goods seized, treated or re-exported.
- 6.5.2 On return to office, record performance indicators on Traditional Vessel Arrivals Register (see Attachment 3)
- 6.5.3 Each Friday, fax Traditional Vessel Arrivals register to Thursday Island office: (fax 07 4069 1737).

ATTACHMENT 1 – STANDARD NOTICE



AUSTRALIAN QUARANTINE AND INSPECTION SERVICE
Department of Agriculture, Fisheries and Forestry - Australia

Notice of Seizure of Goods

Your goods have been imported, introduced into, or brought into a port or other place in Australia, in contravention of the *Quarantine Act 1908*. They have been seized and forfeited to the Commonwealth and will, unless you are otherwise advised, be destroyed.

The *Quarantine Act 1908* requires that the owner of the seized goods is to be provided a notice stating that the goods will be destroyed, sold, exported or otherwise disposed of in a way that the Director of Quarantine thinks appropriate. Goods seized and forfeited in this manner are typically destroyed.

If you have questions or wish to learn more of AQIS's efforts to contribute to the profitability and sustainability of Australia's agricultural and food industries and to protect our unique flora and fauna please visit our web site at:

www.aqis.gov.au




 Possession
goods:

A Smith

Particulars:

Flight Number: _____

Call Sign: _____ CICI _____

IMO/Lloyd's Number: _____

Description of Goods Seized:**Number/Weight of Good/s:****Origin of Goods:**

Food Items and ships waste

5 bags

Noumea

Sample only

Receipt Number: _____

AQIS Fee Paid: (if applicable)

\$A

The animals, plants or other goods identified above in this notice are : (section 68)

- Seized and forfeited to the Commonwealth.
- The goods will be sold, destroyed, exported from Australia or the Cocos Islands or otherwise disposed of in any way that a Director of Quarantine his or her delegate thinks appropriate.

Acknowledgment of Seizure of Goods:Signature: _____ *A Smith* _____

Printed Name: _____ A Smith _____

Date: 16 / 05 / 00

Quarantine Officer:Signature of Quarantine Officer: _____ *T Jones* _____(Place AQIS Official
Stamp here)

Printed Name of Quarantine Officer: _____ T Jones _____

Date: 16 / 05 / 00

Manner of Disposal: (section 68)

- The seized goods described above are to be: sold destroyed
- exported from Australia or the Cocos Islands at the expense of the importer/owner/person in possession or control of the animals, plants or goods.

 disposed of in the following manner. AQIS waste facility**Delegate of the Director of Animal and Plant Quarantine:**Signature of Delegate: _____ *Jones* _____(Place AQIS Official
Stamp here)

Printed Name of Delegate: T Jones

Date: 16 / 05 / 00

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(52) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 55) asked:

Under what head of authority under the Migration Act are immigration powers transferred to Customs officers? What regulation is used and how is it put into effect? Is there a letter signed by the Minister, Mr Farmer or someone else who has been delegated the power to give the Customs officer the immigration Authority? Is it gazetted? Use Townsville as an example.

Answer:

Section 5 of the Migration Act provides that any person who is an 'officer' for the purposes of the Customs Act is also taken to be an 'officer' under the Migration Act. An 'officer' under the Migration Act can undertake functions, which do not require a specifically delegated power.

The power to delegate rests in Section 496 of the Migration Act 1958 ('the Act') and Regulation 1.16 in Part 1 of the Migration Regulations 1994 ('the Regulations').

Officers are authorised to be an 'authorised officer' or delegated specific Ministerial and/or Secretarial powers by Ministerial and/or Secretarial instrument signed under Section 496 of the Migration Act and Regulation 1.16 of the Migration Regulations. Such instruments do not require gazettal. An 'authorised officer' is defined under Section 5 of the Act as an officer authorised in writing by the Minister or Secretary for the purposes of a specific provision. The Minister or Secretary delegates her/his powers under specific sections of the Act in writing to officers occupying specific positions.

Customs officers performing immigration functions in Townsville, for example, may exercise their powers as 'officers', as 'authorised officers' and as delegated under the Migration Act.

The following table outlines a range of powers that may be delegated to Customs officers.

Section Delegated	What it means
Section 29	Power to grant visas
Section 33(9)	Power to cease Special Purpose Visas
Section 43(1)	Instruct persons to enter at a port
Section 47	Consideration of a valid visa application
Section 51	Order of consideration
Section 56	Seek further information for considering application.
Section 57	Give certain information to the applicant in regards to their application
Section 58	Invite the applicant to give further information on their application.
Section 60	Medical exam
Section 63	When decision may be made
Section 65	Refusal to grant on health grounds
Section 67	Way visa to be granted (SCV)
Section 165	Defines clearance officers as Authorised officers
Section 231	Master of vessel to comply with certain requests- (eg give a list of all on board, gather crew as requested by an officer [muster crew],)

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 26 May 2004

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(53) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 56) asked:

Does DIMIA have an MOU with Customs in relation to processing arrivals by sea? In this instance, how does the relationship with Customs operate and what powers are delegated? Outline the process.

Answer:

Yes. The MOU outlines the range of functions to be undertaken by Customs in performing primary immigration clearance including where referrals of casework and alerts are to be made to DIMIA officers performing secondary immigration clearance.

The immigration clearance responsibilities to be performed by Customs on behalf of DIMIA include:

- confirming identification of the passenger;
- conducting basic examination of travel documentation;
- confirming the traveller has the authority to enter by checking against DIMIA databases;
- ensuring the face of the passenger card is fully completed; and
- notifying all system and manual referrals to an immigration officer before the passenger is allowed to pass through the Primary Line.

To this end, Customs officers are delegated certain powers under the Migration Act such as the grant of certain visas in immigration clearance, and the detention and search of persons in specific circumstances. The following table outlines the range of powers delegated to Customs officers.

Section Delegated	What it means
Section 29	Power to grant visas
Section 33(9)	Power to cease Special Purpose Visas
Section 43(1)	Instruct persons to enter at a port
Section 47	Consideration of a valid visa application
Section 51	Order of consideration
Section 56	Seek further information for considering application.
Section 57	Give certain information to the applicant in regards to their application
Section 58	Invite the applicant to give further information on their application.
Section 60	Medical exam
Section 63	When decision may be made
Section 65	Refusal to grant on health grounds
Section 67	Way visa to be granted (SCV)

Section 165	Defines clearance officers as Authorised officers
Section 231	Master of vessel to comply with certain requests - (eg give a list of all on board, gather crew as requested by an officer [muster crew])
Section 248	Exemption from being brought to a port under 247- (a place authorised by Customs)
Section 250	Detain unlawful non-citizens
Section 252	Searches of persons
Section 258	Identifying persons in custody

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(54) Output 1.3: Enforcement of Immigration Law

Senator Ludwig (L&C 57) asked:

In relation to the countries that Australia has entered into bilateral arrangements concerning people smuggling and the return of illegal arrivals, are the arrangements all in writing? Apart from the caveat where a country has asked for the arrangement to remain confidential between the parties, provide a copy of the arrangement.

Answer:

Written return agreements provide an additional level of practical facilitation for implementing the international legal obligation on states to accept the return of their nationals. Australia has a range of written return arrangements with a number of countries. The specific arrangements which detail people smuggling and the return of illegal arrivals are with:

Afghanistan East Timor Papua New Guinea Syria	Cambodia Fiji South Africa Vietnam	China, Peoples Republic of Laos Sri Lanka Yugoslavia, Federal Republic of
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These arrangements are in writing. In general, such arrangements are negotiated on the basis that they remain confidential. The Memorandum of Understanding (MOU) between Australia and the People's Republic of China concerning the "Safe Third Country" arrangement for Sino-Vietnamese settled in China is the only publicly available agreement. It is attached.

SCHEDULE 11 - MEMORANDUM OF UNDERSTANDING

[\(subregulation 2.12A \(3\)\)](#)

Representatives of the Ministry of Civil Affairs of the People's Republic of China and the Department of Immigration and Ethnic Affairs of Australia met in Beijing from January 20 to 25, 1995 on the issue of recent unauthorised arrivals in Australia of Vietnamese refugees settled in China. The discussions were held in a friendly and cooperative atmosphere.

Being concluding parties to the "1951 Convention Relating to the Status of Refugees" and the "1967 Protocol Relating to the Status of Refugees", both parties observed that since 1979 the Chinese Government has provided effective protection to over 280,000 Vietnamese refugees settled in China, including significant humanitarian assistance such as land, housing, medical care, education and employment. Both parties also noted that the United Nations High Commissioner for Refugees has been closely involved in all matters relating to the refugees, with the active cooperation of the Chinese authorities, both centrally and locally.

Both parties noted that the recent movement to Australia of some Vietnamese refugees settled in China was unauthorised. Consistent with international practice, both parties expressed their opposition to the unauthorised flow of refugees to third countries from the country of first asylum where they enjoy protection.

Both parties agreed that for the recent and possible future unauthorised arrivals in Australia of Vietnamese refugees settled in China they will, in the spirit of international cooperation and burden sharing and maintaining and further developing the friendly relations between China and Australia, and fulfilling international obligations consistent with international practice, engage in friendly consultations and seek proper settlement of the issue through agreed procedures. To this end, Vietnamese refugees settled in China returned under agreed verification arrangements, will continue to receive the protection of the Government of China.

On this basis both parties reached the following understandings on special arrangements for dealing with current unauthorised arrivals in Australia of Vietnamese refugees settled in China.

1. The Ministry of Civil Affairs agrees to accept those refugees settled in China, subject to verification procedures as agreed between the two parties, and will be responsible for their resettlement. However, this will not constitute a precedent for China in its handling of similar cases with other countries and regions.
2. The Department of Immigration and Ethnic Affairs will provide the Ministry of Civil Affairs with Vietnamese refugee registration forms as agreed between the two parties to facilitate the verification by the Chinese side. The Department of Immigration and Ethnic Affairs will be responsible for the return of the verified Vietnamese refugees to China by air and will meet all associated costs. The refugees will be returned in groups as soon as possible as verification procedures are completed.

3. Both parties agree to keep the UNHCR informed of the outcome of the negotiations and progress in relation to the returns, and seek its assistance if necessary.

Done in duplicate in Beijing on January 25, 1995 in Chinese and English, both texts being equally authentic.

Director-General, Office for
Reception and Settlement of
Indo-Chinese Refugees

For the Ministry of Civil Affairs
of the People's Republic of China

Ambassador to the People's
Republic of China

For the Department of
Immigration and Ethnic Affairs
of Australia

SCHEDULE 12 - EXCHANGE OF LETTERS

(subregulation 2.12A(3))

Part 1

Mr Jin Er Gang
Director-General
Department of International Cooperation
Ministry of Civil Affairs
Beijing
People's Republic of China

Dear Mr Jin

I am writing about the Memorandum of Understanding of 25 January 1995 between the Department of Immigration and Ethnic Affairs (now the Department of Immigration and Multicultural Affairs and Indigenous Affairs) and the Ministry of Civil Affairs relating to unauthorised arrivals in Australia of Vietnamese refugees settled in the People's Republic of China.

I note that the Memorandum of Understanding, established with regard to Vietnamese refugees settled in China who have arrived in Australia as unauthorised arrivals after 25 January 1995, continues to operate in the future.

Upon your confirmation of this, this exchange of letters replaces the previous exchange of letters of 18 and 19 February 2002, and together with the Memorandum of Understanding constitutes the agreement between our two countries on this subject.

Yours sincerely
Lydia Morton
(Minister)
4 April 2002

Part 2

Ms Lydia Morton
Minister
Ambassador to China
Australian Embassy
Beijing
5 April 2002

Dear Ms Morton

I refer to your letter of 4 April, 2002, and confirm that the Memorandum of Understanding of 25 January 1995, established with regard to Vietnamese refugees settled in China who have arrived in Australia as unauthorised arrivals after 25 January 1995, continues to operate for current arrivals and will continue to operate for future arrivals.

Yours sincerely

Jin Er Gang
Director-General
Department of Foreign Affairs
Ministry of Civil Affairs

Statutory Rules 1994 No. 281