

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE

Question No. 49

Senator Brandis asked the following question at the hearing on 16 October 2012:

In relation to the disposal of asylum seeker vessels:

1. How does Border Protection Command dispose of asylum seeker boats arriving in Australian waters?
2. If they are destroyed who destroys them and where are they destroyed?
3. When vessels are destroyed what procedures are followed? [disposal of fuel, equipment, AQIS intervention and ALL government agency approvals required]
4. What are the appropriate legislative provisions governing the disposal of boats?
5. What is the total cost of disposing of the boats [all components]?
6. What is the total cost to Customs for the protection of Australia's northern waters.

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

1. The preferred method of destruction for irregular entry vessels is burning at sea. For environmental, quarantine and safety reasons burning is more likely to result in the hull sinking in one large piece; preventing risk of collision by shipping, or damage to the environment from floating debris. In the occasional case of metal hulled boats, it is necessary to puncture the hull in order to assist the vessel to sink.
2. The Customs and Border Protection Chief Executive Officer (CEO) has direct authority to destroy, or move to destroy, a vessel deemed hazardous to shipping. The CEO has delegated this function and power to Commander and Deputy Commander Border Protection Command (BPC). The actual destruction of vessels is carried out by assets operating under the command of BPC.

When BPC authorises the destruction of an apprehended vessel, this is undertaken in full consideration of environmental effects. To the greatest extent practicable, all reasonable attempts are taken to ensure the location of destruction is in water as deep as possible, and preferably at least 200m deep and not less than 40m deep. Based on relevant considerations, including distances from local populations, BPC directs that vessels are to be destroyed at least 10 nautical miles from the nearest land, clear from sub-sea structures, marine parks and shipwrecks.

Prevailing weather conditions, current sea state, and the overall condition of the vessel's hull, will see the vessel destroyed at what is deemed the most appropriate location taking into consideration the surrounding environment and the safety of personnel involved.

3. The forfeiture or destruction of irregular entry vessels is not an automatic response and is done on a case-by-case basis. Following the boarding of intercepted vessels, BPC conducts an assessment of the overall seaworthiness of the vessel. The vast majority of SIEVs are found to be

unseaworthy, pose a significant quarantine risk, and are in such poor condition that custody or maintenance would involve an expense to the Commonwealth likely to be greater than the value of the vessel. These vessels are destroyed in accordance with Australian law under Section 185B of the *Customs Act 1901* which provides for moving and destroying hazardous ships. As destruction is carried out under the *Customs Act*, authorisation is required from the Commander or Deputy Commander BPC.

Prior to vessel destruction, all vessels are thoroughly searched. During this time any dangerous, hazardous or valuable items and evidence are removed and isolated. All objects on board the vessel that will not burn or sink are also removed and quarantined for Department of Agriculture, Fisheries and Forestry (DAFF) inspection, along with volatile fuels and vapours.

4. These vessels are destroyed in accordance with Australian law under Section 185B of the *Customs Act 1901* which provides for moving and destroying hazardous ships.

Additionally, while rarely used, Section 261 of the *Migration Act 1958* also allows for vessels knowingly used for the transportation of unlawful non-citizens to be seized and destroyed by the Immigration Secretary if its custody or maintenance creates serious difficulties.

The Australian Fisheries Management Authority (AFMA) and BPC are seeking to develop improved sea dumping protocols and guidelines for the disposal of apprehended illegal foreign fishing vessels and suspected irregular entry vessels in defined circumstances. It is intended that these arrangements will be used for the disposal of such vessels deemed to pose a navigation, safety, environmental or quarantine risk.

A joint application on behalf of AFMA and BPC for a sea dumping permit is in its final stages, and both agencies have engaged an independent environmental consultant to assist in the drafting process. Although BPC does not currently have a sea dumping permit, it has been assessed that BPC is complying with its obligations under the *Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter 1972* (the London Convention), its 1996 Protocol, and the *Environment Protection (Sea Dumping) Act 1981*. BPC continues to provide detailed reports of all vessel destructions to the Department of Sustainability, Environment, Water, Population and Communities, as the Australian national sea dumping regulator.

5. and 6. BPC assigned surveillance and response assets are deployed against a total of eight maritime threats throughout the entire Australian maritime domain. Accordingly, it is not possible to disaggregate costs to attribute in any accurate and meaningful way against distinct areas of operations or operational activities.