



AUSTRALIAN CUSTOMS OPERATIONS AT THE BORDER – COOPERATION AND COORDINATION WITH OTHER LAW ENFORCEMENT AGENCIES.

Purpose

1. To provide background information on the nature of law enforcement arrangements at the Australian Border.

Background

2. One of the most important practical constraints for efficient Customs operations at the border is the day to day operating relationship that exists with other law enforcement agencies.
3. This briefing provides information on how the border is controlled in an Australian context.

Customs Control at the Border

4. As noted below, the Department of Transport and Regional Services (DOTARS) has policy responsibility for physical security arrangements at air and sea ports. The Australian Customs Service (Customs) assists with the management of the security and integrity of Australia's borders. It works closely with, and relies on the support of several other agencies to detect and deter unlawful movement of people and goods across the borders. Apart from DOTARS, Customs key partner agencies are the Australian Federal Police (AFP), the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), the Australian Quarantine Inspection Service (AQIS) and the Department of Defence.
5. Customs also administers indirect tax legislation on behalf of the Australian Tax Office (ATO) in its border control function. Customs main roles are administering the Tourist Refund Scheme and collecting GST on taxable imports to protect against revenue losses through undeclared or falsely declared goods.
6. The only modes of entry to Australia are by air and sea, and Customs border control activities are concentrated in sea and airport environments (including postal facilities). Customs intelligence analysts support the use of sophisticated detection technology by selecting and targeting high-risk aircraft, vessels, cargo, postal items and travellers. Customs also maintains a civil maritime and surveillance response offshore, deploying a fleet of ocean-going patrol vessels and contracted aerial surveillance providers to intercept Suspect Illegal Entry Vessels

and other vessels suspected of involvement with narcotics importation.

7. Once illegal activity is detected, the matter is referred to Customs investigations branch, or the agency with legislative responsibility for prosecution (see below).

What Functions are Undertaken

8. In addition to enforcing the *Customs Act 1901* and related regulations covering prohibited imports and exports, Customs Officers administer legislation on behalf of other agencies. This includes immigration processing of passengers and crew on behalf of DIMIA, and the detection of goods and activities subject to several other legislative requirements and restrictions. Customs officers undertake all examination and searches at a Customs place, and in this capacity administer legislation on behalf of many other agencies.

Outline of Customs Responsibilities:

International Airports (significant elements outlined above)

9. Passenger and crew processing, including immigration clearance. Customs Officers have statutory authority under the *Migration Act 1958* to perform this role.
10. Baggage examination and searches. Customs officers are responsible for the detection of goods and activities subject to legislation for which other agencies are responsible, including matters relating to:
 - a. Quarantine – responsibility of AQIS;
 - b. Wildlife smuggling under the *Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)* – responsibility of Environment Australia;
 - c. Excess undeclared currency, subject to the *Financial Transaction Report Act 1988 (FTR Act)* – the responsibility of AUSTRAC.
 - d. Commercial quantities of goods contained in personal baggage, with the intention of avoiding payment of duty.
11. Cargo examinations, and comprehensive cargo searches in response to identified high-risk consignments. Customs is committed to ensuring at least 70% of all air cargo, and 100% of postal items are examined.
12. Incidental monitoring of certain areas inside the terminal via CCTV.

Sea ports

13. Passenger and crew processing for first-port vessels.
14. Ship searches of first-port vessels.
15. Cargo examination using container X-Ray facilities. The Container X-Ray Units (CXU) in Melbourne (100), Sydney (100) and Brisbane (60) examine numbers of containers each day, of which on average 10% are then selected for physical examination. A similar system will be installed in Fremantle (50 per day) in November this year.
16. Surveillance of Customs controlled areas (wharves) using a comprehensive CCTV system, and perimeter patrols to monitor security of wharf areas.

Civil Maritime Surveillance and Response

17. Coastwatch Division operates a central command post that coordinates marine patrols conducted by Customs National Marine Unit, and aerial surveillance employing privately contracted aircraft and crew.

Investigations

18. Customs investigation teams are responsible for the investigation and preparation of matters involving breaches of the *Customs Act 1901* for prosecution.
19. Customs is also responsible for enforcing provisions of the *EPBC Act* that relate to international movement of wildlife specimens. Customs investigations teams are responsible for all aspects of the investigation and prosecution of these breaches, including the decision whether to initiate prosecute the matter at all. Customs Officers are authorised officers for the purpose of the *EPBC Act*.
20. Customs may also initiate prosecution of breaches of the *Quarantine Act 1908*, but Customs officers are not authorised officers under the *Quarantine Act* and have no authority to investigate breaches of the Act. Quarantine issues are immediately referred to AQIS, and Customs investigators are only involved where the matter is connected to a breach of other legislation administered by Customs (most commonly, the *EPBC Act*).
21. Immigration matters and narcotic detections are immediately referred to the relevant agency – DIMIA and the AFP respectively – for further action.

22. There is no agency specifically charged with investigating breaches of the *FTR Act*, so under the existing cooperative arrangements between the AFP and Customs, the AFP takes primary responsibility for enforcing the *FTR Act*. Matters are therefore immediately referred to the AFP for investigation.
23. Customs has primary responsibility for investigations and prosecution of fraud against the revenue in relation to imported goods. Customs provides information and assistance to the ATO in relation to other matters for which the ATO has primary responsibility.

Policy Responsibility for Activity Undertaken at the Border

24. The agency responsible for the legislation administered by Customs also holds policy responsibility. Therefore, AQIS and DIMIA are responsible for policy in quarantine and immigration matters respectively.
25. The Department of Transport and Regional Services (DOTARS) has policy responsibility for physical security arrangements at air and sea ports, and the Australian Protective Service (a branch of the AFP) is jointly responsible with airport corporations for conducting physical patrols.
26. Australia's illicit drugs policy is developed in the context of the National Drug Strategic Framework (NDSF). The NDSF consists of several high-level councils and committees, incorporating all law enforcement agencies and health departments from both Commonwealth and State Government as well as Non-Government Organisations and specialist advisory subcommittees. The policy agency responsible for Customs legislation dealing with illicit drugs is the Therapeutic Goods Administration.
- The Department of Treasury is responsible for policy in relation to indirect taxation matters. Customs is consulted and provides advice in relation to the administration of taxable importations policy.

Conclusion - What if a Matter Cannot be Resolved by the Agency at the Border.

- Key agencies maintain a presence or a response capability at the border (including AQIS, DIMIA, and the AFP) so matters can be referred directly to staff from the appropriate agency.
- At present all narcotics detections are referred to the AFP to pursue action. The AFP has the capacity to authorise Customs to pursue action following detection, but this power is rarely exercised. Collaborative working arrangements between Customs and the AFP are currently being reviewed.

Why the Structure is as it is?

- The activities of Australia's Commonwealth law enforcement agencies fall within the scope of matters dealt with by the Attorney-General's Department, and a separate Minister for Justice and Customs has portfolio responsibility for these agencies and their activities.
- The current structure enables the development of expertise in relevant areas, while facilitating a close working relationship and common lines of accountability between agencies. Co-operative working relationships are further defined and established through Memoranda of Understanding, and common membership of high-level committees.

**Australian Customs
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