

UNCLASSIFIED**Australian Customs and Border Protection Service****Key Issue 0****Managing the Australia's Border****Issues**

Customs and Border Protection's performance has been under increased scrutiny over concerns of 'porous borders' in relation to drugs and guns entering Australia.

Talking Points

- Since 2009, our agency budget and cargo inspection levels may have decreased, but we have concurrently refined and improved our processes for targeting high risk threats, resulting in a higher number of significant detections. *(Refer to Background for staffing level reductions, and detections results – drugs by year, weight and number)*
- It is impossible, both financially and logistically, to physically inspect every passenger or consignment that crosses the border.
 - International air passenger and crew arrivals and departures are projected to increase by 2020 (In 2011-12, 30.7 million, to 46.6 million in 2019/20). (Projections for sea passengers are not calculated).
 - Incoming sea container cargo consignments are projected increase from 2.6 million in 2011-12 to 4.9 million by 2020.
 - Incoming air cargo consignments are projected to increase from 18.4 million in 2011-12 to 21.7 million by 2020.
- Strong intelligence is the key to protecting our borders, we work closely with other border, intelligence and law enforcement agencies to better understand and act on the threats, vulnerabilities and risks posed.
- Since 2009, 80 – 90 per cent of successful drug detections have come from intelligence-led targeting
- In air cargo, the number of detections increased by 42.6 per cent in 2011-12 compared to 2008-09 under the old approach.
- A total quantity of 3,497.6 kg of drugs and precursors were seized in the 2011-12 financial year;
- In the first three months of the current financial year we have seized over a third (1,202.3 kgs) of the tonnage seized during the last financial year (3.49 tonnes) across all streams of drugs and precursors.
- In the last two financial years, Customs and Border Protection, with its partners, has achieved the third, fifth and sixth largest cocaine seizures and the fifth largest heroin seizure in Australian history.

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- This financial year to 30 September the weight of detected heroin has already exceeded the weight detected throughout the entire 2011-12 financial year and amounts to 115.5% of last year's seizures [296 kg in 2012-13 against 256.2kg in 2011-12]
- The current strategy is a more sustainable approach to the future, in the face of increasing cargo and passenger numbers (*Refer to Background on key trade and passenger statistics*).
- The current strategy also ensures that legitimate traders and passengers are not hindered unnecessarily, and our resources are used more effectively in intercepting the cargo and passengers of highest risk to Australia.

Screening methodology

- We conduct risk assessments of all incoming flights and vessels, their passengers and crew, and imported air and sea cargo. Those that are assessed as high risk are subject to further scrutiny - 100 per cent of cargo consignments identified as high risk are physically examined (*Refer to Background Air and Sea Cargo Inspections, Outcomes and Referrals – July 2007 to June 2012*).
- Current inspection targets were established in 2009 as part of an initiative to strengthen Customs and Border Protection's intelligence-led risk-based approach for air and sea cargo inspections. (*Refer to Background for key changes post-2009*)
- We employ a multi-layered approach to detecting high risk goods and passengers, utilising capabilities and resources such as intelligence analysts, a range of technologies for mail, sea and air cargo, and investigations officers (*Refer to Background for capabilities across the agency*).
- Customs and Border Protection's intervention strategy draws on extensive past experience which has clearly shown the vast majority of imported cargo is legitimate.

Missed Detections (*refer to Background for missed detections process*)

- Whilst detections have increased, the sheer volume of trade, coupled with dynamic criminal typologies, means that some illicit importations will be missed.
- Customs and Border Protection reviews all known incidents of missed detections to ensure business improvements are made to risk treatments, people, processes and technologies.
- The information gathered from missed detection reviews is fed back into the intelligence pool for Customs and Border Protection and its partners to learn from, and to close off any vulnerabilities in our processes.

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Background

Capabilities across Customs and Border Protection facilities

Customs and Border Protection uses a multi-layered approach to screening mail, air and sea cargo:

- Intelligence and targeting analysts employed across the agency using information to identify high risk cargo and people.
- Eight Container Examination Facilities (Major facilities at Sydney, Melbourne, Brisbane, Fremantle, with cargo screening facilities at Townsville, Darwin, Launceston and Newcastle).
- Air cargo screening facilities at all major international airports.
- Four international mail screening facilities located at Brisbane, Melbourne, Perth and Sydney.
- Investigations officers employed across the agency to conduct investigations and prosecutions of serious non-compliance including joint operations with relevant Commonwealth and State/Territory agencies.
- Overall, 4000 officers are performing 'frontline' Customs and Border Protection duties, which includes Cargo, Passenger, Marine and Enforcement operations.

Key passenger and trade volume statistics

- In 2011-12:
 - International air passenger and crew arrivals and departures totaled 32.5 million;
 - Incoming sea container cargo consignments totaled 2.6 million; and
 - Incoming air cargo consignments totaled 18.4 million.
- The numbers of passengers and cargo (sea, air and mail) continue to rise. Based on current estimates:
 - International air passenger arrivals and departures are projected to almost double by 2019/20 (In 2011/12, 30.7 million, to 44.2 million in 2019/20).
 - Incoming sea container cargo consignments are projected to double by 2020 (In 2010-11, 2.5 million, to 4.9 million by 2020).
 - Incoming air cargo consignments are projected to increase by more than fifty per cent in 2020 (In 2010-11, 14 million to 21.7 million).
 - Incoming mail articles are projected to continue to increase due to the growth in individual importers and the strength of the Australian dollar (in 2010-11, 64.8 million parcels were received)

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Key changes

Pre-2009	Now
Mass screening (high volume of undirected activity of low risk cargo).	Prioritised risk-based activity.
Limited coverage focused on small number of big cargo premises.	Presence across the trading environment.
Low cost-benefit based on rates of detection.	Efficient direction of activity based on risk profile.
6.2 million air cargo consignments inspected (2008-09).	1.5 million air cargo consignments inspected (2011-12).
134,000 TEU of sea cargo inspected (2008-09).	101,500 TEU sea cargo inspected (2011-12).
Less than 0.5% of air cargo identified is/was as high-risk, yet over 60% of air cargo consignments were being inspected in 2008.	100% of high risk cargo is inspected.
Less than 0.5% of sea cargo identified was as high-risk, yet between 4 – 9% of loaded import cargo being inspected depending on sea port.	100% of high risk cargo is inspected. Increased efficiency overall, with less legitimate cargo being examined for little gain.
Impact of extensive inspection of cargo was borne by legitimate traders; resulting in slower trade and very low detection outcomes (less than 0.02% anomaly detections for non-high risk cargo).	Approximately 92 per cent of air cargo is cleared without intervention, or delay to industry. Approximately 96 per cent of sea cargo is cleared without intervention, or delay to industry.

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2012-13 PBS targets

The 2012-13 PBS targets are:

- 1.5 million air cargo inspections;
- 101,500 twenty-foot equivalent units (TEU) inspections of sea cargo and 14,000 TEU examinations of sea cargo; and
- 20 million inspections of letters and 20 million inspections of parcels in international mail.
- The PBS does not include an examination target for air cargo, as 100 per cent of high-risk consignments are examined (including those where an anomaly is identified during inspection).

Air and Sea Cargo Inspections, Outcomes and Referrals – July 2007 to June 2012

	Inspections		Detections ³		Weight of Drugs and Precursors (kg)	
	Air ¹	Sea ²	Air	Sea	Air	Sea
2007-08	6,186,207	138,209	870*	787	309	1,824
2008-09	6,150,914	134,544	1,495	780	350	4,777
2009-10	1,492,762	101,822	1,557	757	285	255
2010-11	1,528,590	101,889	1,741	564	548	3,182
2011-12	1,513,678	102,247	2,124	879	926	1092

Notes:

¹ Measured in consignments

² Measured in Twenty-Foot Equivalent Units

³ 'Detections' refers to all EXAMs categories excluding Quarantine, e.g. Drugs, Firearms, Other Weapons, Prohibited Items, Revenue, Intellectual Property Rights infringements, Wildlife and Currency. 'Quarantine' refers to EXAMs category Quarantine, which is a referral of suspected quarantine material to AQIS that may or nor may not lead to a seizure

* Note, new national business rules only commenced in March 2008 for recording air cargo detections in EXAMs.

The number of drug detections vs. the weight of drugs detected

Caution needs to be exercised when interpreting the number of detections and the weight of drugs detected.

- The number of drug detections is heavily influenced by 'scatter' importations – sending many consignments containing small amounts of drugs in postal articles and air cargo parcels. 'Scatter' shipments have much stronger influence over the count of detections than over the total detected weight of drugs. Example: The number of 2011-12 MDMA detections was nearly nine times higher (800% higher) than the number of equivalent detections in the preceding 2010-11, but only 36% higher in weight. The majority of postal 'scatter' importations have been arriving at the Sydney international mail exchange, with Melbourne a distant second.
- The weight of drugs detected is heavily influenced by large but rare detections, mainly, but not exclusively, in sea and air cargo. Example: over 69% of the 785.7kg of cocaine detected in Australia in 2011-12 was in just two large detections, of 276kg and 271kg, while 977 other

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detections of cocaine comprised the remaining weight. Consequently, the total weight of drugs being detected from one year to another can vary significantly.

In the financial year 2011-12:

- **the weight of detected amphetamine-type stimulants (ATS) was over 3.3 times that detected in 2010-11** [347.6kg in 2011-12 against 105.2kg in 2010-11];
- **the weight of detected amphetamine-type stimulants (ATS) is over 3.3 times that detected in 2010-11** [347.6kg in 2011-12 against 105.2kg in 2010-11];
- **the weight of cannabis detected in 2011-12 was 24.2% of that detected in 2010-11** [16.9kg in 2011-12 against 69.6kg in 2010-11];
- **the weight of cocaine detected in 2011-12 was 12% higher than in 2010-11** [785.7kg in 2011-12 against 701.8kg in 2010-11];
- **the weight of heroin detected in 2011-12 was 64% of that detected in 2010-11** [256.2kg in 2011-12 against 400.2kg in 2010-11];
- **the weight of MDMA detected in 2011-12 was 36% higher than that detected in 2010-11** but has remained extremely low in absolute terms [12kg in 2011-12 against 8.8kg in 2010-11]; and
- **the weight of drug precursors detected in 2011-12 was 60% of that detected in 2010-11** [2,079.2kg in 2011-12 against 3,470.5kg in 2010-11].

In the first quarter of the financial year 2012-13 (to 30 September 2012):

- **the weight of detected amphetamine-type stimulants (ATS) has already exceeded by 20% the weight detected throughout the entire 2011-12** [417.4kg in 2012-13 against 347.6kg in 2011-12];
- **the weight of cannabis detected to date in 2012-13 has been low in absolute terms and amounted to 20.1% of the amount detected in 2011-12** [3.4kg in 2012-13 against 16.9kg in 2011-12];
- **the weight of cocaine detected to date in 2012-13 stands at 21.5% of the total weight detected in 2011-12** [169.6kg in 2012-13 against 785.7kg in 2011-12];
- **the weight of detected heroin has already exceeded the weight detected throughout the entire 2011-12 and amounts to 115.5% of the last year's detections** [296kg in 2012-13 against 256.2kg in 2011-12];
- **the weight of MDMA detected in the first quarter of 2012-13 stands at 51% of the total weight detected throughout 2011** but is still very low in absolute terms [6.2kg in 2012-13 against 8.8kg in 2011-12]; and
- **the weight of drug precursors detected to date in 2012-13 stands at 14.8% of the total weight detected in 2011-12** [309.7kg in 2012-13 against 2,079.2kg in 2011-12].

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- Since 2009, 80 – 90 per cent of successful drug detections in 2011 came from intelligence-led targeting.
- In 2011-12, Customs and Border Protection officers seized over 3,490kg of illicit drugs and precursors (4,756.1kg were seized in 2010-11).¹²
- Since July 2010, Customs and Border Protection, with its partners, has achieved the third, fifth and sixth largest cocaine seizures and the fifth largest heroin seizure in Australian history.

Missed Detection Process: Cargo

- Missed detections represent vulnerability within the existing Customs and Border protection processes.
- A '*missed detection*' refers to a scenario whereby a significant border risk was not detected by Customs and Border Protection, and subsequent information indicates that a successful importation or exportation has occurred.
- The purpose of missed detection reviews is to identify any vulnerability that may exist in Customs and Border Protection's current processes and formulate recommendations on future improvements for detection capability. The key focus is on lessons learnt.
- An initial synopsis of the circumstances surrounding a missed detection is provided to the responsible National Manager and the National Manager Integrity and Professional Standards within two working days of the miss or near miss being identified. The purpose of the synopsis is to identify any urgent activity that must occur or likely media issues that require immediate attention.
- The review team prepare a detailed written report within three weeks outlining the key information describing how the miss or near miss occurred and providing specific recommendations for action to minimise the likelihood of future misses.
- The sponsoring National Manager and the National Manager Integrity and Professional Standards, oversee and review the progress of the implementation of any recommendations.

Reduction in staffing levels

- Customs and Border Protection is estimating a reduction in staff numbers of 190 (3.6%) in 2012-13 from 5,222 in 2011-12 to 5,035. This compares with ASL in recent years which peaked in 2007-08 at 5,746 and have reduced steadily since this time to 5,679 in 2008-09, 5,489 in 2009-10, 5,318 in 2010-11 and 5,222 in 2011.12.
- The previous reductions have been achieved without material impact on the management of border risks.

¹ Figures refer to detections of ATS, cannabis, cocaine, heroin, MDMA and precursors only, and exclude PIEDs and 'other' drugs'

² The figure of 4,756.1 kg incorporate other streams eg passengers and small craft – which are not included on the table page 6

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- Customs and Border Protection will continue to protect Australia's border by undertaking an intelligence-led, risk based approach and targeting high risk passengers and cargo, collaborating with law enforcement partners and using technology to manage risk and streamline processes.

Document Control Table

No.	Date	Author	Comments	Cleared by and date
1.0	19/04/12	s47F	First draft	
1.1	16/05/12	s47F	Amendments made from input received from ND I&T, ND C&T and ND C&E	
1.2	16/5/12	s47F	Edits made based on feedback from DCEO BM	
1.3	17/5/12	s47F	Update made as per DCEO BM query on significant drug detections with input from I&T	DCEO MCI 17/5/12 DCEO BM 17/5/12
1.4	21/5/12	s47F	Update to 2007-8 staffing figure on page 8 updated at request of CFO (highlighted in yellow)	
1.5	23/5/12	s47F	Update to Weight of Drug detections (highlighted) at request of Danielle Spiller (C&T) to ensure stats consistent with those included in other briefs and media releases	
1.5	12/10/12	s47F	Updated facts and figures	
1.6	12/10/12	s47F	Edited talking points	M.Wardell Director Comms & Media
1.7	15/10/12	s47F	Updated facts and figures	
1.8	15/10/12	s47F	Updated Drugs figures Sep 2012 and comments from ND Passengers, ND I&T	ND Passengers ND I&T ND C&T ND C&E

Consultation

External agencies consulted: No

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Australian Customs and Border Protection Service

Key Issue 1

Maritime Operations and Incidents

Final as at 10:30am Mon 15 October 2012

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POLICY ISSUES

Search and Rescue obligations

- As outlined in official testimony by Customs and Border Protection officers to the Coronial Inquest into SIEV 221, Border Protection Command (BPC) is not a search and rescue authority.
- However, its assigned assets, like those of any private and commercial organisation, can be called upon to respond to emergencies at sea in accordance with Australia's international obligations.
- BPC-assigned assets are regularly tasked by the Australian Maritime Safety Authority's (AMSA) Rescue Coordination Centre (RCC Australia), to assist in search and rescue (SAR) operations, both inside and outside the Australian Search and Rescue Region.
- Under the United Nations Convention on the Law of the Sea (UNCLOS), masters of vessels at sea, including those assigned to BPC, have a general obligation to render assistance, if in a position to do so, to any vessels which they are aware are in distress at sea, and to proceed with all speed to their assistance. This is further articulated in the International Convention for the Safety of Life at Sea (SOLAS Convention).
- The Navigation Act 1912 (Cth) s265 describes general Australian ships' duties with respect to SOLAS, including that while s3 of the Act excuses Australian Defence Force (ADF) ships from these obligations, ADF ships will seek to assist wherever possible.
- Additionally, the International Convention on Search and Rescue (SAR Convention) further articulates obligations on ships' masters to render assistance to vessels requiring assistance, without regard to their nationality, status or the circumstances in which they are found.
- No differentiation is made regarding whether a search and rescue is undertaken for a suspected irregular entry vessel or any other vessel. A person's immigration status is irrelevant to the duty to render assistance under the SOLAS Convention.

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- RCC Australia's requests for assistance to Customs and Border Protection are not limited to the provision of aerial and surface assets. Requests for assistance can also take the form of provision of information relating to vessels in the reported SAR area, communications assistance (i.e. broadcast to shipping), assistance with source information support and liaison functions.
- BPC has an obligation to consider the request for assistance and to assess if a response is possible. In considering the ability to respond, a variety of factors are considered including:
 - the ability of merchant vessels close to the scene to respond
 - the ability of a foreign navy (or coastguard equivalent) to respond to the incident in their SRR
 - the ability to ensure Australia meets its obligations in its own SRR
 - the ability to protect Australian interests within the EEZ and territorial waters.

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Transfer of rescued people to Christmas Island

- The decision to transfer those rescued at sea to Christmas Island, or any other place, is shaped by international law.

Legal Obligations

- The International Convention on Maritime Search and Rescue (SAR Convention) provides the scope of the duty to rescue as “an operation to retrieve persons in distress, provide for their initial medical and other needs and deliver them to a place of safety”.
- Three principles under international law shape the decision regarding where persons rescued at sea are taken:
 - survivors must be taken to a place of safety;
 - further deviation from the assisting vessel’s intended voyage should be minimised; and,
 - States should coordinate to arrange disembarkation as soon as reasonably practical.
- The responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the Government responsible for the Search and Rescue Region in which the survivors were recovered. However the unique circumstances of each case must be considered.
- Under international law, there is no reference to the nearest port being the appropriate place to disembark survivors, nor is the closest coastal State obliged to accept them. Rather, as referenced in the SAR Convention, assisting vessels have the obligation to deliver the persons to a “place of safety”. This is the principle under which masters of ships rendering assistance, including those assigned to BPC, operate.

What is a ‘place of safety’?

- The International Maritime Organisation (IMO) Guidelines on the Treatment of Persons Rescued at Sea defines a place of safety as one where the survivors’ safety of life is no longer threatened, and where their basic human needs (such

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as food, shelter and medical needs) can be met. Further, it is also a place from which transportation arrangements can be made for the survivors' next or final destination.

- An assisting ship may be deemed a place of safety should it meet the stated requirements, however it should not be considered a place of safety based solely on the fact that the survivors are no longer in immediate danger once aboard the ship. An assisting ship may not have appropriate facilities and equipment to sustain additional persons on board without endangering its own safety, or to properly care for the survivors. Even if the ship is capable of safely accommodating the survivors and may serve as a temporary place of safety, it should be relieved of this responsibility as soon as alternative arrangements can be made.
- Delivery to a place of safety should take into account the particular circumstances of the case. These circumstances may include factors such as the situation on board the assisting ship, on scene conditions, medical needs, and availability of transportation or other rescue units. Each case is unique, and selection of a place of safety may need to account for a variety of important factors.
- Where the persons rescued at sea are asylum seekers or refugees, the Convention on the Status of Refugees should be considered. Article 33 of this Convention provides that:
 - 'No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

Minimising deviation from the assisting vessel's intended voyage

- Under the SAR Convention, a ship which provides assistance to persons in distress should not be subject to undue delay, financial burden or other related difficulties after assisting persons at sea; therefore coastal States should relieve the ship as soon as practicable.

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Coordination between States

- As each SAR case can involve different circumstances, the SAR and SOLAS Conventions have been designed to give responsible Governments flexibility to address each situation on a case-by-case basis. As such, coordination between States is stressed in these Conventions, particularly in ensuring that disembarkation of survivors is arranged as soon as reasonably practical, and that masters of vessels providing assistance are released from their obligations with minimum further deviation from the vessel's intended voyage.

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Impact of regional processing arrangements*If asked – What has been the impact of regional processing arrangements?*

- It is too early to judge the impact of regional processing arrangements.
- We have seen behavioural changes from some cohorts of potential asylum seekers.
- However, we are also aware that people smugglers provide counter messaging to potential asylum seekers.
- We expect to have a better understanding of the impact by the end of the year.
- Further questions should be referred to the PM&C for answer.

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Australian authorities allowed to enter the Indonesian SRR

- The Indonesian Search and Rescue Region (SRR) consists of High Seas, the Indonesian Exclusive Economic Zone (EEZ) and Territorial Sea.
- Vessels, including Australian Defence assets, do not need to seek permission to enter the SRR of another State, as the right to innocent passage exists within the Territorial Sea, along with the right to freedom of navigation on the High Seas and within a State's EEZ.
- Under the IMO *Guidelines for the Treatment of Persons Rescued at Sea*, the first Rescue Coordination Centre (RCC) to be aware of a distress situation is responsible for co-ordinating the response until the State whose SRR the incident is within assumes responsibility.
- The first RCC notified should immediately begin efforts to notify the responsible RCC. Once the responsible RCC is notified, that RCC should immediately accept responsibility for coordinating the rescue efforts.
- In past experiences, BASARNAS, having been notified that assistance is required in their SRR, has often not been able to accept responsibility for the SAR response. On these occasions, responsibility has remained with RCC Australia.
- RCC Australia can, and regularly does, request BPC-assigned assets assistance in SAR operations. All requests to BPC from RCC Australia for assistance in responding to safety of life at sea (SOLAS) incidents are afforded the highest level of response. BPC surface and aerial assets have assisted RCC Australia to respond to reports of possible vessels in distress located both inside and outside the Australian SRR.
- Under the SAR Convention, all RCCs have a duty to provide assistance, (within operational capability) when requested by another RCC. This assistance can be in the form of vessels, aircraft, personnel or equipment. BASARNAS, when coordinating SAR responses, has often requested assistance from RCC Australia. To meet this request, RCC Australia has in turn requested the support of assets assigned to BPC, requiring them to enter the Indonesian SRR.

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The 'Arrangement Between Australia and Indonesia for the coordination of SAR services'

- A SAR Arrangement is an arrangement between countries put into place in accordance with the Maritime SAR Convention and is used to confirm the SRR boundary and coordination arrangements. These would normally apply on or near the SRR boundary but when neighbouring SAR authorities have limited capacity to coordinate or respond Australia often finds itself coordinating and responding to SAR events well inside neighbouring SRRs
- AMSA has a working relationship with BASARNAS, the operational details of which are set out in a document signed in 2004 and submitted with the IMO in accordance with paragraph 2.1.4 of the Annex to the SAR Convention and noted by the IMO on 13 April 2004 ("2004 Arrangement"). As well as delineating the SRRs for Australia and Indonesia, the 2004 Arrangement acknowledges that each SRR covers land areas of the other party and notes that cooperation should be as close as possible.
- The 2004 Arrangement provides for less formality for entering the other State's air space or territorial sea to respond to an incident but notes that approval will first be sought and notified by the appropriate RCC before entering air defence identification zones.
- The 2004 Arrangement provides that coordination of a SAR incident may be transferred to the other RCC if it is more favourably placed to assume control of the mission by reason of better communications, proximity to the search areas, more readily available SAR units or facilities and sets out the procedure for the transfer. The 2004 Arrangement also provides that the initiating RCC will retain responsibility until the accepting RCC formally advises the initiating RCC that it has assumed responsibility for the overall SAR coordination, or part of the coordination.

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Strengthening Indonesian SAR Capability

- Respective search and rescue agencies, BASARNAS and AMSA, have been working closely together since 2007 to improve capability and coordination of search and rescue activities in our region. Activities undertaken to date include search and rescue exercises, short-term officer secondment and training of search and rescue mission coordinators (SMC) in maritime and aviation search and rescue operations.
- Search and rescue arrangements were discussed during high level meetings between Ministers from both countries in Jakarta in early September.
- Ministers agreed to expand the \$38.4 million *Indonesia Transport Safety Assistance Package* which began in 2007, to provide for additional bilateral coordination on search and rescue activities.
- Under the agreement, the Australian Government will make an additional \$4.4m available to enhance coordination between BASARNAS and AMSA and provide for an exchange of expertise and experience to improve search and rescue outcomes in the region.
- The extended arrangements will establish an exchange program of search and rescue specialists between BASARNAS and AMSA and enhance access by Indonesia to the latest ship tracking information and satellite communications technology.
- Australia will also share its experience and expertise on the coordination of search and rescue activities to assist in the deployment of appropriate vessels to assist people in distress.
- Additionally, processes are being developed to facilitate rapid clearance for Australian aircraft to operate in Indonesian Territorial Airspace, and, if necessary, to land to refuel at agreed Indonesian airfields when engaged in search and rescue operations.
- Any further questions regarding airspace clearance for SAR operations should be referred to the Department of Infrastructure and Transport, or AMSA.

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Sharing Intelligence in the Context of SAR/SOLAS Situations

- Customs and Border Protection and other Australian Government agencies receive a range of information about maritime people smuggling vessels travelling from and within waters beyond the Australian Search and Rescue Region. Some of this information proves accurate, some of it does not.
- If Customs and Border Protection receives information from any source, or becomes aware of a potential vessel in need of assistance, that information is communicated to AMSA, as the lead Australian authority for SAR, as quickly as possible. AMSA may then subsequently request the release of BPC-assigned assets to undertake SAR functions.
- During SOLAS situations, Australian authorities work together with partner agencies, including counterparts in Indonesia, to ensure the most accurate information is guiding actions at the earliest possible opportunity.
- Australian authorities have developed greater awareness within the maritime domain, increasing the ability to detect and respond to vessels in need of assistance in Australian waters.
- However, where a SOLAS situation is not called by the Master of the vessel and/or the vessel is not carrying electronic identification transponders, or does not notify authorities of its intended movements (as is the case with SIEVs) the possible location of a vessel in distress is assessed from information that can be indicative rather than precise.
- If Australian authorities receive information that a vessel may have departed for Australia and the vessel does not arrive, this does not mean it has necessarily been lost at sea.

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- In responding to SOLAS incidents, Customs and Border Protection's information sharing arrangements are guided by the following principles:
 - Proactive dissemination of information as early as possible, and at the lowest possible classification to ensure accessibility by all relevant parties.
 - Follow-up to ensure that desired outcomes have been achieved and relevant response actions taken.
- Importantly, no two SOLAS incidents are the same. Although Customs and Border Protection strives to be as seamless as it can be in terms of facilitating the flow of information between relevant agencies, SOLAS incidents are inherently complex with information regarding the location and condition of the vessel often being ambiguous, uncertain or insufficiently precise to support effective SAR operations.
 - Effective responses to these incidents can be sidetracked or delayed by multiple conflicting lines of reporting, often suggestive of separate incidents in different locations, merging over time into a single incident.

If asked : What have you done to improve the timeliness of the reporting of information regarding possible vessels in distress?

- Areas for improvement in the sharing of information between agencies continue to be identified through a practice of ongoing review following SOLAS incidents, including the SAR events on 21 and 27 June 2012. In September 2012, a separate review provided clarification regarding those occasions when whole-of government support should be requested.
- On 21 September 2012, BPC conducted a SOLAS table-top exercise with participants from AMSA and the Department of Infrastructure and Transport, and Defence. The exercise examined our whole-of-government response to past SAR incidents to highlight operational considerations and discuss outcomes, including the flow of information and complexities inherent in responding to SAR events. The exercise helped participants develop a greater understanding of the whole-of-government response to SOLAS incidents and the factors affecting decision making.

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- Events such as that of 12-13 May 2012, when Customs and Border Protection and AMSA received multiple reports of a vessel in distress all at different locations, are routinely evaluated for where improvement in our information-sharing processes can be made.
 - When information regarding the vessel in distress was received, all parties were informed as soon as possible. For example, when CNOC received calls directly from a number of sources to the Customs Hotline number they passed this information directly to AMSA. CNOC then informed the AMSOC who notified BPC-IC.
 - BPC-IC Duty Staff opened lines of communication with the other government agencies and provided them with operational updates to ensure there was an appropriate prioritisation of resources, and relayed findings which incorporated value-added assessments. The established links between other government agencies, BPC-IC and AMSOC allowed for the timely passage and correlation of information.
 - There was effective operational information sharing between Customs and Border Protection in Canberra and Customs and Border Protection officials at post in Jakarta, which aided information sharing with Indonesian authorities.
 - An area for improvement identified was in the ability of the BPC-IC to maintain coverage during a prolonged incident. BPC-IC is currently drafting SOPs to better position it to manage prolonged incidents in the future.
- Incidents such as these are never the same, and as they arise we continue to identify areas for improvement. This will be ongoing.
- Specific effort has been directed at improving and harmonising stakeholder agency practices in relation to handling of information related to SOLAS situations. Key outcomes of this work include:
 - improved procedures governing the handling of information related to SOLAS situations so that information in relation to a maritime distress situation is communicated to AMSA as soon as possible;
 - ensuring agencies have policies and procedures that provide consistent direction to staff who may be inexperienced in these situations;

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- enhanced interagency awareness of each agency's roles, responsibilities and constraints when responding to potential maritime distress situations; and
- a post-incident and an annual review process, so that procedures and agency policies remain relevant and workable over time.
- Improved timeliness in the passing of appropriate information to the relevant agencies has been achieved through regular and prompt post activity desk top analyses attended by all stakeholder agencies. These desk top activities have enabled those at the operator-level to critically assess the responsiveness and adequacy of agency-level responses and to modify practices where necessary for improvement.
- Relevant agencies now operate with improved collaboration and with the benefit of increased awareness of the operational constraints and requirements of the relevant SAR authorities.

Tony Kevin's claims regarding layered separation between PSIAT and BPC

- The publication of Tony Kevin's latest book, *Reluctant Rescuers* (self-published, June 2012), is likely to lead to additional questions on the effectiveness of Australia's border protection system and the intelligence system that underpins it.
- In media reporting, author and former diplomat Tony Kevin claims that four SIEVs have foundered or are missing because of an "opaque system of a layered separation between the intelligence collection and analysis process, and BPC's ocean surveillance".
- According to Mr Kevin, these vessels comprise SIEV X, SIEV 221, and the alleged missing vessels of October 2009 and November 2010.
- As is accepted practice, I do not intend to detail the nature or sources of intelligence used by the Customs and Border Protection and BPC.
- I can state that Mr Kevin's summation that there is a separation between Customs and Border Protection's intelligence analysis activities relating to maritime people smuggling and the advice provided to BPC is incorrect.
- Customs and Border Protection undertakes maritime people smuggling intelligence analysis to ensure that BPC is provided with the intelligence

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support required to position its surveillance and interception assets to maximum effect.

- To this end, there is regular and structured working-level engagement between Customs and Border Protection's maritime people smuggling intelligence analysis program and BPC.

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Claims of Distress

- All notifications of distress to Australian government authorities are treated seriously.
- If Customs and Border Protection receives information from any source, or becomes aware of a potential vessel in distress, that information is communicated to the AMSA, as the lead Australian authority for SAR, as quickly as possible. AMSA's Rescue Coordination Centre (RCC Australia) may then subsequently request the release of BPC-assigned assets to undertake SAR functions.
- All requests to BPC from RCC Australia for assistance in responding to safety of life at sea (SOLAS) incidents are afforded the highest level of response. No differentiation is made regarding whether a search and rescue is undertaken for a suspected irregular entry vessel (SIEV) or any other vessel. A person's immigration status is irrelevant to the duty to render assistance under the SOLAS Convention.
- Under the United Nations Convention on the Law of the Sea (UNCLOS) and the SOLAS Convention, masters of vessels at sea, including those assigned to BPC, have a general obligation to render assistance, if in a position to do so, to any vessels which they are aware are in distress at sea, and to proceed with all speed to their assistance.
- When vessels are located during a search and rescue operation, attempts are made to confirm whether or not the vessels are the subject of any distress calls that may have been made.
- When assistance is rendered to a vessel, making an assessment of whether or not distress calls are valid is not the primary responsibility of assets and personnel responding to such calls. However, as a matter of course, BPC boarding parties will assess the sea worthiness of vessels reported to be in distress.
- The majority of the SIEVs intercepted by BPC are found to be in an unseaworthy state often with inexperienced crew and poor safety and navigation equipment.

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SOLAS Incidents 2010-2012

Year	Total SIEV arrivals	Total SIEVs that were a potential vessel in distress or SOLAS incident	s47C, s47E(d)	Of total SOLAS, how many initiated communications requesting assistance	s47C, s47E(d)
2010	134	28 (21%)		10 of 28 (36%)	
2011	69	19 (28%)		14 of 19 (74%)	
2012 (to 16 Oct 12)	189	58 (31%)		51 of 58 (88%)	

s47C, s47E(d)

- BPC maintains statistics relevant to SIEVs, including those involved in potential distress situations and those that have involved requests for assistance. While AMSA maintains statistics specific to the Rescue Coordination Centre's involvement with SIEVs, BPC's statistics include events where the masters of vessels have requested assistance directly from BPC assets (i.e. there was no involvement from the RCC).

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Crew departing vessel prior to interception

- There have been reported instances of experienced mariners being utilised to navigate ventures to departure points along the southern coast of Java, or the islands of the eastern archipelago, before being substituted with less experienced (or 'expendable') crew for the onwards journey to Christmas Island or Ashmore Islands. This is necessary due to the skills required to transit south through the archipelago from home ports in the north.
- Crew are inexperienced minors in many cases. They are usually supplied with sat phones and GPS units, but occasionally report being instructed to simply follow a wet compass bearing. Some are not experienced with GPS operation but often have some limited experience working on fishing boats; however, do not have experience on boats with large numbers of passengers. Moreover, they are typically unable to effectively manage significant engine faults, poor weather or emergency situations with large numbers of passengers.

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Relatives of IMA seeking information

- In accordance with Australia's privacy laws, the Australian Government is not able to release information about people who have arrived in Australia seeking asylum.
- However, shortly after irregular maritime arrivals are transferred into the care of the Department of Immigration and Citizenship, they are given the opportunity to contact relatives to let them know they are alive and safe.
- Customs and Border Protection has developed the following protocol for handling enquiries regarding missing vessels:
 - Australian government agencies forward all enquires to Customs and Border Protection
 - When enquiries are received, they are shared between Customs and Border Protection, DIAC, AFP and any agency deemed relevant
 - Where names of people are provided these are shared with DIAC and AFP to check their information holdings. In particular, DIAC checks its nominal rolls to see if named individuals have arrived in Australia.
 - Australian government agencies also provide names and other relevant information to international counterpart agencies and international organisations

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RESOURCES

Budget

- The budget for Headquarters Border Protection Command (BPC) is allocated from Customs and Border Protection Program 1.4 (Civil Maritime Surveillance and Response). This budget provides for the running costs of BPC HQ, and while it includes Customs and Border Protection staffing costs, does not include costs for Defence staff operating out of BPC HQ. This cost is covered by Defence.

BPC Budget

2009-10	2010-11	2011-12	2012-13
\$14.2m	\$14.4m	\$15.5m	\$15.5m

- The budget for Maritime Operations Support is also allocated from Program 1.4 (Civil Maritime Surveillance and Response). This budget provides for the costs of aerial and satellite surveillance and the costs of running the Customs and Border Protection Marine Unit which incorporates eight Bay Class vessels and their crews, and three contracted vessels with associated Marine Unit Enforcement Officers.

MOSD Budget

2009-10	2010-11	2011-12	2012-13
\$240.6m	\$235.9m	\$247.2m	\$254.1m

Cost of search and rescue to Customs and Border Protection

- Search and rescue (SAR) is not a core Customs and Border Protection function. As such, Customs and Border Protection is reimbursed by the Australian Maritime

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Safety Authority (AMSA) for costs incurred when participating in live aerial SAR incidents.

- There is currently no reimbursement when Customs and Border Protection vessels participate in live SAR activities.
- Costs reimbursed include Customs and Border Protection contracted aircraft costs incurred during the live SAR operation and any associated aircraft crew deployment and accommodation costs.
- In 2011-12, Customs and Border Protection was reimbursed approximately \$1 million for live SAR aerial support when tasked by AMSA.
- In 2012-13, Customs and Border Protection has budgeted to be reimbursed a further \$1 million for live SAR aerial support.

Operation Resolute Budget

- Questions regarding the budget for Operation Resolute should be referred to Defence for answer.

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BPC – Assigned surface asset availability

Average Assets Available on a Daily Basis Each Month			
Year	Customs & Border Protection Vessels	Australian Defence Force (ADF) Vessels*	Combined Customs and Border Protection & ADF Vessels
Jan-10	8.35	7.68	16.03
Feb-10	8.89	7.43	16.32
Mar-10	8.84	7.81	16.65
Apr-10	8.97	8.10	17.07
May-10	7.68	7.06	14.74
Jun-10	7.80	6.96	14.76
Jul-10	7.77	6.94	14.71
Aug-10	8.32	7.45	15.77
Sep-10	8.27	7.67	15.94
Oct-10	7.65	8.61	16.26
Nov-10	8.53	9.27	17.8
Dec-10	9.65	9.26	18.91
Average 2010	8.39	7.85	16.24
Jan-11	8.77	7.10	15.87
Feb-11	8.57	7.57	16.14
Mar-11	8.81	7.52	16.33
Apr-11	9.87	7.87	17.74
May-11	8.23	8.90	17.13
Jun-11	8.67	7.97	16.64
Jul-11	8.71	8.29	17.00
Aug-11	9.19	7.65	16.84
Sep-11	8.50	6.30	14.8
Oct-11	7.84	7.32	15.16
Nov-11	9.23	7.53	16.76
Dec-11	8.55	7.06	15.61
Average 2011	8.75	7.59	16.34
Jan-12	9.32	6.45	15.77
Feb-12	8.64	4.34^^	12.98
Mar-12	7.45	6.19	13.64
Apr-12	9.00	6.30	15.3
May-12	9.32	5.52	14.84
Jun-12	8.13	3.06^^	11.19
Jul-12	8.16	6.00	14.16
Aug-12	8.97	8.30	17.27
Average 2012 YTD	8.10	5.77	13.87

^These figures were calculated by dividing the number of days in a month by the number of days assets were available for tasking, to determine the average number of vessels available on any given day.

*Includes Armidale Class and other Navy assets assigned to BPC (e.g. Hydrographic survey vessels)

^^JTF639 advise these figures are a result of the number of ACPBs that were required to undergo essential maintenance that month.

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BPC-assigned Customs and Border Protection surface asset availability

- Customs and Border Protection provides eleven vessels to Border Protection Command; eight *Bay Class* vessels, the Australian Customs and Border Protection Service Vessel (ACV) *Ocean Protector*, the ACV *Triton*, and the ACV *Ashmore Guardian*.
- Customs and Border Protection has been able to maximise vessel long haul availability by delivering more ACV *Triton* patrol days and prioritising the ACV *Ocean Protector* to northern waters when necessary. During 2011–12, the ACV *Triton* completed 312 patrol days, 72 days more than its PBS requirement, and the ACV *Ocean Protector* conducted 75 of its 121 patrols days in the north.
- In the past two months, Customs and Border Protection's vessels have experienced the following unplanned non-operational days:

	<i>Bay Class</i> fleet (2400 p.a. 200 p.m.)	ACV <i>Ocean</i> <i>Protector</i> (120 p.a.)	ACV <i>Triton</i> (240 p.a.)	ACV <i>Ashmore</i> <i>Guardian</i> (330 p.a.)
July 2012	56 days (of 248 days)	Nil	Nil	Nil
August 2012	49 days (of 248 days)	22 (of 31 days)	Nil	Nil

- There are a number of reasons why *Bay Class* vessels have been non-operational at various times in the past six months. These mainly include unscheduled absences due to injury or illness, as well as scheduled maintenance.
- In the current fiscal and operational environment it is a challenge to achieve a balance between the immediate operational demands on the current fleet and to contain costs, while also transitioning to the new *Cape Class* vessels.
- The following table shows the target number of patrol days for each capability and the number of patrol days actually allocated to BPC in 2011-12. The target number of days remains the same for 2012-13.

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	Target	Actual
<i>ACV Ocean Protector:</i>	120 days	121 days
<i>ACV Triton:</i>	240 days	312 days
<i>ACV Ashmore Guardian:</i>	330 days	331 days
<i>Bay Class fleet:</i>	2,400 days	2,315 days
Combined total:	3,090 days	3,079 days

BPC-assigned Defence surface asset availability

- Under Operation RESOLUTE, Navy's contribution to BPC is adjusted around operational requirements. In general, Navy provides up to seven Armidale Class Patrol Boats (ACPBs) with an additional ACPB available at 48 hours notice, and one Major Fleet Unit (MFU) on standby. COMBPC reviews the surface asset requirement against the operational environment on a quarterly basis.
- Defence has reduced ACPB availability to increase the number of days available to conduct essential maintenance. ACPB availability will be reduced until December 2012, after which there will be a gradual increase to full capacity by June 2013.
- During this time, the priority for ACPB availability and tasking remains Operation RESOLUTE and the generation of that capability (including crew mission readiness workup).
- There is significant collaboration between Customs and Border Protection and Defence to ensure appropriate assets are made available to Border Protection Command (BPC) for maritime security operations.
- From 1 January 2012 to 27 August 2012, ACPBs assigned to Operation RESOLUTE achieved 84% of required availability. This percentage is expected to increase as the ACPB maintenance remediation program progresses.

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Are ACPBs being sent to sea with outstanding defects and technical problems?

- The majority of outstanding defects across the fleet are of a low priority and do not impinge on the ability of vessels to safely conduct their missions.
- Any emergent defects arising that impact the mission capability or technical integrity of a platform, or lead to a condition of class, are rectified before the vessel is assigned or reassigned to operations.
- The nature of operations at sea will have defects arise on vessels, which are risk assessed for their impact on mission readiness and safety, with an appropriate repair plan implemented.

Why are Navy Hydrographic Survey ships being used in border protection operations, and not performing their intended function?

- Navy determines the platforms they provide BPC to meet operational requirements. This question should be referred to Defence for response.

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The use of the ACV Ocean Protector in northern waters

- Some of ACV Ocean Protector's planned Southern Ocean patrols have been diverted to northern Australian waters in response to the increased number of irregular maritime arrivals.
- Although the *ACV Ocean Protector* is funded to conduct 3 x 40 day patrols in the Southern Ocean, it has been diverted to northern Australian waters in response to the increased number of irregular maritime arrivals. Southern Ocean patrols scheduled to commence in July 2011, November 2011 and June 2012 were fully or partially diverted to northern waters.
- In 2011-12 the *ACV Ocean Protector* completed 75 of its 121 patrol days in northern waters transporting potential irregular immigrants, in lieu of patrolling in the Southern Ocean.
- In 2012-13, *ACV Ocean Protector* has to date completed 18 of its patrol days in northern waters in lieu of undertaking those patrol days in the Southern Ocean.
- *ACV Ocean Protector*'s last Southern Ocean patrol was in January and February 2012.
- *ACV Ocean Protector* completed its last patrol on 18 July 2012 and is currently undertaking annual maintenance before commencing its next patrol.
- In 2011-12 modifications to *ACV Ocean Protector* were completed to further enhance northern waters capability, allowing carriage of up to 200 transportees if required. This is the largest transport capability available to Border Protection Command for use in northern waters operations in recent years.

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Crew availability

Issue

- Crew availability, and in particular unscheduled crew absences (sickness and injury), continues to be an issue. This impacts on vessel availability and the operational capacity of the Customs and Border Protection fleet.

Talking Points

- In the current financial year, to 31 August 2012, there have been 45 patrol days lost due to unscheduled absences. These absences are primarily from *Bay* Class crews where multiple absences have occurred in a single roster period. Further, four full patrols across the *Bay* Class fleet have been one officer below the minimum operational crewing level which has limited operations, but compliant with minimum Navigation Act requirements to put to sea..
- The broader operational tempo currently experienced in the maritime environment has placed additional pressure on crew numbers. The situation has been exacerbated by the high tempo areas near the Cocos (Keeling) Islands Territory, requiring the deployment of a *Bay* Class vessel and additional crew members.
- The optimal manning level onboard a *Bay* Class vessel is ten officers; as a result of the current unscheduled crew absences, most *Bay* Class patrols are reduced to eight officers.
- Vessels also have minimum manning requirements in relation to the number and level of qualifications. If the level or number of qualifications fall below the minimum, the vessel is unable to commence patrol. Despite a level of flexibility to move officers between vessels and having some extra qualified officers, there have been occasions where patrols have been delayed or cancelled and crew redistributed to other vessels.
- Last financial year, the number of unscheduled absences per month was also relatively high. This resulted in eleven and a half full patrols across the *Bay* class being one officer below minimum crewing levels.

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- Additionally, there are a number of officers who are not fit for sea or duty, mainly due to injury. There is potentially a long lead time before these officers can return to sea because of the requirement for them to achieve a minimum fitness standard.
- This situation has been exacerbated by needing to balance the number of affordable seagoing staff with rising supplier costs, mainly fuel.
- In the 2011-12 financial year, the reduced pool of available crew resulted in a reduction in *Bay* Class patrol days as officers were required to be redeployed to the ACV *Triton* to perform three additional ACV *Triton* patrols. This required supplementation of crew.
- The availability of ACV *Triton* crew and *Bay* class crew for patrols has also been affected by the requirement that crew involved in past SIEV boarding operations attend court proceedings.

Leave liability

- Customs and Border Protection experiences a significant leave liability as a result of these crewing and operational issues. To ensure adequate manning, only two officers from any one *Bay* Class can proceed on leave or training per patrol.

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Christmas Island Radar

Issue

- Following completion of the radar trial on Christmas Island, Customs and Border Protection has commenced the establishment of a permanent surveillance system on Christmas Island, based the coherent S band as the primary radar. To ensure continuity of radar coverage at Christmas Island, especially through the monsoon season, the existing system will continue to operate until the new system is introduced.

Talking points

- Christmas Island possesses unique geographic and environmental challenges for any surveillance systems, including radar. Radar is the only technology likely to provide day and night warning of an arrival at Christmas Island at a sufficient range to enable an interception.
- From February 2011 until April 2012, three radars were trialled at Christmas Island. The trials incorporated a system where radars were installed together with tracking software and successfully tested the transmission of information to Border Protection Command Headquarters in Canberra.
- The trials determined that the coherent S band radar is most able to reliably detect small vessels in a wide range of conditions.

On 1 November 2011, the coherent S band radar detected SIEV 273 and the response vessel at Christmas Island was able to intercept this vessel. Additionally, SIEVs 281 and 287 were detected by the trial radar on 23 November and 6 December respectively, enabling successful interceptions by BPC assets.

- Following completion of the radar trial on Christmas Island, Customs and Border Protection has commenced the establishment of a permanent surveillance system on Christmas Island, based the coherent S band as the primary radar.
- The permanent system needs to be established on a new site, as the current trial site has a poor field of coverage to the east and the north east of Christmas Island is a regular SIEV arrival approach. Supporting equipment such as the tracking tool needs to be upgraded to provide a reliable, robust capability.

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- The contract for the construction and installation of the radar tower is in place. Arrangements are also well developed for the equipment shelter and assorted electronics to support the radar. It is anticipated that the tower will be shipped to Christmas Island this year. There is a risk that it may not be able to be unshipped due to the sea states.
- To ensure continuity of radar coverage at Christmas Island, especially through the monsoon season, the existing system will continue to operate until the new system is introduced, with the transition program designed to minimise downtime by sequentially installing radar heads.

Background to the Christmas Island Radar

- Although the radar trial began prior to the Christmas Island SIEV 221 tragedy of 15 December 2010, both the Customs and Border Protection Internal Review of the SIEV 221 tragedy and the Coroner's report into the deaths involved in the tragedy involved the radar trial make recommendations relevant to the radar trial.
- The Internal Review specifically recommended, "That the trial of a land based radar surveillance system of the northern maritime approaches to Christmas Island be completed and considered as a priority." (Recommendation 2)
- The Coroner's report made two relevant recommendations:
 - ...that Border Protection Command continues to examine ways of improving its surveillance capability around Christmas Island so that the risk of SIEVs arriving undetected is reduced. (Recommendation 1)
 - ...that Border Protection Command implement a surveillance strategy, possibly with the assistance of other Commonwealth authorities and organisations on the island such as the AFP, which heightens its coverage at times when the weather and sea conditions are rough. (Recommendation 2)
- Effective radar surveillance of the Christmas Island approaches enables Border Protection Command to program patrol boat activity more effectively to support better posture against arrivals.

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REVIEWS/REPORTS

Internal Review - SAR 2012/4106 and SAR 2012/4259

- Customs and Border Protection, together with AMSA and Defence, has conducted a review into the circumstances surrounding the respective sinking and capsizing, and subsequent operational response, to the SAR 2012/4259 and SAR 2012/4106 incidents.
- The Review has been given to the Minister for Home Affairs who, along with a number of his Ministerial colleagues, is currently considering the recommendations. The Government's response to the review will be submitted for agreement in late October.
- A Coronial Inquest will be conducted by the Coroner of Western Australia. A date has not yet been announced for the Inquest.
- Further information regarding these two SAR events can be found in the Significant SAR/SOLAS section of this brief.

SIEV 221

Customs and Border Protection Internal Review

- The Internal Review established a reliable narrative of events to enable an assessment of the effectiveness of internal policies, processes or procedures used to respond to the incident. This assessment was used to determine whether any immediate remedial changes were required.
- The Internal Review concluded that all Customs and Border Protection personnel acted appropriately and exercised good judgment in responding to the incident. The Review also noted that all persons involved acted in accordance with relevant policies and procedures.
- The Internal Review contained eight recommendations for immediate action. All recommendations have been implemented.

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- Recommendation 2 of the Internal Review was to conduct a trial of a land based radar surveillance of the northern maritime approaches to Christmas Island. This trial has been completed, and work on the permanent radar site is ongoing.
- The permanent radar on Christmas Island will not be operational prior to the 2012-13 monsoon season commencing the end of October 2012, due to the complexity of the key inputs required. To ensure continuity of radar coverage at Christmas Island during this time, the existing radar will continue to operate until the permanent radar is operational.

Parliamentary Inquiry

- On 2 March 2011, the Parliament established the Joint Select Committee on the Christmas Island Tragedy (The Committee) to inquire into the SIEV 221 incident.
- The Committee report was released on 29 June 2011 and tabled in the House of Representatives on 4 July 2011. The Committee acknowledged that the response to the horrific tragedy that took place on 15 December 2010 was professional, courageous and as effective as it could possibly be under the prevailing weather conditions.
- The Joint Select Committee also supported the findings of the Customs and Border Protection SIEV 221 Internal Review and “agrees that everyone involved acted in accordance with policies and processes relevant to their role”.
- The Committee made three consensus recommendations and included a further nine recommendations contained in comments by Senators Crossin and Hanson-Young.
- The Government response to the Joint Select Committee Report was presented to the House of Representatives on 12 October 2011 by the then Minister for Home Affairs and tabled in the Senate on 13 October 2011.
- The Government response agreed to the three key recommendations made by The Committee, which have all been implemented.

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- The nine additional recommendations contained in the comments made by Senators Crossin and Hanson-Young have largely been agreed and are being implemented with the exception of four recommendations, which were not agreed either in whole or in part.

WA Coronial Inquest

- A Coronial Inquest into the Christmas Island Tragedy was established, with Directions Hearings commencing on 16 February 2011 in Perth, Western Australia. It was conducted by the State Coroner of Western Australia Mr A.N. Hope. The Coroner's findings and recommendations were handed down on 23 February 2012.
- The Commonwealth has agreed with ten of the Coroner's recommendations. Of these, seven are completed and work is underway on another three.
- The remaining recommendation (Recommendation 11 – establishment of a military liaison officer on Christmas Island) previously under consideration has not been agreed, as the effect required by this recommendation has been implemented through alternative arrangements.

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Commonwealth response to Coronial Inquest into SIEV 221 – as of 17 Sep 12

Recommendation	Response	Status of Recommendation
<p>Recommendation 1:</p> <p>Surveillance Capability Around Christmas Island</p> <p>I recommend that Border Protection Command continues to examine ways of improving its surveillance capability around Christmas Island so that the risk of SIEVs arriving undetected is reduced.</p>	Agreed	<p>Complete and ongoing</p> <p>Border Protection Command (BPC) continues to assess and analyse its surveillance capability. This remains an intelligence led, risk based process that includes the daily assessment of current information through to a quarterly operations planning cycle.</p> <p>Customs and Border Protection and Defence have implemented revised surveillance arrangements at Christmas Island during the 2011 – 2012 monsoon period. These arrangements have included an additional surveillance aircraft and response vessel in the vicinity of Christmas Island.</p> <p>The trial has now concluded and analysis is underway to assess the costs and implications of establishing a permanent radar system. While this is happening, the radar is still operational.</p>
<p>Recommendation 2:</p> <p>I recommend that Border Protection Command implement a surveillance strategy, possibly with the assistance of other Commonwealth authorities and organisations on the island such as the AFP, which heightens its coverage at times when the weather and sea conditions are rough.</p>	Agreed	<p>Complete and ongoing.</p> <p>BPC has increased the deployment of vessels and aircraft to Christmas Island in the 2011-12 monsoon period, over periods of poor sea conditions, and where operational demands indicate that increased capability may be required.</p> <p>The Christmas Island radar trial has now concluded. The analysis from the trial has informed how Customs and Border Protection will proceed to develop a permanent radar system at Christmas Island, incorporating a coherent S band radar, although the existing radar will continue to operate until the permanent radar is operational to ensure radar coverage is maintained.</p> <p>Progress is being made on the development of the permanent radar. The contract for the</p>

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		<p>construction and installation of the radar tower has been signed and it is expected that the tower will be in place before this Christmas.</p> <p>It is expected that the permanent radar will be complete by September 2013. However, many factors are beyond project control, such as bad weather including monsoonal conditions affecting the capacity to unload or install equipment at Christmas Island. Significant delays may result from these conditions.</p> <p>A surveillance strategy has been agreed by Commonwealth agencies and promulgated in relevant operational protocols. The strategy is being applied in practical terms and facilitates on-Island awareness of the status of surveillance assets, and provides for the assistance of agencies on-Island during periods where additional coverage is required.</p>
<p>Recommendation 3:</p> <p>Search and Rescue Model and Response System (SARMAP)</p> <p>I recommend that the AFP take steps to determine whether access can be obtained to the National Search and Rescue Council endorsed SARMAP program covering the Australian Search and Rescue Region as well as adjoining tiles for Indonesia. Steps should be taken to ensure that if possible coverage would include high traffic areas where SIEVs enter the Australian Search and Rescue region allowing timely search and rescue plans to be drawn up for any potential incidents.</p>	Agreed	<p>Complete</p> <p>Since August 2011, AFP has engaged with SARMAP to procure this product and at AFP request SARMAP has developed a current and tidal database for waters surrounding Christmas Island as well as the adjoining tiles for Indonesia.</p> <p>This will provide coverage of waters surrounding Christmas Island, Cocos (Keeling) Islands and Ashmore Reef, including major sea lanes in these regions. This was delivered to the Christmas Island Search and Rescue Mission Coordinator in March 2012.</p>
<p>Recommendation 4:</p> <p>Training in Search and Rescue Management</p> <p>I recommend that the AFP takes steps to ensure that</p>	Agreed in principle	<p>Complete and ongoing.</p> <p>The Commonwealth accepts the intent of the Coroner's recommendation.</p> <p>The AFP has appointed a National Search and Rescue Coordinator who has completed the</p>

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<p>there are on Christmas Island at all times appropriately trained AFP officers who have completed the National Police Search and Rescue Manager's Course and that upskilling should be ongoing to establish a cadre of trained search and rescue personnel.</p>		<p>National Police Search and Rescue Manager's course and will act to provide overarching expert advice on search and rescue operations.</p> <p>Since the Coroner's recommendations, five members of the AFP have completed a Queensland Police course equivalent to the National Police Search and Rescue Manager's Course. This course provides participants with the same qualification as that obtained by completing the National Police Search and Rescue Manager's Course. The AFP will continue to place additional members on similar courses to establish a cadre of qualified search and rescue members. At any one time there is an appropriately trained person to coordinate any search and rescue activity on Christmas Island. AFP members who are currently deployed on Christmas Island have completed the residential phase of the Assistant Search and Rescue Mission Coordinators Course. These members are in the process of completing post course workbooks which will result in the award of a Diploma in Public Safety – Police Search and Rescue Coordination.</p> <p>This is an accredited course facilitated by Queensland Police through their roles as Secretariat and a Registered Training Organisation. The AFP is satisfied that this course provides AFP members on Christmas Island with the required knowledge and skills for search and rescue operations on Christmas Island.</p> <p>Succession planning has also been implemented to ensure that this capacity is always available on Christmas Island. As part of this succession planning, the AFP has enrolled three additional members who may be deployed on Christmas Island on the upcoming Assistant Search and Rescue Mission Coordinators Course scheduled for August 2012.</p>
<p>Recommendation 5:</p> <p>The Provision of a Suitable Search and Rescue Vessel for the AFP on Christmas Island</p> <p>I recommend that the AFP be provided with a search and rescue vessel which is suitable to the specific conditions of Christmas Island.</p>	<p>Agreed</p>	<p>Nearing Completion</p> <p>Preparation for the procurement of vessels for the AFP and Volunteer Marine Rescue Service (VMRS) on Christmas Island has commenced with a preferred supplier for 8.5m NAIAD designed Rigid Hull Inflatable Boats (RHIBs) following consultation with the VMRS, the Christmas Island Harbour Master and the Western Australian Fire and Emergency Services Authority (WA FESA). Three vessels are scheduled to be delivered to the shipping yard on 22 November 2012 in order to be prepared for a 2 December 2012 shipping date. Please note that this date will be subject to review to accommodate unplanned impacts such</p>

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<p>I further Recommend that steps be taken to ensure that if for any reason the search and rescue vessel is not available, there is a replacement vessel on Christmas Island capable of providing an emergency response in difficult sea conditions.</p>		<p>as adverse weather conditions.</p> <p>However, it must be noted that the severe sea conditions that can prevail on Christmas Island may affect the operation of these vessels on a given day.</p> <p>In the interim, the Volunteer Marine Rescue Service has a replacement vessel in operation on Christmas Island. The Australian Federal Police also has replacement vessels in operation on both Christmas and the Cocos (Keeling) Islands.</p>
<p>Recommendation 6:</p> <p>The Possible Acquisition of Personal Water Craft (PWC) or Jet Skis</p> <p>I recommend that consideration should be given to acquiring two personal water craft for deployment by appropriately trained and equipped staff of the AFP or the VMRS or both on Christmas Island.</p>	<p>For further consideration</p>	<p>Under consideration</p> <p>The AFP has procured the services of a specialist marine consultant to assess the feasibility of jet skis as a Search and Rescue capability for Christmas Island.</p> <p>The consultant's report was provided to the AFP on 31 May 2012.</p> <p>The AFP's preliminary assessment of this report is that Personal Water Craft will not be suitable vessels for use on Christmas Island due to the prevailing sea conditions and workplace health and safety issues. A formal assessment is currently being prepared and the outcomes will be advised accordingly.</p>
<p>Recommendation 7:</p> <p>The Ethel Beach Boat Ramp</p> <p>I recommend that the Commonwealth and the Shire of Christmas Island take steps to ensure that the Ethel Beach boat ramp is significantly upgraded, that it should be provided with shelter in the form of a rock groyne or similar buffer and that provision should be made so that a person can walk beside the ramp on a stable footing; or If this is not considered likely to be effective in providing an appropriate means of deploying a rescue vessel in</p>	<p>Agreed</p>	<p>Underway</p> <p>Work has commenced to enhance the vessel launch and recovery arrangements at Ethel Beach.</p> <p>Any vessel launch and recovery at Ethel Beach will always be at the discretion of the vessel's Master.</p>

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<p>adverse conditions, such other action be taken as is necessary to ensure that there is a means of deploying a rescue vessel in adverse conditions.</p>		
<p>Recommendation 8:</p> <p>The Suitability of the Vessel provided to the VMRS</p> <p>I recommend that the Commonwealth liaise closely with representatives of the Christmas Island VMRS prior to purchasing or replacing any vessels for the VMRS in the future.</p>	<p>Agreed</p>	<p>Complete</p> <p>Meetings about the requirements for the replacement VMRS vessel were held between the AFP, the Commander of the Christmas Island Volunteer Marine Rescue Service and the Christmas Island Harbour Master during January 2012.</p> <p>Consultation on function and performance specification for the vessel has also been undertaken with Western Australian Fire and Emergency Services Authority (WA FESA) and the Harbourmaster. Comments have also been received from the Harbourmaster regarding the launch and recovery system for the vessel.</p>
<p>Recommendation 9</p> <p>Repair and Maintenance of VMRS Vessels on Christmas Island</p> <p>I recommend that the Christmas Island VMRS be given autonomy to maintain operational readiness for the VMRS rescue vessel(s) and an appropriate budget be provided to allow this to take place.</p> <p>Recommendation 10:</p> <p>The Need for the Christmas Island VMRS Vessel to be Commercially Surveyed</p> <p>I recommend that arrangements be put in place which would remove the requirements for Masters of Volunteer Marine Rescue vessels to hold a commercial certificate of</p>	<p>For further consideration</p>	<p>Under consideration</p> <p>The Commonwealth provides the VMRS with a vessel for its use, and ensures that the vessel complies with all requisite standards. The Commonwealth therefore retains an interest in the vessel and potential liability in the event of any incident involving the vessel.</p> <p>Qualifications for master and crew for small Commonwealth ships are established by law (Marine Orders, which are delegated legislation). The Commonwealth does not consider it appropriate to lower the standard of qualification for VMR vessels. This is especially so because of the risk environment that they sometimes are called on to operate in.</p> <p>The Commonwealth Government intends that the regulatory environment for all ships operating in Australian waters will change from 1 January 2013. It is anticipated that craft operated by a VMR (whether owned by the Commonwealth or not) will fall within the appropriate category of regulation under the National Law.</p> <p>At this stage, it is proposed that the qualifications for crew will be based on the level of risk</p>

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<p>competency. Operators could then be qualified through the FESA Volunteer Marine Rescue Training pathway as skippers and crew. This would increase the number of available skippers in the event of a search and rescue incident and would make appropriate training easier to arrange.</p>		<p>as assessed by the operator, subject to acceptance by the National Regulator.</p> <p>In this context the Commonwealth will continue to consider these recommendations in the context of proposed legislative change.</p>
<p>Recommendation 11:</p> <p>Reinstating the Military Liaison Officer Position at Christmas Island and Providing Facilities for a Shore Party</p> <p>I recommend that BPC establish an onshore presence as recommended by Lieutenant Commander Livingstone.</p>	<p>Not Agreed</p>	<p>Complete.</p> <p>Enhanced coordination arrangements between agencies on Christmas Island have already been implemented in accordance with the recommendations of the Customs and Border Protection Internal Review, the Joint Select Committee Inquiry and the Christmas Island Emergency Management Committee Report. These arrangements meet the effect required by the recommendation.</p>
<p>Recommendation 12:</p> <p>Establishing a Mooring Buoy in the vicinity of Ethel Beach</p> <p>I recommend that the Commonwealth ensure that there is a mooring buoy which will enable the mooring of SIEVs to take place and free up the Christmas Island response vessel for ongoing surveillance duties.</p>	<p>Agreed</p>	<p>Underway</p> <p>Regional Australia has allocated \$4.5 million to install deep sea moorings and land platforms at the Nui Nui port facility on the eastern side of Christmas Island. The proposed works, while ensuring the safe delivery of supplies to Christmas Island during the swell season, will also provide a mooring point for SIEVs in the vicinity of Ethel beach, satisfying the Coroner of Western Australia's Recommendation 12. Installation of the mooring system is scheduled for completion by March 2013. Installation of the landing platform and steps is likely to occur in late 2013 (and is not related to Coroner's recommendations).</p>

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<p>Recommendation 13:</p> <p>Complete the Hydrographic Survey of Christmas Island</p> <p>I recommend that the Commonwealth prioritise completion of a hydrographic survey of Christmas Island and ensure that such a survey is completed in the near future.</p>	<p>Agreed</p>	<p>Complete</p> <p>The Hydrographic surveying task has been completed and the data has been received by the Australian Hydrographic Office. This data has been validated and included on charts that were published in July 2012.</p>
<p>Recommendation 14:</p> <p>Jet Intake Blockage</p> <p>I recommend that the issue of RHIB jet intake protection be allocated a high priority and that there be ongoing investigation of possible solutions to reduce the problem.</p>	<p>Agreed</p>	<p>Complete</p> <p>Vessel manufacturers, following consultation with Defence and Customs and Border Protection, recommended no changes be made to the intake systems, noting that adequate features are in place to deal with blockages.</p>

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COCOS (KEELING) ISLANDS

SIEV arrivals at Cocos (Keeling) Islands

- There have been 56 SIEV arrivals at the Cocos (Keeling) Islands since 2001 (to 15 October 2012).
- In 2012, there have been four undetected arrivals to Cocos (Keeling) Islands, meaning four SIEVs were not intercepted prior to the vessel making landfall.

Arrivals	Boats	People
2012	53*	2532
2011	1	81
2001	2	139
TOTAL	56	2752

Current Government	54	2613
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*Includes four undetected arrivals, which landed at North Keeling Island, approximately 20nm north of the other islands of Cocos (Keeling) Islands.

Customs and Border Protection presence at Cocos (Keeling) Islands

- Following the increase in SIEV arrivals to Cocos (Keeling) Islands from May 2012, Customs and Border Protection deployed a response team (eight officers) and an inshore response vessel to Cocos (Keeling) Islands on 12 June 2012. As at 26 September 2012, there are nine Customs and Border Protection officers on Cocos (Keeling) Islands.
- This presence is tasked with carrying out a range of activities in response to SIEV arrivals, including:
 - 24 hour monitoring for SIEV arrivals;
 - on-shore reception and initial processing of persons arriving on SIEVs; and
 - assisting DIAC/SERCO with the care and custody of PIIs pending their transfer to Christmas Island.
- This presence is subject to ongoing review and is staffed on a rotational basis with Officers drawn from around Australia.

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- Prior to 23 July 2012, Border Protection Command (BPC) had not conducted regular surface surveillance in the area of the Cocos (Keeling) Islands, due to available intelligence and the historical trend of very few SIEV arrivals.
- On 23 July 2012, BPC deployed ACV *Hervey Bay* to provide an additional surveillance and response capability at the Island. It is anticipated that ACV *Hervey Bay* will remain there until the end of October 2012, as the vessel is not suitable to operate in monsoon weather conditions. Options to replace ACV *Hervey Bay* are currently being assessed.
- Other Commonwealth assets at Cocos (Keeling) Islands include:
 - ACV 640 Tender – can proceed up to 20nm offshore.
 - MV *Minti Sedaya* – can proceed up to 30nm offshore.
 - An AFP Rigid-hulled Inflatable Boat (RHIB) – can proceed up to 20nm offshore.
 - MV *RJ Hawke*- can proceed up to 30nm offshore.
- The practical range of vessels is further limited by a range of factors including weather conditions, crew qualifications, and the assessment of the master of the vessel.

Impact of the monsoon season on operationsAccess to the lagoon and shelter

- The CKI lagoon is currently used for passenger transfer, re fuelling and a level of shelter under normal weather conditions. In the event of tropical monsoon events (storms and cyclone activity) the low lying nature of the islands provide little to no effective shelter in the lagoon. All services within the lagoon cease to operate and there are currently no options for cyclone rated moorings. Navigation within the lagoon is hazardous in all but benign conditions.
- A *Bay* Class vessel is surveyed only for operations within the Australian Exclusive Economic Zone (EEZ), in this case the Cocos (Keeling) Islands EEZ. The current deployment of ACV *Hervey Bay* is subject to a specific AMSA exemption for passage outside of the EEZ (e.g. transit from the mainland), which would be placed at risk if the deployment was extended into the monsoon season, with passage to be taken in higher risk conditions.

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Lack of alternate re-fuelling options

- Christmas Island, with limitations, is the current alternative re-fuelling option for a *Bay Class* vessel positioned at Cocos (Keeling) Islands. During the monsoon season, re-fuelling a *Bay Class* at Christmas Island is hazardous due to the unsheltered nature of the re-fuelling site at Smith Point. A *Bay Class* vessel could be re-fuelled from another vessel (e.g. *ACV Ocean Protector*); however, this can only be achieved in calm conditions and in well sheltered environments to prevent damage to both vessels.
- Any other conceivable re-fuelling options are likely to pose a significant vessel endurance challenge, even during normal operating conditions.

Aerial Surveillance

- The remoteness of the Cocos (Keeling) Islands presents significant challenges for aerial surveillance, particularly with the ability to hold alternate airfields to account for weather or other airfield limitations. Aerial surveillance of the approaches to Cocos (Keeling) Islands are performed on an intelligence-led basis. Following the completion of runway repairs at the end of August 2012, RAAF maritime patrol aircraft flights can again recover to Cocos (Keeling) Islands when operational circumstances warrant.

Impact on operations of the geographic isolation of the Cocos (Keeling) Islands

- The challenge of the geographic isolation of the Cocos (Keeling) Islands must be understood. Christmas Island is approximately 1000 nautical miles (approximately 1800 kilometres) from the nearest Australian mainland port, Broome. Cocos (Keeling) Islands are approximately another 600 nautical miles (approximately 1080 kilometres) south-west of Christmas Island.
- The operation of BPC-assigned aircraft at the Cocos (Keeling) Islands can be impacted by the amount of fuel available on the islands, and the subsequent need to ration existing stores. The isolation of the Cocos (Keeling) Islands not only impacts on the delivery of fuel, but also means aircraft will naturally consume a large volume of fuel transiting to and from the islands.
- The geographic isolation impacts the operation of BPC-assigned patrol vessels at the Cocos (Keeling) Islands, with two days required for a patrol vessel to

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transit from Christmas Island to Cocos (Keeling) Islands. The facilities to sustain the presence of a patrol vessel (e.g. fuelling, sheltered anchorages, wharves) are extremely limited at Cocos (Keeling) Islands.

Role of the Australian Federal Police on Cocos (Keeling) Islands

- A team of two AFP members and two local special constables provide a community policing service to the Cocos (Keeling) Islands. A further two AFP officers have been temporarily deployed since 15 June 2012.
- In addition to all mainland community policing duties, which include court duties and enforcing Western Australian legislation, police members provide the following ancillary functions:
 - Customs duties
 - Immigration duties
 - search and rescue coordination
 - marine patrol
 - emergency management

Other government agency staffing on Cocos (Keeling) Islands

- DIAC officers on island – 2.
- DIAC Medic support on island – 2.
- DIAC Interpreter support on island - 2.
- Serco on island – 6 including 1 cook.

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SIGNIFICANT SAR/SOLAS EVENTS

AUSSAR 2012/5710 – 29 August SAR

Date: 29-30 August 2012

Location: 45 nautical miles west of Java, Indonesia (or 225 nautical miles north-north-west of Christmas Island), inside the Indonesian Search and Rescue Region.

Incident:

- **29 August** – After receiving two phone calls from a vessel requesting assistance off the coast of Indonesia, RCC Australia broadcast a distress message to vessels in the area while also advising BASARNAS, the Indonesian search and rescue agency. The initial assessed location of the vessel was 144 nm north-north-east of Christmas Island.
- At 4.20am AEST, RCC Australia contacted BPC to assess available air assets for a possible SAR tasking. RCC Australia was informed that BPC had two RAAF maritime patrol aircraft and one Customs and Border Protection Dash-8 aircraft available that day.
- 6.18am AEST - Border Protection Command was advised by RCC Australia that Indonesian SAR authority BASARNAS were taking coordination of this incident.
- BASARNAS reportedly deployed a helicopter and two surface assets in response to the SAR, but the vessel requesting assistance was not found and BASARNAS released the Indonesian assets from the tasking.
- 4.00pm AEST - A Customs and Border Protection Dash-8 departed Christmas Island to conduct routine surveillance of the approaches to the Island. The Dash-8 searched a position north of Christmas Island, inside the Indonesian Search and Rescue Region, where it was calculated the vessel might be if it had continued towards Christmas Island.
- During this surveillance, RCC Australia obtained an updated vessel location from commercially available satellite telephone positional data.
 - o RCC Australia requested BPC release the Dash-8 to search for the missing vessel in the new position. The Dash-8 was at that stage close to completing its surveillance flight, and was low on fuel with very limited capacity for ongoing search and rescue activity. The Dash-8 returned to Christmas Island with the intention to refuel. Due to fuel, weather and crew duty limitations, the Dash-8 was unable to re-launch to support the RCC Australia request.
- RCC Australia tasked the APL *Bahrain*, which had responded to an earlier broadcast to shipping, to attend the broader search area. APL *Bahrain*, diverted to

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the new search area and MV *Gwendolin* was also diverted to the area to assist in the search operation.

- Both merchant vessels (APL *Bahrain* and MV *Gwendolin*) continued the search throughout the evening of 29 August and early morning.
- At approximately 10.15pm AEST, RCC Australia formally requested military aircraft assistance. A RAAF maritime patrol aircraft was assigned, with BPC also releasing a Customs and Border Protection Dash-8 aircraft.
- **30 August** – At approximately 3.47am AEST, MV APL *Bahrain* located survivors around 45 nautical miles west of Java, or approximately 230nm north-north-west of Christmas Island.
- At 4.13am AEST, RCC Australia requested military surface asset assistance. HMAS *Maitland* was subsequently assigned for SAR tasking.
- 12.00pm AEST - RCC Australia advised BPC that BASARNAS has stated that Merak, if needed, can provide hospital and ambulance services.
- 4.00pm AEST - HMAS *Maitland* arrived on scene to assist merchant vessels in responding to the vessel requesting assistance. A RAAF maritime patrol aircraft and a Customs and Border Protection Dash-8 aircraft also assisted in the search.
- HMAS *Maitland*, along with four merchant vessels, rescued 55 survivors and recovered one deceased person. It is thought that up to 150 people had been on board the vessel.
- 9.00pm AEST – BASARNAS contacted RCC Australia to advise that the intention is for all survivors to be taken to Merak, Indonesia.
- 10.18pm AEST – RCC Australia sent a signal to all vessels with survivors, requesting they proceed to Merak, Indonesia, as arrangements had been made with Indonesian authorities for the purpose of survivor transfer and medical care. [APL *Bahrain* – 15 survivors, HMAS *Maitland* – 34, MV *AS Carella* – 5 (4 survivors and 1 deceased), MV *Gwendolen* – 1, MV *Da Ging Xia* – 1]
- **31 August** – 00.57am AEST – BASARNAS provided RCC Australia with the lat/long of the rendezvous position, which was 33nm south-east of Merak, or 6nm off the west coast of Java. This position was provided to all vessels in transit to the area.
- By 11.30am AEST – all 55 survivors and one deceased person were transferred to one BASARNAS vessel and an Indonesian maritime police (POLAIR) vessel.
- 12.15pm AEST - all survivors and one deceased were disembarked at the port of Merak. Initially, up to 47 people had refused to disembark for a period of time. A number of survivors were taken to hospital for medical treatment.

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- The search and rescue continued on 31 August. Several merchant vessels and two civilian aircraft were involved in the morning search.
- Medical professionals advised that the timeframe for survivability would elapse at 3.00pm. Search and rescue operations formally ceased after this time, at the direction of BASARNAS.

Loss of Life: One deceased person was recovered. A possible 94 people remain unaccounted for, though the exact number may never be known.

Post Incident Inquiry: While no formal inquiry was undertaken, a number of claims made by survivors regarding their treatment onboard HMAS *Maitland* are not true. Media reporting about the incident alleged that the survivors who had been rescued by HMAS *Maitland* had been refused water, food and medical assistance while onboard, and that they had been told they would be taken to Darwin. These allegations are false. All survivors were provided with food and water, and although some passengers chose not to eat, food was provided to them nonetheless. The passengers were not told they were being transferred to Darwin, but to the nearest port to provide medical attention.

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AUSSAR 2012/5367 - SIEV 411 (MV *Parsifal*)**Date:** 13 August 2012**Location:** 176nm north of Christmas Island, and within the Indonesian Search and Rescue Region**Incident:**

- **13 August** - Between 4.50pm and 9.31pm AEST – RCC Australia reported a number of phone calls and SMS contact with a person reporting a vessel requesting assistance. A number of disparate locations between Indonesia and Christmas Island were provided to RCC Australia.
- 11.25am AEST - HMAS *Maitland*, at the request of RCC Australia, proceeded to the last reported position of the vessel, 172 nautical miles north-north-west of Christmas Island. RCC Australia also tasked a number of merchant vessels in the area including the MV *Parsifal* to provide assistance to locate the vessel.
- **14 August** – 5.39am AEST - MV *Parsifal* located a vessel thought to be the vessel in need of assistance. The vessel was 176 nautical miles north of Christmas Island.
- 8.05am AEST - MV *Parsifal* rendered assistance and embarked the 67 people from the vessel.
- Records held by BPC do not indicate the reasons why the master of MV *Parsifal* embarked the people from the vessel requesting assistance. The vessel did, however, self-report in earlier conversations with RCC Australia that it had a hole in the side of the vessel and was taking on water. Further questions regarding the actions of MV *Parsifal* and, the decision to embark the passengers, should be referred to AMSA as the coordinators of the SAR response.
- RCC Australia contacted the MV *Parsifal*, whose master advised that he intended to continue his voyage to Singapore. The master also advised that the weather conditions were not suitable for transfer of the recovered persons to HMAS *Maitland*.
 - o The master was within his rights under the IMO Guidelines for the Treatment of Persons Rescued at Sea to take the passengers to Singapore, which is an appropriate place of safety. This course of action would have also significantly minimised deviation from the MV *Parsifal*'s intended voyage, a key objective and consideration in the determination of where survivors are disembarked.
- 8.19am AEST – RCC Australia advised the SAR effort had concluded, and all Defence assets, including HMAS *Maitland*, were released.
- 8.45am AEST – The master of MV *Parsifal* contacted RCC Australia reporting a situation was developing on board after the rescued passengers were advised they

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were being taken to Singapore. An RCC Australia log notes “men have become aggressive: they want Australians to rescue them. The master has decided to turn his ship towards Christmas Island.” A subsequent statement from the ship owner, Wallenius Marine, indicated that when the survivors were told they were heading to Singapore “the survivors became agitated and threatened self-harm and the master decided that they could pose a security threat the *Parsifal*’s crew and vessel”.

- 8.52am AEST – RCC Australia advised Defence of the security situation and requested HMAS *Maitland* respond. Defence advised that based on the operational circumstances, environmental and safety considerations, and information known at the time, an operational assessment was made that Defence could not provide assistance. Defence made a recommendation that MV *Parsifal* consider altering course to calm the situation.
- 9.00am AEST – Following discussions with RCC Australia, the master agreed to divert to Christmas Island. The master advised the survivors of the new destination and the survivors calmed down immediately.
- 9.22am AEST – Defence advised RCC Australia that it had legal advice that indicated it could not provide security assistance onboard a foreign flagged vessel.
- 10.15am AEST – Australian Embassy Jakarta confirmed that the Indonesian Navy had tasked one of its vessels to respond in support to “assist and take action ASAP”. Subsequently, on advice from RCC Australia, BPC advised the Australian Embassy Jakarta that there was no longer a requirement for Indonesian assistance.
- During MV *Parsifal*’s transit to Christmas Island, HMAS *Maitland* shadowed the vessel without incident.
- 8.00pm AEST - On MV *Parsifal*’s arrival at Christmas Island, HMAS *Wollongong* provided assistance with the transfer of the survivors to Australian Government authorities on Christmas Island.

Loss of Life: No loss of life

Post Incident Inquiry: No inquiry

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AUSSAR 2012/5349 - SIEV 410 (MV Maersk Diadema)**Date:** 13 August 2012**Location:** 46 nautical miles south of Pesanggaran, Indonesia and inside the Indonesian Search and Rescue Region.**Incident:**

- **13 August** – 8.30am AEST - the Defence switchboard received a call from an unknown caller stating that a vessel had departed Bali two days previously. RCC Australia established communications with the caller, who advised that they were on a vessel with 65 people onboard. The caller advised that the vessel was in need of assistance.
- A RAAF maritime patrol aircraft, under the coordination of RCC Australia, reported sighting a contact of interest (COI) approximately 48 nautical miles south of the south-east corner of East Java. The aircraft reported 39 persons sighted on deck with the majority wearing lifejackets. The vessel was low in the water but was still underway.
- 6.50pm AEST - in response to a RCC Australia distress relay broadcast message, *MV Maersk Diadema*, located the vessel reportedly in need of assistance. At the time of detection, the vessel was 520 nautical miles north-west of Ashmore Islands and 46 nautical miles south of Pesanggaran, Indonesia.
- By 8.30pm AEST - The *MV Maersk Diadema* had embarked 62 people from the vessel. During the transfer of people from the vessel to the *MV Maersk Diadema*, six people departed the scene (in the vessel), heading towards Indonesia.
- Records held by BPC do not indicate the reasons why the master of *MV Maersk Diadema* embarked the people from the vessel reported to be requesting assistance. The vessel did, however, self-report in earlier conversations with RCC Australia that it had a hole in the side of the vessel and was taking on water. Further questions regarding the actions of *MV Maersk Diadema* and, the decision to embark the passengers, should be referred to AMSA as the coordinators of the SAR response.
- Following completion of the transfer, the master of *MV Maersk Diadema* advised RCC Australia that the MV was only surveyed to safely carry an additional 30 people, and enquired as to the possibility of transferring the rescued passengers to a larger, safer ship.
- *ACV Triton* was subsequently released by BPC to support the SAR operation, and to rendezvous with *MV Maersk Diadema* to embark survivors.
- **14 August** – 12.35pm AEST - *ACV Triton* advised that all 62 persons from the *MV Maersk Diadema* had been embarked onto *ACV Triton* without incident, in a

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position approximately 430 nm east-north-east of Christmas Island. All persons were transferred to Australian government authorities on Christmas Island.

Loss of Life: No loss of life

Post Incident Inquiry: No inquiry.

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AUSSAR 2012/4722 (MV Sea Fortune)**Date:** 17 July 2012**Location:** Approximately 670nm North West of Cocos (Keeling) Islands, and inside the Australian Search and Rescue Region.**Incident:**

- **16 July** - RCC Australia received a communication from the MV *ER Durban* that it had sighted a vessel that was drifting with one person on deck signalling with a white flag or rag. The master of the MV *ER Durban* declined to pick up the passengers as he assessed that it might be an attempt by pirates to facilitate an attack.
- **17 July** - RCC Australia transmitted a distress message regarding the vessel requesting assistance and asked MV *ER Durban* to identify and contact any vessels in the vicinity of the vessel requesting assistance to divert to the scene. MV *Sea Fortune* responded to calls from MV *ER Durban* and travelled to the last known position of the vessel requesting assistance, where it was determined that the vessel was out of fuel, food and water and the engine was disabled.
- The MV *Sea Fortune* subsequently embarked 11 people suspected to be of Sri Lankan nationality onto the ship.
- Once the people from the vessel requesting assistance were on board the ship, the MV *Sea Fortune* continued her voyage to Singapore.
 - o The master was within his rights under the IMO Guidelines for the Treatment of Persons Rescued at Sea to take the passengers to Singapore, which is an appropriate place of safety. This course of action would have also significantly minimised deviation from the MV *Sea Fortune's* intended voyage, a key objective and consideration in the determination of where survivors are disembarked.
- Once the merchant vessel arrived in Singapore, the master of the MV *Sea Fortune* alleges that the ship was boarded by officials from Sri Lanka and Singapore who issued passports and plane tickets to Sri Lanka to the passengers on board.
- However, the passengers reportedly declined this offer and asked for asylum in a third country (preferably Australia).
- Officials from Singapore Immigration reportedly revoked their permission to disembark and detained all 11 people from the vessel that had requested assistance on board the MV *Sea Fortune*.
- Advice from DFAT indicates the eventual disembarkation of survivors was an arrangement between the vessel owner and the representative (unknown) of a third country. DFAT had no involvement in this arrangement. The survivors did not go to Singapore, or back to Sri Lanka.

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Loss of Life: No loss of life.

Post Incident Inquiry: No inquiry.

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AUSSAR 2012/4259 – SIEV 359**Date:** 27 June 2012**Location:** 107 nm north of Christmas Island, and inside the Indonesian Search and Rescue Region.**Incident:**

- **27 Jun 12** – 6.17 am AEST – The Australian Federal Police (AFP) received a call from a person on board a vessel requesting assistance. The caller provided a partial GPS location before disconnecting. AFP passed this information to Customs and Border Protection and RCC Australia.
- In a subsequent call from the vessel to the AFP, the caller indicated a position approximately 2 nautical miles from Christmas Island. Further calls from the vessel indicated that the vessel was approximately 107 nautical miles north of Christmas Island in the Indonesian Search and Rescue Region.
- RCC Australia accepted responsibility for coordination for the search and rescue at 6.32 am AEST and immediately commenced tasking Defence assets and requesting assistance from civilian merchant vessels. RCC Australia passed information on the calls for assistance to the Indonesian Search and Rescue Agency BASARNAS.
- 10.01 am AEST - a merchant vessel *MV Bison Express* advised RCC Australia that it was on scene and had the vessel in sight. *MV Bison Express* reported that the vessel was afloat.
- 10.11 am AEST - the Master of the *MV Bison Express* advised RCC Australia that due to the small size of the vessel requesting assistance, he had determined it was unsafe to lower his rescue lifeboats.
- 10.33 am AEST – RCC Australia requested *MV Bison Express* and *MV Tancred* to remain in the area to maintain visual contact with the vessel, until HMAS *Maitland* arrived on scene. Once HMAS *Maitland* arrived on scene, the intent was for HMAS *Maitland*, along with the *MV Tancred* (who was too small to take all passengers onboard itself), to recover passengers from the vessel.
- 11.36 am AEST – RCC Australia was advised by the Master of the *MV Bison Express* that the vessel was sinking and there were people in the water.
- *MV Bison Express* deployed cargo nets and life rafts to render assistance and was assisted by other merchant vessels *MV Tancred* and *MV Yechie* who were also on scene.
- 12.50 pm AEST - HMAS *Maitland* arrived at the location of the vessel and assumed duty as On Scene Coordinator.
- 1.00 pm AEST - A RAAF AP-3C Orion maritime patrol aircraft arrived at the location.

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- 3.42pm AEST- HMAS *Leeuwin* arrived on scene to assist in the search and rescue effort.
- A total of 130 survivors, and one deceased person were recovered from the water. [HMAS *Maitland* – 53 survivors, MV *Tancred* – 69 and one deceased, MV *Bison Express* – 9].
- 8.48pm AEST – all survivors and one deceased were transferred to HMAS *Leeuwin*, a larger vessel with greater capacity and facilities to hold the additional 131 people. HMAS *Leeuwin* subsequently commenced transit for Christmas Island.
 - o Consistent with obligations under the Safety of Life at Sea Convention people rescued at sea are required to be taken to a place of safety. Appropriate health, medical and other services are available on Christmas Island.
- 9.35pm AEST – RCC Australia concluded the search, and released all assets to resume their normal duties. The recovery effort concluded with 130 survivors, the search was suspended on the basis that all persons were accounted for.
- **28 Jun 12** – 11.23 am AEST - Offload of survivors and one deceased person from HMAS *Leeuwin* to Australian government authorities on Christmas Island was completed.

Loss of Life: One person is confirmed as deceased.

Post-Incident inquiry: Customs and Border Protection, together with AMSA and Defence, has conducted a review into the circumstance surrounding the respective sinking and capsize, and operational response, to the SAR 2012/4259 and SAR 2012/4106 incidents. The Review has been given to the Minister for Home Affairs who, along with a number of his Ministerial colleagues, is currently considering the recommendations. The Government's response to the review will be submitted for agreement in late October. A Coronial Inquest will be conducted by the Coroner of Western Australia. A date has not yet been announced for the Inquest.

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AUSSAR 2012/4106 – SIEV 358**Date:** 21 June 2012**Location:** 110 nm north of Christmas Island, and inside the Indonesian Search and Rescue Region.**Incident:**

- **19 Jun 12** - On Tuesday 19 June at 9.52pm AEST, RCC Australia received the first in a series of calls from a vessel indicating it was experiencing difficulties. Later that evening, the location of this vessel was determined to be within Indonesia's search and rescue zone and as such RCC Australia forwarded the information to BASARNAS. The caller did not provide details of where the vessel was located.
- On the same day Border Protection Command also received information about the vessel that indicated the vessel was underway, the sea conditions were favourable and the people on board were well.
- RCC Australia assumed responsibility for the search and rescue while coordination by BASARNAS, the Indonesian search and rescue agency, was being confirmed.
- **20 Jun 12** – From 1.06am AEST, RCC Australia received further calls from a vessel indicating it was experiencing difficulties. At that stage the vessel was reported to be 38 nautical miles south of the Indonesian mainland. RCC Australia advised the vessel to return to Indonesia if it was experiencing difficulty. RCC Australia passed this information to BASARNAS.
- 7.45am AEST – BASARNAS verbally accepted coordination of the search and rescue response. This was followed up in writing with a facsimile from BASARNAS at 9.00am AEST.
- 1.16pm AEST – RCC Australia received another call from the vessel providing an update on its location. This information was passed to BASARNAS.
- 5.15pm AEST - a Customs and Border Protection surveillance aircraft undergoing routine surveillance detected a vessel then suspected as being the source of the distress calls. The vessel was underway, travelling in a southerly direction with no visual signs of distress reported.
- 8.10 to 8.50pm AEST - RCC Australia received further phone calls from the vessel. (No further phone calls were received by RCC Australia after this time although RCC Australia attempted to call the vessel with no success)
- On Wednesday evening, two BPC assigned vessels at Christmas Island were prepared to respond if assistance was requested.

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- **21 Jun 12** – At 11.07am AEST BPC received additional information that raised concerns about the safety of the vessel. The information was passed to RCC Australia at 11.37am AEST who then passed the information to BASARNAS.
- 1.05pm AEST– COMBPC requested HMA Ships *Larrakia* and *Wollongong* commence passage north of Christmas Island in anticipation of a possible search and rescue response.
- 1.21pm AEST - A programmed Customs and Border Protection surveillance flight departed Christmas Island and was tasked to relocate the vessel.
- 2.58pm AEST - the Customs and Border Protection surveillance aircraft detected the capsized vessel 109 nautical miles south of the Sunda Strait in Indonesia. The information was passed to RCC Australia.
- The Customs and Border Protection aircraft continued to monitor the situation. A RAAF AP-3C Orion maritime patrol aircraft was diverted to attend the scene.
- 4.30pm AEST - The RAAF aircraft arrived at the scene and commenced dropping air sea rescue kits (life rafts) shortly after arrival.
- 5.50pm AEST - a merchant vessel arrived, followed by two more merchant vessels responding to the RCC Australia request for assistance, and commenced rescue efforts.
- 7.20pm AEST HMA Ships *Larrakia* and *Wollongong* arrived at the location and commenced search and rescue operations.
- 10.21pm – At the request of BASARNAS, RCC Australia accepted transfer of the coordination of the incident from BASARNAS.
- An RCC Australia Dornier and another RAAF AP-3C Orion maritime patrol aircraft provided further assistance throughout the night.
- 110 survivors were recovered on 21 Jun 12.
- **22 Jun 12** - RCC Australia continued to coordinate an exhaustive search and rescue operation, encompassing an RCC Australia Dornier aircraft, Defence surface and air assets, Customs and Border Protection air assets, assistance from four merchant vessels and civilian aircraft.
- No further survivors were recovered on this day.
- **23 Jun 12** - The search and rescue operation continued throughout Saturday, 23 June, with RCC Australia coordinating Defence surface and air assets, Customs and Border Protection air assets and assistance from merchant vessels.
- 8.15pm AEST - RCC Australia suspended the search for survivors. The decision to suspend the search was based on medical advice regarding the prospect of

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survivability after this length of time, and after reports from surface and air assets confirmed that there are no further survivors in the search area.

- After the suspension of the search by RCC Australia, the participating ships and aircraft were released to resume their normal operations.

Loss of Life: 17 confirmed deceased. A possible 75 people are unaccounted for, though the exact number may never be known.

Post-Incident inquiry and actions: Customs and Border Protection, together with AMSA and Defence, has conducted a review into the circumstance surrounding the respective sinking and capsize, and operational response, to the SAR 2012/4259 and SAR 2012/4106 incidents. The Review has been given to the Minister for Home Affairs who, along with a number of his Ministerial colleagues, is currently considering the recommendations. The Government's response to the review will be submitted for agreement in late October. A Coronial Inquest will be conducted by the Coroner of Western Australia. A date has not yet been announced for the Inquest.

The AFP's prosecution of the crew of the SAR 2012/4106 vessel is continuing. The AFP arrested and charged the two crew members with four offences under the Migration Act on 27 September 2012. A date for the trial of the crew members has not yet been set.

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AUSSAR 2012/3659 - SIEV 341**Date:** 31 May 2012**Location:** Detected 48 nautical miles north of Christmas Island, and intercepted nine nautical miles north of Christmas Island.**Incident:**

- **31 May 2012** - At approximately 5.19 pm AEST - RCC Australia received a phone call from a person claiming to be onboard a vessel with 147 people. Based on positional data provided by the caller, the vessel was located approximately 195 nautical miles north of Christmas Island. The caller reported that the vessel was overcrowded and had no drinking water and a small food supply. In a subsequent call, the caller stated that the bilge pump onboard the vessel was not working and the vessel was in danger of sinking.
- 6.25 pm AEST - RCC Australia communicated this information to BPC and to BASARNAS. BASARNAS was requested to take coordination of the response as the positional data indicated the vessel was within the Indonesian SRR.
- In anticipation of a possible request for BPC assistance, BPC began assessing what assets it had available.
- 8.40pm AEST – Although RCC Australia had not requested BPC assistance, BPC advised RCC Australia that it had one Dash-8 aircraft and HMAS *Ararat* at located at Christmas Island. It was also assessed that a RAAF maritime patrol aircraft was available from Darwin.
- 9.02 pm AEST - RCC Australia issued a broadcast to shipping regarding the vessel in need of assistance. Vessels in the vicinity of the area were asked to advise of any sightings of the vessel and render assistance if possible.
- 10.14pm AEST – RCC Australia advised BPC that BASARNAS had accepted coordination of the incident, but that BASARNAS had not provided advice as to any assistance they may require from RCC Australia.
- **1 June 2012** – 9.51 am AEST – RCC Australia advised BPC that despite repeated attempts to obtain the contact number from the original caller on board the vessel, the caller would not reveal his contact number. RCC Australia had also attempted to contact the vessel on a number provided by another caller on board, but the calls were unsuccessful and went directly to an engaged tone.
- 10.45 am AEST – RCC Australia advised BPC that BASARNAS had advised that its attempts to contact the vessel were also unsuccessful. BASARNAS advised they would continue to investigate the reported position of the vessel and that they would maintain coordination of the SAR operation. BASARNAS advised they would request RCC Australia assistance if it looked like the vessel was close to Christmas Island.
- BPC did not receive any request for SAR assistance from RCC Australia on behalf of BASARNAS.
- **2 June 2012** - 7.05 pm AEST - a RAAF maritime patrol aircraft, operating under the control of BPC, detected a COI that was observed to be dead in the water

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approximately 48 nautical miles north of Christmas Island. The aircraft reported sighting at least 35 people on board.

- At the time of this detection, HMAS *Ararat* was escorting SIEV 340 to Christmas Island, which had been intercepted 8.5 nm north-west of Christmas Island at 5.52pm AEST that day. Following the detection at 7.05pm AEST, HMAS *Ararat* was tasked to proceed to intercept the COI after transferring those on board SIEV 340 to Australian government authorities on Christmas Island.
- 7.49 pm AEST – RCC Australia advised BPC that the position of the detected COI correlates with the assessed course of the vessel subject to the earlier phone calls.
- 9.27 pm AEST – HMAS *Ararat* completed transferring the people from SIEV 340 to authorities of Christmas Island and commenced passage to intercept the previously reported COI.
- **3 June 2012** - At approximately 1.09 am AEST on Sunday 3 June 2012, HMAS *Ararat* boarded the COI approximately nine nautical miles north of Christmas Island.
- HMAS *Ararat* reported that passengers on board the vessel stated they had made phone calls two days ago. The name of the caller matched the records of RCC Australia in relation to the vessel that had requested assistance on 31 May 2012.
- 12.15pm AEST – HMAS *Ararat* had completed the transfer of all 153 people onboard SIEV 341 to Australia authorities on Christmas Island.

Loss of Life: No loss of life

Post Incident Inquiry: No inquiry

Journalist Natalie O'Brien referred to this SIEV in an article published on 7 October 2012 titled "Slow response to distress calls from asylum boat". The article states that "a boat carrying 35 asylum seekers, which made distress calls to Australian authorities, floundered for three days before it was discovered 'dead in the water' during a routine fly-over by an RAAF maritime patrol aircraft".

It is important to note that BASARNAS had accepted coordination of the SAR response for this vessel. Although BPC was not requested to provide support for this SAR, BPC was prepared to provide assistance and had quickly provided information to RCC Australia regarding available response assets soon after BPC was aware of the calls for assistance. All assets involved in the eventual detection and interception of this SIEV were operating under the control of BPC, and not RCC Australia.

While the RAAF maritime patrol aircraft reported that the vessel was 'dead in the water' upon detection, the vessel was able to travel from its detection location of 48 nm north of Christmas Island, to where it was intercepted at nine nautical miles north of Christmas Island.

SIEV 341 had a total of 153 persons onboard; however when the vessel was first detected by the RAAF maritime patrol aircraft on 2 June 2012, only 35 persons were visible on deck.

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Sumbawa**Date:** 12 April 2012**Location:** In the vicinity of Sumbawa and Lombok islands, Indonesia, and inside the Indonesian Search and Rescue Region.**Incident:**

- **12 Apr 12** – Approximately 4.00pm AEST on Thursday 12 April, RCC Australia received a call from the Refugee Advocacy Centre in Brisbane advising that it had received information that a vessel was sinking off the Indonesian island of Sumbawa.
- At 4.53pm AEST, all known information was passed to BASARNAS, by RCC Australia, who then formally assumed control of the incident. BASARNAS coordinated the search and undertook search and rescue operations with a rescue vessel and helicopter. Australian agencies provided information to assist with these efforts.
- At 4.25pm AEST the AFP reports a capsized vessel was found to the west of Pedauh Pesing Island, this information is passed onto BASARNAS.
- **13 Apr 12** – At 12.20am AEST, the Australian Embassy, Jakarta, received a call from the vessel of interest that the vessel was underway, but the steering was broken.
- At 11.45pm AEST, Customs and Border Protection Jakarta received information from BASARNAS that the vessel requesting assistance was yet to be located, and that the search continues.
- At 8.36pm AEST the Australian Embassy, Jakarta, advised RCC Australia that a vessel had run aground in the vicinity of Hotel Bumbangku in south-east Lombok.
- At 10.30pm AEST the Australian Embassy, Jakarta, advised that that it had received information from three of its sources that people from possible smuggling vessels had been taken ashore in various locations and were accommodated at local hotels.

It is possible that the passengers from SIEV 320, intercepted on Wednesday 18 April 2012, were involved in the venture that was the subject of this search and rescue, coordinated by Indonesian authorities, in the Sumbawa/Lombok area.

It is unclear as to whether the vessel run aground in the vicinity of Hotel Bumbangku was related to this incident, or the earlier reported capsized vessel west of Pedauh Pesing Island.

Loss of Life: No loss of life.**Post-Incident inquiry:** No inquiry.

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MT Hermia**Date:** 8 April 2012**Location:** Approximately 10 nautical miles off the Indonesian coast of West Java, and inside the Indonesian Search and Rescue Region.**Incident:**

- At 6.06am AEST on Sunday 8 April 2012, RCC Australia advised Customs and Border Protection (AMSOC) that a person within Australia had reported that a vessel with 100 people onboard was approaching Christmas Island and was broken down. RCC Australia later reported that the caller was in Indonesia.
- At 8.32am AEST a BPC-assigned Customs and Border Protection Dash-8 aircraft was released to RCC Australia for SAR tasking, and subsequently located the vessel requesting assistance in the Sunda Strait, between Java and Sumatra, at 10.35am AEST.
- The Customs and Border Protection Dash-8 aircraft reported that the *MT Hermia*, a merchant vessel responding to the RCC Australia distress relay message, was on the scene and recovering people from the vessel. This report was immediately passed to RCC Australia for action and on forwarding to BASARNAS.
- BASARNAS accepted coordination of the search and rescue after being notified by RCC Australia.
- After arriving in the port of Merak, Indonesia, onboard the *MT Hermia*, the 120 rescued passengers refused to disembark. The passengers requested guarantees that they would not be sent to Indonesian detention centres, and that Australian officials would assess their claims for asylum.
- After coming to an agreement with Indonesian immigration officials, all persons disembarked the *MT Hermia* in the port of Merak, Indonesia, on the morning of Monday 9 April 2012.

Media reporting claiming this vessel was 'intercepted' as a result of a joint Australian-Indonesian operation is not correct. BPC responded to a Search and Rescue tasking from RCC Australia, which was later coordinated by BASARNAS.

Questions about the ongoing management of this group should be put to the Indonesian Government as this is an Indonesian Government matter.

Loss of Life: No loss of life.**Post-Incident inquiry:** No inquiry.

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Yacht Rahmani**Date:** 5 April 2012**Location:** Approximately 65 nautical miles north-west of the Tiwi Islands, and inside the Australian Search and Rescue Region.**Incident:**

- **5 Apr 12** - At approximately midnight AEST on Thursday 5 April 2012 an Australian commercial fishing vessel, AFV *Moonstriker*, advised Customs and Border Protection it was in the vicinity of a yacht that was requesting assistance approximately 140 miles north of Darwin (65 nautical miles north of the Tiwi Islands). Customs and Border Protection immediately informed RCC Australia.
- **6 Apr 12** – At 12.11am AEST RCC Australia requested assistance from Customs and Border Protection to respond to the scene.
- At 12.34am AEST ACV *Arnhem Bay* was released from BPC to RCC Australia to respond.
- At approximately 4.30am AEST 6 April 2012, ACV *Arnhem Bay* boarded the yacht and reported 10 people on board, who claimed to be Chinese citizens, in transit to New Zealand to seek asylum. The people asked for food, water and diesel fuel.
- RCC Australia identified significant concerns for the safe navigation of the yacht, including the absence of suitable navigation charts, EPIRB or satellite phone, and its planned transit through the Torres Strait. On this basis, RCC Australia recommended ACV *Arnhem Bay* escort Yacht *Rahmani* to Darwin for the purposes of re-supply, prior to recommencing its transit.
- **7 April 12** - Following a request from the Master of Yacht *Rahmani*, ACV *Arnhem Bay* towed the yacht to Darwin, arriving at Cullen Bay at approximately 10.33 am AEST Saturday 7 April 2012.
- **11 Apr 12** - The 10 Chinese nationals decided not to continue with their transit to New Zealand, and to apply for refugee status in Australia.

Yacht *Rahmani* was not designated by responding surface assets as a Suspected Irregular Entry Vessel. The on water response to Yacht *Rahmani* was consistent with international Safety of Life at Sea (SOLAS) obligations. Yacht *Rahmani* presented as a 'force majeure' emergency arrival of a transiting vessel seeking assistance, and the on water response was consistent with this assessment.

Loss of Life: No loss of life.**Post-Incident inquiry:** No inquiry.

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Prigi Beach**Date:** 17 December 2011**Location:** Approximately 40 nautical miles off the coast of Prigi, central Java, and inside the Indonesian Search and Rescue Region.**Incident:**

- **17 Dec 11** - According to Indonesian authorities, at approximately 7.00am local time, a people smuggling vessel foundered around 40 nautical miles off the coast of Prigi, central Java.
- 7.00pm local - Australian authorities (AFP) first became aware that a vessel had foundered, and that rescue operations were underway. Australian agencies notified the relevant Indonesian authority at 7.18pm local.
- Customs and Border Protection (Jakarta) contacted RCC Australia at 8.42pm local and BASARNAS at 8.57pm local. BASARNAS indicated they were already aware of the incident.
- **19-20 Dec 11** - HMAS *Ararat* and a RAAF maritime patrol aircraft conducted aerial and surface searches on 19 and 20 December 2011.
- **21 Dec 11** - Australian government involvement in the SAR operation concluded at 1.30am AEST when HMAS *Ararat* concluded search operations.

Media reporting indicated that known people smuggler Sayed Abbas was involved in organising the venture from detention in Indonesia. It would not be appropriate to comment on this.

- If asked: Abbas has been the subject of an Australian Government extradition request since 8 June 2011. However, on 21 September 2011, INP advised that Abbas was sentenced to two and a half years imprisonment in relation to domestic Indonesian offences.

Australian authorities had a general level of awareness that a people smuggling vessel may depart from Java around 17 December.

There was no information available to Australian authorities that could have assisted Indonesian authorities to stop the vessel from departing.

Loss of Life: The vessel was suspected to be carrying around 250 passengers, 49 of which were rescued. 103 passengers are confirmed deceased with approximately 98 passengers unaccounted for, presumed drowned.

Post-Incident inquiry: At the request of the Indonesian National Police (INP), the AFP deployed members based in Indonesia to assist with the identification and investigation of the venture's organisers, including two investigators, one interpreter and one locally engaged staff member. Any further questions on this investigation should be directed to the AFP.

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Pangandaran**Date:** 1 November 2011**Location:** 5 nautical miles off the coast of southern Java/Pangandaran, Indonesia.**Incident:**

- According to Indonesian authorities and passengers on board, at approximately 0500hrs local (i.e. Indonesian) time on 1 November 2011, a people smuggling vessel foundered around 5 nautical miles off the coast of southern Java/Pangandaran. Indonesian authorities, including local police and the Indonesian Navy, as well as local fishermen, are reported to have begun rescue operations at around 6.00am local time.
- 6.00am local - Australian authorities became aware that a people smuggling vessel may have been in distress earlier that morning. This was later found to relate to the foundered vessel.
- 7.25am local - (over 2 hours after the vessel foundered and 1 hour after rescue operations commenced) Australian authorities became aware of the location of the people smuggling vessel that may have been in distress earlier that morning.
- 8.47am local - Australian authorities (DIAC) first became aware that a vessel had actually foundered.
- 9.36am local - Customs and Border Protection, Jakarta, commenced attempts to contact (phone) BASARNAS.
- 9.46am local - Customs and Border Protection (Jakarta) contacted (email) BASARNAS and BAKORKAMLA (Indonesian Maritime Security Coordination Agency).

Australian authorities had a general level of awareness that a people smuggling vessel may depart from southern Java around 1 November.

There was no information available to Australian authorities that could have assisted Indonesian authorities to stop the vessel from departing.

Loss of Life: The vessel was suspected to be carrying 75 passengers, 45 of which were rescued. Eight passengers are confirmed deceased (4 adult females, 4 children). Approximately 22 passengers are unaccounted for, presumed drowned.

Post-Incident inquiry: No inquiry.

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SIEV 221

Please note: Page X of this brief (Reviews/Reports) contains further information on SIEV 221 inquiries

Date: 15 December 2010

Location: Christmas Island

Incident: On 15 December 2010, a vessel now known as SIEV 221 foundered on rocks at Rocky Point, Christmas Island, resulting in a mass safety of life at sea incident and the loss of life. In total, 42 people survived the shipwreck of SIEV 221—41 of whom were rescued from the water and one who made it safely to land.

- **15 Dec 11-** 5.47am local time - Customs and Border Protection first became aware of SIEV 221 after it was sighted north of Flying Fish Cove, off Christmas Island at 5.40am Christmas Island local time by a Customs and Border Protection officer on temporary duty at the island. When the vessel was initially sighted it did not appear to be in distress.
- 6.05am local time - HMAS *Pirie* was tasked to investigate the vessel by Border Protection Command Headquarters Joint Taskforce 639 (HQJTF 639) at approximately 6:05am local time.
- At the same time as the tasking, HMAS *Pirie* was responding to a report from its steaming party embarked on the hulk of an earlier intercepted vessel (SIEV 220), that the hulk's steering had failed and it was drifting towards the rocks south west of Ethel Beach. HMAS *Pirie* had consequently deployed her RHIB and additional crew to attend to SIEV 220.
- What commenced as a response to a vessel sighting quickly developed into a search and rescue operation by BPC response assets in treacherous weather conditions in close proximity to the cliffs that SIEV 221 foundered upon.
- 6.10am local time, the Australian Maritime Security Operations Centre (AMSOC) received reports of two '000' calls relayed by Western Australian Police Operations via the Australian Maritime Safety Authority Rescue Coordination Centre (AMSA RCC), indicating a vessel was requesting assistance between Christmas Island and Ashmore Reef. At that stage there was no information or indication that the vessel being investigated by HMAS *Pirie* was the subject of the '000' calls.
- 6.16am local time - SIEV 221 was first reported to be in distress by Customs and Border Protection officers at Christmas Island.
- 6.22am local time - Customs and Border Protection at Christmas Island reported by telephone to HQJTF639 that the contact of interest (COI) was now 50 metres off Rocky Point, had lost engines and drifting towards the rocks. In response to this report HQJTF 639 directed HMAS *Pirie* to proceed at full power to the scene.

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- 6.30am local time - HMAS *Pirie* had recovered her RHIB and part of the deployed steaming party, altered course and was proceeding at full speed to the location of SIEV 221.
- 6.35am local time - HMAS *Pirie* advised ACV *Triton* that the COI had no engine power and was on the rocks and requested ACV *Triton*'s assistance with the hulk of SIEV 220.
- 6.40am local time - HMAS *Pirie* experienced an engineering fault in the main port engine which resulted in a system initiated shutdown. As a result HMAS *Pirie*'s speed was temporarily reduced whilst the fault was rectified. ACV *Triton* increased speed and commenced preparations to launch tenders.
- HMAS *Pirie*'s RHIBs reached the scene of the accident by 7.05am local time and commenced rendering assistance.
- ACV *Triton* launched its tenders by 7.05am local time and they arrived on the scene to assist in recovery operations at around 7.22am local time.

Loss of life: A total of 30 deceased were recovered, comprising 11 adult males, 11 adult females, three juvenile males, two juvenile females, one infant male and two infant females. Up to 20 people are missing, presumed drowned.

Post-incident inquiry: SIEV 221 was subject to an Internal Review, Coronial Inquest and Parliamentary inquiry. See page X of this brief for further information.

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SIEV 143**Date:** 9 May 2010**Location:** 125 nm north-west of Cocos (Keeling) Islands, and inside the Australian Search and Rescue Region**Incident:** Over the period 30 April to 9 May 2010, two operations were undertaken north-west of Cocos (Keeling) Islands to assist a vessel requesting assistance (MV *Velankannimath*, also known as SIEV 143). RCC Australia coordinated the search and rescue effort and assistance was provided by Border Protection Command and merchant vessels transiting through the area.

- **30 Apr 10** - Customs and Border Protection received several phone calls relating to a vessel requesting assistance 125 nautical miles north of Cocos (Keeling) Islands inside the Australian Search and Rescue region. Customs undertook initial actions in response however shortly after RCC Australia accepted coordination of the event and commenced arranging assistance to the vessel. RCC Australia ascertained that the vessel had had no food or water for two days, was drifting and was out of fuel and required help. TH *Symphony* reported that they had responded to the request for assistance and located the vessel, providing fuel, food and water.
- **5 May 10** - After the vessel failed to arrive in the vicinity of its intended destination, AMSA initiated another SAR response. BPC assisted in attempts to communicate with the vessel requesting assistance. BPC's closest patrol vessel was approximately 30 hours from the location of the vessel requesting assistance, due to its geographically remote location. A RAAF AP-3C Orion aircraft were tasked to locate the vessel and five men who had left the vessel to swim to find help.
- **6 May 10** - A disabled vessel was located approximately 160 nautical miles west of Cocos (Keeling) Islands on the evening of Thursday 6 May and four merchant vessels diverted to the area to provide assistance to the people on board.
- 59 passengers from the disabled vessel were rescued by a Russian merchant vessel, MV *Postojna*, and were transferred to Cocos (Keeling) Islands on Sunday 9 May 2010. Five people reported as missing from the vessel are presumed deceased - drowned at sea.

Loss of life: Five adult males.**Post-incident inquiry:** The AFP has conducted an investigation into the five missing people from SIEV 143. Any questions on this matter should be directed to the AFP.

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SIEV 69**Date:** 1 November 2009**Location:** 350 nm north west of Cocos (Keeling) Islands, and inside the Australian Search and Rescue Region.**Incident:**

- **1 Nov 09** - RCC Australia received multiple phone calls from a vessel requesting assistance due to ingress of water, lack of food and lack of drinking water approximately 350 nm North West of Cocos Island. BPC had no surface assets in the area and at the request of RCC Australia, BPC provided Dash-8 and AP-3C Orion aerial surveillance capability to assist in the search and rescue effort. The merchant vessel the MV *LNG Pioneer* and a Taiwanese fishing vessel, the *Kuamgwin*, responded to the distress signal. 27 people were rescued, one body was recovered and approximately 11 people were lost at sea. All survivors and the one recovered deceased person were transferred to Christmas Island by the MV *LNG Pioneer*.

Loss of life: 12 (10 adult males and two juvenile males).**Post-incident inquiry:** A Coronial Inquest is being conducted into the deaths of 12 people from Suspected Irregular Entry Vessel (SIEV) 69. The Western Australian Coroner's office advised it is expected that the inquest will be of short duration. The Australian Maritime Safety Authority (AMSA) is the lead agency for Commonwealth interaction with Western Australian authorities regarding SIEV 69.

A directions hearing was held on 14 September 2012, at which the Coroner indicated the majority of his questions during the inquest would be for AMSA to answer. The formal hearing is scheduled to be held on 22-23 October 2012.

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SIEV 36**Date:** 15 April 2009.**Location:** In the vicinity of Ashmore Islands, inside the Australian Search and Rescue Region.**Incident:**

- **15 Apr 09** - HMAS *Albany* intercepted and boarded SIEV 36 approximately 2 nautical miles south west of Ashmore Islands.
- **16 April 09** - control of SIEV 36 was handed over from HMAS *Albany* to HMAS *Childers*. For the PII, the transfer of control led them to believe that they were being returned to Indonesia something the Australian Defence Force (ADF) never intended. This fact was accepted by the Northern Territory Coroner.
- In response to this belief the PIIs became restless and non-compliant and sabotaged the SIEV's engines. An explosion was caused when one or more passengers deliberately ignited fuel collected in the bilge area below the deck area. The incident resulted in the loss of five lives, multiple casualties, and a significant medical evacuation effort involving Commonwealth and state agencies.

Loss of life: Five adult men.**Post-incident inquiry:** The ADF conducted an Inquiry Officer (IO) Report. The IO Report was conducted by Brigadier Don Higgins and was completed by the end of June 2009. 59 recommendations were made, relating to doctrine, policy, procedures and training relevant to boarding operations in general as well as on their application in the boarding and control of SIEV 36. The Northern Territory Coroner also conducted a Coronial Inquest into the incident. The Coroner made findings into the incident but did not give any formal recommendations, referring instead to the IO Report and its 59 recommendations.

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Missing Vessels

Alleged missing vessel: 30 June 2012

Date: On or around 30 June 2012

Location: Off the coast of Indonesia

Incident:

- Australian authorities were first made aware that a vessel might be missing approximately 17 days after relatives and friends of those on board believed it had departed Indonesia for Australia.
- Media has reported that up to 67 people may have been on board.
- Australian government agencies do not have evidence to confirm that a people smuggling vessel carrying up to 67 people departed Indonesia on 31 June – 1 July 2012 but did not arrive in Australia.
- Given the number of enquiries received from a range of sources, and time that has passed with no word from those believed to have travelled on this vessel, we can only assume that the vessel's passengers have been lost at sea
- **11 July 2012** – the Australian Maritime Safety Authority (AMSA) received an enquiry from a person concerned about the fate of family members who were thought to have boarded a vessel in Jakarta on Thursday 28 June destined for Christmas Island.
- Between 16 July and 6 August, AMSA, DIAC and the Australian Federal Police (AFP) received a number of additional enquiries that possibly related to the same vessel and were forwarded to Customs and Border Protection, which coordinated the investigation.
- Each of these enquiries has been analysed by Customs and Border Protection, in consultation with DIAC and AFP.
- Relatives or family members who may be concerned about people who may have been on the vessel should contact the Department of Immigration and Citizenship.
- Any information an individual has about a vessel which may be in distress should be passed immediately to the relevant search and rescue organisation.

Summary of enquiries and actions taken:

- Nine enquiries were received by agencies as follows:

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- AMSA received three enquiries – one each on 11 and 24 July 2012 and 6 August 2012 (all forwarded to DIAC)
- DIAC received 15 enquiries (some forwarded by other agencies) – one each on 11, 16, 18, 19, 24, 26 July 2012 and 1, 6, 9, 10, 16, 23, 26 August 2012, and 12, 17 September 2012 (Note: there were six follow up enquiries to the 26 July enquiry on 3, 15, 16, 21, 22, 28 August 2012)
- AFP received three enquiries – two between 17-22nd July 2012 and one on 24 July 2012

Alleged missing vessel: May 2012

Date: Late-May 2012

Location: Waters between Indonesia and Australia

Incident:

- From June to August 2012, Australian agencies received eight enquiries from three concerned parties regarding a people smuggling vessel that allegedly departed Indonesia in late-May 2012 with around 21 people on board.
- However, the nature and quantity of available information, the relatively few enquiries received, and the fact that these enquiries related to the same individuals, means that Australian government agencies have insufficient information to determine conclusively whether or not this voyage took place.

Summary of enquiries and actions taken:

- The following enquiries were received by agencies from concerned parties regarding the fate of individuals or groups of people thought to be aboard this vessel as follows:
 - DIAC received five enquiries (some forwarded by other agencies) – two on the 18th June 2012, one each on 19, 20 June 2012 and one on 18 August 2012
 - AFP received two enquiries – one each on 27 July 2012 and 16 June 2012
 - SERCO received one enquiry on 18 August 2012
 - ACBPS received one enquiry on 20 June 2012 and we responded to this enquiry on 4 July 2012
- When enquiries of this nature are received, Australian government agencies review their information holdings to determine if the whereabouts of the person or people involved can be confirmed in Australia.

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- In this instance, agencies had no record of the named individuals arriving in Australia on a SIEV.
- Agencies also contacted UNHCR, IOM Indonesia, and Indonesian agencies including: Immigration, Search and Rescue Agency (BASARNAS), Maritime Security Board (BAKORKAMLA), National Police and Navy, in the event the missing people were located in Indonesian.

Alleged missing vessel: November 2010

Date: On or around 13 November 2010

Location: Unknown

Incident:

- An in-depth analysis of information obtained by the AFP suggests that, while it is possible that a vessel may have departed Indonesia for Christmas Island on or around 13 November 2010, the AFP is unable to confirm whether this occurred.
- However, given the time that has passed, and with no word from those believed to have travelled on this vessel, we can only assume that the vessel's passengers have been lost at sea.
- No maritime people smuggling venture identified and monitored by Australian agencies in November 2010 went unaccounted for.
- Customs and Border Protection is aware of a number of enquiries relating to possible missing persons believed to have travelled from Indonesia to Australia on or around 13 November 2010.
- All information and analysis conducted by the AFP has been forwarded to the Indonesian National Police (INP).
- All names of people reported as missing to Australian authorities have also been supplied to the INP. It is possible that additional names of alleged missing persons may continue to be provided to Australian agencies.
- Customs and Border Protection, DIAC and the AFP share all enquires received about potentially missing people smuggling vessels or PIIs. When enquiries are received, agencies review their information holdings to determine whether the subject of the enquiry and their whereabouts can be positively identified.

Post-incident inquiry: No formal inquiry into this incident has occurred. It should be noted a number of enquiries from the public have been made as to the whereabouts of this vessel, resulting in Customs and Border Protection, DIAC and the AFP reviewing information holdings.

Summary of enquiries and actions taken:

- Between 17-20 December 2010, DIAC received three enquiries of potentially missing persons associated with this vessel, through its SIEV 221 Hotline. A fourth enquiry was received by DIAC on 4 January 2011.

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- DIAC forwarded details of all four enquiries to Customs and Border Protection and the AFP. DIAC and the AFP were not able to identify these people, or locate any record of them having arrived in Australia.
- On 12 May 2011, the Australian Federal Police (AFP) received as part of a media enquiry the names of 40 people who were allegedly onboard the vessel. The AFP and DIAC reviewed all information holdings, including open source media reporting, and were unable to determine the whereabouts of the 40 people.
- Four additional names of alleged missing persons were then received through enquiries made to either DIAC or Customs and Border Protection. One of these enquiries was made directly to Customs and Border Protection on 29 July 2011 from a person in Iraq seeking information about her husband who may have been seeking to join a people smuggling vessel to Australia on 7 October 2010 and had not made contact since 15 November 2010. Neither Customs and Border Protection, DIAC or AFP were unable to determine the whereabouts of this person. Customs and Border Protection responded to this enquiry directly on 12 August 2011.
- Most recently, on 20 November 2011, a person that arrived on SIEV 278 claimed during entry interview that his cousin had boarded a vessel on 13 November 2010 that never arrived in Australia. AFP and DIAC reviewed their information holdings and were unable to locate the potential missing person.
- All details of these enquiries were passed on to DIAC and the AFP who reviewed their information holdings and were unable to identify this person, or locate any record of them having arrived in Australia.

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Alleged missing vessel: October 2009**Date:** 3 October 2009**Location:** Unverified location was reported as 17 nautical miles off the coast of Java (200 nautical miles north of Christmas Island) and inside the Indonesian Search and Rescue Region.**Incident:**

- **At 1200hrs AEST** on Saturday 3 October 2009, Customs and Border Protection received classified information from the Australian Embassy (Jakarta) indicating that a vessel was 100 kilometres from Christmas Island and taking on water.
- Partial coordinates were provided with the information and indicated a location of approximately 200 nautical miles from Christmas Island and spanning 3.43 square kilometres. This alternate location was 17 nautical miles off the coast of Java in the Indonesian Search and Rescue Region.
- I am unable to elaborate on the information and its source without prejudicing intelligence sources and methods. I can advise that the information was highly classified, ambiguous, and unverified.
- **At 1210 AEST**, the information, including the partial coordinates, was conveyed to the Border Protection Command (BPC) watch officer in the Australian Maritime Security Operations Centre (AMSOC).
- Following this, AMSOC:
 - o commenced determining the location, and the availability, fuel and logistics status of BPC assets in collaboration with Defence Joint Task Force 639 (Darwin) that could respond to the vessel in distress.
 - o contacted Australian Customs Vessel Oceanic Viking and determined its location was approximately 360 nautical miles south east of the partial coordinate.
 - o briefed ACV Oceanic Viking crew on the information received.
 - o assessed the capacity of HMAS Albany, which was at that time proceeding to the northern approaches of Christmas Island, to intercept the reported vessel noting that this was one of the two possible alternate locations according to the information received.
 - o initiated assessments of the course most likely to locate the vessel, given the paucity of information regarding its status, location, heading and speed.
- Throughout this time, Customs and Border Protection intelligence staff assessed the information's credibility and reliability, and whether it bore any relationship to expected SIEV arrivals at that time.

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- **At 1319 AEST** ACV Oceanic Viking was directed to the area of the partial coordinates, 200 nautical miles from Christmas Island.
- HMAS Albany was directed to remain on task in the vicinity of Christmas Island, noting that this was the possible alternate location, according to the information received.
- Throughout this time, AMSOC was in communication with Defence Joint Task Force 639 (Darwin) to determine the availability of maritime surveillance aircraft to respond to this situation.
- **At 1322 AEST** Commander Border Protection Command (COMBPC) and the on-call BPC Director discussed the status of the operational response to the information.
- As a result of this discussion, it was decided that the on-call BPC Director was to notify the Australian Maritime Safety Authority (AMSA) of a potential vessel in distress, once approval for release of the information from the originating agency had been received.
- Subsequently, the on-call BPC Director contacted the BPC on-call intelligence officer to formally progress this request via the secure systems used to liaise with the originating agency.
- According to the recollections of Customs and Border Protection officers, throughout this time staff sought further information from the originating agency regarding the location of the vessel and the nature of its distress to inform the planning of any operational response.
- During this time, the originating agency sought further details and to clarify the original information received.
- **At 1435 AEST** the BPC on-call intelligence analyst, following up telephone discussions, dispatched a secure communication to the originating agency requesting positional data on the potential vessel in distress at an unclassified level, for dissemination to AMSA.
- **At 1449 AEST** the originating agency approved disclosure of the partial coordinates at an unclassified level.
- **By 1533 AEST** the information and unclassified set of words were settled by BPC officers and the approved text, including the partial coordinate, was emailed to AMSA.
- **At 1548 AEST** AMSOC received an information copy of advice from AMSA to the Indonesian SAR authority (BASARNAS) requesting it assume coordination of any SAR response.
- **At 1840 AEST** a RAAF maritime patrol aircraft departed Darwin for surveillance tasking in response to the possible vessel in distress.
- **At 1945 AEST** AMSOC was advised by AMSA that BASARNAS had investigated the reports of the vessel in distress and did not consider that there was a SAR incident at the reported location.
- **At 1957 AEST** Customs and Border Protection received information from the Australian Embassy, Jakarta that the vessel earlier reported as possibly being in distress was no longer in distress.

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- **From 2230-0100 AEST** the RAAF maritime patrol aircraft surveilled a designated search area from the north of Christmas Island to a position corresponding to the partial coordinate. No vessels matching the report of the vessel in distress were sighted. The aircraft spent 2 hours and 5 minutes in the designated search area and covered 12, 794 square nautical miles.
- Considerations: A review of Customs and Border Protection's records, supported by officer recollections, indicates that officers faced a range of complex issues requiring consideration in the time between receiving the classified information and disseminating an approved rendering of it to AMSA. These issues included:
 - o the ambiguous nature of the information concerning the vessel's location, and the absence of additional information to provide clarity or verification.
 - o the large area (3.43 sq km) to which the partial coordinates referred to.
 - o the appropriate posturing of Defence and BPC assets to respond to a possible SAR or direct arrival scenario, based on ambiguous information.
 - o the appropriate reporting and response protocol if the vessel was located in the Indonesian Territorial Sea / Indonesian SAR Region.
 - o the procedure to be adopted to obtain approval to release highly classified information in an unclassified form to AMSA.
- Customs and Border Protection's response to the information received on 3 October 2009 should be considered with reference to the contemporaneous operating environment.
 - o At that time, Customs and Border Protection had no experience in managing SIEV Safety of Life at Sea (SOLAS) or SAR situations where ambiguous and unverified classified information related to a vessel in the territorial sea of another nation.
 - o Procedures for managing unfamiliar SOLAS situations, such as attendance of appropriately cleared AMSA officers within the Australian Maritime Security Operations Centre (AMSOC), were not yet developed.
 - o These circumstances were unfamiliar to officers from all agencies involved. Additionally, agencies were procedurally unprepared for these circumstances.

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- Customs and Border Protection's response to the information received on 3 October 2009 was formative in terms of shaping the protocols in place today.

Post-incident inquiry: No formal inquiry was undertaken, however since 2009 Customs and Border Protection has implemented a number of measures to ensure classified information that may relate to potential SIEV SOLAS or SAR situations is passed in a timely manner to operational response agencies. [See 'SOLAS procedures' above]

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FREEDOM OF INFORMATION REQUESTS

- Since the May 2012 Budget Estimates, Customs and Border Protection has received five Freedom of Information (FOI) requests as follows:
 - 30 May 2012 – in relation to counter-people smuggling communication activities in Indonesia and Malaysia [Documents released 20 September 2012];
 - 26 June 2012 – in relation to any change in the modus operandi of people smuggling ventures from Indonesia, specifically false distress calls to Australian authorities;
 - 27 June 2012 – in relation to Indonesia's capacity to respond to SIEVs in distress;
 - 7 August 2012 - in relation to a review of Australian agencies management of Safety of Life at Sea situations beyond Australia's Search and Rescue zone; and
 - 8 August 2012 - in relation to a SIEV believed to have gone missing on its way to Australia from Indonesia on 30 June 2012.
 - **NOTE: The first four FOI requests have been processed and the fifth is expected to be finalised prior to Supplementary Budget Estimates.**
- In addition to the above requests, on 8 August 2012 Customs and Border Protection officials at post in Jakarta received an enquiry similar to the FOI request of 30 May 2012 in relation to counter-people smuggling communication activities. The enquirer was advised that the documents were subject to a similar FOI enquiry and would soon be available on the FOI Disclosure Log on the Customs and Border Protection website. **[These documents are now available on the website].**
- In addition to the above five requests, we have responded to three prior FOI requests as follows:

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- 8 March 2012 – in relation to the December 2011 Prigi Trenggalek boat incident. [Documents released on 29 June 2012].
- 13 March 2012 – in relation to missing and foundered vessels between October 2009 and February 2011. [Documents released on 28 May 2012].
- 11 April 2012 – in relation to the asylum seeker boat in trouble in waters between Indonesia and Australia from 8 – 11 April 2012 (the MV *Hermia* incident). [Documents released on 29 June 2012].
- A continuing high level of media interest in missing and foundered vessels and SOLAS-related incidents will likely result in questions pertaining to the timeliness and adequacy of our operational response to these incidents.
 - Tony Kevin’s latest book, *Reluctant Rescuers* (self-published, June 2012) may stimulate additional questioning regarding the efficacy of Australia’s border protection system and the intelligence system underpinning it.

Natalie O’Brien article – 7 October 2012

- In an article published in the Sun Herald on 7 October 2012 by Natalie O’Brien titled “Slow response to distress calls from asylum boat”, Ms O’Brien stated that the ‘Australian Customs and Border Protection Service has refused FOI requests from the Sun Herald to release documents’. This statement is correct, and FOI legislation permits this in certain circumstances.
- The two occasions referred to by Ms O'Brien in the article are in relation to her requests for documents relating to Indonesia's capacity to respond to distress calls, and documents relating to the capsized vessel of 21 June 12 (AUSSAR 2012/4106).
- **Capacity to respond:** A decision was issued to Ms O'Brien in relation to her request on Indonesia's capacity to respond exempting the two documents in full from release as, the disclosed of the documents:

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- would or could reasonably be expected to cause damage to the Commonwealth's international relations, and
 - would divulge information communicated in confidence to the Commonwealth by a foreign government, agency of a foreign government or an international organisation.
- In this respect, the article is correct in that we have refused to release the two documents that fell within scope, though the exemption claimed has not been explained precisely.
- **21 Jun 12 vessel (SAR 4106):** Customs and Border Protection were able to negotiate and narrow the scope of Ms O'Brien's request for documents relating to the capsized vessel of 21 Jun 12 to include the WoG TPs and a BPC Operational Chronology. A decision was issued to Ms O'Brien releasing part of the WoG TPs, and claiming an exemption over the BPC Operational Chronology on the basis that disclosure of the chronology would prejudice the conduct of ongoing investigations/enquiries.

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Control table

	Internal Clearance	External Clearance
Policy Issues	COMBPC ND I&T (where appropriate)	AMSA
Resources	COMBPC ND MOS	Defence
Reviews/Reports	COMBPC Review Team Brennan Fraser-Bell	
Cocos	COMBPC ND C&E	
Significant SAR/SOLAS	COMBPC ND I&T (where appropriate)	AMSA
Missing Vessels	NDI&T COMBPC	
FOI	ND I&T COMBPC	

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Australian Government
**Australian Customs and
Border Protection Service**

Key Issue 2

SUPPLEMENTARY BUDGET ESTIMATES

October 2012

Maritime People Smuggling and Irregular Maritime Arrivals

Whole-of-Government Brief

Cleared by: Chris Wall, Acting National Director Intelligence & Targeting Division

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25 September 2012

Please note statistics were current as of 23 September 12. Statistics may be updated on an ongoing basis.

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UNCLASSIFIED**LIKELY FUTURE TRENDS**

- Based on available information, irregular maritime arrivals to Australia are expected to continue in relatively comparable numbers to recent months, as the volume of people fleeing countries in our region continues to be high.

Global Perspective

- On 27 March 2012, UNHCR released its *Asylum Levels and Trends in Industrialised Countries 2011* report.
 - The report estimated that 441,260 asylum applications were recorded in the 44 European and non-European countries included in the report, a rise of 20% over 2010. Europe received approximately 74% of these applications.
 - The top five receiving countries for asylum claims in 2011 were:
 - The United States of America (74,020)
 - France (51,910).
 - Germany (45,740)
 - Italy (34,120)
 - Sweden (29,650)
 - Other countries recorded significant increases. The number of applications in the USA is up 33% over 2010. Spain recorded a 24% increase. Most notably, the number of applications to Italy is up 240% and Malta recorded an increase of 1221%, due to unrest in North Africa and the Middle East.
 - In contrast, Australia received 11,510 asylum applications in 2011, a decline of 9% since 2010.
 - Australia's ranking in 2011 placed us 13th of the industrialised countries receiving asylum applications, three places down from our ranking of 10th in 2010.
- In its 2011 *Global Trends Report* (issued in June 2012) UNHCR reports that there were 42.5 million forcibly displaced people worldwide at the end of the 2011 calendar year, which included 15.2 million refugees and people in refugee-like situations.

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- Afghanistan was the biggest single source country, with over 2.6 million refugees in 2011. Iraq was the second most significant source country with over 1.4 million refugees in 2011.
 - The movement of people seeking asylum is a worldwide phenomenon driven by insecurity, persecution, conflict and lack of economic opportunity.
 - Over one third of all refugees (35 percent) were in the Asia Pacific region, with a total of more than 3.6 million people, of whom 1.7 million were hosted in Pakistan.¹
- The number of refugees in need of resettlement in countries other than their home country or country of first asylum is growing.
 - According to UNHCR, available resettlement places globally are not keeping pace.
 - UNHCR estimates that in 2011 there were around 800,000 people in need of resettlement and only about 80,000 places available

¹ UNHCR, 2011 Global Trends.

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Arrivals Totals – 1996 to present by CALENDAR YEAR

Year	Boats ¹	People (excl. crew) ²
1996	19	660
1997	11	339
1998	17	200
1999	86	3721
2000	51	2939
2001	43	5516
2002	1	1
2003	1	53
2004	1	15
2005	4	11
2006	6	60
2007	5	148
2008	7	161
2009	60	2726
2010	134	6555
2011	69	4565
2012 (to 21 Sep)	158	10277

Arrivals since August 2008: 428 boats and 24,284 people (excluding crew)

Year	Crew
2007	2
2008	18
2009	141
2010	345
2011	168
2012 (to 21 September)	235

Notes

¹ Excludes boats returned from whence they came.

² The total figure **does not** include:

- 2 Burmese rescued from a floating esky;
- 2 Afghans, 1 Sri Lankan, 1 Indian and 1 Indonesian found on Deliverance Island;
- 2 Sri Lankans found on Saibai Island in the Torres Strait;
- 78 Sri Lankans rescued by the ACV *Oceanic Viking* in Indonesian waters in October 2009, and transferred to Indonesia;
- 5 people reportedly lost at sea from SIEV 143;
- Casualties among the passengers of the vessel which sank off Prigi Beach on 17 December 2011 or the vessels which foundered on 21 and 27 June and 30 August 2012; or
- 10 Chinese nationals who arrived by yacht in Darwin in April 2012.

The total figure **does** include 5 deceased from SIEV 36 and 12 deceased from SIEV 69. SIEV 69 is subject to ongoing coronial investigation. The total figure also includes 50 confirmed deceased from SIEV 221.

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NB: The matter of 6,130 non-crew arrivals for 2001 as opposed to 5,516 (as sometimes reported, such as in the Customs Figures publication available on our website) includes those people turned around and returned to Indonesia.

Arrivals Totals – 1996 to present by FINANCIAL YEAR

Year	Boats ¹	People (excl. crew) ²
1996-97	13	365
1997-98	13	157
1998-99	42	920
1999-00	75	4175
2000-01	54	4137
2001-02	19	3041
2002-03	0	0
2003-04	2	68
2004-05	0	0
2005-06	8	61
2006-07	4	133
2007-08	3	25
2008-09	23	985
2009-10	117	5327
2010-11	89	4750
2011-12	111	8092
2012-13 (to 21 Sep)	87	5064

Arrivals since August 2008: 428 boats and 24,284 people (excluding crew)

Year	Crew
2007-08	0
2008-09	53
2009-10	300
2010-11	210
2011-12	245
2012-13 (to 31 August)	97

Notes

¹ Excludes boats returned from whence they came.

² The total figure **does not** include:

- 2 Burmese rescued from a floating esky;
- 2 Afghans, 1 Sri Lankan, 1 Indian and 1 Indonesian found on Deliverance Island;
- 2 Sri Lankans found on Saibai Island in the Torres Strait;
- 78 Sri Lankans rescued by the ACV *Oceanic Viking* in Indonesian waters in October 2009, and transferred to Indonesia;
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investigation. The total figure also includes 50 confirmed deceased from SIEV 221.

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GOVERNMENT POLICY AND BUDGET MEASURES

NB: Refer questions about Budget Measures to the relevant agency.

Overview of Government Policy

Expert Panel on Asylum Seekers Report

- On 13 August 2012, the Expert Panel on Asylum Seekers (EPAS) presented its report to the Prime Minister and Minister for Immigration and Citizenship. The EPAS report envisaged a comprehensive integrated package comprising a series of incentives and disincentives for potential irregular migrants to use regular pathways over irregular maritime travel. The report contained a series of recommendations (see [WHOLE-OF-GOVERNMENT ISSUES & LEADS](#) section), which broadly address:
 - ways to adjust Australia's visa arrangements and policy settings to create incentives for asylum seekers to use regular migration pathways;
 - options to process asylum seekers in locations outside Australia; and
 - measures to strengthen bilateral and regional partnerships to improve counter-people smuggling and protection arrangements in the region.

Australian Government response

- s34 [REDACTED]
- s34 [REDACTED]
 - s47C [REDACTED]
 - s47C [REDACTED]
 - s47C [REDACTED]

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- s47C [REDACTED]
- s47C [REDACTED]
- s47C [REDACTED]
- s47C [REDACTED]

- Thus far, we have introduced legislation to enable regional (offshore) processing (passed on 16 August 2012) and are in the process of establishing a regional processing centre on in Papua New Guinea. A regional processing centre on Nauru has been established.
 - We have also increased Australia's Humanitarian Program from 13,750 to 20,000 places per annum; and
 - Restricted family reunion eligibility of those who arrive in Australia by irregular maritime means.
 - Refer questions about regional processing centres in Nauru and PNG to **DIAC**.
- The Government continues to develop responses to the package of recommendations made by the Expert Panel.
 - Refer questions on overall implementation of the Panel's recommendations to **DIAC Project Management Office**.
 - Refer questions on implementation of individual recommendations to lead agencies (see [ATTACHMENT E](#)).

Whole-of-Government Strategy

- Although more expansive in scope, the Report recommendations also reaffirm the pre-existing whole-of-government strategy to combat people smuggling and strengthen border controls, which included measures aimed at:
 - more effective and streamlined whole-of-government arrangements for combating maritime people smuggling
 - retaining mandatory detention and initial processing on Christmas Island for all irregular maritime arrivals
 - increasing our engagement with regional partners to target people smuggling operations at their source

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- working with key regional countries to strengthen domestic people smuggling laws and facilitate effective international legal cooperation
- building the capacity of regional officials to manage their borders effectively, and
- intensifying patrols of our northern borders by Border Protection Command.
- Under the strategy, the Government has funded agencies to focus activity offshore in source and transit countries.
 - Customs and Border Protection, Australian Federal Police (AFP), the Attorney-General's Department (AGD), the Department of Immigration and Citizenship (DIAC) and other relevant agencies have significantly strengthened their engagement with their counterparts throughout the region to disrupt ventures, break-up syndicates, build capacity in comprehensively criminalising people smuggling and implementing those laws, immigration intelligence and border management, and secure the cooperation of foreign governments.
- The Government also provided \$15.3m in 2010-11 for the Australian Defence Force contribution to the Australian Whole-of-Government effort under Operation RESOLUTE to protect Australia's littoral and offshore maritime areas. \$9.8m was provided for RESOLUTE in 2011-12 from existing Defence resources, and \$9.5m for 2012-13, also from existing Defence resources.

Results

- This strengthened offshore approach has achieved significant progress in the context of a very active global people smuggling environment. As of 21 September 2012, reports indicate that:
 - Since September 2008, Indonesian authorities have effected 345 disruptions involving 10,251 foreign nationals seeking passage to Australia. In that time, Indonesian authorities have also arrested 187 alleged people smugglers.
 - Since April 2009, Sri Lankan authorities have effected 69 disruptions involving 2,573 people seeking passage to Australia. In that time, Sri Lankan authorities have also arrested 131 alleged people smugglers.
 - Since March 2009, Malaysian authorities have effected 31 disruptions involving 930 foreign nationals seeking passage to Australia.

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- Since March 2010, Indian authorities have effected 13 disruptions involving 405 foreign nationals seeking passage to Australia. In that time, Indian authorities have made 21 arrests.
- These numbers are continually reviewed for accuracy and are subject to change.
- Since 2008, Australian authorities have arrested 567 crew and organisers and secured 285 convictions for people smuggling offences as of 19 September 2012, with sentences of up to eight years imprisonment. There were currently 96 defendants before the courts. There were four outstanding extradition requests to other countries.

Cooperation with Indonesia

- Australian authorities share a strong and productive relationship with Indonesian authorities and have established a joint Framework to address people smuggling.
 - *Note: refer questions about the Framework to DFAT.*
- The passage of legislation on 7 April 2011 through Indonesia's Parliament to criminalise people smuggling is a positive development. The Indonesian Parliament has recognised the seriousness of this offence by attaching penalties from five to 15 years imprisonment to persons convicted of this crime.
- While official data for people smuggling prosecutions in Indonesia is not available, as at August 2012, Post in Jakarta understands that eight people have been convicted of people smuggling under the new Immigration Law. Of these:
 - Six were convicted under article 120 of the Law (people smuggling offence) and sentenced to between five and seven years with fines up to 500 million Rupiah (nearly \$50,000AUD).
 - Two were convicted under article 124 of the Law (concealing, protecting, employing etc., an illegal immigrant) and sentenced to six months imprisonment.
- Post understands a further 14 people are currently before the courts, facing charges under article 119 (travel documents) and 120 of the Law, with approximately 30 more investigations under way. Post advises that these figures should be cited cautiously.
- In 2009, the Indonesian National Police (INP) Chief established a taskforce dedicated to combating people smuggling within Indonesia.
 - Liaison between the AFP and the INP people smuggling taskforce has resulted in a number of high-level Indonesian-based people smugglers being investigated and

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arrested by the INP. Examples of this include the arrests made by INP of two high-level organisers in August and October 2011, respectively, pursuant to Provisional Arrest Requests made by Australia.

Cooperation with Sri Lanka

- Cooperation with Sri Lankan authorities has also grown considerably in recent years, assisted by the establishment of an AFP Office in Colombo in June 2009. The AFP has signed an MOU with the Sri Lanka Police Service to facilitate the exchange of information, the conduct of coordinated operations and cooperative assistance.
- Australia also signed an MOU with Sri Lanka on legal cooperation against people smuggling in November 2009. This has increased opportunities for investigating and prosecuting people smugglers and seizing the proceeds of their criminal activity.
 - s33(a)(iii) [REDACTED]
 - Several Sri Lankan policy, prosecutorial and drafting officials have visited Australian agencies on pairing programs for exposure to the functioning of Australia's people smuggling laws. The Attorney-General's Department delivered two workshops in Sri Lanka in May and December 2011 with a focus on combating people smuggling and proceeds of crime issues, and a further workshop in May 2012 with a focus on combating people smuggling, proceeds of crime issues, and mutual legal assistance.
 - Australian aid to Sri Lanka is responding to the needs of displaced civilians, their resettlement and the rehabilitation of their communities.
 - Assistance for recovery and reconstruction includes support to the World Bank and Asian Development Bank to provide internally displaced people with cash for essential household items and to repair community infrastructure, to UN Habitat for repair and reconstruction of houses damaged or destroyed as a result of the conflict, to UNICEF for repair or reconstruction of damaged schools in the conflict-affected northern province, and to UNDP for removal of land mines and other unexploded ordnance to make it safe for displaced people to return home.

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UNCLASSIFIED**Cooperation with Malaysia**

- Australia continues to engage with Malaysia, assisted by the posting of additional officers to our High Commission in Kuala Lumpur, and continued work through the Malaysia-Australia Working Group on People Smuggling and Trafficking in Persons.
 - This Working Group is materially enhancing our countries' cooperation to counter maritime people smuggling, including through closer intelligence sharing arrangements, legal cooperation and harmonisation, and capacity building activities. The Working Group met most recently in Melbourne on 14 and 15 November 2011.
 - The Working Group established a Bilateral Technical Legal Working Group on People Smuggling, Human Trafficking and Transnational Crime to identify options to strengthen Australia's and Malaysia's transnational crime laws, and build prosecution and investigation capacity. The fifth meeting of the Bilateral Technical Legal Working Group was held on 16 and 17 November 2011 in Melbourne.
 - In November 2010, the Malaysian Parliament passed legislative amendments to criminalise people smuggling. The law now provides a strong basis for investigating and prosecuting people smuggling activities in the region. Under the new laws, convicted people smugglers could face imprisonment for up to 20 years. These laws apply to offences committed outside Malaysia and criminalise the provision of material support to people smuggling.
 - Prime Minister Gillard and Prime Minister Najib released a joint statement in March 2011, noting the strong relationship between Australia and Malaysia and welcoming the outstanding cooperation between our countries on people smuggling.

Cooperation with Pakistan

- Australia is working to develop a closer relationship with Pakistan to address people smuggling.
 - We established a Pakistan-Australia Joint Working Group on Border Management and Transnational Crime in 2010 to enable future cooperation on transnational crime issues, including people smuggling, between Australia and Pakistan.
 - The Joint Working Group met most recently in Melbourne, on 13 September 2012.

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- The Joint Working Group established a Legal Issues Sub-Committee to identify options to strengthen Australia's and Pakistan's transnational crime laws, and build prosecution and investigation capacity. The second meeting of the Legal Issues Sub-Committee was held on 12 and 13 April 2012 in Canberra, and agreed a significant forward work program to progress both people smuggling and anti-money laundering reform. It is currently scheduled for the 3rd LISC meeting to take place in Islamabad in late 2012.

Regional Cooperation and the Bali Process

- The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) is the only grouping in our region which comprehensively addresses the challenges of people smuggling and trafficking in persons.
- People smuggling is a regional problem, which requires regional solutions.
 - Bali Process builds political momentum in the region to combat these challenges.
- It has been successful in enhancing cooperation and coordination across the region and in implementing practical measures aimed at addressing the problems of people smuggling and trafficking in persons.

Regional Cooperation Framework including the Regional Support Office

- On 30 March 2011, ministers at the Fourth Bali Process Ministerial Conference agreed to establish a Regional Cooperation Framework to address irregular migration and combat people smuggling
 - under this framework regional countries and international organisations can cooperate over the long-term to manage irregular migration through regional arrangements.
- The establishment of the Regional Support Office in Bangkok in July 2012 is a key step in the implementation the Bali Process Regional Cooperation Framework.
- The Regional Support Office will develop and support Bali Process activities and practical arrangements to enhance the region's response to people smuggling and trafficking in persons
 - activities will cover various levels of migration management relating to operational matters, data sharing, legislation and policy including in the asylum context in the Asia-Pacific region.

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- The Regional Support Office will also support the harmonisation of national people smuggling and trafficking in persons legislation including to enhance efforts to provide appropriate protection and assistance to victims of trafficking.
- The RSO's engagement with Bali Process members has commenced with four foundation projects covering key migration issues. These are:
 - Regional data harmonization initiative: promoting improved information management between States and international organizations to enhance data collection, support further analysis and reporting, and facilitate information sharing and dialogue;
 - Voluntary repatriation capacity building and support initiative: raising awareness of voluntary repatriation opportunities for irregular migrants and enhancing government capacity to facilitate voluntary returns;
 - Pilot study on information exchange and data analysis on irregular migration by sea; and
 - Regional roundtable on irregular movements by sea: promoting common understandings of conceptual issues to inform future cooperative arrangements between interested States.
- Refer questions about the RCF, RSO or the Australia-Malaysia Transfer and Resettlement Arrangement to **DIAC**.
- Refer questions about the Bali Process to **DFAT**.
- Refer questions about the Australian Government's relationship with IOM and UNHCR to **DIAC**.

Maritime Operations and Incidents

Please note: Key Issue Brief: Maritime Operations and Incidents covers in detail the subject of maritime operations and incidents, including: the SIEV 221 incident and review, missing and foundered vessels, recent SOLAS-related incidents, Cocos (Keeling) Islands arrivals, Freedom of Information enquiries, policy and resourcing issues.

2012 - 13 Border Protection Budget Measures

- The 2012-13 Budget provides targeted investment for our border security regime and improving immigration processes, including:

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- a new forensic facility for the Australian Federal Police to help in investigations of terrorism, transnational crime, and disaster victim identification;
 - **AFP** is best placed to comment on this funding.
- \$19.821m over four years for a new vessel to guard against people smuggling, environmental degradation and illegal fishing at Ashmore Reef
 - **Customs and Border Protection** is best placed to comment on this funding.
- This Budget provides \$21 million to improve immigration processes by:
 - streamlining protection visa assessment processes by transferring assessment duties to the Refugee Review Tribunal;
 - helping asylum seekers who wish to return to their country of origin to do so; and
 - reforming migration health requirements for both humanitarian and other visa applicants.
 - **DIAC** is best placed to comment in detail on these measures.

2012-13 BUDGET

For details of the 2012-13 budget measures please refer to **ATTACHMENT A**.

2011-12 BUDGET

For details of the 2011-12 budget measures please refer to **ATTACHMENT B**.

2010-11 BUDGET

For details of the 2010-11 budget measures please refer to **ATTACHMENT C**.

2009-10 BUDGET

For details of the 2009-10 budget measures please refer to **ATTACHMENT D**.

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WHOLE-OF-GOVERNMENT ISSUES & LEADS

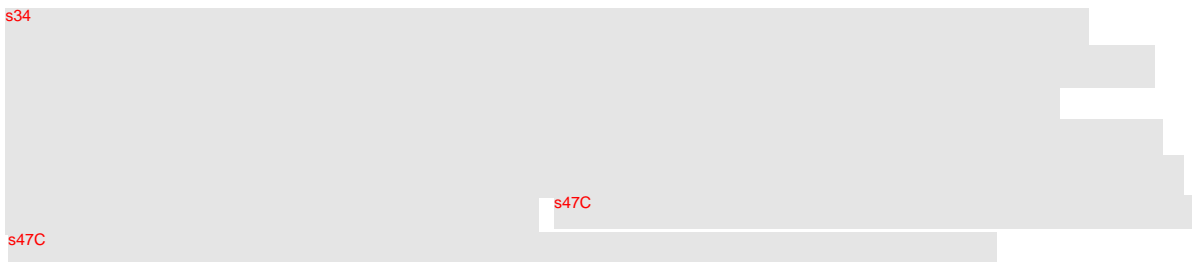
Expert Panel on Asylum Seekers Recommendations – Implementation & Leads

The report of the Expert Panel on Asylum Seekers contained 22 recommendations, which provide short, medium and long-term approaches to assist in the development of an effective and sustainable approach to irregular maritime arrivals (IMAs).

The principles contained in Recommendation One have been adopted by the Australian Government and will underpin the entire implementation strategy. Recommendation 19 considers that the conditions necessary for effective, lawful and safe turnback of irregular vessels carrying asylum seekers to Australia are not currently met. As such, implementation arrangements for this recommendation are not included in this strategy.

The remaining 20 recommendations translate into 25 measures for implementation. Initial measures to be implemented – such as establishing regional processing capacity in PNG and Nauru and the expansion of the Humanitarian Program to 20,000 places – will provide a circuit breaker. Longer term measures – such as further building capacity to improve regional protection arrangements – are designed to ensure that the future management of asylum seekers is genuinely regional in character.

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The Department of Immigration and Citizenship (DIAC) has been charged with overall implementation of the report. This will be done through a Project Management Office reporting to cabinet on a quarterly basis and to Border Protection Taskforce on a more regular basis.

- Refer questions on overall implementation of the Panel's recommendations to DIAC Project Management Office.
- Refer questions on implementation of individual recommendations to lead agencies (see [ATTACHMENT E](#)).

Age Determination and Minor People Smuggling Crew

Minors are only prosecuted with people smuggling offences in exceptional circumstances, on the basis of their significant involvement in a people smuggling venture or multiple ventures.

Under the policy framework, where age is not able to be clearly established, the person is to be given the benefit of the doubt and returned to their country of origin without charge.

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The Australian Human Rights Commission has completed its inquiry into the treatment of people smuggling crew who claim to be minors. The final report was released on 27 July 2012.

AGD has reviewed all of the 28 cases of convicted people smuggling crew who had claimed to be minors at the time of their offence.

- The outcome of this review was that 17 people were released early on licence (15) or on parole (2), three people were released after completing their non-parole periods.
- A further eight people remain to serve their sentences, as there was no evidence to suggest that they were minors at the time of arrival.

The *Privacy Act 1988* prevents the Government from identifying individual cases.

- Refer questions about review and age assessment processes used in the criminal justice system to **AGD**.
- Refer questions about the conduct of investigations to **AFP** and prosecutions to **CDPP**.
- Refer questions about children in immigration detention to **DIAC**.

People smuggling offences

The report of the Expert Panel on Asylum Seekers recommended changes to Australian law in relation to Indonesian minors and others crewing unlawful boat voyages from Indonesia to Australia, including restoring discretion to Australian courts in relation to sentencing of people smuggling crew (Recommendation 4).

On 27 August 2012, the Attorney-General gave the CDPP a direction not to prosecute first time offender, lower culpability people smuggling crew with offences attracting a mandatory minimum penalty.

The direction does not apply to organisers of people smuggling ventures, crew who repeatedly come to Australia on such ventures, or crew of a people smuggling venture involving a death.

The AFP and CDPP have discretion to determine the appropriate charge for the relevant conduct.

The CDPP re-assessed the 101 people smuggling crew matters that were before the courts on 27 August 2012. As a result, the CDPP has discontinued a number of matters, while other matters have been recommenced under a lesser people smuggling charge that does not attract mandatory minimum penalties.

- Refer questions about people smuggling laws, including mandatory minimum penalties, to **AGD**.
- Refer questions about law enforcement action to **AFP**.

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- Refer questions about prosecutions to **CDPP**.
- Refer questions about Australia's engagement in the region to harmonise people smuggling laws to **AGD**.
- Refer questions about immigration detention to **DIAC**.

Indonesian Visa 'Red List' Changes

In December 2011, the Indonesian Government announced its intention to remove Bangladesh and Sri Lanka from its 'Immigration Red List' – a list of 13 countries deemed to be high risk by immigration officials. Visa applicants from these countries will still be required to apply for a visa before entering Indonesia, however they will not be subject to the visa clearing house process, whereby applicants are 'cleared' by relevant Indonesian agencies in Jakarta before visa issuance. Contrary to media reports at the time, visa applicants from Bangladesh and Sri Lanka will not be eligible for visa on arrival in Indonesia.

During bilateral talks on 9 January 2012, Indonesia's Foreign Minister Dr Natalegawa confirmed to Mr Rudd that the new arrangements did not provide visa on arrival or visa-free facilitation and would be subject to "normal review" within the Indonesian system. Australia and Indonesia agreed to enhance cooperation on visa, document integrity and fraud-related issues.

- Refer questions on Australia's diplomatic relationship with Indonesia to **DFAT**.
- Refer questions on Australia's immigration cooperation with Indonesia to **DIAC**.

Australia-Malaysia Transfer and Resettlement Arrangement

The decision by the High Court on 31 August 2011 has had significant implications for the policy of offshore processing, including the Arrangement with Malaysia and the establishment of an assessment centre in Papua New Guinea (PNG).

On 21 September 2011, in response to the High Court's decision, the Government introduced legislative amendments to enable offshore processing, but has not yet sought a vote on these amendments.

On 13 February 2012, the Hon Robert Oakeshott MP introduced a private members bill, known as the Bali Process Bill, to broker a middle path through the legislative deadlock. The Bill allows the Minister to designate an offshore assessment country if it is a participant in the Bali Process and the Minister considers the designation is in the national interest. The Bill also requires consultation with the United Nations High Commissioner for Refugees and the International Organization for Migration.

On 19 March 2012, the Government indicated its intention to move some amendments to the Bali Process Bill to improve its workability in practice and provide some additional checks and balances.

The Government remains committed to working with countries in the region under the Regional Cooperation Framework to improve protection outcomes for refugees and reduce people smuggling activity. Although offshore processing and implementation of the

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Malaysia Arrangement cannot be pursued at this time, the Government remains committed to this initiative as an important element in the management of irregular migration in our region.

- Refer questions about the arrangement to **DIAC**.

Conditions, detainee welfare and order in detention centres

DIAC manages the immigration detention facility on Christmas Island, and a further 20 across mainland Australia.

Clients are placed in IDFs based on risk and care needs.

The department's detention services provider, Serco, is responsible for the good order and security of the IDFs and works closely with the AFP and state agencies as appropriate.

- Refer questions about conditions, IMA welfare and order in detention facilities to **DIAC**.
- Refer questions about the response to unrest on Christmas Island to **AFP**.

Community Detention

- Refer questions about detention policy and detainee support arrangements to **DIAC**.

Christmas Island

- Refer questions about detention facilities on Christmas Island, including capacity, construction and contingency arrangements to **DIAC**.
- Refer questions about Christmas Island infrastructure to the **Department of Regional Australia, Regional Development and Local Government**.
- Refer questions about general infrastructure and services on Christmas Island including power and waste water upgrades to the **Department of Regional Australia, Regional Development and Local Government**.
- Refer questions about police actions in response to rioting on Christmas Island to **AFP**.

Cocos (Keeling) Islands

Please note: a separate Key Issues Brief covers in detail the subject of maritime operations and incidents, including: the SIEV 221 incident and review, missing vessels and foundered vessels, recent SOLAS-related incidents, Cocos (Keeling) Islands arrivals, Freedom of Information enquiries, policy and resourcing issues.

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UNCLASSIFIED**Communications Campaigns and Information Strategies**

The Australian Government is implementing counter people smuggling communications campaigns and information strategies in Australia and source and transit countries in the region.

- o Refer questions about overseas communications campaigns to **Customs and Border Protection**.
- o Refer questions about domestic information strategies to **DIAC**.
- o Refer questions about domestic information strategies relating to the changes to the Australian legal regime to **AGD**.

Humanitarian response

The Australian Government provides significant assistance to meet the humanitarian and protection needs of displaced people around the world.

- o Refer questions about resettlement processes and humanitarian assistance to **DIAC**.
- o Refer questions about humanitarian assistance through the international aid program to **AusAID**.²

Claims of Tamil Tigers on Boats

There has been sporadic media reporting suggesting that members of the Liberation Tigers of Tamil Eelam (LTTE) may seek to enter Australia through irregular migration pathways, including as irregular maritime arrivals. Media reporting has further suggested that adverse security assessments issued to a number of Sri Lankan asylum seekers by ASIO is primarily due to the individuals' possible association with the LTTE.

- o Refer questions about processing the claims of asylum seekers to **DIAC**.
- o Refer questions about adverse security assessments to **ASIO**.
- o Refer questions about the status of LTTE as a terrorist organisation or listing of LTTE under the Criminal Code to **AGD**.

² Australian Government funds provided to the UNHCR in 2011 totalled US\$56,537,400 as of 31 December 2011.

UNCLASSIFIED**Claims made by Chinese boat arrivals in Northern Territory**

On 9 April 2012 a group of ten Chinese nationals, including two children, docked in the Northern Territory and stated they were on their way to New Zealand to seek asylum.

On 11 April 2012, the asylum seekers chose to apply for protection in Australia.

The Minister for Immigration and Citizenship noted on the same day that he was happy they had decided not to extend their dangerous sea voyage.

The asylum seekers will have their claims assessed as per the normal channels for onshore arrivals.

- o Refer questions on processing of asylum seekers to **DIAC**

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Exempt material

Sections 34(3) and 47C

ATTACHMENT E

Summary of EPAS Recommendations and Lead Agencies

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Rec no.	Recommendation	Lead	Support	s47C
1	Principles to shape Australia's policymaking on asylum seeker issues.	NA	NA	NA
2.1	Increasing the Humanitarian Program to 20,000 places per year	DIAC		<6 weeks
2.2	Minimum of 12,000 of the 20,000 allocated for refugees	DIAC		<6 weeks
2.3	Consider increasing the Humanitarian Program to 27,000 places within five years	DIAC		>12 months
2.4	Focus the Humanitarian Program on asylum-seeker flows from countries of origin into South East Asia	DIAC		<6 months
3	Developing the regional cooperation framework through capacity-building initiatives to enhance protection for displaced persons and asylum seekers	DIAC	AusAID, DFAT, AGD	<6 months
4.1	Increasing Humanitarian Program resettlement from Indonesia	DIAC	DFAT	<6 weeks
4.2	Enhancing regional cooperation on joint surveillance and response patrols, law enforcement and search and rescue	ACBPS	AFP, Defence, AMSA	<12 months
4.3	Changing Australian law relating to how crew (including minors) are dealt with	AGD	AFP, DIAC	<6 weeks
5	Cooperation with Malaysia on asylum issues, including resettlement	DIAC	DFAT	<6 months
6	Development of a whole-of-government strategy for engaging with countries of origin and first asylum to address the root causes of displacement and to maximise protection for asylum seekers, with a focus on resettlement	DIAC	DFAT, AusAID	>12 months
7	Introduction of legislation to support the transfer of people to regional processing arrangements	DIAC	AGD, AFP	<6 weeks
8	Establishment of a processing centre on Nauru	DIAC	Defence DFAT,	<6 weeks

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			AFP, AusAID, AGD, DRA	
9	Establishment of a processing centre in Papua New Guinea	DIAC	Defence DFAT, AFP, AusAID, AGD, DRA	<6 weeks
10	Reopening discussions on the Malaysia Arrangement, particularly regarding protection and oversight mechanisms (including the transfer of 800 IMAs to Malaysia)	DIAC	DFAT, AGD	<6 months
11	Reducing the backlog of family reunion applications in the Special Humanitarian Program (SHP) and making available 4000 places for family reunion in the Family Stream of the Humanitarian Program	DIAC		<6 weeks
12	Changing the Special Humanitarian Program so that future IMAs are not eligible for family reunion through this program	DIAC		<6 weeks
13	Coordination among traditional and emerging resettlement countries promoted	DIAC	DFAT	<6 months
14	Amend the Migration Act to align the status of IMAs arriving in mainland Australia with those who arrive in an excised offshore place	DIAC	AGD, ACBPS	<6 weeks
15	Review refugee status determination processes	DIAC		<6 months
16	Development of a strategy to negotiate better outcomes on removals and returns of failed asylum seekers	DIAC	DFAT, AusAID	<6 months
17	Continued, comprehensive disruption strategies to be resourced appropriately	ACBPS	AFP, DIAC, DFAT	<6 months
18	Law enforcement activities in Australia maintained	AFP	ASIO, ACC	<6 weeks
19	Conditions for turning back boats at sea do not currently exist	NA	NA	NA
20	Development of joint operational guidelines for search and rescue and possible codification of arrangements across SAR jurisdictions	DIT	Defence ACBPS, AMSA, DRA	<6 months

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21	Reviewing the linkage between the onshore and offshore components of the Humanitarian Program within two years	DIAC		>18 months
22	Increasing research and evaluation activity to further improve Australia's evidence based policy approach to irregular migration and asylum, and extending to settlement and social cohesion	DIAC	ACBPS, ONA	<6 months

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Australian Customs and Border Protection Service

Key Issue 3

Firearms

Issues

Customs and Border Protection has recently been criticised for having “porous” borders with more illegally imported guns and gun parts available on “the street”.

Australia has some of the toughest firearm laws and regulations in the world but recent operational activity has highlighted a number of instances where firearms have been illegally imported.

Working in collaboration with our partners, Customs and Border Protection has increased the level of border intelligence activity on this issue.

TALKING POINTS

- Strong intelligence is the key to detection and stopping illegal firearms.
 - 85 per cent of all successful gun and gun part seizures are the result of intelligence generated by us or our partners before the parcel or container arrives in Australia.
- The agency has a comprehensive strategy to identify and respond to individuals and criminal syndicates who attempt to illegally import.
- This strategy incorporates the use of intelligence resources to identify and target high risk consignments, the deployment of investigative resources to respond to illicit firearm detections and collaboration with international, federal and state law enforcement agencies.
- We are continuing to work along the supply chain with international, local law enforcement, internal stakeholders, industry and community engagement:
 - Before the border: overseas engagement
 - At the border: intelligence, targeting and investigations
 - Post border: investigations, industry and community participation and law enforcement agency engagement.
- In a recent report by the ACC where they traced 31 168 firearms seized by police across the country, they found that less than one per cent were illegally imported:
 - 44 per cent were weapons not handed in after Port Arthur,
 - 12 per cent were stolen
 - They also found a large domestic market exists, with an estimated 260,000 illegal firearms already in circulation, many of these guns for 10, 20, 30 years and some of those weapons over 100 years old.

Intelligence Led Risk Based Approach

- In April this year we established the Firearms Intelligence and Targeting Team [FITT] to fuse together all available intelligence from law enforcement agencies. This improves our ability to target illegal imports which leads to more seizures and arrests.
- Since the FITT began work in April, the team has actioned 77 cases.

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- Working with state and federal partners we have raised cargo, passenger and postal profiles and alerts and created intelligence reports and targeting products which have been widely disseminated by law enforcement agencies and stakeholders.
- The core team of six intelligence and targeting officers will be supplemented by relevant internal and external subject matter experts as required.
- As part of FITT we recently out-posted a Senior Intelligence Analyst to the NSW Police Force's Firearms and Organised Crime Squad to enhance the NSW Police Force's access to border intelligence holdings and present both agencies with an increased level of cooperation.
- The USA has consistently been the main source of firearms and firearm parts to Australia. Outreach by the Customs and Border Protection Counsellor in the United States is underway to identify relevant partner agency stakeholders for targeted engagement on the illicit importation of firearms to Australia. This is to increase the flow of overseas entity and thematic intelligence.

Investigations

- In the first two months of 2012-13 there have been four successful prosecutions for firearms import offences.
- As at 31 August 2012 Customs and Border Protection had 44 active investigations into firearm import offences and a further six cases are currently before or scheduled to appear before the courts.
 - 28 of these cases relate to the illegal importation of firearm parts,
 - 13 relate to the illegal importation of complete firearms and nine relate to the illegal importation of soft air guns.
- In 2011-12 there were six successful prosecutions for firearms import offences
- In 2010-11 there were 13 successful prosecutions for firearm import offences.
- We are currently working with local State authorities on a number of operations relating to illegal imports. It would be inappropriate to comment further without prejudicing current and ongoing operations.

Detections

- From 1 July 2011 to July 2012, Customs and Border Protection detected 1,344 undeclared firearms, firearm parts, accessories and magazines across all streams, comprising:
 - 76 firearms (handguns, rifles and shotguns).
 - 748 conventional firearm magazines (for handguns, rifles and shotguns) and;
 - 520 items consisting of a variety of parts and accessories.
- 62.5% of these detections were ex United States of America.
- The new financial year to August 2012 there have been 146 undeclared detection comprising:
 - 8 firearms (handguns, rifles and shotguns).
 - 36 conventional firearm magazines (for handguns, rifles and shotguns) and;
 - 102 items consisting of a variety of parts and accessories.

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- These detections are largely the result of targeted, intelligence-led selections with a collaborative effort within and across agencies ensuring these seizures result in arrests.
- We are exploring opportunities for improving our technology, education, training and awareness strategies to support the identification of firearms, parts and accessories by operational staff.
- This is a more sustainable approach to the future, in the face of increasing cargo volumes. It is impossible, both financially and logistically, to inspect every consignment that crosses the border, and has proven ineffective.

Media Interest

- A recent article on “soaring gun imports” claim there has been a 66 per cent decrease in firearm detections. The comparison is between 2005/06 and 2010/11 statistics. The reporting regime changed during this time and is an inaccurate reflection of undeclared detections.
 - The figure in the article of 17,635 illicit detections came from the 2005-06 annual report. During 2006 Customs and Border Protection introduced a new Detained Goods Management System for the reporting and management of detained goods.
 - Since 2007/08 Customs and Border Protection has only reported undeclared detections.
 - Based on the seizure/detection figures since 2007/08 approximately 20% of seizures are subsequently undeclared
- The same article claimed 19,561 handguns were legally imported into Australia in 2010-11. This figure includes around 10,000 handguns for supply to law enforcement agencies.

Standing Council on Policy Emergency Management (SCPEM)

- The Council consists of Commonwealth, State and Territory Ministers responsible for Police and Emergency Management.
- To combat increased firearm crime nationally the 29 June 2012 SCPEM meeting resolved a number of initiatives to be progressed through Commonwealth, State and Territory agencies.
- Customs and Border Protection has an active role in progressing these resolutions including:
 - assisting CrimTrac to deliver a National Firearms Identification Database (NFID)
 - assist in a cost benefit analysis to report at the first meeting in 2013 for the feasibility in;
 - mandating all high risk firearm importations are not permitted unless the importer has provided ballistics testing data for each firearm.
 - back capturing ballistic data of all high risk firearms registered in Australia.
 - assist in developing a National Firearms Register to record and share information across all jurisdictions on firearms imported and registered in Australia and on licensed firearm owners. The cost analysis into this will report to the November SCPEM meeting.

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Import Controls

- In 2011-12, just under 100,000 firearms were legally imported into Australia. To be able to bring a firearm to Australia, an importer must first obtain approval from either State or Territory police or the Attorney-General.
- Illegal import and export of firearms and regulated parts carries a criminal offence with a penalty for conviction of \$275,000 or ten years imprisonment, or both.
- To crack down on illegal imports the Minister is set to introduce legislation to create a maximum penalty of life in jail for people who traffic firearms into Australia or between states. Work on this legislation is progressing.
- Laws concerning licensing and the possession of firearms are regulated and administered by the States and Territories.

Cleared by: Raelene Vivian, National Director, Cargo and Trade
Roxanne Kelley, National Director, Compliance and Enforcement
Chris Wall, Acting National Director, Intelligence and Targeting

Action officer: ^{s47F} [REDACTED]

Work: ^{s47F} [REDACTED]

27 September 2012

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BACKGROUND

1) AUSTRALIAN CRIME COMMISSION'S NATIONAL ILLICIT FIREARM ASSESSMENT

The Australian Crime Commission [ACC] finalised its National Illicit Firearm Assessment in May 2012. Key findings include:

- Australia has a sizable and growing pool of firearms which are readily assessable by criminals. The ACC conservatively estimates that there are over 250,000 long arms and 10,000 handguns in the illicit market.
- The illicit firearm market is predominantly comprised of firearms that have previously been diverted from the licit market through various means. Of the 3,186 firearms traced by the ACC, less than 1% was found to be illegally imported.
- Firearms and organised crime are inextricably linked, with strategies needed to address both the illicit supply chain for firearms and the underlying activities of organised crime groups.

2) COMPLIANCE AND ENFORCEMENT

Active and recent investigations

As at 31 August 2012, Customs and Border Protection had 44 active investigations into firearm import offences and a further six cases were currently before, or scheduled to appear before, the courts.

Twenty-eight of these cases relate to the alleged illegal importation of firearm parts, 13 relate to the alleged illegal importation of complete firearms and nine relate to the alleged illegal importation of soft air guns.

In 2011-12 there were six prosecutions for firearms import offences. A total of \$24,120 in fines, penalties and costs were awarded for these prosecutions.

A further four successful prosecutions for the prohibited import of firearms and firearm parts/accessories were recorded in the first two months of 2012-13. A total of \$14,045 in fines, penalties and costs have been awarded for these prosecutions.

In 2010-11, there were 13 successful prosecutions for firearms import offences. A total of \$36,624 in fines, penalties and costs were awarded for these prosecutions, as well as three good behaviour bonds, ranging from 12 to 36 months.

What action is taken when undeclared firearms or related goods are detected?

Not all detected undeclared firearms, parts and accessories are illegally imported, if the importer has a valid import permit then these firearms, parts and accessories are released.

Customs and Border Protection seizes those firearms and related goods detected that do not have a valid import permit.

Detections of illegal firearms are referred to Customs and Border Protection Investigations Branch to determine whether further action is required. There are a range of treatments which range from seizing the goods and issuing a warning through to prosecution.

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All undeclared detections are also referred to the Firearms Intelligence and Targeting Team for further intelligence assessment against border holdings, liaison with State Police firearms and intelligence sections and further targeting activity, if deemed necessary.

Partnerships with other law enforcement agencies

Customs and Border Protection Investigations Branch is currently working with the New South Wales Police Force, Victoria Police and the Queensland Police Service on a number of operations involving the importation of illicit firearms or parts.

It would be inappropriate to comment any further on these investigations without prejudicing current and ongoing operations.

Issues relating to investigations

The determination of the regulated status of firearms parts and accessories found during recent post border search warrant activity, as part of the investigation of alleged firearms related offences, has highlighted a potential difficulty in enforcing some instances of suspected non-compliance with the Customs Act.

Some imported firearms parts and accessories are not prohibited under the Customs Act when they cross the border. Other parts and accessories are not prohibited in the condition they are in when they cross the border but are subsequently modified to the extent that if they were to subsequently cross the border, they would be prohibited.

Customs and Border Protection is addressing this potential gap in the effectiveness of firearms controls by continuing to engage and work with State and Territory police who can take action to seize these modified parts and accessories and, where appropriate, prosecute offenders under their respective legislation.

Operation Maxworthy

Operation Maxworthy is a joint Customs and Border Protection and New South Wales Police Force investigation which conducted joint warrant activity across Sydney on 13 March 2012 in a coordinated operation led by the New South Wales Police Force following the detection by Customs and Border Protection of 140 Glock firearm magazines imported into Sydney in the air cargo stream.

Operation Maxworthy focused on the alleged importation of Glock firearms and components from Germany to addresses in Sydney.

Operation Maxworthy led to the arrest of three men including a 30-year-old post office licensee, a 21-year-old worker at the import business, a 27-year-old telecommunications technician and a 28-year-old woman. German authorities also arrested an individual allegedly connected to the importations.

This operation highlights the cooperation between Customs and Border Protection and the New South Wales Police Force.

It would be inappropriate to comment further on the operation without prejudicing upcoming legal proceedings against the individuals involved.

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3) UNDECLARED DETECTIONS

Firearms statistics are referred to in terms of 'undeclared detections', rather than seizures.

An imported firearm is considered an 'undeclared detection' when it has been detected and identified by Customs and Border Protection as a prohibited or restricted firearm, AND where it has *not* been declared to Customs and Border Protection in accordance with the import requirements.

Not all undeclared detections are 'seized'. This only occurs when the firearms detained by Customs & Border Protection have failed, or will fail, to meet import requirements. Many are eventually released after the importer has been given the opportunity to meet import requirements (egg. obtaining relevant permits).

For the purposes of the statistics below, 'conventional' firearms are what most people would consider to be 'real' or traditional firearms. In technical terms, they operate by means of an explosive charge, and discharge shot, bullets, or some other projectile. Whole firearms in this category include handguns, rifles, shotguns, and machine guns.

Table 1: Undeclared detections of conventional firearms, parts & accessories, and magazines, up to & including August 2012.

Year	Whole firearms	Parts & Accessories	Magazines	TOTAL
2008-09	72	184	766	1022
2009-10	121	523	1252	1896
2010-11	97	326	756	1179
2011-12	76	520	748	1344
2012-13	8	102	36	146
TOTAL	374	1655	3558	5587

Table 2: Undeclared detections of conventional firearms, parts & accessories, and magazines by import stream, up to & including August 2012.

Year	Post	Pax	Air Cargo	Sea Cargo	Smallcraft / Vessel	TOTAL
2008-09	708	50	109	155	-	1022
2009-10	1669	45	148	32	2	1896
2010-11	817	278	55	27	2	1179
2011-12	1014	76	232	22	-	1344
2012-13	126	7	2	11	-	146
TOTAL	4334	456	546	247	4	5587

Table 3: Undeclared detections of conventional firearms, parts & accessories, and magazines by state of entry, up to & including August 2012.

Year	ACT	NSW	Vic	Qld	SA	WA	Tas	NT	TOTAL
2008-09	-	720	62	144	5	32	1	58	1022
2009-10	-	1545	110	160	5	32	1	43	1896
2010-11	10	685	200	73	5	16	1	189	1179
2011-12	-	798	400	69	10	34	-	33	1344
2012-13	-	86	41	13	1	5	-	-	146
TOTAL	10	3834	813	459	26	119	3	323	5587

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Table 4: Undeclared detections of conventional firearms, parts & accessories, and magazines by state of intended consignee address, up to & including August 2012.

Year	ACT	NSW	Vic	Qld	SA	WA	Tas	NT	TOTAL
2008-09	30	119	116	634	17	56	1	49	1022
2009-10	24	445	279	985	47	78	3	35	1896
2010-11	11	277	182	379	63	105	14	148	1179
2011-12	15	520	191	340	119	116	9	34	1344
2012-13	1	61	34	21	8	14	2	5	146
TOTAL	81	1422	802	2359	254	369	29	271	5587

Table 5: Countries of origin (Top 10) for undeclared detections of conventional firearms, parts & accessories, and magazines, for 2008-09.

Origin	USA	South Africa	Thailand	New Zealand	Timor Leste	Germany	UK	Tonga	Canada	Kuwait	Others
2008-09	511	261	60	35	30	23	14	12	12	12	52

Table 6: Countries of origin (Top 10) for undeclared detections of conventional firearms, parts & accessories, and magazines, for 2009-10.

Origin	USA	South Africa	Czech Republic	UK	Germany	Poland	Austria	New Zealand	Kuwait	Afghan.	Others
2009-10	964	334	130	122	107	47	41	26	21	20	84

Table 7: Countries of origin (Top 10) for undeclared detections of conventional firearms, parts & accessories, and magazines, for 2010-11.

Origin	USA	Afghan.	Germany	UAE	Canada	Thailand	UK	New Zealand	Hong Kong	South Africa	Others
2010-11	681	132	60	50	35	30	30	24	23	16	98

Table 8: Countries of origin (Top 10) for undeclared detections of conventional firearms, parts & accessories, and magazines, for 2011-12 (up to & including June 2012).

Origin	USA	Germany	Switzerland	Greece	Hong Kong	Thailand	China	Afghan.	New Zealand	Singapore	Others
2011-12	841	152	48	36	34	29	26	21	19	12	126

Table 9: Countries of origin (Top 10) for undeclared detections of conventional firearms, parts & accessories, and magazines, for 2012-13 (up to & including August 2012).

Origin	USA	Hong Kong	Germany	New Zealand	Singapore	Canada	Sweden	Israel	China	Thailand	South Africa
2012-13	85	17	13	10	6	5	3	2	1	1	1

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4) FIREARM IMPORT CONTROLS

Policy and Legislation

The Attorney-General's Department (AGD) is responsible for Commonwealth firearms policy in relation to the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) which regulates the import of firearms, firearms parts and accessories (such as silencers and collapsible stocks) into Australia.

Firearms controls are contained within Regulation 4F and Schedule 6 of the PI Regulations. These regulations control the importation of firearms, firearm accessories, firearm parts, firearm magazines, ammunition, components of ammunition and imitation firearms.

Illegal import and export of firearms and regulated parts carries a criminal offence with a penalty for conviction of \$275,000 or ten years imprisonment, or both.

Importers must satisfy a number of conditions to legally import into Australia. Depending on the type of firearm importers must obtain either:

- certification from State or Territory Police that they are permitted to possess that firearm in their jurisdiction (and it can therefore be imported); or
- permission from the Attorney-General in respect of higher-risk firearms (such as semi-automatic and military firearms), which are generally only available for end-use by military or police personnel.

The Customs (Prohibited Exports) Regulations 1958 (the PE Regulations) requires that export permission is obtained from either the Defence Export Control Office or Customs and Border Protection prior to a firearm being exported from Australia.

Laws concerning licensing and the possession of firearms in Australia are regulated and administered by States and Territories.

Customs and Border Protection activities in the lawful movement of firearms across the border include:

- checking import permissions presented by importers against consignments of firearms, parts and accessories;
- physically verifying and recording the serial numbers on all imported firearms, parts and accessories;
- conducting safety testing in accordance with the tests specified in the regulations (for example checking that firearms subject to safety testing have operable safety mechanisms);
- managing the Category H (handguns) Scheme, which limits the number of newly imported handguns an authorised dealer can access at any one time;
- issuing export permission on behalf of the Department of Defence for certain firearms in the passenger environment. For example, where a passenger is departing overseas to compete in a clay target shooting competition; and
- Providing safe and secure control, storage and transfer of custodial firearms.

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Review of existing legislation

Customs and Border Protection with the support of the AGD recently introduced changes to definitions within Regulation 4F to the Regulations for *firearms part*, *firearm accessory* and *firearm magazine* to provide clarity and consistency.

In *CEO of Customs v Powell [2007] QCA 106* (Powell decision), Customs and Border Protection seized a firearm part on the basis the importer did not have the required permit from the AGD. The importers contended that, as the firearm was being imported for use with a firearm that only required police permission to import, the part should also be able to be imported on that basis. However, as the part being imported was able to be used in a range of firearms, including firearms normally subject to AGD permit requirements, the Commonwealth's position was that an AGD permit was required. On appeal, the Commonwealth's position was upheld.

In practice, the decision means that, a person importing a firearm part (such as a barrel or magazine) for a lower controlled firearm, which could be used with a higher risk firearm (requiring an AGD permit), must seek an import permission from AGD to import the part. To obtain an AGD permit, an importer must meet one of the higher tests such as 'official purposes', 'specified purposes' or 'dealers test' before the part can be imported into Australia. This may mean that owners of lower controlled firearms are not be able to import replacement parts for their firearms, if those parts could fit a firearm subject to a higher control such as a semi- automatic or automatic firearm.

The AGD is conducting a review of the legislation. Specific amendments to Schedule 6 to address the implications of the Powell decision may be considered.

Working with Other Agencies

We work with a number of other government agencies and law enforcement bodies to administer the Government's Firearm policy including:

- The Attorney-General's Department;
- State and Territory police;
- The Australian Crime Commission;
- The Australian Institute of Criminology;
- The Department of Defence
- The Department of Foreign Affairs and Trade; and
- State and Territory Departments responsible for domestic firearms legislation.

Licensing and possession of firearms

Issues regarding the licensing of armourers or dealers and the domestic possession of firearms are a matter for the State/Territory Police.

Firearms and Weapons Policy Working Group

Customs and Border Protection is an active member of the Firearms and Weapons Policy Working Group (FWPWG). The FWPWG is a key forum for the exchange of information on intelligence, analysis and investigations and for research work to inform policy development.

The FWPWG provides advice to the Standing Council on Police and Emergency Management (SCPEM) and the Senior Officer Group (SOG) on:

- firearms issues referred by SCPEM and SOG; and
- emerging and nationally significant firearms and weapons policy issues.

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Standing Council on Police Emergency Management (SCPEM)

Is a bi-annual meeting of Commonwealth, State and Territories Ministers responsible for the Police and Emergency Management.

At the 29 June 2012 meeting SCPEM resolved to progress a number of initiatives in response to an increase in national firearms crime. These initiatives include development of systems, information and intelligence, legislation and regulation and operational responses. will be progressed through a number of Commonwealth, State and Territory agencies and.

As part of this process Customs and Border Protection will maintain an active role to progress these resolutions including:

- assisting CrimTrac as it implements a project to deliver a National Firearms Identification Database (NFID) which has been approved and funded by the CrimTrac Board of Management (BOM); and
- assisting in a cost benefit analysis to investigate the feasibility of mandating that all importations of high risk firearms are not permitted unless the importer has provided ballistics testing data with each imported firearm and the feasibility of back capturing ballistic data of all high risk firearms registered within Australia, and report to SCPEM at the first meeting in 2013; and
- assisting in the development of a National Firearms Register which jurisdictions will use to record and share information on firearms imported and registered in Australia, and on licensed firearm owners, the Commonwealth AGD in consultation with states and territories undertake a benefits analysis of a National Firearms Registry (NFR), and present an update in November 2012 on work to develop a model and funding options for consideration by SCPEM at its first meeting in 2013.

The Commonwealth's activities to progress the SCPEM resolutions are being coordinated through the Attorney-General's Department, Firearms Unit and the national Firearms and Weapons Policy Working Group (FWPWG).

Handgun Certification Scheme

Customs and Border Protection administers the handgun certification scheme (Category H Scheme). Certified dealers are only able to hold newly imported handguns for sale within a "certified stock limit" determined by Customs and Border Protection.

Generally, certified dealers are restricted to ten newly imported handguns. A small number of certified dealers, who have satisfied a number of stringent conditions, have been certified to hold more than ten newly imported handguns. Any importations of handguns in excess of a certified dealer's stock limit are securely stored by Customs and Border Protection until such time as they can provide evidence of sale or disposal, at which time further stock can be released to them.

As at 17 September 2012, of the 495 firearm dealers in Australia certified to hold newly imported handguns, only 29 are certified to stock more than ten newly imported handguns. The dealers with a stock limit higher than 10 must provide sales data to justify an increase, which is reviewed annually when their certificate is renewed.

Customs and Border Protection reconciles each certified dealer's holdings against their stock. We also work with State and Territory law enforcement bodies to monitor dealer compliance. Part of this process includes examining and comparing dealer declarations; records of disposals and compliance with State and Territory requirements.

It should be noted, however, that dealers can hold a much higher number of used handguns as part of their stock, – which undermines the objective of the Category H Scheme. As a consequence the former

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Minister for Home Affairs, the Hon Brendan O’Conner, asked AGD to review the Category H Scheme arrangements. **The review report is with the current Minister for consideration.**

Importing and tracking of firearms

Customs and Border Protection provides statistical information on all imports and exports of firearms to AGD. This information is to be made available to all Australian law enforcement agencies, to assist them in monitoring the movement of firearms.

AGD is responsible for publishing this data on an internal web portal they host. This enables domestic law enforcement agencies to monitor the movement of firearms across the border and into and out of their jurisdictions. The web portal provides the current mechanism for these agencies to reconcile the permits they have issued with the firearms that have been imported, but does not allow for the monitoring of firearms movements across domestic borders. Customs and Border Protection understands that there may have been some delays in the uploading of some data to the AGD web portal in recent months. Any questions about the web portal and the data on it should be referred to AGD.

Customs and Border Protection has currently provided all data up to and including November 2011 to AGD.

Firearms statistics are provided at [Attachment A](#).

Firearm Import Controls Brief Consultation

External agencies consulted: Yes

1. Attorney-General’s Department – Drugs, Firearms and Fraud

Reviewed and approved brief:

Document Control Table

No.	Date	Author	Comments	Cleared by and date
0	17/9/12	s47F	Draft Talking points only	
0.1	19/9/12	s47F	Incorporated cleared brief from A.Browne C&E	
0.1	19/9/12	s47F	Incorporated cleared brief from R. Ellis-Brownlee C&T	
0.1	19/9/12	s47F	Incorporated input from A. Sullivan I&T	
0.1	20/9/12	s47F	Sent around to divisions	
0.4	21/9/12	s47F	Incorporated A. Sullivan I&T brief	
	21/9/12	s47F	Incorporated changes from C&T R. Ellis-Brownlee	NM cleared
0.5	24/9/12	s47F	Finalised talking points	M. Wardell 24/9
0.5	25/9/12	s47F	Incorporated changes as advised by A.Browne C&E	NM K. Woodford Smith
0.6	25/9/12	s47F	Finalised Document and sent to ND’s	
0.6	25/9/12	s47F	Minor edits requested by ND C&E	25/9 ND C&E
0.6	27/9/12	s47F		27/9 ND C&T
0.7	28/9/12	s47F	Minor edits requested by ND I&T	28/9 Chris Wall
1.0	28/9/12	s47F	DCEO BM & DCEO MCI for approval	
2.0	03/10/12	s47F	Minor update to page 1 wording from Exec Coord.	

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Attachment A

FIREARMS STATISTICS

DECLARED COMMERCIAL IMPORTS

- “Commercial” is defined as goods that have been imported to or exported from Australia in accordance with a customs import or export declaration, even if a private user.
- “Conventional firearms” operate by means of an explosive charge and discharge shot, bullets or other projectiles. These figured also include **imitation firearms** of the same type.
- “Air firearms” refer to firearms that discharge a projectile via a compressed gas or air system. This includes both **traditional air guns** and **paintball markers**.

FIREARM IMPORTATIONS

Current Data

Firearm imports by type

Conventional Firearms

Financial Year	Handguns	Rifles	Shotguns	Military	Total
2008–2009	7,288	39,592	9,815	827	57,522
2009-2010	8,604	51,144	13,371	582	73,701
2010-2011	15,564	44,525	12,055	442	72,586
2011-2012	16,485	54,694	18,739	88	90,006

Source: National Analytical Program – Firearms Lead

Air Firearms

Financial Year	Air Handgun	Air Rifle	Paintball Markers	Air Unclassified	Total
2008–2009	103	9,014	1,977	96	11,190
2009-2010	372	5,266	853	0	6,491
2010-2011	979	5,499	1,604	370	8,452
2011-2012	460	6,893	2,011	439	9,803

Source: National Analytical Program – Firearms Lead

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Historical data¹

Financial Year	Handguns	Rifles	Shotguns	Military	Antique	Total
1996-1997	5,526	46,052	37,601	512	69	89,760
1997-1998	11,326	13,050	9,918	400	143	34,837
1998-1999	9,733	5,540	2,372	669	91	18,405
1999-2000	20,983	8,563	3,256	299	51	33,152
2000-2001	12,615	11,109	4,889	2,007	46	30,666
2001-2002	8,887	10,401	6,221	2,387	120	28,016
2002-2003	12,833 ²	18,414 ³	5,371	3,751	570	40,939
2003-2004	8,714	21,413	4,442	1,984	427	36,980
2004-2005	8,466	22,348	6,973	915	84	38,786
2005-2006	5,876	21,665	10,036	1,706	106	39,389
2006-2007	7,221	26,963	10,728	2,681	227	47,820
2007-2008	6,475	41,840	8,620	1,176	N/A	58,111
2008-2009	7,288	39,592	9,815	827	N/A	57,522
2009-2010	8,604	51,144	13,371	582	N/A	73,701
2010-2011	15,564	44,525	12,055	442	N/A	72,586
2011-2012	16,485	54,694	18,739	88	N/A	90,006
TOTAL	166,596	437,313	164,407	20,426	1,934	794,673

Source: National Analytical Program – Firearms Lead

Note: Information on the reasons for imports of legitimate commercial firearms imports is not collected. However, some intelligence analysts have suggested that the strong Australian dollar during the Global Financial Crisis may have played a part in the significant increase in commercial rifle importations in the 2009-10 financial year.

¹ Historical data contains figures for conventional firearms (non-air) only

² This figure contains two (2) deactivated and twenty (20) imitation handguns

³ This figure contains one (1) deactivated and three (3) imitation rifles

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FIREARM EXPORTS

Current Data

Financial Year	Handguns	Rifle	Shotgun	Military	Air	Other	Total
2008–2009	888	300	341	119	848	208	2,704
2009-2010	1,276	947	981	5	82	0	3,291
2010-2011	1,698	1,079	913	34	816	0	4,540
2011-2012	2,376	1,942	1,483	135	408	177	6,521

Source: National Analytical Program – Firearms Lead

Note: In addition to the above commercial exportations, there were 1,980 firearms legally exported as 'accompanied baggage' in the passenger stream in 2009-2010. (Exports of firearms via accompanied baggage are often for sporting events).

Commercial Firearms Exports – historical data

Financial Year	Handguns	Rifle	Shotgun	Military	Antique	U/C*	Total
2002–2003	1,836	2,391	2,985	256	330	1,378	9,176
2003–2004	687	1,361	397	42	198	0	2,685
2004–2005	5,430	2,020	511	69	424	0	8,454
2005–2006	1,435	1,733	697	14	87	0	3,966
2006–2007	452	1,072	1,084	55	97	18	2,778
2007–2008	946	1,604	862	19	N/a	0	3,431
TOTAL	10,786	10,181	6,536	455	1,136	1,396	30,490

*U/C – Uncategorized. The information on the firearm is not sufficient to categorise

Source: National Analytical Program – Firearms Lead

UNCLASSIFIED**Australian Customs and Border Protection Service****Key Issue 4****Waterfront Criminality****Issues**

Media reporting has focussed on vulnerabilities in the waterfront environment which were identified by law enforcement agencies as part of Operation Polaris.

Talking points

- Criminality at Australian ports and wharves has been a challenge for law enforcement agencies for many decades. Customs and Border Protection is of the view that these elements continue to pose a serious risk to the Australian border in particular around the movement of illicit drugs.
- At the waterfront, Customs and Border Protection employs a risk based intervention strategy that is designed to detect, deter and disrupt criminal activity and improve our presence in the port environments through:
 - *Business as usual activities* such as risk assessing all vessels and travellers, boarding commercial vessels, cruise ships and small craft arriving from overseas to ensure compliance with a range of legislative requirements and conducting waterfront patrols at major, regional and remote ports around Australia. These activities provide a physical deterrence and assist the gathering of information and intelligence;
 - *Targeted Operations* directed at specific entities or particular goods/vessels. These operations are often conducted jointly with other agencies (AFP, State Police, and ACC) and often employ specialist intelligence analytical teams, specialist surveillance teams, and the Container Examination Facilities (CEF) for cargo examination; and
 - *A Campaign Approach* that was instituted in 2008/09 with intensive activity around the waterfront environment in all ports with a Customs and Border Protection presence and some very remote ports. Campaign activities are designed to increase Customs and Border Protection's presence on the waterfront, test assumptions relating to compliance activity and to gather information for further analysis. Campaigns also serve as an additional means of deterrence and disruption.

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- Because of our presence in the waterfront, Customs and Border Protection was observing that the traditional face of waterfront criminality was changing. During 2008 and 2009 Customs and Border Protection conducted a detailed assessment of criminality on the waterfront and undertook targeted campaign activity on the waterfront which identified a number of suspected criminally complicit maritime employees and the process vulnerabilities they exploited to facilitate criminal activity on behalf of serious and organised crime.
- Given the benefits of joint agency operations where the unique capabilities of each agency (both intelligence and operational) are brought together to maximise the detection and disruption of criminal behaviour, the then-Chief Executive Officer of Customs and Border Protection approached his colleagues in the Australian Federal Police (AFP), the Australian Crime Commission (ACC), the New South Wales (NSW) Police and the New South Wales Crime Commission (NSWCC) to establish Joint Agency Taskforce in Sydney, focused on criminality on the waterfront. Joint Agency Taskforce POLARIS, commenced in July 2010.
- In March 2012, the Task Force reported on the vulnerabilities on the waterfront and in the cargo supply chain. The report recommended a range of measures to reduce the vulnerability of the waterfront and cargo supply chain to organised crime. These measures are consistent with the Government's response to Parliamentary Joint Committee report of the *Inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime* which was released in September 2011.
- In April 2012 the Minister for Home Affairs announced the implementation of a number of measures in response to these recommendations. These measures strengthen the environment and make it more difficult for organised criminals to operate. These included:
 - Anti-corruption measures (see Key Issue 6 brief – Integrity)
 - Strengthening ASIC/MSIC requirements - review of the offences that make a person ineligible to hold an ASIC or MSIC, with a view to extending the scheme to protect against infiltration by serious and organised criminal networks. The current list of offences was developed with preventing terrorism in mind, rather than combating organised crime. AGD and Department of Infrastructure and Transport will conduct this review, which is underway.
 - Strengthening security of Integrated Cargo System (ICS) information – we have taken action to strengthen the security of, and access to, the information contained in the ICS.

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Additionally, work will be progressed on increasing the auditing capabilities of the ICS to detect anomalies and gather intelligence.

- Improved port security measures - more effective use of criminal intelligence in the response to organised crime in the aviation and maritime sectors. AGD will work with Customs and Border Protection to assess how this operating model, including legislative changes, could apply to the holders of customs broker, warehouse and depot licences.
- Improving security at container examination facilities - measures will be undertaken immediately at the Port Botany Facility and progressively rolled out to other examination facilities in Melbourne, Brisbane, Adelaide and Perth. These include, for example:
 - improving perimeter security and security signage;
 - reviewing standard operating procedures at the CEFs, including covert movements and examination of containers; and
 - implementing a quality assurance program including random and targeted audits for x-ray image analysis.
- Industry engagement measures – Attorney-General’s Department led industry forum to examine options for serious and organised crime prevention at Australian airports and seaports. These will focus on building stronger links between law enforcement agencies, and representatives of the aviation and maritime sectors, and ensuring that industry participants are consulted in the development of any organised crime measures that may affect them.
- Review of other controls and powers - Customs and Border Protection is progressing other initiatives to improve the integrity of the trading system. This includes higher entry standards and mandatory continuing professional development for customs brokers and tailored licence conditions to reflect the relative risk of depots, warehouse and brokers. Customs and Border Protection will also increase high visibility overt patrols, targeting identified risk areas of the waterfront and develop covert patrols, supplemented by CCTV, to gather further intelligence on risk areas, as well as operating in conjunction with industry security services that provide security coverage of the waterfront.
- Additional Joint Operational Task Forces targeting the waterfront - given the success of existing Joint Agency Task Forces, Operation TRIDENT commenced in August 2012 in Melbourne and involves intelligence, investigations and proactive/operational teams from

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Customs and Border Protection, AFP, Victoria Police and ACC on a full time basis, and Austrac and Australian Taxation Office on a significant part-time basis. Planning for a further Task Force in Brisbane has commenced; however, it is not expected to be operational until 2013.

- In the last two years Operation POLARIS results include:
 - 30 arrests;
 - the seizure of over 12 tonnes of illicit substances and precursor chemicals;
 - the seizure of 119 tonnes of loose leaf tobacco and 92.7 million cigarette sticks which represent around \$77 million in potential revenue evasion; and
 - seizure of over \$1m in cash and ten firearms and three stun guns.

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UNCLASSIFIED**Background*****Waterfront Investigations***

Operation INCA was a joint AFP and Customs and Border Protection investigation conducted from July 2007 to September 2008 into an Australian-based Italian organised crime syndicate alleged to be involved in the importation of significant quantities of MDMA through Melbourne CEF. Operation INCA identified that the syndicate utilised complicit waterfront employees to facilitate and monitor their illicit importations.

Following Operation INCA, Customs and Border Protection established Project YELL, which focussed on the risks surrounding complicit waterfront employees supporting criminal activities. YELL identified that criminally complicit maritime employees were using their positions to observe law enforcement activities and consignments of interest while under the guise of performing normal duties. YELL also determined that criminal networks and criminally complicit maritime workers appeared to have an awareness of law enforcement methodologies, supply chain processes as well as container movements when undergoing covert examinations.

Criminality Campaign

The Campaign *Criminality at the Waterfront* commenced in September 2009 and focussed on a nine month program of waterfront activity in New South Wales, Victoria and Western Australia. It was designed to identify and respond to process vulnerabilities and high risk entities, gather further information about risk factors, inform and improve our targeting practices and the deployment of resources in addressing key vulnerabilities and highest risk.

The main findings of the campaign activity were that sea cargo selection and examination processes were not keeping pace with the criminal methodologies which are constantly evolving. Entrenched organised crime infiltration of the Container Terminal Operators has occurred and cargo examination processes have been compromised by criminal groups who, through counter surveillance and other techniques, are aware of Law Enforcement Agency interest in their suspect consignments.

Joint Agency Task Forces

A WA Task Force was established by Customs and Border Protection, AFP and WA Police in December 2010 in Fremantle. In July 2011, the Australian Crime Commission formally joined the Joint Agency Task Force which focuses on serious organised criminal activity within local, national and transnational environments.

This Joint Agency Task Force focuses on criminality at the border (not limited to maritime) and develops high level targets of interest among criminal groups that have previously been operating while maintaining a low profile to law enforcement agencies.

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No.	Date	Author	Comments	Cleared by and date
0.1		s47F [REDACTED]	First draft	
1.0	25/9/12	s47F [REDACTED]	Amendments by ND C&E	ND C&E 25/9/12
2.0	3/10/12	s47F [REDACTED]	Amended with ND C&E changes	ND C&E 3/10/12
3.0	12/10/12	s47F [REDACTED]	Amendments made – Cleared by ND I&T and ND C&E – Sent to DCEO BM and MCI for clearance	

Consultation

External agencies consulted: Victoria Police, AFP and AGD

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Australian Customs and Border Protection Service

Key Issue 5

Drug Detections 2011-12 and Q1 2012-13

Issues

Detections at the Australian border for major illicit drugs during 2011-12 have increased in terms of detection numbers but not weight.

Talking points

- FY 2011-12 concluded with 6,886 detections of drugs and precursors, a 42% increase in the number of detections from the preceding year (4,827 detections in 2010-11).
- There have already been 2,898 detections of drugs and precursors in the first quarter of the financial year 2012-13 to 30 September 2012. *(higher pro-rata in 2012-13)*
- The detections have comprised a wide range of illicit substances including amphetamine-type stimulants (ATS), cocaine, heroin, MDMA (ecstasy), cannabis and chemical precursors to synthetic drugs.
- The total quantity of major illicit drugs and precursors seized at the border for 2011-12 was 3,497.6kg.
- The total quantity of major illicit drugs and precursors seized at the border in the first quarter of 2012-13 was 1,202.3kg *(higher pro-rata in 2012-13)*.
- In addition to the high detection rate for the major illicit substances, Customs and Border Protection also detected large numbers of 'other' drug types throughout 2011-12.
- Of particular note was the detection of more than 10,000 litres of hypophosphorous acid (a reducing agent used in the manufacture of methamphetamine) in sea cargo in early 2012.
- All cargo continues to be risk assessed and all high risk consignments are examined.
- Customs and Border Protection continues to work with our partner law enforcement agencies such as the Australian Federal Police (AFP) and the Australian Crime Commission (ACC) on a number of important initiatives including:

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- working with State law enforcement on joint agency operations;
 - seeking out intelligence from international law enforcement partners; and
 - undertaking analysis of data aimed at identifying targets for law enforcement activity.
- Detail about these initiatives has been restricted given their operational nature. The objective is to achieve significant detections and prosecutions.
 - Customs and Border Protection made significant detections of major illicit drugs and precursors¹ in 2011-12, including the seizures of:
 - 41kg of pseudoephedrine (a precursor to methamphetamine)
[6 June 2012]
 - 20kg of heroin [29 May 2012]
 - 15kg of cocaine [26 April 2012]
 - 56kg of heroin [7 and 8 April 2012]
 - 2012-13 detections have included:
 - 70kg of crystalline methamphetamine hydrochloride ('ice') [11 September 2012]
 - 5.7kg of cocaine [11 September 2012]
 - 5.5kg of heroin [17 August 2012]
 - 12kg of pseudoephedrine (a precursor to methamphetamine)
[10 August 2012]
 - 12kg of pseudoephedrine (a precursor to methamphetamine)
[26 July 2012]
 - 306kg of crystalline methamphetamine hydrochloride ('ice')
[19 July 2012]
 - 252kg of heroin [19 July 2012]
 - other major detections of drugs not yet made public in view of ongoing operations

¹ Figures refer to detections of ATS, cannabis, cocaine, heroin, MDMA and precursors only, and exclude PIEDs and 'other' drugs'

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BACKGROUND

Drug detections in 2011-12²

A total of 3,497.6kg of illicit drugs and precursors were detected during 2011-12, compared to 4,756.1kg in the preceding FY 2010-11.

Detections for 'Other' drug types

In addition to the high detection rate for the key border controlled illicit drugs and precursors during 2011-12, Customs and Border Protection also continued to detect large numbers of 'Other' drug types (6,221 detections compared to 5,135 in 2010-11). Whilst it is not possible to report the overall weights of substances within this 'catch all' category, due to no consistent unit of measure available, it is possible to highlight some of the significant seizures from a select sample of substances. Of particular note was the detection of more than 10,000 litres of hypophosphorous acid in sea cargo arriving in Sydney in early 2012. The consignment was concealed behind a cover load of cardboard boxes; although hypophosphorous acid is not a border controlled substance it was referred to New South Wales Police as it is a reducing agent used in the manufacture of methamphetamine and is controlled under State legislation.

Refined risk-based approach for Air Cargo and Sea Cargo

Customs and Border Protection had previously interpreted the fall in the weight of drugs and precursors detected in 2009-10 as unrelated to the refined risk based approach adopted from that year. This judgment **has been confirmed by the recovery of detected drug and precursor weights in 2010-11 and 2011-12 as well as the strong detections in Q1 of 2012-13.**

The refined intervention approach primarily reduced the number of sea cargo inspections of low risk cargo at the ports of Fremantle and Brisbane, with a small reduction in Sydney. All cargo continues to be risk assessed and all high risk consignments are examined.

Historically, most major drug detections in sea cargo have been detected at Melbourne and Sydney ports. This trend is continuing.

Decline in MDMA detections

The weight of MDMA seized at the Australian border has been very low (12kg in the FY 2011-12 financial year, **6.2kg in Q1 of 2012-13**). Beginning in 2008-09, the amount of MDMA seized at the Australian border has decreased dramatically from previous levels, leading to the situation where genuine MDMA became difficult to obtain in Australia. The trend appears to be related to broader changes in the Australian and international MDMA market over the past three years, which have seen a drop in MDMA purity, a decline in the presence of MDMA in drug use monitoring reporting, and a global trend of decreasing seizures and purity.

² Figures refer to detections of ATS, cannabis, cocaine, heroin, MDMA and precursors only, and exclude PIEDs and 'other' drugs'

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The shortage of MDMA is understood to have been caused by a global shortage of MDMA precursors safrole and piperonylmethylketone (PMK, also known as MDP-2-P). This is thought to have been caused in part by the intervention of international law enforcement agencies against illicit production of safrole-rich plant oils in South East Asia, partly by the tightened regulation of drug precursor chemicals in China, and partly by the competition for the same raw material supply from the licit industries using safrole in legitimate industrial applications. However, information from European law enforcement authorities and international detections of MDMA suggest that transnational MDMA manufacturers and traffickers may have at least partially overcome the precursor shortage. While the international trafficking of MDMA does not seem to have recovered to its pre-shortage levels to date, the number, if not the weight, of these detections has risen rapidly from late 2011.

The decline in global MDMA availability has been accompanied by a marked increase in international trafficking of MDMA replacement drugs, both in Australia and overseas. Several such replacement substances, mainly analogues of the prohibited drug methcathinone, have been detected at the Australian border. Action is being taken against these imports under the provisions of the *Criminal Code Act 1995*.

Fourteen novel synthetic drugs were added to the schedules of the *Customs (Prohibited Imports) Regulations 1956* from December 2010, enabling their seizure without a warrant at the Australian border. Regulatory processes against new synthetic drugs of abuse have continued in 2011-12, mainly by way of new substance inclusions in the Commonwealth legislation administered by the Department of Health and Aging and in State and Territory laws.

The number of drug detections vs. the weight of drugs detected

Caution needs to be exercised when interpreting the number of detections and the weight of drugs detected.

- The number of drug detections is heavily influenced by 'scatter' importations – sending many consignments containing small amounts of drugs in postal articles and air cargo parcels. 'Scatter' shipments have much stronger influence over the count of detections than over the total detected weight of drugs. *Example: The number of 2011-12 MDMA detections was nearly nine times higher (800% higher) than the number of equivalent detections in the preceding 2010-11, but only 36% higher in weight.* The majority of postal 'scatter' importations have been arriving at the Sydney international mail exchange, with Melbourne a distant second.
- The weight of drugs detected is heavily influenced by large but rare detections, mainly, but not exclusively, in sea and air cargo. *Example: over 69% of the 785.7kg of cocaine detected in Australia in 2011-12 was in just two large detections, of 276kg and 271kg, while 977 other detections of cocaine comprised the remaining weight.* Consequently, the total weight of drugs being detected from one year to another can vary significantly.

In the financial year 2011-12:

- **the weight of detected amphetamine-type stimulants (ATS) was over 3.3 times that detected in 2010-11** [347.6kg in 2011-12 against 105.2kg in 2010-11];
- **the weight of detected amphetamine-type stimulants (ATS) is over 3.3 times that detected in 2010-11** [347.6kg in 2011-12 against 105.2kg in 2010-11];

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- **the weight of cannabis detected in 2011-12 was 24.2% of that detected in 2010-11** [16.9kg in 2011-12 against 69.6kg in 2010-11];
- **the weight of cocaine detected in 2011-12 was 12% higher than in 2010-11** [785.7kg in 2011-12 against 701.8kg in 2010-11];
- **the weight of heroin detected in 2011-12 was 64% of that detected in 2010-11** [256.2kg in 2011-12 against 400.2kg in 2010-11];
- **the weight of MDMA detected in 2011-12 was 36% higher than that detected in 2010-11** but has remained extremely low in absolute terms [12kg in 2011-12 against 8.8kg in 2010-11]; and
- **the weight of drug precursors detected in 2011-12 was 60% of that detected in 2010-11** [2,079.2kg in 2011-12 against 3,470.5kg in 2010-11].

In the first quarter of the financial year 2012-13 (to 30 September 2012):

- **the weight of detected amphetamine-type stimulants (ATS) has already exceeded by 20% the weight detected throughout the entire 2011-12** [417.4kg in 2012-13 against 347.6kg in 2011-12];
- **the weight of cannabis detected to date in 2012-13 has been low in absolute terms and amounted to 20.1% of the amount detected in 2011-12** [3.4kg in 2012-13 against 16.9kg in 2011-12];
- **the weight of cocaine detected to date in 2012-13 stands at 21.5% of the total weight detected in 2011-12** [169.6kg in 2012-13 against 785.7kg in 2011-12];
- **the weight of detected heroin has already exceeded the weight detected throughout the entire 2011-12 and amounts to 115.5% of the last year's detections** [296kg in 2012-13 against 256.2kg in 2011-12];
- **the weight of MDMA detected in the first quarter of 2012-13 stands at 51% of the total weight detected throughout 2011** but is still very low in absolute terms [6.2kg in 2012-13 against 8.8kg in 2011-12]; and
- **the weight of drug precursors detected to date in 2012-13 stands at 14.8% of the total weight detected in 2011-12** [309.7kg in 2012-13 against 2,079.2kg in 2011-12].

The ContacNT Issue

ContacNT is an over-the counter cold and flu pharmaceutical with high pseudoephedrine content manufactured in China for the Chinese domestic market. Following the introduction of restrictions on bulk pseudoephedrine trading by the Government of China in 2009-10, *ContacNT* has been rising in prominence as an internationally trafficked source of pseudoephedrine for the clandestine production of methamphetamine. **It currently accounts for more than half the weight of all precursors detected in Australia in Q1 2012-13.**

2010-11:

All precursors **785** detections, weight detected **3,470.5kg**

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of that, *ContacNT* **64** detections, weight detected **129.1kg**
(8.1% of precursor detections by number, 3.7% by weight)

2011-12:

All precursors **1,026** detections, weight detected **2,079.2kg**
of that, *Contac NT* **262** detections, weight detected **879.4 kg**
(25.5% of precursor detections by number, 30% by weight)

Q1 2012-13 (to 30 September 2012):

All precursors **201** detections, weight detected **309.7kg**
of that, *ContacNT* **43** detections, weight detected **176.4 kg**
(21.3% of precursor detections by number, **56.9 %** by weight)

Note:

For the first time ever more than half of the weight of all precursor detections was ContacNT.

As of 18 June 2012, the Government of China has placed the previously unregulated *ContacNT* and other pseudoephedrine containing pharmaceuticals on equal legal footing with illicit drug precursors, where the circumstances of possession, sales or exports suggest their use in illicit drugs manufacturing. It is too early yet to assess any effect of that measure on *ContacNT* trafficking to Australia.

Drug Detections FY 2011-12 and FY2012-13 YTD

	Number of detections				Weight of drugs detected (kg)			
	2009-2010	2010-2011	2011-2012	2012-2013	2009-2010	2010-2011	2011-2012	2012-2013
ATS	672	1,077	1,078	439	66.7	105.2	347.6	417.4
CANNABIS	1,454	2,137	2,660	785	19.6	69.6	16.9	3.4
COCAINE	291	486	979	473	386.5	701.8	785.7	169.6
HEROIN	250	232	179	49	117.5	400.2	256.2	296.0
MDMA (ECSTASY)	53	110	964	951	6.5	8.8	12.0	6.2
PRECURSORS	690	785	1,026	201	655.8	3,470.5	2,079.2	309.7
Total	3,410	4,827	6,886	2,898	1,252.6	4,756.1	3,497.6	1,202.3

FY 2012-13 data to 30 September 2012

NOTE 1: All weights above are based on the known net weight, and do not account for purity

NOTE 2: All border detections information provided in this document refers only to the detections of amphetamine-type stimulants (ATS), cannabis, cocaine, heroin, MDMA and chemical precursors to synthetic drugs, and does not include information on other drugs detected at the Australian border.

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12 October 2012

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UNCLASSIFIED**Document Control Table**

No.	Date	Author	Comments	Cleared by and date
0.1	23/01/12	s47F	First draft	
0.2	13/02/12	s47F	ContacNT para added, updated to 31 Jan 2012	
0.2	30/04/12	s47F	Updated to 31 March 2012	
0.3	18.09.12	s47F	Updated to 31 August 2012, 'Other' drug paragraph added.	NM Intelligence 19 September A/g ND Intelligence & Targeting 21 September
1.0	24/9/12	s47F	Update to v1.0	A/g DCEO 28/9/12
1.1	4/10/12	I&T Coord	Changes requested by A/CEO	4 October 2012
2.0	5/10/12	s47F	Received	
3.0	9/10/12	s47F	Date change on Page 5 (FY 2012-13)	A/ND I&T 9 October 2012
4.0	12/10/12	s47F	All detection figures updated to include up to 30 September 2012	a/g Director Strategic Intelligence 12 October 2012

Consultation

External agencies consulted: No

UNCLASSIFIED**Australian Customs and Border Protection Service****Key Issue 6****Anti-Corruption and Integrity Measures – Investigations of Customs Officers****Issue**

Recent media reports of an officer being charged and allegations of corruption within Customs and Border Protection may give rise to a perception of systemic corruption within the agency.

Talking points

How are we managing corruption issues within Customs and Border Protection?

New Integrity Measures

- On 28 April 2012, the Minister for Home Affairs and Minister for Justice announced additional integrity measures to strengthen Customs and Border Protection against corruption.
- Processes are underway to provide the same integrity powers currently available to the Australian Federal Police (AFP) and the Australian Crime Commission and to extend these powers to Customs and Border Protection. These include:
 - the power to authorise drug and alcohol testing;
 - the power for the CEO to make a declaration terminating the employment of an officer for serious misconduct;
 - the introduction of mandatory reporting requirements, whereby Customs and Border Protection officers are required to report any misconduct or corruption activity; and
 - The Government has agreed to the PJC's recommendation on introduction of Integrity Testing for agencies currently under ACLEI's jurisdiction (AFP, ACC and Customs). The introduction will require legislative amendment. The Attorney General's Department is the lead on the introduction of this measure. Customs and Border Protection supported the introduction of targeted integrity tests.

Internal Integrity Review

During May 2012, Customs and Border Protection commissioned an *internal integrity review* of its existing integrity and anti-corruption measures.

The Integrity Review Report validated the current measures Customs and Border Protection has in place to counteract misconduct and corruption but recommended that additional measures could be

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pursued to further strengthen the organisations defences against infiltration and corruption. The report recommended improvements and additional measures to strengthen the integrity of the agency. The recommendations support the reforms proposed in the *Law Enforcement Integrity Legislation Amendment Bill 2012* (the Bill).

Customs and Border Protection is managing the integrity recommendations and legislative requirements as a programme of activities aligned to three strategic goals. These goals are:

- Enhance *Engagement* with internal and external stakeholders on integrity;
- *Prevent* infiltration and corruption; and
- Increase *Expertise* within the organisation to facilitate the integrity strategic change program.

In addition to the integrity measures stemming from the legislative changes recommended in the Bill, Customs and Border Protection is currently working on the implementation of strategies to enhance the organisations preparedness for the risk of infiltration and corruption. They are aimed at further strengthening the integrity culture of the organisational, with a specific focus on employees' 'pathway', from pre-recruitment through to separation or retirement from Customs and Border Protection.

Some of the key strategies consist of:

- the integration of integrity components into all aspects of recruitment and induction;
- embedding integrity elements into all employee training packages across the organisation;
- the establishment of a Confidant network consisting of officers, designed to provide all employees with access to 'trusted' advisers to support the organisation's mandatory reporting requirements.
- providing staff with greater work flexibility and career streaming opportunities which recognise the importance of staff mobility and performance management as an effective corruption prevention mechanism;
- the provision of improved IT mechanisms to identify inappropriate access and use of Customs and Border Protection systems; and
- to educate staff that life-circumstances change over time, which may require them to declare conflicts of interest relevant to their work and to self-report any changes in their circumstances that may impact on their work in Customs and Border Protection.

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Hamburger Review

- In February 2012, the Minister appointed Mr Peter Hamburger PSM to review the implementation of ACLEI's jurisdiction to deal with corruption issues within Customs and Border Protection. The Review's focus was to ensure that appropriate resources and related operating arrangements have been directed effectively to strengthen resistance to corruption within Customs and Border Protection. Customs and Border Protection has continued to work closely with ACLEI since the review to implement all of Mr Hamburger's recommendations. ACLEI and Customs are implementing further continuous improvement strategies to ensure the preservation of a robust integrity partnership.

Approach to Integrity and Professional Standards

- Customs and Border Protection takes corruption issues very seriously. The Integrity and Professional Standards Branch is responsible for the implementation of preventative and detection strategies to minimise the risk of corruption and fraud within Customs and Border Protection; which enables the organisation to foster an environment that is resistant to criminal infiltration and corruption and the protection and security of the integrity of our operations, personnel and information.
- Integrity issues are at the forefront of Executive consideration with an Integrity Committee being formed of senior executive members to oversight the progress of implementing anti-corruption initiatives.
- In addition, regular senior executive briefings are provided on active investigations.
- Our Integrity and Professional Standards Branch works closely with other Law Enforcement Agencies including ACLEI and the Australian Federal Police (AFP) to investigate allegations of corruption or misconduct by Customs and Border Protection officers. These partnerships include CEO level consultations.

Integrity Partnership

- Since 1 January 2012, Customs and Border Protection has notified a total of 17 matters to ACLEI that meet the definition of corruption in the LEIC Act, whereas since 1 January 2011, a total of 55 matters have been referred to ACLEI. A corruption issue is any information or an allegation that may disclose corrupt conduct. Not every, or even any, notification will result in a finding of corrupt conduct. However, it is important that any indications of possible corrupt

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conduct are notified to ACLEI, for the Integrity Commissioner to determine how each one should be dealt with. These statistics reflect this principle.

- The following provides a breakdown on the number and status of each notification:

Status of notification	Notifications since 1 January 2012	Notifications since 1 January 2011
Decision pending an assessment by ACLEI	7	10
No action by ACLEI – however require final report from I&PS	1	8
No action by ACLEI	1	5
ACLEI directed I&PS to investigate	5	8
Joint investigation by ACLEI and I&PS	0	5
Matters closed	3	19
Totals	17	55

- I&PS officers work closely with ACLEI staff to undertake joint investigations, to identify emerging risks, develop education and training modules.
- Liaison continues with AFP and ACC in the community of practice working group to develop mitigation strategies surrounding similar corruption risks.

Integrity Framework

- Customs and Border Protection has established an Integrity Framework based on the four key elements of preparedness, prevention, detection and resolution. The Framework is supported by a number of elements: training and awareness, integrity risk management, organisational suitability assessments and security clearances, and an investigations and intelligence function.
- The framework is under continual review and improvement.

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UNCLASSIFIED**Allegations received by Integrity and Professional Standards**

- From 1 January 2012 to 12 September 2012, 336 matters were received by the Professional Standards Coordination Unit (PSCU). Of the 336 matters:
 - 82 required no further action.
 - 70 are still under investigation or assessment.
 - 184 have been investigated and finalised.
- The outcome of the 184 concluded investigations are:
 - 58 matters were referred to external agencies as it was determined that the information did not relate to Customs and Border Protection officers;
 - 16 matters, on conclusion of enquiries, were found to be unsubstantiated – improvements to policy, procedures or minimisation and treatment options to risks and threats were identified;
 - 10 matters were referred for security related action regarding the staff members' suitability to maintain a Commonwealth security clearance;
 - 58 matters were requests for information from external agencies; and
 - 42 matters of a non-criminal nature were referred to People and Corporate Services for administrative consideration.
- 5 officers have been suspended (placed on leave) from 1 January 2012, with two of these officers resigning. In relation to these 5 matters:
 - A Customs and Border Protection officer is currently under investigation for the unauthorised access and release of information. This matter is ongoing;
 - A Customs and Border Protection officer was charged by Western Australia Police with assault occasioning actual bodily harm. This charge was for action outside the work environment. This officer, who resides in Queensland is yet to travel to Western Australia to face these charges;
 - A Customs and Border Protection officer was under investigation for theft and unauthorised access to information technology systems. This officer resigned whilst under investigation.
 - A Customs and Border Protection officer was charged by Airport Uniformed Police at Melbourne Airport with theft of a passenger's wallet. This officer resigned whilst under investigation;
 - A Customs and Border Protection officer was arrested by the Australian Federal Police and charged with:

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- Conspiracy to import a commercial quantity of border controlled precursors, namely pseudoephedrine, contrary to section 307.11 of the *Criminal Code Act 1995*.
- Receiving a bribe (Bribery of a Commonwealth Public official) contrary to section 141.1(3) of the *Criminal Code Act 1995*.
- Abuse of Public office contrary to section 142.2 of the *Criminal Code Act 1995*.

The matter is now before the court.

Arrest of Customs and Border Protection Officer in relation to Sydney Airport

- A Customs and Border Protection officer was arrested by the Australian Federal Police and charged with:
 - Conspiracy to import a commercial quantity of border controlled precursors, namely pseudoephedrine, contrary to section 307.11 of the *Criminal Code Act 1995*.
 - Receiving a bribe (Bribery of a Commonwealth Public official) contrary to section 141.1(3) of the *Criminal Code Act 1995*.
 - Abuse of Public office contrary to section 142.2 of the *Criminal Code Act 1995*.

This matter is now before the Court.

Waterfront Allegations

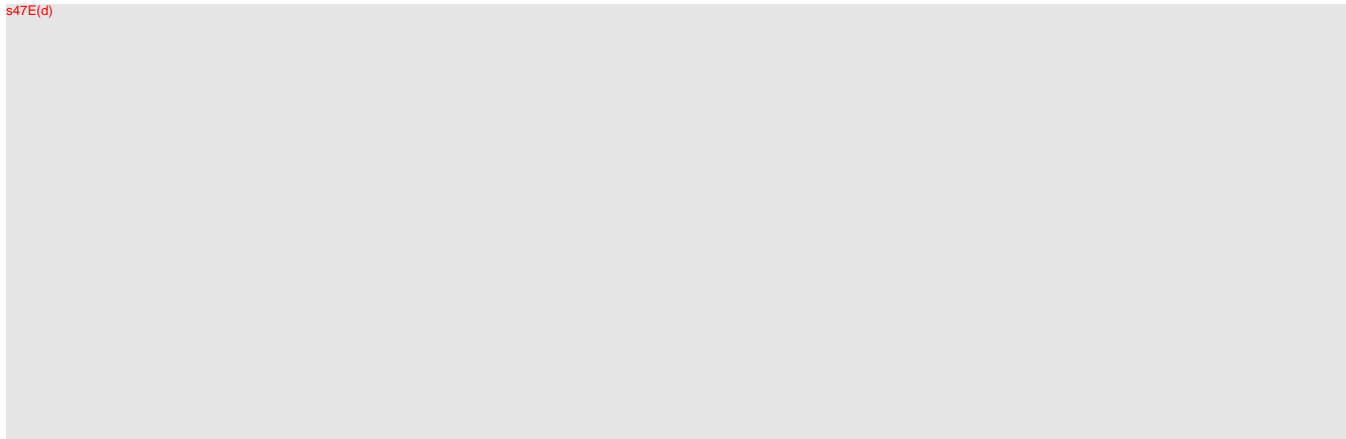
- Operation POLARIS has recently reported on activities on the NSW waterfront and made a number of recommendations to strengthen the border against infiltration from organised crime groups. Operation POLARIS is a multiagency task force comprising criminal investigators and intelligence analysts from the Australian Federal Police, the Australian Customs and Border Protection Service, NSW Police Force, NSW Crime Commission and the Australian Crime Commission. Operation POLARIS's objective has been to investigate, deter and prevent serious and organised criminal activity at international sea cargo terminals in New South Wales.
- Customs and Border Protection is continuing to work with ACLEI, Operation POLARIS and the emerging Operation TRIDENT to improve security on the Victorian water front relating to corrupt activity. While many of the identified measures may be quickly addressed, others will require time to develop and implement such as those requiring the assistance of the Department in following the legislative change process. These and a range of other measures currently

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being considered by Customs and Border Protection will be released through the appropriate channels. Due to the sensitive nature of the measures, the areas they refer to, and their closeness to the operational activities of Operation POLARIS, we are unable to comment further.

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Background

As at 12 September 2012, Customs and Border Protection has notified a total of 55 matters to the Australian Commission for Law Enforcement Integrity (ACLEI) since it came under the jurisdiction of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act) on 1 January 2011. Media reports obtained from transcripts of a recent Parliamentary Joint Committee on ACLEI has suggested that this number of matters reported may give rise to a perception of systemic corruption within the agency.

Various journalists, including Nick McKenzie and Richard Baker from *The Age* and Linton Besser from the *Sydney Morning Herald* have published articles alleging corruption within the ranks of Customs and Border Protection. Recent firearm detections by the NSW Police Force have also brought Customs and Border Protection into the forefront of political consideration with Opposition calls for an independent inquiry into the Customs and Border Protection service.

On 28 March 2012 the '*The Age*' newspaper published a report into the Australian Customs and Border Protection Service (Customs and Border Protection) alleging 24 Customs and Border Protection officers are under investigation by several Law Enforcement Agencies for corruption or misconduct.

Within the article the '*The Age*' journalists Nick McKenzie and Richard Baker make a number of allegations and name a number of joint Law Enforcement Operations. The article also includes some detail into the circumstances surrounding the suspension and resignation of Customs and Border Protection officer in January 2011. The article discusses the perceived inability of the Australian Commission for Law Enforcement Integrity (ACLEI) ability to effectively police Customs and Border Protection and that border agencies such as the Australian Quarantine and Inspection Service (AQIS) do not fall under ACLEI's jurisdiction.

The article suggests that the need for a Royal Commission into the Maritime and Aviation sectors is required.

Sensitivities

It appears that the journalists have obtained this information from open source or public documents. Although the information is of a general nature the possibility of adverse effects on current investigations and joint operations may exist, however, the actual effect of this article is yet to be identified.

Customs and Border Protection works closely with and has a strong relationship with the other Law Enforcement Agencies involved in such investigations including Australian Commission of Law Enforcement Integrity and the Australian Federal Police.

Customs and Border Protection, Integrity and Professional Standards will continue to liaise with the other affected agencies to minimise any detrimental operational consequences.

Customs and Border Protection complies with the requirements of the Commonwealth Fraud Control Guidelines 2011 with reference to the Australian National Audit Office's Better Practice Guide on Fraud Control in Australian Government Entities (March 2011).

Customs and Border Protection plays a significant role in the National Security and Border Protection environment. Infiltration and corruption have been identified as a strategic enabling risk

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which impacts on the objective of fostering an organisational environment that is resistant to criminal infiltration and corruption that enables the management of border risks.

Customs and Border Protection has a well-established fraud control and corruption prevention framework. The key elements of this framework encompass preparedness, prevention, detection and resolution.

Preparedness: We have addressed the need for management support via setting an appropriate 'tone at the top' and establishing governance and regulatory compliance arrangements which promote an overall fraud and corruption prevention culture within the agency. The development of robust policies, procedures and guidelines also enables us to deal with incidents efficiently. A strategy is in place to ensure that staff receive appropriate and specific fraud and corruption awareness training and have access to reliable material on what actions they should take on identifying and reporting unlawful activities.

Prevention: We are addressing the need for a thorough understanding of the sources and potential pressure points associated with fraud and corruption by identifying and assessing risks based on the application of existing controls in all areas of the agency. We are implementing measures to identify and address relevant areas where there is the opportunity to improve on existing fraud and corruption strategies. We are implementing a program of work to examine specific areas with reference to 'single points of failure' which impact on fraud and corruption risks and the need to implement additional strategies in those areas.

Detection: We have established appropriate channels for reporting fraud and corruption. In addition, we are continually monitoring the effectiveness of our agency-wide detection mechanisms including compliance, investigations and analytical/intelligence capabilities.

Resolution: We have established strategies in place so that consideration can be given to prosecution or other available remedies in appropriate circumstances. The strategies allow for administrative, civil and/or criminal processes to be carried out. Additionally, an important element in place across the agency is the opportunity to examine the outcomes of investigations and administrative or criminal processes to further refine our fraud and corruption preparedness and prevention strategies (more commonly referred to as 'closing the loop'). We have adopted a risk-based approach for investigation outcomes to report against the identified risks in the Fraud Control and Corruption Prevention Plan 2010 – 2012. Linkages between outcomes of investigations and results of fraud risk assessments are also being addressed through selected elements of internal audit activity.

From 1 January 2011, Customs and Border Protection was included within the jurisdiction of the ACLEI. The extension of ACLEI's jurisdiction to the law enforcement functions of Customs and Border Protection officers is an important element of the Australian Government's anti-corruption framework. This measure recognises the strategic role played by Customs and Border Protection officers in safeguarding Australia's borders, and the corruption risks associated with that role.

Customs and Border Protection Integrity Framework

Attachment B provides a timeline of the progression of Integrity within Customs and Border Protection

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UNCLASSIFIED***Training and Awareness Strategies***

- Customs and Border Protection has long established governance and regulatory compliance arrangements in accordance with the *Commonwealth Fraud Control Guidelines* to promote awareness and an overall fraud and corruption prevention and security culture within the agency.

Integrity Risk Management

- The *Fraud Control and Corruption Plan 2010 – 2012* and *Fraud and Corruption Risk Mitigation Report 2010* provide strategies to mitigate Fraud and Corruption risks and ensure that the controls that are in place are effective, and where it is identified that these strategies are not effective that there is a focus on strengthening controls. The 2013-2014 Anti-corruption and Fraud Control Plan is in development.

Organisational Suitability Assessment (OSA) and Security Clearance

- A suitability assessment is conducted of all new employees, contractors, service providers and secondees considered for employment within the agency. The OSA is undertaken in addition to the whole of government security clearance process for both new employees and for security clearances of current employees, contractors, service providers and secondees that are up for review.
- Candidates cannot commence employment with Customs and Border Protection unless they have satisfied the requirement of the OSA and security clearance.

Investigations and Intelligence Function

- Customs and Border Protection has established an investigations and analytical intelligence capability within our Integrity and Professional Standards Branch in accordance with the *Commonwealth Fraud Control Guidelines 2011* and the *Australian Government Investigation Standards*. The branch is responsible for investigating allegations and offences against Commonwealth laws committed by Customs and Border Protection officers and the provision of intelligence relating to internal risks/vulnerabilities that may affect border operations.

Training and Awareness Strategies

- A strategy is in place to ensure that staff receive appropriate and specific fraud, corruption and protective security awareness training and have access to reliable material on what actions they should take into consideration when identifying and reporting unlawful activities including:
 - Face-to-face fraud control and corruption prevention training has been delivered to 2845 staff from January 2010 to August 2012 that also included information about the Australian Commission for Law Enforcement Integrity;
 - Development of an e-learning fraud control and corruption prevention training package that will be mandatory for all staff and will ensure that all staff receive this training annually and as part of their initial induction program;
 - Program of briefings for officers at all security clearance levels, travelling overseas on official business, to raise awareness on corruption and security risks relevant to the country(s) being visited; and
 - Customs and Border Protection has established appropriate channels for reporting fraud and corruption and continually monitors the effectiveness of agency-wide detection mechanisms including compliance, investigations and analytical/intelligence capabilities.

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UNCLASSIFIED***Integrity Risk Management***

- Customs and Border Protection currently has risk management strategies and a well-developed fraud control and corruption prevention methodology based around preparedness, prevention, detection and resolution that allows the agency to foster an environment that is resistant to criminal infiltration and corruption.
- Customs and Border Protection has adopted a risk-based approach where outcomes of investigations, administrative and criminal processes are examined to further refine fraud and corruption preparedness and prevention strategies across the agency.
- There have been some significant changes in the environment within which Customs and Border Protection operates which requires our Agency to continually examine and reflect on the way integrity risks are managed.
- There has been a recent focus on integrity in Customs and Border Protection. The outcomes of Program Integrity Risk Assessments (PIRAs) will assist in monitoring integrity risk mitigation strategies across all of Customs and Border Protection's functions. The 'bottom-up' strategies identified from PIRAs continue to form an integral element to the development of the Customs and Border Protection Fraud Control and Corruption Prevention Plan for 2012 – 2014. They will also complement the 'top-down' measures identified in the Internal Integrity Review Project.
- Programs within Customs and Border Protection are being examined through this schedule of risk assessments with reference to significant areas of fraud and corruption risk exposures. Program-specific strategies have been formulated to treat the vulnerabilities identified in areas of significant risk.

Document Control Table

No.	Date	Author	Comments	Cleared by and date
1.0	14.09.2012	I&PS		NM, I&PS – 14.09.2012
2.0	26.09.2012	I&PS	Requested changes	ND SFID – 26.09.12

Consultation

External agencies consulted: (Please list)

- | | | |
|----|-------|---------------------------------|
| 1. | ACLEI | Reviewed and approved brief: No |
| 2. | AFP | Reviewed and approved brief: No |

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UNCLASSIFIED**Attachment A**

From the period 1 January 2011, we are aware of 7 matters involving Customs and Border Protection officers who have been charged by a Law Enforcement Agency (including Customs and Border Protection) or suspended for misconduct or criminal activity.

One matter is classified as a corruption issue.

Officers charged with criminal offences

Seven matters involving Customs and Border Protection officer. Three of the matters are work related and four incidents occurred outside of the work environment. See Table below.

One matter identified as a corruption issues

One officer charged by the Australian Federal Police with:

- Conspiracy to import a commercial quantity of border controlled precursors, namely pseudoephedrine, contrary to section 307.11 of the *Criminal Code Act 1995*.
- Receiving a bribe (Bribery of a Commonwealth Public official) contrary to section 141.1(3) of the *Criminal Code Act 1995*.
- Abuse of Public office contrary to section 142.2 of the *Criminal Code Act 1995*.
(Item 7 below)

Two matters allege serious criminal activity (not corruption as it was outside the work environment):

- Indecent act to minor. Officer found not guilty and has returned to work (Item 2 below)
- Possession of child exploitation material (Item 3 below)

Three matters were low level criminal activity (not corruption related):

- Two officers have been charged with assault charges – external to Customs and Border Protection (Items 4 and 5)
- One officer has been charged with theft related offences (Items 6 below)
- One officer has been charged with using credit card fraudulently (Item 1 below)

Officers Suspended or Employment Terminated

Five officers have been suspended or have had their employment terminated since 1 January 2012. Three of the officers relate to the individuals charged as detailed above and two officers are currently under investigation:

- A Customs and Border Protection is currently under investigation for the unauthorised access and release of information. This matter is ongoing;
- A Customs and Border Protection officer was charged by Western Australia Police with assault occasioning actual bodily harm. This charge was for action outside the work environment. This officer, who resides in Queensland is yet to travel to Western Australia to face these charges;
- A Customs and Border Protection officer was under investigation for theft and

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unauthorised access to information Technology systems. This officer resigned whilst under investigation.

- A Customs and Border Protection officer was charged by Airport Uniformed Police at Melbourne Airport with theft of a passenger's wallet. This officer resigned whilst under investigation;
- A Customs and Border Protection officer was arrested by the Australian Federal Police and charged with:
 - Conspiracy to import a commercial quantity of border controlled precursors, namely pseudoephedrine, contrary to section 307.11 of the *Criminal Code Act 1995*.
 - Receiving a bribe (Bribery of a Commonwealth Public official) contrary to section 141.1(3) of the *Criminal Code Act 1995*.
 - Abuse of Public office contrary to section 142.2 of the *Criminal Code Act 1995*.

Table 1

No.	Date	Charges	Outcomes
1 Work related	8 April 2011	Customs and Border Protection officer was identified as having fraudulently used her Commonwealth purchasing card for approximately \$9000 over 3-4 years.	The brief of evidence has been referred to the CDPP for adjudication. The officer has resigned.
2 Personal	1 May 2011	Customs and Border Protection officer was charged by ACT Policing for committing an indecent act with a minor.	This officer was found as not guilty and has returned to work
3 Personal	22 June 2011	Information was received that a Customs and Border Protection officer had been charged by QLD Police with possession of child exploitation material.	This officer has resigned and the court case is pending.
4 Personal	16 September 2011	Customs and Border Protection officer was charged by NSW Police with assault and resist arrest.	Loss of employment prior to the court hearing.
5 Personal	25 December 2011	A Customs and Border Protection officer unlawfully assaulted a member of the public in Broome.	WA Police have issued an arrest warrant for this officer who is currently suspended pending the resolution of this matter.
6 Work related	16 May 2012	A Customs and Border Protection officer was arrested and charged with theft by AFP at Melbourne Airport.	The officer was suspended pending the court hearing. The officer has resigned.
7 Work related	20 August 2012	A Customs and Border Protection officer was arrested by the Australian Federal Police and charged with: Conspiracy to import a commercial quantity of border controlled precursors, namely pseudoephedrine, contrary to section 307.11 of the <i>Criminal Code Act</i>	The officer was suspended pending the court hearing.

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		<p>1995.</p> <p>Receiving a bribe (Bribery of a Commonwealth Public official) contrary to section 141.1(3) of the <i>Criminal Code Act 1995</i>.</p> <p>Abuse of Public office contrary to section 142.2 of the <i>Criminal Code Act 1995</i>.</p>	
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UNCLASSIFIED**Attachment B****Progress of Customs and Border Protection's Integrity and Anti-Corruption Approaches****Staffing**

- Between 2007 to 2010, increased staff from 5 to 45 and in December 2009, the Branch name was changed from Internal Affairs to Integrity and Professional Standards (I&PS).
- All staff as a minimum possess Certificate IV in Government (Investigations) or Certificate IV in Personnel Security or similar qualifications.
- The Internal Integrity Review has recommended an increase of staff for I&PS – Funding is currently being considered.

Case Management System

- 2009 - Implementation of a Case Management System – CRIMEIA – to capture all allegations and complaints and to case manage all I&PS investigations, intelligence and incidents and to record critical decisions.
- 2012 - CRIMEIA - Single database for Case management across both Criminal and Administrative (Code of Conduct) cases.

Intelligence Capability

- Intelligence capability established in 2009. The Intelligence area has grown in strength from one (1) Intelligence Analyst to four (4) Analysts. The intelligence area undertakes intelligence activities into allegations of criminality or serious misconduct made against Customs and Border Protection Service employees and conducts strategic intelligence assessments aimed at identifying activities by Customs and Border Protection Service employees

Integrity Risk Capability

Area staffed by six officers to deliver Corruption Prevention including Fraud Control and Corruption Prevention Plans and Education and Training.

- December 2007 Fraud Control responsibilities transferred to Internal Affairs.
- Two Fraud Control and Corruption Prevention Plans have been developed
 - Fraud Control Plan 2008 – 2010; and
 - Fraud Control and Corruption Prevention Plan and 2010 – 2012.
- Fraud Control and Corruption Prevention Plan 2012-2014 in development stage - to be completed by December 2012.
- Rolling program of integrity risk assessments provides assurance around the appropriate management of a broad range of integrity risks including the “single point of failure” work.
- Fraud Control & Corruption Awareness Training - Nationwide refresher and induction training program – delivered to approximately 3000 staff from January 2010 to June 2012 including information about the Australian Commission for Law Enforcement Integrity.
- Commenced in 2012 a program of briefings for officers at all security clearance levels, travelling overseas on official business, to raise awareness on corruption and security risks relevant to the country(s) being visited.

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- Mandatory online training for all staff covering security awareness (current program) and fraud control/corruption awareness on line training to commence in November 2012.
- Integrity awareness campaigns and dissemination of Z Cards - initially 2009 and updated in 2011 providing an awareness to all staff of the multiple channels for incident reporting.
- Ethics and Integrity Handbook updated and made available to all staff online and provided individual hardcopies outlining the standards of behaviour and ethical conduct for employees.

Pre- Employment Clearances

Implemented from October 2010

- Improvements to Organisational Suitability Assessments (OSAs) - OSA complements the AGSVA process by conducting additional agency specific checks to assess an applicant's suitability to operate in the Customs and Border Protection environment (eg probity checks against law enforcement and intelligence databases).
- Security Clearance Vetting Process transferred to Australian Government Security Vetting Agency (AGSVA) which assesses an applicant's ability to acquire a whole-of-government security clearance. All Customs and Border Protection officers must hold the minimum PROTECTED clearance.

Post-Employment Clearance Reviews

- More rigour surrounding
 - Change of circumstances - requirement for staff to report circumstances of potential concern (eg associations; gambling; financial changes; relationship changes).
 - Contact reporting – requirement for staff to report interaction with high risk persons (eg foreign intelligence officials; criminals etc).
 - Risk based review of OSA and/or security clearance (eg – critical incident; receipt of adverse intelligence etc.).
 - Security Investigations – initiated to investigate security breaches.
 - Revalidation periods for Commonwealth security clearances range from 5 years to 15 years, depending on the level of clearance held by individuals

Tone at the Top / Organisational Support

- Transition of Internal Affairs to Integrity and Professional Standards Branch to also include Security function
- Additional resourcing provided.
- Branch reports directly on business related matters to CEO.
- Monthly reporting to EC on integrity and security issues and trends.
- Integrity Committee and Security Committee created to oversight the appropriateness of anti-corruption and security measures across the organisation. Representation from senior executive and chaired by the COO.
- Enabling Risk to include Infiltration and Corruption – substantial work has been progressed in this space to identify risks, threat and vulnerabilities and to ensure appropriate risk mitigation strategies are in pace.

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UNCLASSIFIED**Integrity Partnership**

- Funding provided to support ACLEI's expanded role.
- Investigators and Intelligence supporting joint ACLEI / Customs and Border Protection and/or AFP operations as required (10 staff sworn into ACLEI - three officers on secondment; 2 engaged semi-permanently to assist with ACLEI tasking, six officers available for deployment).
- I&PS is represented on the "Community of Practice" with ACLEI, AFP and ACC.
- Operational and Executive meetings attended weekly and fortnightly.
- Emerging Risk Committee attended by I&Ps and ACLEI officers monthly;
- Customs and Border Protection CEO and ACLEI Integrity Commissioner meet monthly;
- Discussions held monthly with I&PS Integrity Risk to progress the Integrity Online Training Module.

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Australian Customs and Border Protection Service

Key Issue 7(a)

Budget – One-Off 2.5% Efficiency Dividend

Issues

To provide an overview:

- Of the 2012-13 Commonwealth Budget impacts on internal funding;
- The impacts on funding as a result of the implementation of the government's decision as part of the 2011-12 Mid Year Economic and Fiscal Outlook (MYEFO) process to introduce:
 - a one-off 2.5 % increase in the efficiency dividend (ED) for 2012-13; and
 - a 20% reduction to the Departmental Capital Budget (DCB) from 2012-13.

Summary Talking points

- Customs and Border Protection will receive total departmental funding (including Departmental Capital Budget (DCB) funding) of \$1,065.1m in 2012-13, a reduction of \$20.8m when compared to 2011-12.

\$m	2011-12	2012-13	+/-	+/- %
Appropriation Revenue	935.4	933.5	-1.9	-0.2
Revenue (Section 31)	71.3	71.8	0.5	0.7
Total operating income	1,006.7	1,005.3	-1.4	0.1
Departmental Capital Budget	79.2	59.8	-19.4	-32.5
Total departmental funding	1,085.9	1,065.1	-20.8	-1.9
Capital Funding	56.5	64.9	8.4	12.9
Total net cash funding	1,142.4	1,130.0	-12.4	-1.0

- The decline in departmental funding of \$20.8m is the result of:
 - the net impact on appropriation revenue of a number of government decreases including the introduction of a one-off 2.5% ED (\$17.059m in 2012-13); and
 - a 20% reduction in funding for the DCB (\$16.188m in 2012-13).
 - the decline in funding noted above is offset by the funding impacts of a number of government measures from previous Budgets (for example Cape Class and ACV *Triton* in both 2011-12 and 2012-13), parameter adjustments and passenger workload growth agreement movements.

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- These reductions are in addition to the impact of the ongoing 1.5% ED that is factored into all agencies base funding.
- The government will also provide new capital funding in 2012-13 of \$64.9m, an increase of \$8.4m from 2011-12 to continue the construction of the new *Cape Class* vessels and to roll out additional SmartGate infrastructure at international airports.
- The reduction in funding in 2012-13 is being managed by Customs and Border Protection by targeting savings in non-front line services and back office functions wherever possible.
- Where front line services are impacted, the highest risk areas of the organisation will be exempted from the one-off 2.5% ED related reductions.
- Capital investment decisions, due to the reduction in the DCB, have been made in light of the government's priorities and the commitment made to enhance intelligence led, risk based intervention that is essential to ensure the protection of Australia's borders.
 - Customs and Border Protection is estimating a total reduction in staff numbers of 187 (3.7%) in 2012-13 from 5,222 in 2011-12 to 5,035. The staff reductions are a function of a number of drivers including, the impacts of other government decisions, the new Enterprise Agreement and the impact of implementing the one-off ED. The impact of the additional one off 2.5% efficiency dividend, assuming this is funded 50% from labour, consistent with our budget expense profile, will result in a planned reduction of approximately 85 staff.
- Staff reductions are being achieved through natural attrition and redeployment wherever possible.

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UNCLASSIFIED**Background***One-off 2.5% increase in Efficiency Dividend in 2012-13*

- As part of the 2011-12 Mid Year Economic and Fiscal Outlook (MYEFO), the government introduced a one-off 2.5% efficiency dividend (ED).
- This one-off 2.5% ED was introduced from 2012-13 and reduced Customs and Border Protection's appropriation funding on an ongoing basis.
- The implementation of this 2.5% ED will reduce Customs and Border Protection's funding by just over \$64.448m over the forward estimates from 2012-13 to 2015-16, excluding the expected impact of this ED on GST Administration funding received from the ATO (estimated to be a further reduction of \$1.4m per annum).

Funding (\$m)	2012-13	2013-14	2014-15	2015-16	FE Total
	(\$m)	(\$m)	(\$m)	(\$m)	(\$m)
Total departmental operating	(17.059)	(16.299)	(15.457)	(15.633)	(64.448)

Where will the one-off 2.5% ED Savings Come From

- Customs and Border Protection is finding the required efficiencies by targeting "back office" functions wherever possible, thus minimising the impact on front line operations. As part of the agency's internal budgeting and business planning processes, it is the following business functions will be exempted from the need to find the one-off 2.5% ED:
 - Passenger Clearance – Primary and Secondary Clearance
 - Revenue Management and Compliance,
 - Border Security (including Air, Waterfront, Remote, Coastal and Inshore Maritime Response),
 - People Smuggling Disruption and Post Interdiction Processing,
 - Vessel Clearance and Crew Processing,
 - Offshore Maritime Response.

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- \$10.0m of savings to implement the one-off ED will be found from the following back office functions:
 - Managing IT Applications, Infrastructure and Information – a reduction of \$2.5m annually is planned through tighter management of our major contracts, better use of contractors and taking a more consistent approach to IT across the organisation.
 - Managing our People - Training and Workforce Management – a reduction of \$2.0m annually through the removal of duplication between central and divisional areas.
 - Managing major Capabilities (includes detection technologies, detector dogs, CCTV, Smartgate and Vessels) – a reduction of \$0.5m annually is planned.
 - Property operations – a reduction of \$1.0m annually to be found from a combination of property consolidation and subletting.
 - Finance, legal and integrity – a reduction of \$0.5m annually by looking more closely at our use of external legal resources.
 - Managing the operations of the organisation - \$3.5m. This is a sizeable reduction which will be achieved following an organisation review of our ‘Plan and Manage’ functions. This review is underway and will identify opportunities to reduce duplication and to streamline practices. SES positions have been reduced from 56 to 44 which will generate savings towards this reduction.

- Savings of \$7.7m to implement the one-off 2.5% ED will be found from the following front line operational areas:
 - Cargo examinations and Inspections – Air, Sea, Mail – a reduction of \$1.0m annually through process improvement. This saving will not impact the number of container examinations and inspections.
 - Supporting legitimate trade – a reduction of \$1.0m annually to be found across our Trade and Compliance and Cargo functions focussed toward more efficient practices in how we deal with the public by encouraging greater exchange of information and transactions.
 - Policy design, industry and international engagement - a reduction of \$1.0m annually by carefully considering our international footprint including post presence in certain countries and the number of staff at posts.

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- Intelligence, risk assessment and investigations – a reduction of \$3.0m annually through more efficient practices in our intelligence and risk assessment activities including the cessation of non-critical activities.
 - Aerial Surveillance – a reduction of \$1.7m annually to be achieved through better management of the Aerial Surveillance contract.
- Customs and Border Protection has implemented a reduction in SES numbers by approximately 20% (from 56 positions to 44).
 - It is important to note that all areas of Customs and Border Protection will need to find efficiencies to fund the ongoing ED (1.5% in 2012-13) and to fund pay rises and supplier price increases over and above supplementation received as part of the Commonwealth Budget Process, (WCI increases).

20% reduction in Departmental capital Budget (DCB) from 2012-13

- The reduction to the DCB has taken effect from 1 July 2012.
- The impact of this efficiency measure on the DCB is \$66.597m over four years, from 2012-13 to 2015-16, with an ongoing impact of around \$16.6m per year.

Funding (\$m)	2012-13	2013-14	2014-15	2015-16	FE Total
	(\$m)	(\$m)	(\$m)	(\$m)	(\$m)
Departmental Capital Budget	(16.188)	(16.525)	(17.236)	(16.648)	(66.597)

- The allocation of the 20% reduction to the DCB has been undertaken as part of the organisation's Investment Review Committee processes.
- Capital investment decisions have been made in light of the government's priorities and the commitment made to enhance intelligence led, risk based intervention capability essential to ensure the continued protection of Australia's borders.
- The reduction to the DCB has resulted in Customs and Border Protection focussing capital expenditure on the most critical asset replacement and maintenance projects.

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No.	Date	Author	Comments	Cleared by and date
0.1	14/09/12	s47F [REDACTED]	First draft	M. Belmonte 17/09
0.2	17/09/12	s47F [REDACTED]	Second draft – changes requested by M. Belmonte	M. Belmonte
1.0	20/09/12	s47F [REDACTED]	Third draft – CFO Changes	S. Groves 20/09/12

Consultation

External agencies consulted: No

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UNCLASSIFIED**Australian Customs and Border Protection Service****Key Issue 7(b)****2012-13 Budget - Staff numbers****Issues**

To provide an overview of:

- Customs and Border Protection's staffing numbers for 2012-13, including:
 - Average Staffing Level (ASL) statistics are provided at Attachment A;
 - Definitions of staffing level terminology are provided at Attachment B; and
 - Headcount numbers and other statistics as at end August 2012.

Talking points

Staffing numbers:

Explanation of movements in average staffing levels (ASL) between 2011-12 and 2012-13

- The 2012-13 expected ASL is 5,035 a planned reduction of 187 (3.6%) from the actual ASL for the 2011-12 financial year of 5,222.
- The ASL reduction is a result of the net impact of the implementation of specific budget measures, including the one-off 2.5% Efficiency Dividend increase announced as part of the MYEFO process, as well as the need to manage cost pressures over and above salary supplementation levels.
- A primary driver behind the planned reduction of 187 staff is the impact of pay rises. Labour costs in 2012-13 will be approximately 3.4% higher than in 2011-12 due to the effect of pay rises required under our Enterprise Agreement. Funding this amount is expected to result in a reduction of approximately 177 staff (assuming an average staff cost of \$100,000 per annum).
- The impact of the following parameter adjustments on planned staffing levels is as follows:
 - The impact of the additional one off 2.5% efficiency dividend equates to a reduction in funding of \$17.0 million. Assuming this is funded 50% from labour, consistent with our budget expense profile, this results in a planned reduction of approximately 85 staff.
 - The need to fund the ongoing efficiency dividend of 1.5% equates to \$11.2m in 2012-13. Assuming this is sourced 50% from labour this results in a planned reduction of 56 staff.

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- Offsetting the reductions above is the impact of additional WCI supplementation. For 2012-13 this is estimated to fund an additional 110 positions assuming 50% of the increase is applied to labour.
- Passenger Workload Growth Adjustments (net of Biometric Efficiency Savings) of \$4.4m. This results in a planned increase of 35 positions.
- Major budget adjustments impacting staffing levels for 2012-13 include:
 - Additional funding for the *Cape Class* – Enhanced Option of \$5.9m which includes funding for a further 19 positions.
 - A reduction in funding from the *Increased Use of Smart Gate* measure resulting in a reduction of 33 positions in 2012-13.

Managing workforce reductions

- A number of workforce management strategies are being used to achieve ASL reductions in 2012-13, with a focus on natural attrition and redeployment, in line with the agency's internal Workforce Adjustment policies and practices. The emphasis is on achieving the required reduction while minimising the impact on staffing levels and ensuring that we can still deliver our business.

Workforce Headcount numbers

- As at 31 August 2012, the number of staff employed by Customs and Border Protection was 5,656 (Headcount). Between 1 March 2012 and 31 August 2012 the overall headcount for the Agency has decreased by 93.
- Classification and Regional breakdown is at Attachment D.
- Recruitment and Separation breakdowns are at Attachments E, F and G.

SES numbers

- As at 31 August 2012, Customs and Border Protection had 47 SES positions which is within the cap set by the APSC of 54 SES positions.
- In March 2012 there was a change in Senior Management arrangements resulting in a reduction of the agency's SES officers from 56 to 45 positions. During 2012-13 this will be further reduced to 44 SES positions.

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Background

- ASL numbers for the years 2007-08 to 2012-13 are identified in the table below.

Average Staffing Levels (ASL)	2007-08 Actual	2008-09 Actual	2009-10 Actual	2010-11 Actual	2011-12 Actual	2012-13 Forecast
Customs and Border Protection	5,746	5,679	5,489	5,318	5,222	5,035
Movement between years	-	-163	-190	-171	-96	-187
% Movement between years	-	-2.8%	-3.3%	-3.1%	-1.8%	-3.7%

- The 2012-13 forecast of 5,035 is a reduction of 187 ASL or 3.7% when compared to the 2011-12 forecast ASL of 5,225.
- The ASL reduction is required to manage the net impact of the implementation of specific budget measures, including the combined effect of the government imposed efficiency dividends, as well as the need to manage cost pressures over and above supplementation levels.
- Corporate and support operations continue to be rationalised which is consistent with the focus on making our back office or support operations as lean and effective as possible through the elimination of duplication in business processes, consolidation of functions such as the establishment of a centre of expertise for training, and enhanced access to self-service options by staff.
- The decline in ASL during 2011-12 was achieved through a range of workforce adjustments including:
 - natural attrition;
 - not filling non critical positions;
 - the cessation of non-critical projects;
 - redeployment across the organisation; and
 - targeted Voluntary Redundancy process.
- ASL reductions in 2012-13 will continue to be managed as far as possible through natural attrition and redeployment.
- Voluntary redundancies will be used only as a last resort.
- A divisional breakdown is provided at [Attachment A](#).

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UNCLASSIFIED**STAFFING NUMBERS ATTACHMENTS**

- Attachment A** Average Staffing Level Statistics – Multi Year Analysis
- Attachment B** Table of definitions relating to staffing levels terminology.
- Attachment C** Overtime paid and hours worked by location by calendar year.
- Attachment D** Staff Profile (Headcount) as reported in Customs and Border Protection's previous five Annual Reports, with a Year to Date (YTD) comparison.
- Attachment E** Customs and Border Protection Recruitment and Separation Rates, by location and financial year.
- Attachment F** Customs and Border Protection Employer initiated Terminations with Year to Date (YTD) comparison by classification, location and financial year (On-going Employees only).
- Attachment G** Customs and Border Protection Employer initiated Termination Reasons with Year to Date (YTD) comparison (On-going Employees only).
- Attachment H** Customs and Border Protection equity profile as reported in Customs and Border Protection's previous Annual Report.

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UNCLASSIFIED**Document Control Table**

No.	Date	Author	Comments	Cleared by and date
0.1	12/09/12	s47F [REDACTED]	Updated attachments B-H and parts of the brief	
0.2	13/09/12	s47F [REDACTED]	Updated attachment A and parts of the brief	s47F [REDACTED] 13/09/12
0.3	21/9/12			CFO cleared brief
0.4	24/9/12	s47F [REDACTED]	Acting ND P&CS clearance	Cleared 27/9/12
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Consultation

External agencies consulted: No

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Attachment A

Average Staffing Level (ASL) Statistics - MultiYear Analysis

	Prior Years			Movement in ASL for the 2012-13 Financial Year (As At Aug 2012)			2012-13 Average ASL Analysis			Future Years - Estimate
	2009-10 ASL	2010-11 ASL	2011-12 ASL	Jul Actual	Aug Actual	Jul - Aug Move	2012-13 Aug YTD Avg	2012-13 Full Year Avg*	Diff	2013-14 ASL
PAID ASL										
Passengers	1,590.9	1,553.9	1,494.9	1,427.7	1,428.5	0.8	1,428.1	1,456.3	28.2	1,453.8
Cargo & Trade	1,019.1	961.9	925.0	900.1	898.2	(1.8)	899.1	881.6	(17.5)	833.0
Compliance & Enforcement	1,135.3	1,047.6	1,010.8	1,004.0	992.1	(11.9)	998.1	975.0	(23.1)	896.1
Border Management	3,745.3	3,563.4	3,430.7	3,331.8	3,318.9	(12.9)	3,325.3	3,312.9	(12.4)	3,183.0
Intelligence & Targeting	460.4	424.7	449.0	489.7	498.2	8.6	494.0	405.7	(88.3)	412.0
Border Protection Command	96.4	98.8	95.7	96.5	97.2	0.6	96.8	104.8	8.0	101.7
Maritime Operations Support	378.6	386.7	396.9	418.2	413.6	(4.6)	415.9	408.6	(7.3)	448.3
Information Technology	153.2	217.6	237.0	250.2	253.8	3.6	252.0	223.1	(28.9)	199.1
People & Corporate Services	439.4	338.7	336.4	336.2	330.9	(5.3)	333.5	314.4	(19.1)	295.7
Trainees & Graduates	28.3	73.2	57.5	67.2	58.6	(8.6)	62.9	59.2	(3.7)	57.6
Maritime, Corporate & Intelligence	1,556.4	1,539.7	1,572.4	1,657.9	1,652.3	(5.6)	1,655.1	1,515.8	(139.3)	1,514.4
Strategy, Finance & Integrity	120.9	145.7	152.3	160.5	159.8	(0.7)	160.1	143.4	(16.7)	139.4
Executive	67.1	68.4	66.2	62.1	60.4	(1.7)	61.2**	49.1	(12.1)	49.7
Total ASL	5,489.6	5,317.2	5,221.6	5,212.2	5,191.3	(20.9)	5,201.8	5,021.3	(180.5)	4,886.5

* Based on Version 2.0 of the Internal Budget

** Includes Executive Assistants who are in the Executive division, as well as staff on higher duties that are acting SES

2012-13 PBS ASL Estimate **5,035**

Attachment B

	Average Staffing Levels (ASL)	Full-Time Equivalents (FTEs)	Headcount	Workforce Adjustment
Definition	<p>Average staffing level is the average of the Full Time Equivalent (FTE) staff paid by the organisation at each pay for the period.</p> <p>ASL is normally used for reporting averages over a financial year (26 pays) or for a month (i.e. it may be the average of the 2 or 3 pays during the month).</p> <p>ASL is used for Portfolio Budget Statements (PBS), Financial Statements and Ministerials/Senate Estimates (particularly divisional based reporting).</p> <p>Affordable FTE numbers provided by Financial Services Division are ASL based estimates.</p>	<p>A measure of staffing levels which converts the total number of hours worked by all staff (including part time and casual staff) to an equivalent number of full-time staff. For example someone working 3 days per week will be 0.6 FTE.</p> <p>Paid FTE (excluding LWOP) is usually used to report on paid FTE at a point in time i.e. 30 June or Pay 26. It is used for Ministerials/Senate Estimates when reporting FTE at a point in time.</p>	<p>Is used for the Senate Estimates, Annual Report and Ministerials, where reporting on geographical or workforce demographics is required.</p> <p>Headcount does not differentiate between full time and part time staff. For example someone working 3 days per week will still be reported as one headcount.</p>	<p>This was the workforce adjustment figure quoted within the Workforce Adjustment strategy. It is based on a workforce modelling tool taking into a number of variables such as attrition and recruitment rates, market trends, divisional consultation and more specifically factors in regional impacts and mismatches of capability.</p>

Attachment C

Australian Customs and Border Protection Service

Overtime Hours Worked by Region (Calendar Year)

Overtime Hours								
Region	2005	2006	2007	2008	2009	2010	2011	2012*
ACT	22,870	19,427	13,811	13,129	15,144	14,927	21,262	11,977
NSW	89,761	72,064	72,237	47,452	42,381	41,214	40,114	24,052
VIC	36,253	45,496	45,293	29,241	21,129	21,005	32,485	20,013
QLD	68,381	68,453	59,941	40,326	27,792	27,066	29,442	18,333
SA	12,328	11,356	11,366	10,335	6,532	6,515	5,061	3,003
WA	38,375	39,840	42,453	36,803	20,622	20,396	21,789	13,509
TAS	2,194	2,257	1,908	1,902	906	903	919	618
NT	13,967	20,713	19,646	18,854	7,404	7,342	6,442	4,119
Total	284,129	279,606	266,655	198,042	141,910	139,368	157,514 #	95,624

Overtime Paid by Region (Calendar Year)

Pay Amount (\$)								
Region	2005	2006	2007	2008	2009	2010	2011	2012*
ACT	\$1,111,429	\$1,544,845	\$1,153,019	\$886,648	\$690,369	\$991,538	\$1,346,494	\$861,143
NSW	\$4,177,421	\$3,504,149	\$3,695,994	\$2,660,595	\$2,280,111	\$2,502,786	\$2,516,805	\$1,566,466
VIC	\$1,603,126	\$1,930,171	\$2,169,435	\$1,538,113	\$1,191,879	\$1,203,408	\$1,855,033	\$1,214,183
QLD	\$2,920,279	\$2,998,989	\$3,129,457	\$2,368,317	\$1,888,220	\$1,694,384	\$1,804,855	\$1,165,982
SA	\$555,030	\$490,902	\$564,667	\$536,794	\$455,933	\$410,815	\$303,664	\$241,972
WA	\$1,723,450	\$1,744,538	\$2,478,390	\$2,249,943	\$1,340,956	\$1,421,420	\$1,398,468	\$1,003,438
TAS	\$91,065	\$116,028	\$126,068	\$137,199	\$127,605	\$71,419	\$64,418	\$51,829
NT	\$595,961	\$879,178	\$1,158,196	\$1,176,363	\$760,067	\$517,014	\$396,694	\$283,540
Total	\$12,777,761	\$13,208,800	\$14,475,226	\$11,553,972	\$8,735,140	\$8,812,784	\$9,686,431	\$6,388,553

Note:

1. Sourced from PeopleSoft (HRIS) and COMPASS (SAP).
2. # Includes \$157,695 of overtime paid through COMPASS relating to periods on or before 22 June 2011 (last date for PeopleSoft processing). While \$ amounts were captured, overtime hours worked were not stored. An approximation of hours worked in this category was made by dividing the total amount of overtime paid for these instances, by the employee's actual hourly rate as at 22 June 2011.
3. *Calendar YTD is at pay period 31 August 2012.

Attachment D

Australian Customs and Border Protection Service

Staff Profile (Headcount) as reported in the Agency's Annual Report with 31 August 2012 YTD comparison*

Headcount by Classification	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013 YTD	Variance YTD
Cadets	3	2	4	7	5	5	0
Customs Graduates	10	7	16	19	31	31	0
Customs Trainees	132	0	46	60	62	21	-41
CL1	2,681	2,571	2,461	2,394	2,336	2,373	37
CL2	1,619	1,568	1,494	1,389	1,389	1,380	-9
CL3	1,070	1,001	1,003	992	1,016	1,008	-8
CL4	512	508	513	524	556	561	5
CL5	206	201	206	226	224	224	0
SES	67	64	62	63	52	53	1
Grand Total	6,300	5,922	5,805	5,674	5,671	5,656	-15

Headcount by Region	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013 YTD	Variance YTD
ACT	1,640	1,588	1,658	1,630	1,755	1,751	-4
NSW	1,575	1,475	1,426	1,356	1,322	1,316	-6
VIC	1,093	1,021	998	1,018	1,008	1,012	4
QLD	954	868	817	807	766	761	-5
SA	218	188	170	172	165	161	-4
WA	580	572	527	500	476	480	4
TAS	37	35	35	31	29	27	-2
NT	185	158	155	141	136	136	0
Overseas	18	17	19	19	14	12	-2
Grand Total	6,300	5,922	5,805	5,674	5,671	5,656	-15

Variance Year to Year						
		-378	-117	-131	-3	-15

Note:

- Includes staff employed under the *Public Service ACT 1999*, staff on leave, higher duties and staff on loan from other agencies. Figures do not include contractors or Customs Flexible Employees (CFEs). Numbers reflect the actual occupancy (Headcount derived from Customs and Border Protections COMPASS reporting system, previously PeopleSoft. Financial statements report on staff numbers by full time equivalent (FTE).
- Senior Executive Service (SES) includes ongoing SES employed under the Public Service Act 1999, and also includes non SES staff on higher duties and the Chief Executive Officer.
- 2011/12 Annual Report data provided not yet published.
- *YTD is at 31 August 2012.
- There are approximately 317 maritime staff that are included in the 1,751 Headcount for the ACT region. These maritime staff are the crew that are deployed on various Customs and Border Protection vessels, however, due to the nature of the employment have been included in the ACT figures.

Attachment E

Australian Customs and Border Protection Service

Recruitment and Separation Rates by Location by Financial Year (On-going Staff)

Separation Rate

Location	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013 YTD
ACT	9.70%	9.87%	9.93%	12.26%	9.10%	0.93%
NSW	5.82%	4.14%	4.00%	6.85%	4.45%	0.31%
VIC	5.66%	5.03%	5.40%	5.81%	3.99%	0.60%
QLD	5.78%	7.22%	6.18%	9.31%	5.76%	0.92%
SA	4.98%	7.18%	5.33%	5.59%	4.73%	3.08%
WA	9.28%	7.82%	6.59%	12.47%	9.71%	0.63%
TAS	10.70%	5.74%	11.04%	12.70%	13.06%	3.66%
NT	11.77%	15.27%	2.45%	13.26%	3.02%	1.48%
Overseas	0.00%	5.59%	0.00%	0.00%	0.00%	0.00%
Average	7.24%	7.02%	6.42%	9.15%	6.39%	0.79%

External Recruitment Rate

Location	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013 YTD
ACT	18.36%	7.19%	9.07%	11.38%	13.62%	1.10%
NSW	8.08%	0.20%	1.65%	1.69%	1.81%	0.00%
VIC	8.51%	0.10%	2.24%	4.21%	3.29%	1.30%
QLD	10.50%	0.22%	2.12%	4.97%	2.56%	0.13%
SA	10.83%	0.51%	6.39%	0.00%	0.59%	1.23%
WA	15.03%	7.00%	0.18%	4.75%	4.55%	1.68%
TAS	2.67%	0.00%	5.52%	0.00%	3.26%	0.00%
NT	9.89%	2.43%	0.61%	8.62%	2.26%	0.00%
Overseas	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Average	11.91%	2.76%	3.84%	5.73%	5.91%	0.77%

Note:

1. Includes On-going staff only
2. Senior Executive Service (SES) includes ongoing SES employed under the Public Service Act 1999.
3. 2012/13 data is YTD as at 31 August 2012.

Attachment F

Australian Customs and Border Protection Service

Total Employer Initiated Terminations with 31 August 2012 YTD comparison (On-going Employees)

By Classification	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013 YTD	Variance YTD
Cadets	0	0	0	0	0	0	0
Customs Graduates	0	0	0	0	1	0	-1
Customs Trainees	0	0	0	2	1	0	-1
CL1	9	8	11	11	6	1	-5
CL2	5	7	11	71	18	1	-17
CL3	5	4	6	22	12	2	-10
CL4	1	0	3	8	3	1	-2
CL5	0	2	4	8	2	0	-2
SES	1	1	0	0	0	0	0
Grand Total	21	22	35	122	43	5	-38

By Region	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013 YTD	Variance YTD
ACT	8	7	10	29	12	1	-11
NSW	4	6	7	48	12	0	-12
VIC	4	7	5	9	7	1	-6
QLD	2	0	7	20	6	0	-6
SA	0	0	1	2	3	2	-1
WA	0	1	5	9	2	1	-1
TAS	2	0	0	3	1	0	-1
NT	1	1	0	2	0	0	0
Overseas	0	0	0	0	0	0	0
Grand Total	21	22	35	122	43	5	-38

Variance Year to Year	-	1	13	87	-79	-38
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Note:

1. Includes On-going staff only
2. Senior Executive Service (SES) includes ongoing SES employed under the Public Service Act 1999, and also includes non SES staff on higher duties at time of reporting and Chief Executive Officer.
3. 2012/13 YTD Figure as at 31 August 2012

Attachment G

*Australian Customs and Border Protection Service***Total Employer Initiated Termination Reasons with 31 August 2012 YTD comparison
(On-going Employees)**

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013 YTD	Variance YTD
Other S.29(3)(h) & S29(4)	1	0	0	0	0	0	0
Voluntary Redundancy	10	14	25	109	39	5	-34
Involuntary Redundancy	0	0	0	0	0	0	0
Inability to perform duties	0	0	0	0	0	0	0
Invalidity Retirement	5	4	7	8	0	0	0
Dismissal - Misconduct	1	1	0	0	0	0	0
Termination of Probation	2	1	1	2	0	0	0
Lost essential qualification	1	0	1	0	0	0	0
Unsatisfactory performance	0	1	0	1	1	0	-1
Initial Training not completed	0	0	0	0	1	0	-1
Failure to meet conditions of Employment	1	0	0	0	1	0	-1
Breach of the Code of Conduct	0	1	1	2	1	0	-1
Grand Total	21	22	35	122	43	5	-38
Variance Year to Year	-	1	13	87	-79	-38	

Note:

1. Includes On-going staff only
2. 2012/13 YTD Figure as at 31 August 2012

Attachment H

**Australian Customs and Border Protection Service
Equity Profile (Headcount)**

Representation of Equity and Diversity Profile as reported in the Agency's Annual Report 2011-2012

	Female		NESB		People with Disabilities #		Indigenous #	
	Number	%	Number	%	Number	%	Number	%
Indigenous Cadet	3	60.00	0	-	-	-	4	80.00
Customs Trainee	31	50.00	3	4.84	-	-	1	1.61
Customs Graduate Trainee	16	51.16	1	3.45	-	-	-	-
Customs Level 1	1,030	44.09	145	6.20	27	1.15	44	1.88
Customs Level 2	610	43.92	72	5.18	29	2.09	14	1.01
Customs Level 3	420	41.34	63	6.20	22	2.17	3	0.30
Customs Level 4	210	37.77	31	5.58	5	0.90	3	0.54
Customs Level 5	75	33.48	6	2.68	3	1.34	1	0.45
Senior Executive Service	20	38.46	2	3.85	-	-	-	-
Total	2,415	42.59	323	5.70	86	1.52	70	1.23

Note:

Figures are based on staff voluntarily providing information and are not an accurate reflection of the profile within the organisation

1. The figures provided are a headcount and represent the actual number of staff at level as at 30 June 2012
 - includes staff employed under the Public Service Act 1999, ongoing and non-ongoing staff, staff on leave and higher duties
 - excludes CEO and non Public Service Act employees (Acting Officers of Customs, Contractors and Committee Members)
2. Senior Executive Service (SES) includes all SES held against Executive organisation code in HRIS
3. 2011/12 Annual Report data provided not yet published

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Australian Customs and Border Protection Service**Key Issue 8****2012-13 Commonwealth Budget Measures****Issues**

To provide an overview of the major impacts on Customs and Border Protection's funding arising from the 2012-13 Budget.

Talking points

As part of the 2012-13 Budget:

- The government agreed to:
 - Three Revenue Measures totalling \$589.000 million over four years;
 - Three Expense Measures totalling \$29.791 million over four years;
 - Two Savings Measures totalling \$25.787 million over four years;
 - Four Measures that impact Capital totalling \$11.100 million saving over four years.
- Detail on the individual measures is provided in the Background at page 5.

2012-13 Budget – Summary of Measures

The following table provides a summary of the measures:

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Revenue Measure					
Measure Description	2012-13	2013-14	2014-15	2015-16	Total
	(\$'000)	(\$'000)	(\$'000)	(\$'000)	(\$'000)
Extension of the South Pacific Regional Trade and Economic Cooperation Agreement – Textile, Clothing and Footwear Scheme	-	-	-	-	-
Passenger movement charge - increase	85,000	140,000	175,000	210,000	610,000
Company tax cut - do not proceed	(2,000)	(5,000)	(6,000)	(8,000)	(21,000)
Total Revenue Measure	83,000	135,000	169,000	202,000	589,000

Savings Measure					
Measure Description	2012-13	2013-14	2014-15	2015-16	Total
	(\$'000)	(\$'000)	(\$'000)	(\$'000)	(\$'000)
Australian Customs and Border Protection Service - Increased use of SmartGate capability	(3,306)	(5,206)	(5,420)	(5,855)	(19,787)
Illegal Foreign Fishing in Northern Waters - efficiencies	(1,500)	(1,500)	(1,500)	(1,500)	(6,000)
Total Savings Measures	(4,806)	(6,706)	(6,920)	(7,355)	(25,787)

* This savings measure is offset by \$7.9m injection of Capital (see below). Includes ABS savings at \$1.000m per annum (\$800k in 2012-13).

Expense Measure					
Measure Description	2012-13	2013-14	2014-15	2015-16	Total
	(\$'000)	(\$'000)	(\$'000)	(\$'000)	(\$'000)
Australian Customs and Border Protection Service - Long Term Ashmore Reef capability	544	4,184	7,550	7,543	19,821
Australian Commission for Law Enforcement Integrity - resource transfer	(750)	(750)	(750)	(750)	(3,000)
Maritime Humanitarian Assistance and Disaster Relief Capability - share arrangement for Southern Ocean surveillance	-	-	6,447	6,523	12,970
Total Expense Measures	(206)	3,434	13,247	13,316	29,791

Capital Measure					
Measure Description	2012-13	2013-14	2014-15	2015-16	Total
	(\$'000)	(\$'000)	(\$'000)	(\$'000)	(\$'000)
Australian Customs and Border Protection Service - Increased use of SmartGate capability	5,200	2,700	-	-	7,900
Australian Customs and Border Protection Service - redirection of capital spending	(4,800)	(4,900)	(4,900)	(4,900)	(19,500)
Australian Customs and Border Protection Service - Long Term Ashmore Reef capability	nfp	nfp	nfp	nfp	nfp
Maritime Humanitarian Assistance and Disaster Relief Capability - share arrangement for Southern Ocean surveillance	-	-	500	-	500
Total Capital Measures	400	(2,200)	(4,400)	(4,900)	(11,100)

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Summary of 2012-13 Budget Measures: Administered

- The net impact on revenue collected on behalf of the government will be \$589.000m over four years.
- This is a function of the following measures:
 - *Extension of the South Pacific Regional Trade and Economic Cooperation Agreement – Textile, Clothing and Footwear Scheme*. This measure has no impact on revenue estimates.
 - *Passenger movement charge (PMC) - increase*. This measure was expected to increase PMC revenue by \$85m in 2012-13 and \$610m over four years. CPI adjustments were also to apply from 2013-14. The government subsequently agreed to remove the indexation component of the original measure and will instead continue the current practice of periodic increases.
 - *Company tax cut- do not proceed*. This measure is estimated to reduce revenue by \$2m in 2012-13 and \$21m over four years from 2012-13 due a forecast reduction in imports resulting from the implementation of this measure.

Summary of 2012-13 Measures: Departmental

- The net impact on Departmental funding over the forward estimates is a function of the following measures:
 - *Australian Customs and Border Protection Service- Long Term Ashmore Reef capability* – This measure provided \$19.821 million over four years to fund the operating expense of the long term Ashmore Reef capability. Capital acquisition funding has also been agreed but details of this funding will not be published until after the procurement exercise has been completed.
 - *Maritime Humanitarian Assistance and Disaster Relief (HADR) Capability - share arrangement for Southern Ocean surveillance* – funding for this measure will commence in 2014-15 when Customs and Border Protection will have shared use of the Department of Defence's HADR. The HADR vessel is funded to undertake two, 40 day patrols in the Southern Ocean, one less patrol per year than is currently undertaken by the Southern Ocean capability, the *Ocean Protector*. The vessel will be transferred to Customs and Border Protection from 2016-17 s47C 

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- *Australian Commission for Law Enforcement Integrity - resource transfer-* \$3.000 m, (\$0.750m annually) has been provided to ACLEI over the forward estimates as a result of the Hamburger review which, amongst other things, recommended a doubling of resources available to ACLEI to oversee Customs and Border Protection.
- The increase in funding was offset by three savings measures (including capital savings), resulting in net savings of \$4.406m in 2012-13 and net savings of \$36.887m over the forward estimates. These measures include:
 - *Australian Customs and Border Protection Service - Increased use of SmartGate capability-* This measure provided savings back to budget of \$19.787m over the forward estimates, offset by capital funding of \$5.200m in 2012-13 and \$2.700m in 2013-14 to fund 20 additional SmartGate kiosks or gates, which is enough to process approximately 80% of all eligible Australian and New Zealand passengers.
 - *Illegal Foreign Fishing in Northern Waters - efficiencies-* provides \$6.000m in savings over four years. These savings are being achieved by reducing expenditure in the onshore response component for illegal foreign fishing and will deliver savings of \$1.5m per annum over the course of the 2012-13 financial year. These savings are being realised in the variable costs associated with discontinuing the capacity to contract civilian vessels capable of towing illegal foreign fishing vessels; reducing the number of charter flights; reducing the number of inshore coastal patrols; and reducing onshore processing capacity.
 - *Australian Customs and Border Protection Service - redirection of capital spending-* provided savings of \$19.500m over four years.
- The One-off 2.5% increase in the ED and the 20% reduction in Departmental Capital Budget (DCB) adjustments are not reflected in the 2012-13 Commonwealth Budget. These initiatives were reported as adjustments in the 2011-12 Additional Estimates process.

INITIATIVES AGREED SINCE 2012-13 BUDGET

- *Reducing Inbound Duty Free Allowances for Tobacco -* S47C
 proposal to reduce the tobacco concessions on

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tobacco products imported by incoming passengers and crew entering Australia from 250 grams to 50 grams [1 gram = 1 cigarette stick]. The measure became effective from 1 September 2012 and will maintain the current passenger facilitation standards.

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Background

- A summary of the 2012-13 Budget measures as they appear in the 2012-13 Portfolio Budget Statements and the 2012-13 Budget Paper No. 2 is provided below.
- Customs and Border Protection has a total of twelve measures that were agreed as part of the 2012-13 Budget process.
- Of these measures:
 - Three revenue measure;
 - Four capital saving measure
 - Three expense measures
 - Two saving measures
- Detail in relation to the 2012-13 measures is provided below.

2012-13 Budget - Revenue Measures (Administered)

Revenue Measure					
Measure Description	2012-13	2013-14	2014-15	2015-16	Total
	(\$000)	(\$000)	(\$000)	(\$000)	(\$000)
Extension of the South Pacific Regional Trade and Economic Cooperation Agreement – Textile, Clothing and Footwear Scheme	-	-	-	-	-
Passenger Movement Charge - increase	85,000	140,000	175,000	210,000	610,000
Company tax cut - do not proceed	(2,000)	(5,000)	(6,000)	(8,000)	(21,000)
Total Revenue Measure	83,000	135,000	169,000	202,000	589,000

- Detailed questions relating to Revenue Measures should be directed to the Department of the Treasury.
- The measure relates to the *Textile, Clothing and Footwear Scheme* and has a zero impact on revenue estimates.
- *Increase Passenger movement charge - increase*
 - The government agreed to increase the Passenger Movement Charge by \$8. This resulted in an increase to the PMC from \$47 to \$55.
 - The increased PMC will be levied on eligible departing passengers for air and sea tickets sold for overseas travel after 1 July 2012.

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- This measure was expected to increase PMC revenue by \$85m in 2012-13 and \$610m over four years with CPI adjustments to apply from 2013-14. The government subsequently agreed to remove the indexation component of the original measure and will instead continue the current practice of periodic increases.
- Customs and Border Protection is responsible for the collection of PMC revenue.
- Policy responsibility for the PMC rests with the Treasury.
- The modelling and the costs developed to derive the PMC estimates are subject to Cabinet confidentiality and therefore cannot be released.
- Questions related to the increase to the PMC should be referred to Treasury.
- *Company Tax Cut- do not proceed*
 - The Government decided not to proceed with the measure to lower the company tax rate from the 2013-14 income year and it has not implemented an early start to the company tax rate cut for small businesses from the 2012-13 income year.
 - The growth dividend associated with the company tax cut was also removed from the forward estimates, resulting in an impact on Customs duty.
 - The impact of this measure on Customs duty is \$2.000m in 2012-13 and \$21.000m over the forward estimates and results from a forecast reduction in imports that will result from the implementation of this measure.

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2012-13 Budget - Expense Measures (Departmental)

Expense Measure					
Measure Description	2012-13	2013-14	2014-15	2015-16	Total
	('000)	('000)	('000)	('000)	('000)
Australian Customs and Border Protection Service - Long Term Ashmore Reef capability	544	4,184	7,550	7,543	19,821
Australian Commission for Law Enforcement Integrity - resource transfer	(750)	(750)	(750)	(750)	(3,000)
Maritime Humanitarian Assistance and Disaster Relief Capability - share arrangement for Southern Ocean surveillance	–	–	6,447	6,523	12,970
Total Expense Measures	(206)	3,434	13,247	13,316	29,791

A detailed summary of each expense measure is as follows

1. *Australian Customs and Border Protection Service - Long Term Ashmore Reef capability*

- The government provided \$19.821m over four year years for the operating expenses associated with this measure.
- The *Long term Ashmore Reef vessel* will provide an on-going surveillance and enforcement capability in the vicinity of Ashmore Reef through the purchase and Commonwealth ownership of a vessel.
- This vessel will replace the Customs and Border Protection vessel *ACV Ashmore Guardian*, funding for which terminates on 30 June 2013.
- A near-permanent presence at Ashmore Reef is critical for supporting efforts to manage irregular maritime arrivals, protect the fragile fishery, deter illegal activity in the nature reserve and promptly respond to Safety of Life at Sea (SOLAS) or pollution incidents.
- Although the Government agreed to acquire a vessel for the Ashmore Reef, the capital acquisitions costs have not been published in the Budget papers to ensure that the upcoming tender process is not compromised. The acquisition costs related to this measure will be published when the tender process is finalised.

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2. *Maritime Humanitarian Assistance and Disaster Relief Capability(HADR) - share arrangement for Southern Ocean surveillance*
- The lease for the current Southern Ocean Capability, the *ACV Ocean Protection*, terminates on 30 June 2014.
 - This measure provides \$12.970m in operating expenses and \$0.500m in capital funding (refer to capital measure) to maintain a capability in the Southern Ocean in 2014-15 and 2015-16 through the use of the HADR vessel.
 - The HADR capability will be made available to Customs and Border Protection by Defence to undertake 2 x 40 day patrols per year in the Southern Ocean from 2014-15 to 2015-16.
 - The funding provided for the HADR vessel represents a reduction of one sea patrol per year, a reduction from the current funded level of effort of 3 x 40 day patrols per year.
 - The risk of implementation was considered to be low when this proposal was put forward. Risks will be mitigated by continued coordination with French patrol activity and the continuation of the current satellite surveillance program which will provide awareness of potentially illegal activity and be enabled to cue response activities.
 - From 2016-17, the HADR vessel will transfer to Customs and Border Protection's ownership s47C
 - This measure eliminates the need for Customs and Border Protection to acquire a dedicated vessel for use in the Southern Ocean. However, the long haul transport capability currently provided by *ACV Ocean Protector* will cease.
 - Customs and Border Protection will go back to Government in the context of the 2015-16 Budget to determine the future use of the HADR vessel and the ongoing operating costs required, based on the risk profile that exists at that time.
3. *Australian Commission for Law Enforcement Integrity - resource transfer*
- In February the Minister for Home Affairs and Justice commissioned a review of the first year of ACELI's oversight of Customs and Border Protection to examine the work ACLEI has been doing with Customs and Border Protection since it was brought under its jurisdiction and to ensure ACLEI is implementing this new responsibility effectively and is properly equipped to discharge this crucial function.

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- The review was conducted by former senior public servant Mr Peter Hamburger PSM and recommended that further annual funding of \$0.750m. As a result Customs and Border Protection transferred \$0.750m to ACLEI to undertake further significant activities in prevention and case work.
- A number of additional recommendations, all of which have been agreed by the Government, were made including:
 - That ACLEI explore the scope for seconding suitably senior and experienced staff from law enforcement agencies to assure ACLEI maintains up-to-date major investigation experience and expertise;
 - That the ACLEI Commissioner continue to build an understanding among ACLEI staff of ACLEI's role and the need to work jointly with other agencies;
 - That ACLEI establish a regular forum for relevant Customs and Border Protection and ACLEI staff to meet to discuss integrity issues;
 - That funding go towards completing ACLEI's information management project within the next 12 months;
 - That ACLEI work with Customs and Border Protection on communications and training strategies around increasing awareness of ACLEI's role and improving lessons learned from current integrity investigations; and
 - Measures to refine ACLEI's processes for managing and investigating integrity matters referred by law enforcement agencies.
- All of the recommendations were agreed by the government.

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2012-13 Budget - Savings Measures

Savings Measure					
Measure Description	2012-13 ('\$000)	2013-14 ('\$000)	2014-15 ('\$000)	2015-16 ('\$000)	Total ('\$000)
Australian Customs and Border Protection Service - Increased use of SmartGate capability	(3,306)	(5,206)	(5,420)	(5,855)	(19,787)
Illegal Foreign Fishing in Northern Waters - efficiencies	(1,500)	(1,500)	(1,500)	(1,500)	(6,000)
Total Savings Measures	(4,806)	(6,706)	(6,920)	(7,355)	(25,787)
* This savings measure is offset by \$7.9m injection of Capital (see below). Includes ABS savings at \$1.000m per annum (\$800k in 2012-13).					

- Customs and Border Protection provided departmental savings of \$4.806 million in 2012-13 and \$25.787 million over the forward estimates. In addition, a capital savings measure also provided savings to the Budget (refer Capital Measures for details).
- A detailed summary of each savings measure is as follows:
 1. *Australian Customs and Border Protection Service - Increased use of SmartGate capability*
 - This measure will deliver savings of \$3.306m in 2012-13 and \$19.787m over four years from 2012-13 by reducing the number of Customs and Border Protection officers performing manual clearance functions in Australia's eight international airports and reducing Air Border Security (ABS) coverage at Sydney International airport.
 - These savings have been partially offset by \$7.900m in capital funding provided to invest in additional SmartGate capacity (please refer to capital measure).
 - Additional SmartGate capacity will allow more passengers to use SmartGate, thereby reducing the number of passengers that are required to be manually processed by Customs and Border Protection officers.
 - This measure will result in savings in staff numbers from the inwards and outwards primary processing function of approximately 18 ASL in 2012-13, an additional 18 ASL (36 ASL in total) in 2013-14, an additional 2 ASL (38 ASL in total) in 2014-15 and and an additional 4 ASL (42 ASL in total) in 2015-16;
 - Central office support functions will be reduced by 5 ASL over the course of the first year with an impact across forward estimates.

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- The reduction to the ABS function at Sydney International airport will result in a reduction of 10 ASL in 2012-13 with an ongoing impact across forward estimates.
- The facilitation rate has been maintained at 92% under this proposal across the forward estimates.

2. Illegal Foreign Fishing in Northern Waters - efficiencies

- Since 2006 the comprehensive response to illegal foreign fishing has had a positive effect which is demonstrated by the decreasing number of apprehensions and suspect sightings in Australia's northern waters.
- The success of the current intervention approach (maintaining offshore deterrence resulting in fewer incursions and lower apprehensions) means that Customs and Border Protection is able to reduce expenditure on some variable costs associated within the onshore response component of the program.
- This measure will provide savings of \$1.500m in 2012-13 and \$6.000m over four years, by:
 - discontinuing of the vessel towing and destruction component of the current IFF activity;
 - reducing in the number of in shore coastal patrols, which will reduce vessel running costs for the regional based offices; and
 - reducing funding for charter flights to transport illegal foreign fishers from the reception ports at Broome, Weipa, Horn Island or Gove once they have been assessed as fit to fly to the Darwin Detention Centre.
- This savings measure is low risk provided that current offshore surveillance and response capability is maintained.

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2012-13 Budget – Capital Measures

Capital Measure					
Measure Description	2012-13	2013-14	2014-15	2015-16	Total
	('000)	('000)	('000)	('000)	('000)
Australian Customs and Border Protection Service - Increased use of SmartGate capability	5,200	2,700	–	–	7,900
Australian Customs and Border Protection Service - redirection of capital spending	(4,800)	(4,900)	(4,900)	(4,900)	(19,500)
Australian Customs and Border Protection Service - Long Term Ashmore Reef capability	nfp	nfp	nfp	nfp	nfp
Maritime Humanitarian Assistance and Disaster Relief Capability - share arrangement for Southern Ocean surveillance	–	–	500	–	500
Total Capital Measures	400	(2,200)	(4,400)	(4,900)	(11,100)

- A detailed summary of each Capital measure is as follows:

1. Australian Customs and Border Protection Service - Increased use of SmartGate capability

- The investment in additional SmartGate capacity of \$5.200m has been provided in 2012-13 with an additional \$2.700m to be provided in 2013-14.
- This investment will provide 20 additional SmartGate kiosks or gates - enough to process approximately 80 per cent of all eligible Australian and New Zealand travellers within current passenger facilitation standards.

2. Australian Customs and Border Protection Service - redirection of capital spending

- This measure will deliver savings of \$19.500m over four years by reducing Custom's and Border Protection's Departmental Capital Budget (DCB).
- This measure supports the government's fiscal strategy and its commitment to achieve a Budget surplus in 2012-13.

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- The measure is part of a suite of savings to offset the measures for the replacement of the *Maritime Humanitarian Assistance and Disaster Relief (HADR) Capability - share arrangement for Southern Ocean surveillance* and *Australian Customs and Border Protection Service - Long Term Ashmore Reef capability* vessels.
- The reduced capital funding base is being managed by refocussing expenditure to only those areas that support the delivery of the government's key strategic priorities (focussing on investments which enhance its intelligence-led, risk based approach) or critical maintenance.
- This measure will terminate at the end of the 2015-16 financial year.
- This reduction to the DCB in 2012-13 is over and above the 20 percent (\$16.188m), reduction to the DCB that was agreed as part of the 2011-12 Mid-Year Economic Fiscal Outlook (MYEFO).
- The risk of this measure is that Customs and Border Protection's remaining DCB will be inadequate to fund all critical infrastructure leading to the degradation in long term capability and infrastructure.

3. *Maritime Humanitarian Assistance and Disaster Relief Capability(HADR) - share arrangement for Southern Ocean surveillance*

- \$0.500m capital funding will be provided in 2014-15 to transfer systems, including boarding tenders, from the *ACV Ocean Protector* to ensure compatibility with civil maritime security requirements.
- This work will coincide with the timing of the shared use agreement for the HADR with Defence.

Other Issues:

- *Duty free allowances — cigarettes and tobacco*
 - The government agreed to reduce the inbound duty free allowance for cigarettes and tobacco products for international travellers aged 18 years and over to 50 cigarettes or 50 grams of tobacco, effective from 1 September 2012 [1 gram = 1 cigarette].
 - Under the previous arrangements, international travellers aged 18 years and over arriving prior to 1 September 2012 were able to bring in up to 250 cigarettes or 250 grams of tobacco into Australia duty free.

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- Implementation arrangements to introduce this measure have been agreed between Ministers (the Minister for Home Affairs, the Treasurer, the Prime Minister and the Finance Minister).
- The revenue impact of this measure has been recognised in the Australian Taxation Office estimates.
- This measure is estimated to provide additional revenue of \$600.000 million over the forward estimates period to the Budget.

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Version Control

Document Control Table

No.	Date	Author	Comments	Cleared by and date
0.1	13/09/2012	s47F [REDACTED]	Updated budget measures for tense and Tobacco adjustment	M.Belmonte 17/09/2012
1.0	17/09/2012	s47F [REDACTED]	Amended as per A/g DCFO changes	M. Belmonte 17/09/2012 ND, 21.09.2012

Consultation

External agencies consulted: Treasury, Attorney General's Department.

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Australian Customs and Border Protection Service

Key Issue 9**Workforce Adjustment****Issue:**

- Staffing reductions have been undertaken across the Agency in response to the 2012-2013 Budget.
- Customs and Border Protection have made staffing reductions in district offices, Tasmania, across the CL5 (Director) level and Senior Executive Staff (SES) positions across the agency.
- The CPSU has issued a number of media releases related to this topic, gaining some media traction.

Talking Points

- In response to the 2012-13 Budget, Customs and Border Protection has outlined staffing reductions of 190 Average Staffing Level (ASL).
 - The impact of the additional one off 2.5 per cent efficiency dividend equates to a reduction in funding of \$17.059 million.
 - The ongoing efficiency dividend of 1.5 per cent equates to \$11.2 million
- Customs and Border Protection are directing resources and personnel to areas of highest risk, namely major ports and capital cities and concentrating on areas of higher return such as improving our intelligence approaches, to shift the nature of the business, improve operational outcomes and compensate for the staff reductions.
- Customs and Border Protection is managing staff reductions through natural attrition, not back filling a number of currently vacant positions, redeployment and voluntary redundancies.
- Redundancies are on a voluntary basis.
- Customs and Border Protection actively consults with staff and their representatives (including the CPSU) regarding all workforce adjustment processes.
- Customs and Border Protection has sought as much as possible to find savings from non-frontline activities, and by placing a greater focus on applying intelligence-led risk-based approaches to our intervention strategies.
- In summary the key workforce reductions to date have been
 - A reduction in Senior Executive Staff (SES) positions from 56 to 45 positions, this will be further reduced to 44 positions
 - A reduction of 12 positions across Tasmania, 5 of which were vacant.
 - A reduction of approximately 25 CL5 (EL2) positions across the agency.

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- There have been a range of other workforce reduction processes on a smaller scale where the agency has continued to streamline or centralise functions.
- There will be further staffing reductions over the next 6 months to enable the agency to meet the ASL reduction required for 2012-13.
- All decisions regarding staff reductions are decisions made by the Agency alone.

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27 September 2012

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BACKGROUND

District Office Reductions:

A reduction of 37 positions and the relocation of a further 7 positions to other major ports from 14 district offices has been implemented.

We reduced our capacity in district offices identified as having low level of high risk activity, the rationale for identifying offices for staff reduction has been based on the current assessment of risk as provided by the Vessel Threat Risk Assessment System (VTRAS)

Seven positions were relocated to supplement the major ports of Fremantle (one position) and Brisbane (six positions).

Customs and Border Protection consulted with staff and the Community and Public Sector Union (CPSU). The consultation period was from 7 June until 2 July with a final decision announced on 12 July.

In order to meet these proposed savings and allow reasonable timeframes for moves accounting for children's schooling and accommodation arrangements, the reductions will need to be completed by 31 December 2012.

The following offices will have staffing changes: Bowen, Broome, Bunbury, Cairns, Dampier, Gladstone, Geraldton, Launceston, Mackay, Newcastle, Port Hedland, Port Lincoln, Thursday Island and Townsville.

Tasmanian Reductions

Customs and Border Protection has implemented a reduction of 12 positions across Tasmania. 5 of these positions were vacancies.

Customs and Border Protection undertook an assessment of the current risk to the border in Tasmania and the decision to reduce current staffing numbers is based on the following factors:

- International sea freight and bulk shipping is no longer arriving into Bell Bay in the north of the State;
- Hobart Airport does not receive any regular or scheduled international flights; and
- Intelligence indicates that the risk to the border in Tasmania is lower than the other major ports.
- Capacity to move officers into Tasmania will be retained should these or any factors affecting border risks change.

Tasmania-based staff and their representatives were notified of proposed changes to Tasmanian offices on 27 July 2012, followed by a period of pre-decision consultation. The final decision was announced to staff on 3 September 2012.

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In response to feedback received during the consultation period, Customs and Border Protection maintained an extra intelligence officer.

Reductions included: 6 positions in Intelligence and Targeting in Hobart; 3 positions in Enforcement Operations in Launceston (part of the District Office reductions); 1 position in Investigations in Hobart; and 2 positions in People and Corporate Services.

Customs and Border Protection is working with affected staff in accordance with standard workforce adjustment processes.

CL5 Reductions

- Customs and Border Protection has reduced the number of Directors (CL5/Executive Level 2) across the agency by approximately 25 positions.
- This will produce efficiency gains, tighter alignment of functions and will strengthen the core of the organisation to effectively deliver critical services to the community.
- There were no CL5s requiring redeployment as a result of this process.

Document Control Table

No.	Date	Author	Comments	Cleared by and date
0.1	17/9/12	s47F [REDACTED]	Draft Talking points only	
0.2	24/9/12	s47F [REDACTED]	Talking points	24/9 s47F [REDACTED]
0.3	25/9/12	s47F [REDACTED]	Incorporated changes from DY and AL including additional info from DT	Cleared s47F [REDACTED] 27/9
0.4		s47F [REDACTED]		Cleared s47F [REDACTED] 27/9
1.0	28/9/12	s47F [REDACTED]	A/DCEO for clearance	
2.0	3/10/12	s47F [REDACTED]	Updates requested by A/g DCEO MCI in consultation with CFO	A/g DCEO MCI 3/10/12

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UNCLASSIFIED**Australian Customs and Border Protection Service****Key Issue 10****Implementation of the Government's *Streamlining Australia's anti-dumping system* reforms.****Issues**

Action taken to date to implement the Government's reforms, and associated issues.

Talking points

- The Government is nearing the completion of the implementation of its reforms to the anti-dumping system entitled *Streamlining Australia's anti-dumping system*.
- Over the last 15 months, the Government has implemented the biggest changes in over a decade to the anti-dumping system.
- On 4 July 2012 the Minister for Home Affairs announced the appointment of John Brumby to consider the feasibility of establishing a Commonwealth anti-dumping agency, or retaining the function within Customs and Border Protection.
- The Prime Minister's Taskforce **on Manufacturing** released a 'Report of the non-government members' on 16 August 2012.

If asked about the Brumby Review - Commonwealth anti-dumping agency

- Mr Brumby has been asked to provide advice on the best structure for administering Australia's anti-dumping system.
- The Brumby Review is investigating the benefits and costs of a stand-alone anti-dumping agency or retaining the function within the Australian Customs and Border Protection Service (Customs and Border Protection).
- It is anticipated that Mr Brumby will present his findings to Government by 30 November 2012.
- [Note: further questions should be referred to the Attorney-General's Department]

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UNCLASSIFIED***If asked about the Prime Minister's Taskforce on manufacturing – 'Report of the non-government members'***

- Recommendation six of the 'Report of the non-government members' to the anti-dumping system refers

to Appendix A of the report (**Attachment A**) which makes a number of suggestions for anti-dumping policy reform including:

- continued operation of the International Trade Remedies Forum (ITRF);
 - appropriate resourcing of the anti-dumping function;
 - increased transparency in anti-dumping processes;
 - revised methodologies for determining normal value and export prices;
 - improved public record;
 - improved operations and strike forces; and
 - use of experts in anti-dumping investigations.
- Many of these are already being addressed through the work of the International Trade Remedies Branch (ITRB) and the ITRF in implementing the *Streamlining* reforms.
 - [Note: further questions, including the Government's response to the 'Report of the non-Government members should be referred to the Department of Industry, Innovation, Science Research and Tertiary Education].

If asked whether recent budget announcements will impact Branch staffing

- As part of its *Streamlining* reforms, the Government increased staff numbers in the ITRB to 45 officers. Currently there are 40 staff working in the area.
- Adequate staffing is an essential part of implementing the Government's reforms and the Branch will continue to monitor staffing levels to ensure that they are adequate to meet its workload in line with available resources.

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The International Trade Remedies Forum (ITRF)

- The ITRF was established by the Government in 2011 to play an ongoing advisory role, including reporting to the Government on options for further improvements to the anti-dumping system.
- Members are appointed by the Minister for Home Affairs and comprise representatives of manufacturers, producers, importers, industry associations, trade unions and key government agencies (see **Attachment B**).
- The ITRF has met four times: August 2011, December 2011, 1 May 2012 and 31 August 2012. The next meeting is scheduled for December 2012.
- The ITRF has been active and effective over its 14 months of operation:
 - It presented the Minister for Home Affairs with a protocol on the greater use of experts in anti-dumping investigations, which the Minister endorsed in February 2012.
 - The ITRF's working group on 'close processed agricultural goods' provided a report and recommendations on improving access for primary producers to the anti-dumping system.
 - A second working group provided a report and recommendations on improving the effectiveness of Australia's 'market situation' provisions.
 - The Government has accepted the recommendations in the two reports. The recommendations will continue to be implemented over the coming months.
 - These reports were made available on the Customs and Border Protection website on 21 March 2012.
 - The ITRF has also considered a number of discussion papers relating to investigation and injury periods, approach to non-cooperation, and development of an anti-circumvention framework, and agreed to continue work on these matters.

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International Trade Remedies Advisor (ITRA)

- A funding agreement has been entered into with Australian Industry Group (Ai Group), which is employing and hosting the ITRA.
- The ITRA was appointed on 2 July 2012 and is available to provide information and assist small and medium enterprises (SME) to make applications and submissions for anti-dumping and countervailing investigations, reviews and continuation inquiries. The ITRA is also providing assistance to downstream industries.
- There has been strong interest and usage of the ITRA since it commenced.

Stronger Compliance

- In addition to ongoing monitoring, Operation BLUENET was launched in November 2011 to monitor compliance with anti-dumping measures and trade controls.
- The products targeted under Operation BLUENET included aluminium extrusions, clear float glass, hollow steel sections and structural timber.
- At its conclusion on 30 June 2012, Operation BLUENET had:
 - assessed 920 importations; and
 - undertaken 67 desktop verifications (audits) which have resulted in the detection of 275 instances of non-compliance.
- Overall, the operation recovered \$701,579.11 in total, including:
 - \$125,028.64 interim dumping duties;
 - \$66,189.67 interim countervailing duties;
 - \$445,017.05 in Customs duty; and
 - \$65,343.75 in GST.
- To build on the work of Operation BLUENET, an Economic Risk Unit has been established within the Customs and Border Protection Compliance Program. This Unit will undertake a 12 month project called 'Project Salify' which will include the establishment of an ongoing compliance monitoring regime for trade remedies and other trade rules.

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UNCLASSIFIED***Legislative amendments***

- The Government's reforms necessitated a number of amendments to the *Customs Act 1901*, which were introduced into the Parliament in stages.
- The Bill representing the first tranche of *Streamlining* reforms was passed and commenced on 24 October 2011.
- The Bill, representing the second tranche of *Streamlining* reforms, passed the House of Representatives on 28 February 2012 and is awaiting debate in the Senate.
- The two bills, representing the third tranche of *Streamlining* reforms, passed the House of Representatives on 9 May 2012 and are awaiting debate in the Senate.
- A fourth and final tranche of legislation to implement the remaining reforms was introduced to Parliament on 27 June 2012. This Bill passed the House of Representatives on 15 August 2012 and is now awaiting debate in the Senate.

Trade Measures Review Officer — See Cargo and Trade backpocket brief

Implementation of the Streamlining reforms

- Implementation of the *Streamlining* reforms is nearing completion.
- The ITRB has:
 - consulted closely with the ITRF and its working groups on the implementation of the reforms;
 - introduced into Parliament four tranches of legislation;
 - implemented a subsidies register;
 - increased transparency by upgrading the Electronic Public Record;
 - appointed the ITRA; and
 - updated the Minister's Direction on material injury.

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Background New Issues in Anti-Dumping Brumby Review

The Brumby Review, announced by the Minister for Home Affairs on 4 July 2012, is examining the current arrangements for assessing and investigating anti-dumping matters and to consider the feasibility of a Commonwealth anti-dumping agency or retaining the function within Customs and Border Protection.

The ITRB has provided a CL5 level officer (Executive Level 2 equivalent), experienced in both policy and operational matters, to work with the Brumby secretariat located in the Attorney-General's Department. ITRB receives fortnightly updates from the secretariat on the progress of the Review.

To date, the Review has held a number of consultations with industry stakeholders including manufacturers, importers, end-users, unions, industry associations and peak bodies. A discussion paper was released in mid-September 2012 and identifies the following key issues that have emerged from consultations:

- the need (or not) for a stand-alone agency;
- the skills, experience and resourcing of the existing anti-dumping administration;
- the transparency of the anti-dumping process;
- public confidence and 'cultural issues' in the existing administration — noting that some stakeholders have indicated ITRB is perceived as anti-manufacturer, others say it is pro-manufacturer and yet others say ITRB is generally objective and neutral;
- the geographic location of the agency;
- verification of financial data and analytical rigour; and
- access to the anti-dumping system especially for small and medium enterprises.

The paper also identifies the following issues as outside, or likely to be outside, the Review's terms of reference:

- the role of the Minister as the ultimate decision-maker;
- timeframes for investigations;
- public interest test;
- appeals process;
- transparency of import data available from the Australian Bureau of Statistics;
- acceptance of price undertakings as a form of measures; and
- significant amendments to policy and technical matters eg. abolishing the lesser duty rule etc.

(a) Prime Minister's Manufacturing Taskforce

In August 2012 the Prime Minister's Manufacturing Taskforce released the '*Report of the Non-Government Members*'. Recommendation six of this report relates to anti-dumping. It states:

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'The non-Government members of the Taskforce recommend that in examining its anti-dumping policy, the Commonwealth's proposed inquiry into establishing an anti-dumping authority ensure that any new entity is properly resourced consistent with the material presented in Appendix One of this Report. In addition, in the context of the current environment, there is a need to enforce a rigorous approach, including the continued operation of the International Trade Remedies Forum as well as appropriate resourcing for ongoing operations and strike forces. This needs to be supported by a more systematic and comprehensive approach to negotiations aimed at removing non-tariff trade barriers erected by our trading partners'.

Appendix One of the Report is at [Attachment A](#).

Streamlining Reforms

On 22 June 2011 the then Minister for Home Affairs, the Hon Brendan O'Connor MP, along with the Minister for Trade, the Hon Dr Craig Emerson MP, announced a package of improvements to Australia's anti-dumping regime. The package includes the Government's response to the Productivity Commission Report, Senator Xenophon's Bill, submissions from stakeholders and comments from State and Territory governments.

Summary of the Improvements

The Australian Government's improvements include 29 measures and will result in:

1. Better access to the anti-dumping system.
2. Improved timeliness of the system.
3. Improved quality of decision making.
4. Greater consistency with other countries.
5. Stronger compliance with anti-dumping measures.

1. Better access to the anti-dumping system through:

- Supporting small and medium businesses and downstream manufacturers and producers to actively participate in anti-dumping investigations with a new Support Office resource within the Australian Industry Group (Ai Group).
- Improving access to import data by working with the Australian Bureau of Statistics (ABS) on options for obtaining import statistics for more clearly defined categories of goods.
- Improving access to subsidies data through an online register of subsidies previously investigated by Customs and Border Protection.
- Clarifying the data requirements for making an application.
- Clarifying the parties permitted to participate in investigations to include relevant industry associations, trade unions and downstream industry. This will:
 - allow these parties to make submissions to an investigation; and
 - not affect the present standing requirements for making an anti-dumping application.
- Providing a more flexible basis for parties wishing to seek a review of existing measures

2. Improved timeliness through:

- A 45 per cent increase in Customs and Border Protection staff, to approximately 45 staff, working on anti-dumping issues over the next 12 months to ensure cases are not delayed by resources.

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- Introducing provisional measures to remedy the effects of dumping at the earliest opportunity.
- Introducing a 30 day time limit for Ministerial decision-making in anti-dumping cases.

3. Improved decision making through:

- Greater use of trade and industry experts in investigating complaints.
- Introduction of a more rigorous appeals process supported by more resources. The Review Officer:
 - will be selected from a panel;
 - may ask Customs and Border Protection to reinvestigate certain findings;
 - will make recommendations directly to the Minister; and
 - will be supported with administrative and research assistance.
- Expanding the list of injury factors that can be claimed by domestic industry (noting that before measures may be imposed material injury, in any form, must still have to be found to have been caused by dumping) to include:
 - any impact on jobs or on investment, not just those impacts already listed; and
 - confirm that profits foregone and loss of market share in an expanding market are relevant injury indicators.
- Clarifying Customs and Border Protection's approach to injury determinations.
- Providing flexibility in allowing extensions of time to complete complex cases.

4. Consistency with other countries through:

- Regular consideration of the practices and decisions of other countries.
- Allowing Australian companies to combat a wider range of subsidies.

5. Stronger compliance through:

- A dedicated resource within Customs and Border Protection who is increasing monitoring of measures to ensure compliance.
- Combating attempts to avoid anti-dumping duties.

Details of the improvements are included in a fact sheet, 'Streamlining Australia's Anti-Dumping System' which is available on the Customs and Border Protection website.

The implementation costs of the improvements were costed as \$10.4 million over four years. The Government has approved the reallocation of \$10.4 million from within Customs and Border Protection.

Implementation to date

New branch

The Trade Measures Branch within Customs and Border Protection was renamed the International Trade Remedies Branch (ITRB) on 4 July 2011. This Branch is responsible for the investigation of dumping and countervailing applications.

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At 31 August 2012, ITRB had 39 staff (excluding an SES officer). A number of staff are currently on long term leave and are expected to return in the next six to twelve months. Recruitment is undertaken as required in line with available budget.

Subsidies register

The subsidies register is part of the Government's reform package and is available on the Customs and Border Protection website. The aim of the register is to assist companies considering countervailing action where they have been damaged by imports of subsidised products in other countries. It provides a summary of subsidy programs previously investigated by Customs and Border Protection.

Case Management System

Customs and Border Protection is also developing a new case management system. It is on track for implementation by the end of 2012.

Stronger Compliance

A dedicated position has been established and co-located with Compliance Assurance officers in Customs and Border Protection to develop and implement an improved ongoing program to monitor compliance with anti-dumping and countervailing measures. To date, approximately 3,200 import declarations have been checked and follow-up action taken. Shortfalls in interim dumping duties and interim countervailing duties amounting to more than \$2 million (AUD) have been identified. Action to recover the unpaid, or underpaid, duties is underway. Penalty action will also be considered.

Legislative amendments

The legislative amendments required by the reforms were introduced over four tranches.

The Government introduced the first tranche of legislative amendments to implement the Government's improvements on 6 July 2011.

The legislation was passed on 13 October 2011. It received Royal Assent on 17 October 2011 and its operative provision took effect through Proclamation on 24 October 2011.

This bill amended the *Customs Act 1901* to:

- clarify that, in assessing material injury, the Minister may consider any impact on jobs in the domestic industry producing like goods;
- reflect the full range of actionable subsidies under World Trade Organization (WTO) rules;
- insert a time limit to provide that, subject to extenuating circumstances, the Minister will make a decision within 30 days of receiving a report on an investigation, duty assessment, continuation inquiry, review of measures or a report following a review of a decision by the Trade Measures Review Officer (TMRO); and
- amend the definition of "interested party" in relation to anti-dumping and subsidy investigations to include industry associations, unions and downstream industry (whether or not they are importers).

A second tranche of amendments was introduced on 23 November 2011. The Bill passed the House on 28 February 2012. The purpose of this second Bill is to amend the *Customs Act 1901* to establish a new appeals process consisting of the following key elements

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- replacement of the current single TMRO by a panel, any of which can be chosen to perform the functions of the TMRO;
- amendments to permit the TMRO (before making a recommendation to the Minister) to request that the International Trade Remedies Branch reinvestigate a particular finding and report back to the TMRO;
- amendments to permit the TMRO in circumstances where he or she finds in favour of an appeal, to make a recommendation to the Minister for a final determination;
- amendments to permit a number of decisions that are not presently able to be appealed to become appealable, including decisions to continue measures or not, and to vary measures following review;
- amendment of the threshold for the TMRO to apply in accepting applications for review consistent with the Government's administrative law policy for merits review; and
- amendments to allow industry associations, trade unions and downstream industry to participate in administrative reviews.

Additionally, the Bill proposes amendments to allow the CEO of Customs and Border Protection to seek more than one extension of time during an investigation, review of measures, continuation inquiry or duty assessment and will formally establish the ITRF.

This Bill is currently awaiting debate in the Senate.

The Customs Amendment (Anti-dumping Improvements) Bill (No.2) 2012 & Customs Tariff (Anti-dumping) Amendment Bill 2012 were introduced as the third tranche of reform on 21 March 2012. These Bills passed the House on 9 May 2012 and are awaiting debate in the Senate. The Improvements Bill, will:

- remove the need for a separate review and continuation enquiry occurring in close proximity;
- better reflect the definitions and operative provisions of the WTO Agreement on Subsidies and Countervailing Measures;
- enable the Minister to impose different forms of interim duties; and
- repeal section 269TAC(13) to remove the limitations to determining profit when constructing a normal value because of section 269TAAD.

The Tariff Amendment Bill will amend the *Customs Tariff (Anti-Dumping) Act 1975* to enable the use of different forms of duty from those currently used including an ad valorem (percentage duty), a fixed amount of duty, a combination duty (having fixed and variable components), or a floor price.

These two Bills are also awaiting debate in the Senate.

The fourth tranche of legislation, entitled Customs Amendment (Anti-dumping improvements) Bill (No.3) was introduced to Parliament on 27 June 2012. The purpose of this Bill is to:

- (i) introduce an anti-circumvention framework;
- (ii) introduce provisions for determinations of dumping margins based on the level of cooperation of exporters; and

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- (iii) complete the alignment of the subsidies provisions of the Customs Act with the *WTO Agreement on Subsidies and Countervailing Measures*.

This Bill passed the House of Representatives on 15 August 2012. It is now awaiting debate in the Senate.

International Trade Remedies Forum (ITRF)

The ITRF was established to provide advice and feedback to the Government on the effectiveness of improvements to the anti-dumping system. The ITRF is comprised of 21 members representing manufacturers, producers and importers, as well as industry associations, trade unions and relevant Government agencies. It is chaired by the Chief Executive Officer of Customs and Border Protection

In the first instance members were appointed administratively by the Minister (in line with the Government's *Streamlining* policy). At its first meeting on 29 August 2011, the ITRF noted its terms of reference and conduct of meeting guidelines.

ITRF and working group members are set out at Attachment **B**.

The ITRF also agreed to provide feedback to Customs and Border Protection on a draft protocol on the use of experts.

The Working Group on Particular Market Situation met on 23 September 2011 and 16 November 2011. The CPAG Working Group met on 29 September 2011 and the Working Group on ABS Import Data met on 7 October 2011.

The ITRF met for the second time on 12 December 2011 and considered reports from the working groups on particular market situation and CPAG, and also finalised the protocol. Both the report on particular market situation and CPAG were provided to the Minister on 22 December 2011.

The Minister approved the protocol on the greater use of experts in February 2012. The Minister also published the two working group reports (including recommendations) on the ITRF page on the Customs and Border Protection website on 21 March 2012. In line with discussions with other Ministers on the publication of the reports and recommendations, his media release noted that “[n]ot all the views expressed in the reports are endorsed by the Government. The Government's purpose in reforming Australia's anti-dumping system is to improve access to the anti-dumping system for businesses, and ensure that anti-dumping investigations can be resolved more quickly”.

Additionally, proposals to improve the provision of evidence under the existing legislative provisions were approved.

At the third meeting, held on 1 May 2012, the ITRF discussed key issues including:

- establishing a Compliance Working Group;
- establishing a Subsidies Working Group;
- developing an Australian anti-circumvention framework;
- progressing recruitment of an International Trade Remedies Advisor (ITRA), previously known as the Small and Medium Enterprise Support Officer;
- enhancing the Electronic Public Record; and
- legislative amendments to address issues relating to non-cooperative parties.

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The ITRF met for the fourth time on 31 August 2012 and discussed key issues including:

- noting that the implementation of the Streamlining reforms were almost complete;
- the Brumby Review into the establishment of a Commonwealth anti-dumping agency;
- status of certain issues relating to non-cooperative parties;
- Electronic Public Record enhancements;
- a report from the ITRA; and
- the status of the establishment of the Trade Measures Review Officer Panel.

The fifth meeting is scheduled for December 2012.

Compliance Working Group

The first Compliance Working Group meeting was held on 27 July 2012 with the second meeting scheduled to occur in the week commencing 11 February 2013.

Electronic Public Record Working Group

At the ITRF on 1 May 2012 it was agreed to establish an Electronic Public Record Working Group to liaise with Customs and Border Protection on improvements to the Electronic Public Record. A number of improvements to the Electronic Public Record have been implemented.

The Electronic Public Record now provides access to current and newly concluded cases without the need to login and use a password. A new numbering system and naming convention has been adopted to make it easier for users to quickly find documents. Documents, once assessed and approved, are now available on-line within the hour or in a maximum time of half a day. A new 'case page' for all current and recently concluded cases provides a 'one-stop-shop' where all information and documents about a case are available in one place.

The Electronic Public Record Working Group met for the first time on 2 August 2012. While industry members noted that improvements to EPR were an 'enormous step forward', members requested that Customs and Border Protection make a number of further improvements. ITRB is working through the list of changes requested and implementing those that are feasible and in line with the available budget, confidentiality obligations and IT systems compatibility.

International Trade Remedies Advisor (ITRA)

The Small and Medium Enterprise Support Officer (SSO) position was renamed the International Trade Remedies Advisor (ITRA) to better reflect the roles and responsibilities of this senior position.

The ITRA provides advice and support to SMEs and downstream industries by providing advice relating to investigations, through making submissions and working with businesses to assist them to prepare applications, including applications for dumping and/or countervailing investigations, reviews, and continuation inquiries.

The ITRA also facilitates cooperation between SMEs to ensure their applications reach the "25 per cent of domestic producers of like goods" and "more support than opposition" thresholds for applications required by the WTO Anti-Dumping Agreement (ADA) and Agreement on Subsidies and Countervailing Measures (ASCM). Additionally the ITRA will periodically review available

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data about downstream industries following the imposition of measures and assist with preparation of anti-dumping or countervailing applications in respect of those goods. If appropriate, the ITRA will refer matters relating to the dumping of downstream goods to the Minister to determine whether there are grounds for the Minister to initiate an investigation, consistent with the WTO ADA and ASCM.

There has been interest and demand for ITRA services since the position formally commenced. As at 31 August 2012, the ITRA has responded to 15 enquiries, conducted 13 visits to SMEs (including manufacturers, downstream industry and importers) across a variety of sectors, and is working with SME clients on seven applications for anti-dumping or countervailing measures.

A funding agreement has been entered into with Australian Industry Group (Ai Group), to employ and host the ITRA. Budgeted funding totalling \$367,000 is available over the forward estimates for a pilot program for the employment of the ITRA. Ai Group advertised the position on Friday 21 and Saturday 22 October 2011. Interviews were held on 28 November and 1 December by a panel with a representative from Customs and Border Protection, Ai Group and the AWU.

Initially, three applicants were interviewed and a successful applicant was selected. During negotiations regarding a start date in late December 2011, the applicant notified Ai Group that he was withdrawing from the process. Ai Group advised Customs and Border Protection on 17 January 2012. The position was re-advertised on 4 February 2012 in The Australian and on Seek and Lloyd's List on 2 and 9 February 2012 but did not attract any suitably qualified candidates.

In order to improve prospects for attracting suitably qualified and experienced candidates the Minister agreed to remove the criterion that the ITRA cannot be a public servant and to immediately second a Customs and Border Protection officer to the Ai Group to establish and perform the functions of the ITRA until an ongoing ITRA is appointed. The Minister also agreed the remuneration for the ITRA be increased to attract applicants with appropriate skills and experiences, including from major consulting firms. The level of remuneration was negotiated with the successful applicant in line with his skills and experience.

The position was again re-advertised in April 2012, resulting in a number of promising applications being received. A short-listing was finalised, with interviews conducted in the week commencing 28 May 2012. The ITRA was appointed on 2 July 2012 and is available to assist SMEs.

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UNCLASSIFIED**ATTACHMENT A****APPENDIX ONE****Short term issues relating to Australia's anti-dumping regime and Australian Industry Participation (AIP) in both government procurement and private sector projects**

A central theme of this report is the importance of short term measures to address the cyclical pressures that many firms and sub sectors of Australian manufacturing are confronting. Such an approach must also recognise the tough global trading environment Australian manufacturers are faced with and some of the predatory practices that are being pursued by other nations and firms.

These current market pressures can be addressed in part with a more comprehensive government approach to Australian industry Participation (AIP) both in terms of government procurement and AIP in private sector projects and tenders across the country (particularly the \$450 billion pipeline of mining investment). This can help win business that would otherwise go offshore. This approach needs to be backed up by ensuring Australia's antidumping arrangements are up to the task. Both these measures (AIP and anti-dumping) can make a difference by reducing the risk of loss of jobs and preserving core manufacturing capabilities in the current environment.⁹⁴

Improve anti-dumping arrangements

As the non-government members of the Taskforce made clear at the May 25 Taskforce meeting, dumping goods into Australian markets can have a significant impact on local manufacturing viability. Policies should ensure:

- Continued operation of the International Trade Remedies Forum and where appropriate continued legislative change.
- The creation of an Anti-dumping Agency, while not covered in our May 25 discussions can be consistent with implementing what needs to be done.
- Appropriate resourcing for ongoing operations and strike forces against dumping within Customs.
- Tough anti-dumping measures need to be backed up by a more systematic and comprehensive approach to negotiations aimed at removing non-tariff barriers erected by our trading partners.

The dumping of illegally priced goods into Australian markets is having a destructive effect on the viability of some Australian manufacturing firms. Many of the goods that are dumped in Australia originate from 'sanctuary markets' in countries that are notoriously opaque in terms of subsidies and advantages provided to their exporting manufacturing firms. This unfair assistance includes the granting of advantages that cannot possibly be considered legitimate 'comparative cost advantages' in a rules based global trading system. Furthermore many of these firms are either state owned or have a quasi-state ownership, further complicating the nature of these unfair advantages and their effective identification. In Australia glass,

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aluminium, timber products, pulp and paper, TCF and steel markets are being subject to dumping, as well as some firms in other sectors.

1. Legislative steps

The non-government members support the efforts the Federal Government is taking by implementing the 'streamlining' reforms to the anti-dumping regime, and considers this a good first step in combating the illegal practice of dumping. Given that trade and market behaviour of dumping firms is constantly evolving, the government cannot assume that the task of combating and curtailing dumping is complete or will be at the conclusion of its legislative agenda. It is expected that, as with any legislative regime seeking to curb illegal behaviour, this will be an ongoing process of reform requiring further consultation with industry and unions. In overcoming the negative effect of dumping, manufacturers are identifying the need for further reform in the following areas:

- Administrative practices including ongoing improvement of the culture within agencies tasked to detect and discipline dumping.
- Agencies are adequately resourced and mandated to cooperate with one another in anti-dumping investigations.
- There is increased transparency in anti-dumping processes.
- There are revised methodologies for determination of normal values and export prices.
- There is an improved public record.
- There is an improved reliability, transparency and consistency of statistics.
- There is change in the usage of subject matter experts.
- And that other issues currently being considered by the International Trade Remedies Forum are adequately addressed.

A priority needing greater attention is the development of effective mechanisms to deal with the non-market activities that prevail in key industries in China and elsewhere (noting that Australia has ceded the right to consider China as a non-market economy for anti-dumping purposes).

2. Commonwealth Anti-Dumping Agency

The non-government members note the announcement of a feasibility study into a Commonwealth Anti-Dumping agency by former Victorian Premier John Brumby. The non-government members are supportive of this study and note that any Commonwealth Anti-Dumping agency should:

- Be highly resourced with Commonwealth funding and expertise.
- Have a broad remit of powers and cross-government scope for the purposes of dealing with breaches of trade.

3. Operations and strike forces

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The non-government members of the Taskforce advocate a continuation of the International Trade Remedies Forum (ITRF) which brings together government, business and employee representatives to discuss issues relevant in the dumping space. The ITRF will be valuable in ensuring that the new regime is effectively operating, identifying where it has failed to achieve its tasks, and also identifying further areas for improvement, including current issues cited above.

The success of Operation Bluenet in identifying compliance issues in the anti-dumping space is important. The success of such high profile investigations should not be solely measured in 'dollars and cents' in terms of cargo identified and duties and taxes captured – as important as those are – but also in the general and specific deterrence that they provide for other would be dumpers. Penalties for deliberate and negligent circumvention of trade controls detected need to be increased to compliment increased compliance monitoring as an effective deterrent. Such specific bodies and operations are often utilised with great success in areas of public safety and crackdowns on criminal behaviour.

There is a case for the expansion of 'Bluenet' type operations and strike forces that target specific industries, importers or products. This approach should also be extended beyond compliance and into circumvention measures and should have a focus on ensuring freight and goods are thoroughly and adequately inspected. The creation of a specific operation to look into the dumping of aluminium extrusions should be considered.

Any operation should source information from public sources, industry as well as intelligence from other agencies that have relevant information on potential trade violations. It would be expected such operations would be appropriately resourced with staff and finances.

Investigations could be conducted in a high profile manner, or more covertly depending on whether a specific or general deterrence outcome was being sought. Both approaches can be used with the choice at the time depending on the degree of intelligence and the nature of the investigation.

Activate a comprehensive Australian Industry Participation policy now for both government procurement and private sector projects

As pointed out by the non-government members of the Taskforce on May 25, a significant opportunity to get work into firms right now is in projects and tenders involving government procurement and in private sector project work. This includes the \$450 billion pipeline of resource sector investment and capital works.

Many firms currently are suffering from a lack of demand due to the loss of competitiveness resulting from the terms of trade driven currency as well as sluggish domestic demand in non-resource related sectors.

With appropriate short term measures that boost demand, firms can adapt to cyclical fluctuations thereby allowing firms to position themselves for longer-term supply side competitiveness improvements.

To ensure the benefits from 'full, fair and reasonable access' materialise, there will need to be greater rigour and transparency applied to the issue of procurement.

Early engagement has been shown to be vital in winning work on major resource projects as specifications and other logistical decisions are often made at a bank feasibility or Environmental Impact Statement stage.

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Australian Industry Participation Plans should be formulated as early as possible, with proponents providing clear indications of engagement with local suppliers. Proponents should provide detailed expectations of the levels of local content to be used in the project, with a breakdown of percentages in classes of materials and goods. Such detail will provide greater accuracy for the purposes of review and audit as to the successful efforts of that proponent in providing full, fair and reasonable access for Australian local manufacturers.

In part this will involve project developers working with the Industry Capability Network, AusIndustry and others to ensure that a careful assessment is made of which key contracts include contestable items (between domestic producers and importers), and ensuring that packages bid for this work are appropriately packaged to ensure 'full, fair and reasonable' opportunity.

In some cases (particularly where firms are getting access to duty free imports through mechanisms such as the enhanced project by law scheme) an independent review or audit of undertakings will be required to ensure compliance.

It is also the case that standards should not be specified in a way that unreasonably utilises foreign competitor specifications thus limiting the access of Australian suppliers. The industry supply advocates, national sector managers, Commonwealth and State Governments need to harness their combined efforts in this challenging environment to ensure that the approach described above is a reality when contracts are tendered.

The non-government members of the Taskforce see this approach to AIP applying as much too specific manufacturing or mining projects as we do to infrastructure projects in regional centres. These infrastructure projects can also help meet the cyclical pressures and help boost short-term demand immediately.⁹⁵

That is why this report proposes that COAG establish a program to engage all levels of government to increase investment in the built environment, social and community infrastructure and liveability in mining communities. This is to ensure that the mining boom leaves a lasting legacy for these towns, as was the case with the diversified economic and social legacy left for gold rush communities such as Bendigo, Ballarat, Gympie and Bathurst. This program should ensure that there is full, fair and reasonable access to local suppliers including of manufactured building products, fit out, labour and related services, to better spread the benefits of the boom throughout manufacturing and the broader economy. The non-government members of the Taskforce are also aware that there is much that can be done through government procurement right now.

For example:

1. While AIP arrangements apply to Commonwealth contracts over \$20 million it is readily acknowledged by those involved that resources required to promote improvements have been in short supply for the early stage of the new AIPP regime. As a result they have not provided sufficient access to demand opportunities available right now. This can be improved.
2. In some cases, arrangements need to be tailored to the circumstances of individual industries. For example in the case of TCF it is more important to focus on a specific set of tenders and arrangements for those tenders as opposed to the traditional AIP focus on projects. In addition the \$20 million threshold is

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inappropriate for maximising the opportunities in TCF for supplying the government market given the small batch size of contracts. Specific measures for TCF SME's (broadly defined) could include a set aside arrangement for accessing certain contracts, early access to the SBIR scheme, and designation as an industry where the \$20 million threshold will not apply. These measures warrant immediate consideration by the Commonwealth.

3. At the State level similar opportunities to promote AIP are available.

4. The re-negotiation of the Commonwealth-State National Framework agreement for Australian Industry Participation is of considerable strategic importance to Australian manufacturing in the medium to longer term. The negotiations should provide a better way of connecting Austrade, Enterprise Connect and the ICN network to help industry win opportunities at home and abroad. But in the short term it must be a vehicle for action to focus the combined purchasing power of all levels of government on the cyclical pressures facing many parts of industry.

5. Similarly the proposal in this report for special procurement arrangements for SME's through an SBIR program could be fast tracked in key agencies at the State and Commonwealth level to ensure innovative manufacturing SME's survive the current drought many face for orders.

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Attachment B
Forum membership

International Trade Remedies Forum

	Organisation	Represents
1	Australian Manufacturing Workers' Union (AMWU)	Union
2	Australian Workers' Union (AWU)	Union
3	Australian Council of Trade Unions (ACTU)	Union
4	Construction, Forestry, Mining and Energy Union (CFMEU)	Union
5	CSR	Glass producers
6	Dried Fruits Australia (on behalf of the National Farmers' Federation)	Growers of fruit
7	OneSteel	Domestic steel manufacturer
8	Capral	Aluminium extrusion producers
9	Kimberley Clark	Tissue product manufacturer
10	Australian Industry Group	Domestic manufacturers (across industry)
11	SPC Ardmona	Importers
12	Australian Steel Association	Steel importers
13	Jeld-Wen	Fabricators, end users and importers of building products
14	Plastics and Chemicals Industry Association	Plastics and chemicals manufacturers
15	Australian Food and Grocery Council	AFGC has withdrawn from membership due to lack of resources to attend ITRF meetings. A replacement member is being sought via consultation with the ITRF.
16	Australian Customs and Border Protection Service	Government
17	Attorney-General's Department	Government
18	Department of Foreign Affairs and Trade (DFAT)	Government
19	Department of Innovation, Industry, Science and Tertiary Education (DIISRTE)	Government
20	Department of Agriculture, Fisheries and Forestry (DAFF)	Government
21	Treasury	Government

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UNCLASSIFIED**ITRF Working Group Memberships****ABS Import Data Working Group**

Organisation
Australian Steel Association
AWU
Capral
CFMEU
Jeld-Wen
Kimberley-Clark
OneSteel
PACIA
Customs and Border Protection (Chair)
Australian Bureau of Statistics
DIISRTE
Treasury

Particular Market Situation Working Group

Organisation
AiGroup
Australian Food and Grocery Council
Australian Steel Association
AWU
BlueScope Steel
Capral
CFMEU
Dow Chemical
Jeld-Wen
Kimberley-Clark
OneSteel
PACIA
Customs and Border Protection (Chair)
Customs (member)
DIISRTE
DAFF
DFAT

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UNCLASSIFIED**Close Processed Agricultural Goods Working Group**

Organisation
Australian Dried Fruits
Australian Food and Grocery Council
Australian Pork Ltd
CFMEU
SPC Ardmona
DAFF (Chair)
Customs and Border Protection
DIISRTE

Compliance Working Group

Organisation
Capral
Ullrich Aluminium
OneSteel
CFMEU
ABS
Department of Innovation
DAFF (Chair)
Customs and Border Protection (Chair)
Customs and Border Protection (members)

Electronic Public Record Working Group

Organisation
CSR Limited
OneSteel
CFMEU
International Trade Remedies Advisor
Customs and Border Protection (Chair)
Customs and Border Protection (member)

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UNCLASSIFIED**Australian Customs and Border Protection Service****Key Issue 11****Tobacco****Issues**

The tobacco industry regularly publicises issues surrounding the illicit trade in tobacco and tobacco products. The introduction of the Customs Amendment (Smuggled Tobacco) Bill 2012 into Parliament may also generate media interest in illicit tobacco detections at the Australian border.

Talking points***Combating tobacco smuggling***

- Customs and Border Protection is committed to combating tobacco smuggling through whole of agency activity in collaboration with Government, industry and international partners. Tobacco smuggling is identified as one of Customs and Border Protection's key border risks.
- Customs and Border Protection takes an intelligence-led, risk based approach to its work which ensures resources are prioritised toward those goods that present the highest level of risk to our community. Treatments to manage the threat posed by tobacco smuggling are proportionate to the treatments used to manage other higher level threats, such as illicit drugs, precursors and firearms.
- Customs and Border Protection has been, and will continue to, work closely with other agencies in order to disrupt those criminal networks involved in attempts to smuggle tobacco. Customs and Border Protection also contributes to national and international tobacco control strategies and policies.
- The Government has introduced legislation to strengthen penalties for tobacco smuggling, including gaol terms of up to ten years. These legislative amendments mean that tobacco smuggling penalties will more accurately reflect the risk posed to the Australian community and the seriousness of the offences being committed, as well as providing a strong deterrent to criminals.

Seizures

- During 2011-12, Customs and Border Protection made 46 seizures of smuggled tobacco products in sea cargo, consisting of 175 tonnes of tobacco and 122 million cigarettes. These importations represent a potential revenue evasion of \$128 million plus GST.

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- In the first two months of 2012-13, Customs and Border Protection made 14 seizures of smuggled tobacco product in sea cargo, consisting of seven (7) tonnes of tobacco and 29 million cigarettes. These importations represent a potential revenue evasion of \$13 million plus GST.

Recent large seizures – Taskforce Polaris

- Taskforce Polaris is a joint agency taskforce targeting serious and organised criminal activity at New South Wales sea cargo terminals. It includes Customs and Border Protection, the NSW Police Force, the Australian Federal Police, the Australian Crime Commission and the NSW Crime Commission.
- To date, Polaris has been involved in the seizure of significant quantities of illicit leaf tobacco (119 tonnes) and cigarettes (92 million sticks) and has prevented evasion of approximately \$77 million in tax revenue.
- On 1 September 2011, Customs and Border Protection was involved in a major Polaris operation that resulted in three men being charged with alleged importation and bribery offences following the seizure of more than 60 tonnes of illicit tobacco, almost 25 million counterfeit cigarettes and approximately \$1 million in cash. These illicit imports had the potential to defraud Australia of more than \$35 million in tax revenue.
- On 17 July 2012, a Polaris operation resulted in two men being arrested and charged with Commonwealth fraud offences in relation to duty evasion and forgery offences. The operation involved the seizure of 21 tonnes of loose leaf tobacco and over 9 million cigarettes, and had the potential to defraud Australia of more than \$16 million in tax revenue.

Prosecutions

- Successful prosecution action has resulted in the disruption of organised tobacco smuggling operations. We continue to work closely with Commonwealth and state agencies in the investigation and prosecution of offenders.
- There were two successful prosecutions for tobacco smuggling during 2011-12, resulting in two convictions and fines, penalties and costs of \$325,579.
- During 2010-11, Customs and Border Protection successfully prosecuted two cases of tobacco smuggling, resulting in four convictions; two custodial sentences; and fines penalties and costs of \$400.

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Penalties

- Customs and Border Protection is seeking to amend the Customs Act to strengthen the penalties that apply to illegal tobacco importations. In June 2012, the *Customs Amendment (Smuggled Tobacco) Bill 2012* was introduced to Parliament.
- The bill amends the Customs Act to create new offences for smuggling tobacco products and for conveying or possessing smuggled tobacco products. These offences will include the option of gaol terms, with a maximum penalty of ten years imprisonment in addition to a pecuniary penalty of up to five times the amount of duty evaded.
- Currently, the only option available with tobacco smuggling is a financial penalty, with a maximum penalty of five times the value of Customs duty evaded.
- The legislative amendment is being introduced because it has become evident that the current financial penalties for tobacco smuggling are an insufficient deterrent to some criminals involved in this activity.

Plain packaging

- Customs and Border Protection has seized many counterfeit cigarettes in recent years and the quality of the packaging and labelling is often very high due to the easy availability of copying software and technology.
- A move to plain packaging is unlikely to be a significant factor in facilitating the activity of counterfeiters.
- The policy responsibility for the introduction of plain packaging for tobacco products lies with the Attorney-General and other questions related to this policy should be directed to the Attorney General's Department.

Illicit tobacco data provided by the tobacco industry

- The tobacco industry has commissioned a series of reports that aim to estimate and track the size of the illicit tobacco market in Australia. The most recent of these reports was prepared by Deloitte and released in May 2012. This report (covering 2011):
 - estimated the size of the illicit market in Australia, as a proportion of the legal tobacco market, was 13.4 per cent, representing a modest decrease from 15.6 per cent in the 2010 report; and

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- noted a significant structural change in the illicit tobacco market, with a shift to counterfeit and contraband illicit cigarettes rather than unbranded loose leaf tobacco.
- It is difficult for Customs and Border Protection to comment on the accuracy and validity of the estimates of the size of the illicit tobacco market in Australia, as the detailed size and methodology of the survey on which the report findings are based are not included in the report.
- Customs and Border Protection is not aware of any efforts by Commonwealth agencies to formally estimate the size of the illicit tobacco market, as it is difficult to accurately make such estimates.
- Customs and Border Protection detection figures in recent years do indicate a gradual increase in detections of cigarettes and a decrease in detections of loose tobacco. However, given variability in detections of illicit tobacco, it is not yet appropriate to draw any firm conclusions from this.

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Background

Illicit Tobacco Risk Focus

Smuggling of illicit tobacco and tobacco products not only poses a risk to Commonwealth revenue, but also poses risks to the community, the economy and the environment. However, Customs and Border Protection focuses primarily on illicit tobacco as a revenue risk. The tobacco industry often makes distinctions between counterfeit, contraband and cheap white cigarettes. However, as all these products attempt to avoid duty, Customs and Border Protection will continue to target all forms of illicit tobacco.

Illicit Tobacco Trade Reports

The 2011 Deloitte report '*Illicit Trade of Tobacco in Australia*' was released on 3 May 2012. The report was jointly commissioned by British American Tobacco Australia Limited (BATA), Philip Morris Limited (PML) and Imperial Tobacco Australia Limited (ITA). It provides an overview of the nature and dynamics of the illicit tobacco market in Australia and updates the estimated size of the illicit tobacco market in Australia.

The updated report claims that:

- the size of the illicit market, as a proportion of the legal tobacco market, is estimated at 13.4 per cent. This represents a modest decrease from 15.6 per cent in the 2010 report; and
- there has been a significant structural change in the illicit tobacco market, with a shift to counterfeit and contraband illicit cigarettes rather than unbranded loose leaf tobacco.

The findings of the report are based primarily on the results of a telephone survey of adult tobacco users in Australia conducted by Roy Morgan Research. As the detailed size and methodology of the survey has not been shared with government agencies, it is difficult for Customs and Border Protection to comment on the accuracy and validity of the estimates contained in the report.

Detections of illicit tobacco are variable and not predictable and Customs and Border Protection is not aware of any efforts by Commonwealth agencies to formally estimate the size of the illicit tobacco market as it is difficult to accurately make such estimates.

However, a Quit Victoria and Cancer Council Victoria analysis of the 2012 Deloitte report has found that it substantially overestimated the number of smokers using unbranded tobacco, and also the amount that these smokers would be purchasing. This analysis suggests that the size of the Australian illicit tobacco market is likely to be closer to 2-3 per cent.

Detection Data

Detection figures over the past three financial years do indicate a gradual increase in detections of cigarettes and a corresponding decrease in detections of loose tobacco. Given, however, that detections of illicit tobacco are variable and not predictable, it is not yet appropriate to draw firm conclusions from this.

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Seizure Data – Sea Cargo Environment (1 July 2007 to 31 August 2012)

Year	No. of Detections	Tobacco (Tonnes)	Cigarettes (Millions of Sticks)	Revenue Evaded
2007-08	58	287	107	\$114 million plus GST
2008-09	33	180	50	\$70 million plus GST
2009-10	42	311	68	\$120 million plus GST
2010-11	55	258	82	\$135 million plus GST
2011-12	46	175	122	\$128 million plus GST
2012-13	14	7	29	\$13 million plus GST
Total	248	1218	458	\$580 million plus GST

Tobacco and cigarette smuggling outside the sea cargo stream make up less than one per cent of the total value of illicit tobacco and cigarettes detected by Customs and Border Protection.

While China has traditionally been a major source country for illicit cigarettes, there appears to be a shift towards the United Arab Emirates (UAE) becoming the major source country over China. In 2011-12, seven out of twenty-four detections originated from the UAE, accounting for 54.5 million sticks, or 45% of the total illicit cigarette detections. Other significant source countries also include Malaysia with 36 million sticks (29%) and Singapore with 21.2 million sticks (19%).

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Penalties regime

Detections of illegal tobacco importations are primarily investigated by Customs and Border Protection as smuggling offences against section 233 of the *Customs Act 1901* (the Customs Act). Section 233 is a strict liability offence attracting a penalty of up to five times the amount of duty evaded. Notably, the offence does not currently carry a term of imprisonment as a sentencing option. In the cases where large fines are imposed, usually only a fraction of the fine imposed is recovered. For example, there is currently over \$45 million in outstanding fines for tobacco smuggling offences.

On some occasions the investigation of the smuggling offence may result in the identification of sufficient evidence to warrant the pursuit of fraud offences under the Criminal Code. In these cases offences will carry penalties of up to 10 years imprisonment.

Customs and Border Protection is seeking to amend its legislation to increase the penalties that apply to illegal tobacco importations and strengthen the Agency's ability to disrupt illegal tobacco importations. The Bill proposes new offences relating to smuggling tobacco products and conveying or possessing smuggled tobacco products, with associated penalties of up to ten years imprisonment, in addition to the existing pecuniary penalties. The imprisonment penalties are expected to provide a strong deterrent to criminals.

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In June 2012, the *Customs Amendment (Smuggled Tobacco) Bill 2012* was introduced to Parliament, and is expected to be passed with the support of all major parties. The Bill passed the House of Representatives on 22 August 2012 and was introduced into the Senate on 23 August 2012. The Senate Legal and Constitutional Affairs Committee has considered the Bill, and has recommended that it be passed.

Plain Packaging

The Government's plain packaging legislation is due to come into effect from December 2012. Cigarette companies have made statements in the press that this will increase the likelihood of the manufacture and importation of counterfeit tobacco and tobacco products.

The move to plain packaging is, however, unlikely to be a significant factor in facilitating the activity of counterfeiters. Many counterfeit cigarettes have been seized in recent years and the quality of the packaging and labelling is often very high. The key driver of tobacco smuggling is that it is a high profit, generally low risk criminal activity, and it is unlikely to be significantly impacted by the ease with which packaging can be replicated.

FOI Request from British American Tobacco Australia (BATA)

In February 2011, Corrs Chambers Westgarth Lawyers (CCW), on behalf of their client British American Tobacco Australia (BATA), requested access to documents under the *Freedom of Information Act 1982*.

Customs and Border Protection identified 447 documents as falling within the scope of this request. In July 2011, the decision maker decided to exempt 80 documents in full from release, exempt 114 documents in part with deletions and to release 253 documents in full. Many of the exemptions related to ongoing law enforcement activities.

In August 2011, Customs and Border Protection received a request for an internal review from CCW. Customs and Border Protection applied to the Office of the Australian Information Commissioner (OAIC) for an extension of time to issue a decision on internal review. The OAIC granted this extension and a decision was due in November 2011. Due to the complex nature of the review and availability of relevant staff to conduct the assessment, Customs and Border Protection did not finalise the decision on internal review within the required timeframe.

Due to the number of documents that fall within the scope of the review and to prevent further delays, Customs and Border Protection will be issuing staged decisions on access. Customs and Border Protection's decision maker has prepared a draft decision in relation to the first 115 documents and this decision is currently being settled. The decision maker is working towards finalising the second draft decision in relation to the remainder of the documents. CCW has been kept informed of the agency's progress in finalising the matter.

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No.	Date	Author	Comments	Cleared and date
0.1	06/09/12	^{s47F} [REDACTED]	Redraft of May Estimates version, including updated statistics, tobacco penalties and FOI status and source country information.	
0.2	12/09/12	^{s47F} [REDACTED]	Slight amendment to tobacco penalty wording from LSB.	
0.3	19/09/12	^{s47F} [REDACTED]	Editorial comments/amendments.	
0.4	19/9/12	^{s47F} [REDACTED]	Editorial comments	
0.5	21/09/12	^{s47F} [REDACTED]	Further editorial amendments	
0.6	24/09/12	^{s47F} [REDACTED]	Further amendments incorporating comments from NM Investigations	
0.7	25/09/12	^{s47F} [REDACTED]	Minor amendments from ND C&E	ND C&E
1.0	25/9/12 28/9/12	^{s47F} [REDACTED]	Update to v1.0 DCEO for approval	

Consultation

Nil external consultation.

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Australian Customs and Border Protection ServiceKey Issue **12****Low Value Import Threshold (LVIT)****Issues**

There has been ongoing criticism and lobbying by the retail sector in relation to the perceived advantage afforded to overseas retailers caused by goods imported under \$1000 being free of GST.

In 2011 the Productivity Commission held an inquiry to explore the issue of lowering the threshold and more recently an independent Taskforce was commissioned to investigate options. The Low Value Parcel Processing Taskforce's (the Taskforce) report was publicly released by the Assistant Treasurer on 6 September 2012.

Government is currently considering their response to this report (anticipate that this will be considered before Christmas). Treasury is the lead agency.

Talking points***Current Low Value Import Threshold (LVIT)***

- Customs and Border Protection is responsible for administering the LVIT, presently set at \$1,000. This threshold determines whether domestic tax and duty are collected on goods imported into Australia.
- All alcohol and tobacco products are subject to tax and duty regardless of their value.

The Low Value Parcel Processing Report

- The Taskforce provided a number of recommendations that will significantly change the current processing activities for low value goods – particularly in international mail.
- The key recommendation for Customs and Border Protection is the adoption of electronic reporting in the international mail environment.
 - The implementation of electronic reporting of mail is driven internationally through the Universal Postal Union and it is currently unclear when this electronic data will be of a level and quality to be of practical value for risk assessment or revenue in the Australian context.

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- The Taskforce has used the work of the Kahala Group¹ as the prime electronic reporting capability. Given the limited scope the Taskforces estimates it will only deliver electronic information for 20% (approx) of incoming international mail parcels.
- Customs and Border Protection needs to work with other government agencies and industry, to identify the most cost effective implementation approach that maximises the full benefit of an enhanced process and addresses the concerns of retailers.

Costing information within the LVPPT Report

- The LVPPT financial analysis focuses on elements involved in revenue collection and broader changes to border processes in the international mail environment.
- The report does not provide an overall total cost for the proposed enhanced parcel processing package; rather costing individual specific reforms where possible.
- The Taskforce has noted that cost information included in the report should be used to provide an “order of magnitude” and the level of confidence is in the +/- 50 per cent range.
- The IT estimate that was provided by Customs and Border Protection only included limited back-end system changes of approximately \$3 million, with the associated ongoing support cost of around \$1 million per year. The overall scope and cost of any required system changes will depend on what is included in a final model and its relationship to existing systems architecture.
- A more detailed costing exercise will be undertaken when the detailed business requirements of the reformed process are determined.

Value Distribution of Cargo

- The value distribution of low value goods imported through the international mail and air cargo is heavily skewed towards items valued below \$300 (*see Background Table 2 and 3*).
- This means that in implementing an enhanced process, the volumes (and value) of the threshold need to be considered in parallel in order to measure the enhanced effectiveness of the process.

¹ The Kahala Group made up of 10 members Australia Post, China Post, Spanish Postal Company, Hong Kong Post, Japan Post, Korea Post, France Post, Royal Mail, Singapore Post and the US Postal Service was established in 2003 to jointly explore the development of new integrated business models and commercial opportunities – including electronic reporting.

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Volumes and costs associated with the low value threshold in international mail

- In 2010/11, approximately 55 million mail articles were imported into Australia. Of these approximately 17,000 parcels were above the LVIT of \$1,000. In 2011/12, parcel volumes in international mail increased to over 64 million.
- In 2010/11, the cost to process international mail (to service both community protection and revenue risks) involved 168 Full Time Equivalent (FTE) staff and cost approximately \$19.7 million (\$19.0 million FTE, \$0.7 million supplier expense).
- The revenue component of this (as provided to the Taskforce) was estimated to be \$4.1 million. This was based on a range of assumptions, historical intervention activity and experience of officers in the gateways, given officers do not record the time taken to address individual categories of risk in their daily activity.
- Based on 2011/12 volumes and sampling results from internal sampling exercises (p.31 of LVPPT Report), the volume of cargo subject to GST calculation at different thresholds is estimated to be:
 - At a threshold of \$100 – 16 million articles subject to GST assessment (25% of volume);
 - At a threshold of \$300 – 4.5 million articles subject to GST assessment (7.0% of volume);
 - At a threshold of \$500 – 1.9 million articles subject to GST assessment (3.0% of volume) – meaning 97% of articles will not be subject to GST.

Cost information on current air cargo activities

- Customs and Border Protection also provided 2010/11 information on air cargo intervention activities (at a cost of \$11.2 million and 115 FTE). This only related to employee and supplier costs. From this, the taskforce derived a unit cost of \$7.39 per inspection (\$11.2 million / 1.5 million inspections). This figure should be viewed with caution as it does not take into account all costs of the breadth and complexity of air cargo operation activities.

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Background

The Australian retail sector has raised concerns since early 2011 about the perceived competitive advantage afforded to overseas retailers/online stores as a result of the current LVIT.

To address these issues, the Government tasked the Productivity Commission to look into the structural issues facing Australian retail and to report on the:

- current structure, performance and efficiency of the retail sector;
- drivers of structural change in the retail industry;
- broader issues contributing to increased volume of online purchasing by Australians; and
- the sustainability and appropriateness of current indirect tax arrangements (largely LVIT).

Productivity Commission Inquiry

In 2011, the PC undertook an inquiry into the *Economic Structure and Performance of the Australian Retail Industry*. The final PC report recommended (in principle) lowering the LVIT when it was cost effective to do so and the formation of an independent taskforce to explore a more efficient processing model for low value goods. The Government agreed with the recommendations on 9 December 2011 and announced the establishment of the Low Value Parcel Processing Taskforce (LVPPT).

The Low Value Parcel Processing Taskforce

The LVPPT was responsible for:

- undertaking a comprehensive investigation of low value import processing, particularly in the international mail stream;
- designing a system to process low value parcels and enable efficient revenue collection; and
- providing a final report to government in July 2012 that provides a comprehensive blue print for reform, along with costed alternatives and a timetable for implementation.

The LVPPT delivered its final report to Government on 31 July 2012 and was publicly released by the Assistant Treasurer on 6 September 2012. The report provided an enhanced end-to-end conceptual process model for the handling of low value goods entering Australia, based upon 17 recommendations (See *Attachment A*).

- In summary the findings from the report include:
 - leaving the processing arrangements for goods over \$1000 as they currently are;
 - continuing to explore the adoption of electronic reporting in international fora;
 - the exploration of options for GST prepayment (including collection option from overseas suppliers, self assessment or direct debit);
 - the separation of GST and duty reporting thresholds;
 - the potential to simplify GST calculation for low value goods;
 - reconfiguring physical and IT systems to facilitate pre-arrival data and enhanced risk assessment;
 - the change for GST revenue collection to be undertaken by industry and not government;
 - the change for low value cargo to be released at the border without revenue liabilities having been paid;
 - Review of the administration of the GST deferral scheme at the border;

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- That border fees and charges are structured appropriately and also be levied across low value goods, instead of only on those over the \$1000 threshold; and
- Increasing the reporting of GST statistics to ABS, ATO and the States and Territories.

The report also provides a reform pathway made up of three phases and suggests (if some activities were run in parallel) a target implementation date for the reforms could be 1 July 2014, and that implementation of the recommendations should be overseen by a multi-agency steering group.

The report did not provide an overall total cost for the proposed enhanced parcel processing package, rather costing individual specific reforms where possible. Some of these provided in the report include:

- Aggregate GST collection costs (for the international mail environment) at the \$0 threshold level would be around \$450 million, down to \$1million at a \$500 threshold;
- Australia Post capital costs to facilitate cargo at the lowest threshold level are estimated to be more than \$100 million;
- Customs and Border Protection provided cost estimates for initial back-end IT system changes (approx \$3 million), with the associated ongoing support costs of around \$1 million per year.

Major implications of the LVPPT recommendations

The most significant implication from the report for Customs and Border Protection is the adoption of electronic reporting in international mail. Implementation of an appropriate level and quality of electronic reporting is likely to enhance the agency's intelligence-led risk-based approach in international mail.

Currently, no international mail articles are electronically reported and the process of identifying packages valued over the threshold requires manual intervention. The current process was never designed for revenue collection on the high volumes anticipated by a lower threshold, and given the continuing growth in international mail volumes, electronic reporting will support a more efficient model to identify risk and collect revenue

Other implications from the report for Customs and Border Protection include:

- a requirement for significant enhancement to existing systems to accommodate the increase in transaction traffic and potential change to clearance arrangements;
- refinement/redesign of business processes particularly within international mail to support changing roles of entities in the supply chain; and
- Changes to legislation to support changes to business processes and reporting requirements.

The recommendations and their likely impact on Customs and Border Protection are available at *Attachment A*.

Customs and Border Protection are working with Treasury as the lead agency to assess and analyse the recommendations and how they could be implemented in an Australian context. This work will have to be undertaken before any decision can be made on lowering the threshold to a level similar to some of Australia's closest trading partners.

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Overseas Models and the Low Value Threshold

Internationally, Canada and the United Kingdom (UK) have lower thresholds. The Canadian LVIT is set at \$20CAD (approximately \$19AUD), and the UK has separate thresholds for domestic tax at £15 (approx \$10AUD) and Customs duty at £135 (approx \$90AUD).

The Canadian Border Service Agency (CBSA) processes approximately 34 million mail items annually with 213 FTE. CBSA is currently developing a new international mail process that will rely on electronic data exchange between UPU members.

The UK HM Revenue and Customs (HMR&C) processes approximately 30 million mail items annually with 45 HMR&C FTE for revenue processing (excludes UK Government Border Agency staff for community risks). There is currently no electronic reporting, with Royal Mail paying duty and tax to HMR&C and then collecting from the end user.

Both Canada and the UK are interested in the considerations being undertaken in Australia given the global increase in the volume of trade and the challenges being experienced in managing the threshold.

Imports of Low Value Goods

The number of low value goods imported has increased significantly from 2008-09 to 2011-12:

Table 1 – Cargo Volume Growth 2008-09 to 2011-12

Items	2008-09	2009-10	2010-11	2011-12
International Mail – No. of Parcels	23m	36m	55m	65m
No. of air cargo consignments	9.8m	11.2m	13.9m	18.4m
No. of sea cargo manifest lines	2.2m	2.3m	2.5m	2.6m
Items under \$1000 (approx)				
Mail – No. of Mail Articles valued under \$1,000	23m	36m	55m	65m
Cargo (air and sea) - No. of Self Assessed Clearances (SACs)	6.8m	8.2m	10.8m	N/A

The value distribution of low value goods shows a significant concentration into the lower value ranges – particularly below \$300.

Table 2 - Distribution of mail volumes by value 2010* & forecasted GST revenue by value band

Value (\$Band)	Total Parcels	Threshold Level / \$ million (from LVPPT report p.193)			
		%	\$0	\$100	\$200
0-100	74.92	\$142.0	\$0.0	\$0.0	\$0.0
100-200	12.91	\$46.9	\$46.9	\$0.0	\$0.0
200-300	4.83	\$23.6	\$23.6	\$23.6	\$0.0
300-400	2.44	\$14.9	\$14.9	\$14.9	\$0.0
400-500	1.6	\$12.2	\$12.2	\$12.2	\$0.0
500-600	1.18	\$10.2	\$10.2	\$10.2	\$10.2
600-700	0.88	\$9.2	\$9.2	\$9.2	\$9.2
700-800	0.37	\$4.9	\$4.9	\$4.9	\$4.9
800-900	0.26	\$4.5	\$4.5	\$4.5	\$4.5
900-1000	0.28	\$3.8	\$3.8	\$3.8	\$3.8
TOTALS	100	\$272.2	\$130.2	\$83.3	\$32.6
% / \$million					

* Derived from sampling exercise Nov/Dec 2010

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Table 3- Distribution of air cargo volumes by value 2010/11 & forecasted GST revenue by value band

Value (\$Band)	Total Air Cargo	Threshold Level / \$ million (from LVPPT report p.194)			
		%	\$0	\$100	\$200
0-100	68.17	\$10.0	\$0.00	\$0.00	\$0.00
101-200	13.04	\$21.8	\$21.8	\$0.00	\$0.00
201-300	5.99	\$15.8	\$15.8	\$15.8	\$0.00
301-400	3.46	\$11.9	\$11.9	\$11.9	\$0.00
401-500	2.52	\$10.3	\$10.3	\$10.3	\$0.00
501-600	1.87	\$8.7	\$8.7	\$8.7	\$8.7
601-700	1.46	\$7.5	\$7.5	\$7.5	\$7.5
701-800	1.28	\$6.8	\$6.8	\$6.8	\$6.8
801-900	1.22	\$7.9	\$7.9	\$7.9	\$7.9
901-1000	1	\$6.5	\$6.5	\$6.5	\$6.5
TOTAL % / \$million	100	\$107.3	\$97.2	\$75.4	\$37.4

History - Low Value Import Threshold

The low value import threshold was originally established in the 1970s where the collection of duty and tax on imported goods was not required where it was not cost effective or administratively feasible. By the late 1990s, different thresholds were applied to duty, tax, formal Customs entry and between postal goods and cargo (air and sea).

In October 2005, the Government agreed to align the entry and value thresholds across all modes of importation following a recommendation by the Competitive Neutrality Complaints Office of the Productivity Commission. The Government set the threshold at \$1,000. Harmonising the threshold to \$1,000 eliminated a competitive advantage across the postal and cargo environments and ensured that goods arriving by all modes of importation were treated in the same manner for calculating Customs duty and GST.

In February 2010, in its review of the application of GST to cross-border transactions, the Board of Taxation was of the view that at that point in time, the increase in administrative costs of bringing more goods into the customs system for collection of revenue would likely outweigh any benefit.

Document Control Table

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0.2	17/09/12	s47F	Edits	
0.3	19/09/12	s47F	Comments from NM	s47F (a/g Director SCI&P)
0.4	24/09/12	s47F	Comments from ND	
0.5	24/09/12	s47F	Comments from NM	
0.6	24/09/12	s47F	Comments from NM	Raelene Vivian ND Cargo and Trade 24/09/12
1.0	25/9/12	s47F	Updated to v1.0	
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2.0	02/10/12	s47F	Corrections to p3 (highlighted) as advised by Jessica Fraser.	
3.0	03/10/12	s47F	Edits from DCEO / P&E	ND C&T cleared 4/10/12
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Consultation












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ATTACHMENT A
LVPPT Recommendations

Recommended Reform	Preliminary Assessment
<p>Recommendation 2.1 That the Australian Government, advocate for, and support, appropriate initiatives with respect to the provision and development of electronic data interchange in the international mail stream.</p>	 Customs and Border Protection will need to undertake significant remodelling of business practices and systems to support electronic reporting.
<p>Recommendation 3.1 Ongoing consideration should be given to initiatives that allow for duty and/or GST collection from financial intermediaries.</p>	 Likely to be an arrangement between the ATO and financial intermediary. Longer term project.
<p>Recommendation 3.2 The option of GST payment deferral for all GST registrants should be considered further going forward.</p>	 Customs and Border Protection systems identify transactions of GST deferral, particularly its interaction with current processes and systems.
<p>Recommendation 3.3 Duty and GST low value thresholds be separated to facilitate a more efficient process for handling low value imports.</p>	 Separated Duty and GST thresholds will require some reconfiguration of business processes/systems and review of legislation.
<p>Recommendation 3.4 Simplified GST assessment arrangements be applied to low value imported goods that would provide, inter alia: a) for assessment based on value (not include T&I costs); b) the use of a declared value of the goods</p>	 This recommendation could potentially require the development of a new GST-calculation capacity Customs and Border Protection systems (though the capability may lie in another portfolio's systems).
<p>Recommendation 4.1 Reform to the handling and administration of low value goods would best be achieved through the application of simplified GST assessment, and the use of pre-arrival electronic data to streamline border agency processes to allow more targeted, risk based assessment over time.</p>	 This recommendation would involve significant reconfiguration of ICS and supporting IT systems, business processes, legislative instruments and regulations, stakeholder roles and responsibilities and revenue collection arrangements.
<p>Recommendation 4.2 In order to streamline revenue collection on low value imported goods, a centralised system for pre-registration for direct debit could be established over time.</p>	 Dependent on where the centralised system would sit, the likely impacts could range from some reconfiguration of existing IT systems and processes to a complete build of a new capability.
<p>Recommendation 4.3 Legislative arrangements could be amended to enable and encourage appropriately regulated overseas suppliers to collect GST from purchasers of low value goods at the time of purchase.</p>	 If it was to progress, changes would be required to legislation and IT/business processes and systems.
<p>Recommendation 4.4 To enhance processes, the following actions in mail be taken: a) remove the role of AP of opening parcels for examination; b) enhancement to risk analysis and management; and c) develop and implement additional performance criteria</p>	 These reforms would form part of work already underway to improve mail gateway processes, and may impact interim service delivery timeframes in these gateway facilities.
<p>Recommendation 4.5 To streamline duty collection processes and to facilitate future reform, IT systems are modified to provide a web interface to enable completion of FIDs in the international mail environment.</p>	 This recommendation dovetails existing work programs to find efficiencies in the automation of postal FIDs.
<p>Recommendation 4.6 Border agency fees and charges should apply to goods valued below \$1,000 to which GST is applied (if any).</p>	 Any new or enhanced processes will require Customs and Border Protection (and other relevant agencies) to review cost recovery activities.
<p>Recommendation 4.7 DAFF Biosecurity's charge to AP</p>	<p>No assessment required</p>
<p>Recommendation 4.8 a) Periodic testing be undertaken to assess changes to compliance b) Review of offences/penalties in the Custom Act/Tax Admin Act c) Additional funding be provided for additional compliance and enforcement activities</p>	 The proposed broadening of revenue collection activities will create a larger base of non-compliant activity. This will require a commensurate level of compliance and enforcement activity.
<p>Recommendation 4.9 Additional information be provided to ATO to enable assessment of undeclared business activities.</p>	 It is proposed to use existing info sharing capabilities. Mechanisms for collection and other capacity/workload issues will need to be assessed.
<p>Recommendation 4.10 Providing additional detailed annual reporting of GST outcomes to State and Territories such as item volumes, by value bandwidths</p>	
<p>Recommendation 4.11 That information gathered on low value goods be supplied to the ABS for use in the preparation of the National Accounts/other publications.</p>	
<p>Recommendation 5.1 The implementation of be undertaken in consultation with States and Territories taking into account broader border processes and occur in a staged manner</p>	 Customs and Border Protection will need to ensure that implementation timeframes are realistic and that consultation occurs with all the relevant industry stakeholders.



Likely high impact



Likely high/medium impact



Likely medium/low impact



Likely low impact

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Australian Customs and Border Protection Service

Key Issue 13**Customs and Border Protection Online Targeting Capability – Alternative Websites****Issues**

Digital commerce (*E-Commerce* and *M-Commerce* (mobile)) continues to develop at an exponential rate, providing an increase in both the range of goods available for importation and volume of international parcels and mail articles. The evolution of licit and illicit digital commerce platforms has provided criminal networks with new opportunities to engage in the importation of prohibited goods and the movement of proceeds of crime. Customs and Border Protection is uniquely positioned to address these threats as its jurisdiction traverses the point where the online economy and the real world movement of goods intersect.

Talking points

- Digital commerce continues to develop at an exponential rate.
- Recent operational activity has identified a number of instances where prohibited or controlled items have been purchased through digital commerce platforms and illegally imported into Australia. These items include: firearm parts, tasers, laser pointers, chemicals, child pornography, precursor drugs and prohibited drugs.
- Given the relatively embryonic state of digital commerce development, it is difficult to accurately quantify the extent and value of illicit digital commerce activity. It seems reasonable to assume that its growth will follow a trend similar to that of licit online digital commerce activity.
- In 2005, Customs and Border Protection established an Online Targeting Team to enhance the agency's understanding of the nature of the threat from online commerce and to work with other members of the Australian law enforcement community, industry groups and international partner agencies to counter this threat to the border.
- Customs and Border Protection has identified illegal trade activity through a range of digital commerce platforms, including major established digital commerce sites, individual commercial websites representing 'bricks and mortar' businesses and illicit web sites operating in 'hidden' networks, such as the drug sale website '*Silk Road*'.
- Customs and Border Protection has recently disseminated intelligence assessments in relation to darknet threats such as '*Silk Road*' to domestic and overseas partner agencies to encourage further research in this area.

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- In addition to targeting activities, Customs and Border Protection's online strategy includes reviewing and risk assessing specific websites in order to determine if they present a threat to the border. By way of example, Customs and Border Protection recently conducted an assessment of the recently closed darknet firearms sales website 'The Armory'. The *Website Monitoring Report* product generated by this work has been shared with local and international law enforcement partner agencies to encourage cooperative targeting strategies against the darknet threat.
- Customs and Border Protection has, through its Online Targeting Team, implemented a strategy to understand, detect and disrupt illicit digital commerce activity in the online environment which includes:
 - engagement with international and local law enforcement and internal stakeholders;
 - partnerships with digital commerce businesses;
 - supporting and coordinating intelligence and investigative activity against specific digital commerce threats and commodities, including illicit firearms importation; and
 - providing advice to law enforcement and industry on countering the threat of illicit digital commerce and developing strategies to make digital commerce activity resistant to criminal exploitation.

This strategy will drive more coordinated and informed intelligence and targeting strategies and result in more effective investigative outcomes.

- Intelligence produced through Customs and Border Protection's Online Targeting capability has contributed to several significant outcomes including:
 - The online procurement of glassware used in the production of amphetamine, resulting in the arrest of a Victorian entity. When police executed a search warrant at the entity's home they located laboratory glassware, several litres of precursor chemicals, cannabis, white powder substances, tablets and prohibited weapons. The entity made admissions to police and is currently awaiting sentencing.
 - An attempt by a NSW entity to purchase online and import 30 tablet presses in contravention of Regulation 4G of the *Customs (Prohibited Imports) Regulations 1956*. Tablet presses are often a key component in the production of illicit drugs.

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The entity was charged and convicted of two offences under the *Customs Act 1901* and fined \$20,000.

- A Victorian entity that was suspected of procuring child pornography through an internet digital commerce platform. The entity was subsequently charged and convicted of several offences including knowingly possess child pornography, contrary to s70(1) of the *Crimes Act 1958* (Vic).
 - A syndicate involved in the online procurement of pseudoephedrine tablets which were used in the production of amphetamine. Intelligence provided by the Online Targeting Team lead to the identification of an active clandestine amphetamine laboratory in South Australia. Several key members of the syndicate were arrested and police seized 70 grams of amphetamine paste, laboratory equipment and firearms. The defendants are currently awaiting court appearances.
 - The online sale of a range of firearm parts through various online portals. Recent seizures include an attempt to import and resell several parts for banned AR-15 assault rifles. The entity in this matter has been charged and is currently awaiting a court appearance.
- The Online Targeting Team has prioritised the targeting of illicit digital commerce activity involving firearms, firearm parts and chemicals, including precursor chemicals, for the 2012/2013 financial year. This work will include the provision of direct support to the newly formed Firearms Intelligence and Targeting Team and other intelligence and investigation teams.

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Background

Digital commerce continues to develop at an exponential rate. The 2011 Productivity Commission Enquiry Report: *The Structure and Performance of the Australian Retail Industry* estimated that online retailing represents 6% of total Australian retail sales, 2% (\$4.2 billion) of which was overseas online purchases. The Commission predicted further growth in these figures in coming years. The July 2012 *National Australia Bank Online Retail Sales Index*¹, found that while domestic online retail sales grew by 24% year on year, international online purchases grew by 29%. These figures of course, do not include sales through illicit digital commerce activity.

The Online Targeting Team

The Online Targeting Team collects and analyses data obtained from digital commerce sites and other web based platforms, to assist in detecting and targeting threats to the border. Since the initial firearms work, the team has expanded its focus to include the gamut of illicit commodities traded through digital ecommerce portals and/or funded through PayPal.

The team's work has resulted in many seizures of illicit and precursor drugs, drug manufacturing equipment and clandestine drug laboratories, firearms and parts and child exploitation material. The team's work has also resulted in the conviction and sentencing of a number of persons in relation to offences resulting from detections and subsequent Customs and Border Protection and partner agency investigation activity. Some of these individuals have had links to criminal syndicates including OMCG groups.

A significant strategic result from this work has been the strong cooperative relationship between Customs and Border Protection and eBay/PayPal. This relationship has resulted in the eBay/PayPal digital commerce platforms being recognised as a model approach to law enforcement/industry cooperation and resistance to criminal exploitation.

In February 2012, the Online Targeting Team began implementing a new operating model. The new model is intended to broaden the team's capability, away from an eBay/PayPal centric focus, to provide a more holistic understanding of specific commodities and threats in the broader online environment. This will deliver intelligence that will inform targeting activity across the Customs and Border Protection business. The new model recognises the dynamic nature of online commerce and many ways in which the internet can facilitate illicit trade. The new operating model includes a number of new intelligence products including commodity specific online environmental scans and web site monitoring reports which examine the nature, extent and risk posed by the trade of specific commodities in the online environment. The Online Targeting Team's new model has already resulted in intelligence

¹<http://www.nab.com.au/wps/wcm/connect/3baae1004c8864d5bb06bb58cbc838f7/NAB-Online-Retail-Index-July2012.pdf?MOD=AJPERES&CACHEID=3baae1004c8864d5bb06bb58cbc838f7>

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assessments of new and emerging threats such as the dark net sites *Silk Road* and *The Armory* and the team is currently completing an initial assessment of the firearms trade online.

Document Control Table

No.	Date	Author	Comments	Cleared by and date
0.1	17/9/12	s47F [REDACTED]	First Draft	
0.2	28/9/12	s47F [REDACTED]	Minor Amendments requested by ND I&T	Chris Wall A/ND I&T 28/9/12
1.0	28/9/12	s47F [REDACTED]	s47F [REDACTED] for QA	
2.0	9/10/12	s47F [REDACTED]	Additional information provided on page one under Issues as requested by A/g DCEO MCI 2/10	A/g DCEO MCI with edits 2/10 A/g ND I&T 9/10/12
3.0	11/10/12	s47F [REDACTED]	Amendments to Issues/TPs/Background (no change to content)	

Consultation

External agencies consulted: Nil

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UNCLASSIFIED**Australian Customs and Border Protection Service****Key Issue 14****Customs Connect Facility Implementation****Issues**

The recent cutover to the new version of Customs Connect Facility impacted cargo and freight industry partners, resulting in delays in clearing cargo.

Talking points

- On Sunday 23 September, Customs and Border Protection implemented a new Customs Connect Facility platform. Following the cut-over, system issues affected a range of cargo industry stakeholders. These issues became apparent on 23 September at 0500 at cut-over as the outbound messages queue began to grow. On identifying the system issues, Customs and Border Protection immediately informed industry partners of the issues, and initiated workarounds until a coding fix could be implemented.
- The major system issue continued from 23 September to 29 September, when a fix was implemented which improved the performance of response message transmission.
- However industry are still being affected by intermittent system stability issues requiring resolution.
- The system issues resulted from delays in processing some outward messages from the CCF to industry. This situation was compounded by the backlog of messages queued for transmission during the cutover period.
- The impact of these issues on the cargo and freight industry was significant.
- In response, the incident was allocated the highest level of priority for resolution and additional Customs and Border Protection staff were tasked to support extended call centre operations.
- The upgrade to a new Customs Connect Facility was necessary as the existing CCF (in service since 2003) is approaching the end of its service life and is under pressure from increasing cargo and freight volumes. The new CCF is scalable and will be able to meet future workload increases and the introduction of new e-services.
- Customs and Border Protection engaged extensively with industry prior to, during and after the phased cutover to the new system. We managed a comprehensive test regime with cargo

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industry and other Government agencies, including an eight week test window where industry jointly tested. None of the testing conducted indicated any performance or system issues with the new platform. *If asked about the lessons learned from the 2006 Australian National Audit Office Report into Customs' Cargo Management Re-engineering (CMR) Project:* Customs agreed with all 7 recommendations and comprehensively implemented them. Customs and Border Protection placed particular emphasis on testing mechanisms, business continuity plans and industry engagement during planning for the CCF cutover, which form recommendations 4, 6 and 7 respectively from the 2006 ANAO Report.

- Industry may have incurred expenses and costs as a result of the system issues. Customs and Border Protection has an established process for managing claims against the Commonwealth. As at 12 October, Customs and Border Protection has received 11 claims for compensation relating to the CCF cutover.
- *If asked about what Customs Connect Facility does:* Customs Connect Facility is Customs and Border Protection's secure electronic transaction gateway, which enables the agency to interact electronically with industry partners, other government agencies and service providers. CCF supports in excess of half a million transaction per day to and from systems including the Integrated Cargo System, the Tourist Refund Scheme and airline passenger data.

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UNCLASSIFIED**Background*****Critical Incident Response***

Attachment A summarises the actions undertaken during the implementation.

As with all critical incidents, Customs and Border Protection will conduct a post implementation review of the implementation process, which will consider the cut-over processes, incident response and management.

Impact to Industry

Delays in messages being transmitted to industry meant cargo operators' storage sheds reached capacity. Delays in the ability to report export cargo resulted in planes departing without all their assigned cargo, and express carriers were unable to meet service levels for cargo delivery. Customs brokers were also impacted.

Air Cargo

Feedback from industry on 9 October indicates that the impact of the issues was significant. As messages were not being received in the first few days post deployment, industry suffered from significant cargo backlogs i.e. new flights were landing with freight sheds already being full to capacity. Some clients have spent days retransmitting missing messages which required additional staffing and expense, and some clients are still experiencing intermittent messaging issues (Customs to Client) which are yet to be resolved.

Sea Cargo

Feedback from industry on 12 October indicates that the impact was significant. DP World and Patrick Stevedores had suffered significantly from messaging delays and have had to rely on Customs to resend status messages. Freight backlog is still being cleared after the implementation impacts and messaging delays, with clients incurring storage charges. Reports were run twice daily for sea cargo terminal operators in an effort to assist in clearing the backlog. These reports were produced from 23 September to 3 October. Since this time, no further requests for these reports have been received. Some clients are still experiencing intermittent messaging issues (Customs to Client) which are yet to be resolved.

Pre-Implementation Testing

The CCF solution was deployed in a phased manner. In 2011, the hardware and monitoring was deployed to the production environment and verified. The second phase was to cutover the internal Customs users, which was done on the 23 August. The next phase on the 22 September was the cutover was to introduce industry users.

CCF underwent a comprehensive test regime with our Cargo Industry Partners and other Government Agencies. Industry tested the new environment for eight weeks. Input rates modelled from peak hourly message counts observed in the old CCF environment ran through the testing environment for 10 hours and no queuing was observed.

Industry Consultation

Customs and Border Protection engaged with industry in readiness for CCF implementation, including through the Customs and Border Protection National Consultative Committee (CBPNCC) Business and Technology Sub-Committees. Engagement included input into implementation and

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changes, industry education on the new CCF, and progress and issue information. Feedback from industry has been positive on the engagement, communication and support provided.

Throughout the incident, industry was closely engagement regarding the performance issues, with Customs and Border Protection speaking directly to industry users and providing them with regular updates through our web and call centre support services.

2006 Australian National Audit Office Report

During March to May 2006, the ANAO conducted an audit of Customs' Cargo Management Re-engineering (CMR) Project. The audit was aimed at examining Customs' management of the CMR Project, and to determine whether the ICS and CCF met project and operational objectives, as well as use capability and functionality requirements. After the audit commenced, Customs engaged Booz Allen Hamilton to undertake a separate review of the ICS. The purpose of that review was to provide Customs with a forward looking report on the lessons learned from ICS implementation.

The ANAO audit concluded that the CMR project was a major challenge for Customs and was not implemented effectively. The audit's findings were substantially negative, assessing the project encountered considerable delays, cost blowouts and that implementation of the imports component of ICS caused substantial disruption to the movement of cargo at Australia's major ports and airports.

Claims Against the Commonwealth

During the period 1 January 2012 to the commencement of the CCF cutover, only 4 CCF related complaints were received from industry. During the period 23 September to 12 October 2012, 11 claims for compensation had been received from industry relating to compensation from the CCF cutover. The 11 claims total \$8762 and range from \$110 to \$1919.

Attachment B identifies the process for industry stakeholders wishing to make a claim for compensation against Customs and Border Protection for costs incurred as a result of the delays in the transition.

Consultation

External agencies consulted: Nil.

Document Control Table

No.	Date	Author	Comments	Cleared by and date
1.0	12/10/12	s47F	First draft	ND C&T 15/10/12

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UNCLASSIFIED**Attachment A – Critical Incident Response**

- 23 September 2012 – 0500, post cut-over a Severity 2 incident initiated due to delays in the processing of messages. Escalated to a Severity 1 from 1222 to 2156 to ensure high visibility and response across all delivery/support teams.
- 24 September - outbound messages were again taking some time to process and a severity 2 incident was raised. By 1200 inbound message processing was also being delayed and the incident was escalated to a severity 1 at 1607 and was in place overnight.
- During these incidents ITD teams, including IBM, were on-site actively monitoring the message queues, analysing the issues and testing potential remediation activities The IBM development labs in the USA were engaged and logs analysed with a view to identifying a fix for the issues.
- The problem was experienced by clients who were batching several (up to 100) messages into one interchange Clients who didn't use batching were receiving their messages back in an acceptable timeframe. These were mainly smaller Importers or Exporters.
- Two large clients (Qantas and Toll) were not impacted due to using non batching MQ connection.
- 25 September - processing stabilised and analysis of the issues continued throughout the week.
- 28 September C&BP requested that IBM initiate a Critical Situation to ensure proactive monitoring of the system and ongoing high priority work continued within their development labs.
- 29 September a coding fix was deployed with positive results. The processing of messages remained stable over the weekend.
- On 2 October the Critical Situation ceased and management of the system was handed back to C&BP.
- The system has remained stable but some minor issues have been encountered during the processing of a high volume of messages. The delays have been infrequent and the queues have been processed with some messaging delays.
- The fix will remain in place until a review by IBM and the subsequent development, test and deployment of recommended changes.
- Outstanding cleanup and decommissioning tasks have been held up until the new outbound message processing issues have stabilised.

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UNCLASSIFIED**Attachment B – Process for Claims Against the Commonwealth****CLAIMS FOR COMPENSATION – CCF PROJECT
(CEI 4.17 CLAIMS AGAINST THE COMMONWEALTH)**

1. Industry wishing to make a complaint in regard to the CCF upgrade would be directed to the Customs and Border Protection Complaints and Compliments web page:
<http://www.customs.gov.au/site/page4231.asp>
2. These claims are referred from Complaints and Compliments to the area responsible for the investigation (ICS Business Support). The area has 15 working days to investigate and make a decision.
3. Research is then conducted into the claim. This involves establishing timelines in relation to the cargo in question and verifying the claim in ICS. Research may also be conducted within the Message Tracking Facility (MTF) and with the third part software provider.
4. Once a decision has been made a Statement of Facts is prepared with full details of the claim which is then sent to the National Manager for approval. If the claim is less than \$1,000 the claim can be paid on the recommendation of the National Manager. If the recommendation is to pay the compensation of over \$1000 and that recommendation is accepted by the National Manager then a copy of the Statement of Facts is sent to the Divisional Finance area.
5. The Divisional Finance team will then fill in the Register that is required to be kept for the Insurance Operations & Policy quarterly inspection.
6. The Register must contain Date incident occurred; Brief description of claim; Department/Region; Contact Name; Delegate Name; Approved/Not Approved; Date Release and Indemnity forms received; amount of compensation paid; Date Paid; Organisational Code; Date sent to NPAC for Payment;
7. The Divisional Finance Team will then send back to ICS Business Support a Deed of Release and Authorisation for Direct Credit Facility forms that are sent to the claimant for signature.
8. On return of the signed Deed of Release and Authorisation for Direct Credit Facility forms the Divisional Finance Team will send off the signed paper work to NPAC. The above two forms plus the Payment/Refund Sub Type 20 form must be sent to NPAC so that NPAC can complete the process.
9. The Divisional Finance Team sends advice to ICS Business Support when the forms have been sent to NPAC for processing.

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