

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL  
AFFAIRS FOR ITS INQUIRY INTO THE AUSTRALIAN FILM AND  
LITERATURE CLASSIFICATION SCHEME

CUSTOMS AND BORDER PROTECTION

*Questions number 1& 2*

**Senators Furner and Barnett asked the following questions:**

**Question 1 (Senators Furner and Barnett)**

**Outcomes where breach detected**

**Senator FURNER:** In respect of Customs, you indicate in your submission that there were 1,373 breaches detected in relation to prohibited import regulations and 54 cases were considered sufficiently serious to warrant prosecution. What has happened to the other 1,319 of those cases?

**Senator FURNER:** Are you able to identify out of those 54 cases [considered sufficiently serious to warrant prosecution] whether they came in by sea or air?

**CHAIR:** We would like further and better particulars regarding these 1,373 breaches which were detected, as set out on page 4 of your submission, and the 54 cases where they were considered sufficiently serious to warrant prosecution, including 47 cases involving some form of child pornography. Can you give us a broad indication now as to the breakdown of those figures or would you like to take it on notice?

**Question 2 (Senator Barnett)**

**Most recent breach figures**

**CHAIR:** When you provide further and better particulars, you have got the details for the 2009 full financial year; can you provide us with the most up to date figures? You have details in your submission for the six months to 31 December but can you provide the most up to date figures when you come back to the committee, up to the latest possible figures? Would it be possible for you to do that?

**The answer to the honourable senators' questions are as follows:**

## Outcomes: 2009/2010

Figures represent <b>DETECTIONS</b> rather than items. A detection may range from 1 photo in a magazine, to a hard drive containing thousands of images						
2009/2010	Mode of Entry					
MEDIA TYPE	PASSENGERS	POST	SMALL CRAFT	CARGO (AIR)	CARGO (SEA)	Totals
Computer	82		2	1		<b>85</b>
DVD	346	355	16	132	21	<b>870</b>
Electronic Storage *	206	6	9	6		<b>227</b>
Game	1	105		4		<b>110</b>
Mobile Phone	35		1	1		<b>37</b>
Publication	15	11	2	5	2	<b>35</b>
Unknown **	7	2				<b>9</b>
<b>TOTALS</b>	<b>692</b>	<b>479</b>	<b>30</b>	<b>149</b>	<b>23</b>	<b>1373</b>
* Electronic Storage includes Computer hard drives, USB devices, video and digital camera memory cards and similar goods. ** Unknown relates to records where the title of the goods is recorded but the media type was not recorded.						

- Customs and Border Protection made 1373 detections of objectionable material in the 2009-10 financial year.
- Of these, 54 cases were prosecuted, comprising 47 cases involving child pornography, seven (7) cases involving abhorrent material (e.g. harmful or disgusting fetish), and two (2) cases involving violence. None of these cases related to terrorism material.
- Of the cases considered sufficiently serious to warrant a prosecution, 46 were referred by Passengers, two (2) from the Sea Cargo Stream and six (6) from the International Mail Gateway.
- All but four (4) of the child pornography cases were successfully prosecuted. Two of these cases were unsuccessful on the following grounds: mistake of fact, and insufficient evidence resulting in case dismissal. In two (2) cases the defendant was found not guilty.
- For the 2009-10 financial year, sentences handed down included thirty custodial sentences ranging from one (1) month to three (3) years, two (2) suspended sentences over 12 months, eleven good behaviour bonds ranging from 12 months to three (3) years and one (1) community service sentence.

For the same period, court imposed payments totalled \$211,754. This includes fines/penalties (\$158,910), legal costs (\$35,923), and court orders to pay (\$6,300) as well as other associated costs of \$10,601.

Where a case is not accepted for further investigation, or where a prosecution action is terminated, a warning letter is usually issued. In cases where the goods are found not to be in breach of the regulations, the goods are returned to the importer. In all other cases, the goods are seized and destroyed.

## Outcomes: 2010/2011

Figures represent <b>DETECTIONS</b> rather than items. A detection may range from 1 photo in a magazine, to a hard drive containing thousands of images						
2010/2011 to 30 April 2011	Mode Of Entry					
MEDIA TYPE	PASSENGERS	POST	SMALL CRAFT	CARGO (AIR)	CARGO (SEA)	Totals
Computer	6					<b>6</b>
DVD	135	344	2	171	21	<b>673</b>
Electronic Storage *	117	4	3		1	<b>125</b>
Game	1	9		3	1	<b>14</b>
Mobile Phone	31					<b>31</b>
Publication	17	14		15	167	<b>213</b>
Unknown **	2	6		2		<b>10</b>
<b>TOTALS</b>	<b>309</b>	<b>377</b>	<b>5</b>	<b>191</b>	<b>190</b>	<b>1072</b>
* Electronic Storage includes Computer hard drives, USB devices, video and digital camera memory cards and similar goods. ** Unknown relates to records where the title of the goods is recorded but the media type was not recorded						

- From 1 July 2010 to 30 April 2011, Customs and Border Protection made 1072 detections of objectionable material.
- During the period 1 July 2010 to 30 April 2011, 24 cases were prosecuted, comprising 21 cases involving child pornography, two (2) cases involving abhorrent material (e.g. harmful or disgusting fetish), and one (1) case involving violence. None of these cases related to terrorism material
- Of the cases considered sufficiently serious to warrant a prosecution, 22 were referred by Passengers, one (1) by Intelligence and Targeting and one (1) from the International Mail Gateway.
- All but four (4) of the child pornography cases were successfully prosecuted. Two (2) cases were unsuccessful on the following grounds: mistake of fact, and no reasonable prospect of conviction. In two (2) cases the defendant was found not guilty.
- The total number of convictions handed down for the period July 2010 to April 2011 was 26. This included twelve custodial sentences ranging from one (1) month to three (3) years, one (1) suspended sentence for a period of 21 months and three (3) good behaviour bonds ranging from 11 months to two (2) years.
- For the same period, court imposed payments totalled \$52,581. This includes fines/penalties (\$39,800), legal costs (\$11,547), and court orders to pay (\$234) as well as other associated costs of \$1,000.

In the financial year 2010/11 (to date), Customs and Border Protection has experienced a reduction in the number of objectionable material matters being referred for investigation compared to 2009/10. In particular, fewer child pornography related matters have been referred.

While the detection rate of objectionable material has remained consistent, the reduction of serious offences may indicate that an information campaign undertaken by Customs and Border Protection to educate employers about Australia's strict laws on objectionable material and child pornography, particularly in the mining, resource development and exploration sectors, is having an effect on the number of importations of this nature.

### ***Question 3***

**Senator Barnett asked the following question:**

#### **International Forums**

**Mr Fitzgerald:** From a Customs and Border Protection perspective, we have overseas posted officers that we take advantage of in order to share intelligence with other Customs agencies around the world. In addition to that we have forums such as the heads of intelligence meeting, which involves the UK, USA, New Zealand, Canada and ourselves, where we can get together and discuss in detail our own experiences, what we are seeing in respect of the types of seizures, where the seizures are coming from, profiles of those that might be importing that we can take advantage of, that help us to improve our intelligence led, risk based approach to activities.

CHAIR: Likewise, if you can take on notice anything that comes out of those forums that you think would add value to the committee's work, that would be appreciated.

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

Customs and Border Protection maintains close contact with the intelligence networks of international law enforcement agencies and the Australian Federal Police. Information exchanged can include the targeting of individuals suspected of involvement in the trafficking of objectionable material.

### ***Question 4***

**Senator Barnett asked the following question:**

#### **Comparative research material on classification schemes**

CHAIR: Just a global question again to each witness here: I have referred to the Bond University comparative analysis of ratings, classification and censorship in selected countries around the world—2003, unfortunately. Can you alert the committee to more recent research and evidence that provides that comparative analysis of ratings classification and censorship around the world that would help us in our deliberations? Could you take that on notice, please? Thank you.

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

Customs and Border Protection ensures compliance with, and enforcement of, Customs legislation at the border. This involves sharing of policy, information and intelligence as it relates to enforcement. It does not involve analysing or researching international standards as they relate to classification policy.

### ***Question 5***

**Senator Barnett asked the following question:**

#### **OH&S guidelines**

CHAIR: ... Customs: on occupational health and safety guidelines in respect of objectionable material, can you provide further and better particulars regarding those guidelines and how they are implemented? I am happy for you to take that on notice.

#### **The answer to the honourable senators' question is as follows:**

Customs and Border Protection officers assessing the content of potentially objectionable material at the border are provided with training to undertake this role.

Assessment is only undertaken by officers who have successfully completed a training course within the past two years. The training course is conducted by the Attorney-General's Department.

An OH&S brief is provided to staff at the commencement of their training, on the personal risks of viewing objectionable material. The issues discussed include:

- the psychological impact of viewing objectionable material;
- coping techniques; or
- signs to be aware of that suggest an officer is being adversely affected by viewing the material.

Written guidelines are also available to all staff and supervisors undertaking this work. These are provided to all staff who nominate to undertake the training as part of the pre-course reading material. The guidelines make clear that, for general assessment duties, undertaking the work is voluntary, and may cease at any time. No staff member is obliged to undertake or continue these tasks.

Investigations staff, who must prepare detailed briefs of evidence for serious cases and therefore must view all relevant material, have additional guidance on matters such as limiting exposure, and techniques to avoid the retention of images (e.g. Tetris game for 30 minutes following prolonged exposure).

Professional counselling services are available for staff who consider they have been affected by viewing objectionable material.

The OH&S guidelines are under review and a more comprehensive document is being developed with the assistance of a professional psychologist, along with plans for more comprehensive ongoing well-being checks.