



Australian Government
Australian Customs Service

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25 August 2006

Ms Jane Hearn
Inquiry Secretary
Parliamentary Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600



Dear Ms Hearn

REVIEW OF SECURITY AND COUNTER TERRORISM LEGISLATION

I refer to your letter of 14 August 2006, concerning additional information required following Australian Customs Service (Customs) appearance before the Parliamentary Joint Committee on Intelligence and Security on Tuesday 1 August 2006.

Questions on Notice

1. *The adequacy of powers under the Customs Act 1901 identified by Customs during the Sheller Inquiry and the relevant findings of the Wheeler Report:*

No specific recommendations were made in the Wheeler Report that directly correlates to Customs recommendations 1 and 2 to the Sheller Review. However, security of the airport environment is a constant theme throughout the Report and improvements to the Aviation Security Identification Card (ASIC) scheme were mentioned specifically at pages 67 to 73 and in Recommendation X.

Customs subsequently amended the *Customs Act 1901* through the Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006 (passed by Parliament on 17 August 2006), which implements these two recommendations.

Specifically, the changes limit access the 234AA area (Customs Controlled Area) to those persons who hold an ASIC and are required to be in the area for the purposes of their employment.

2. *The involvement of the European Parliament in the development of an EU wide agreement on passenger name records and inter parliamentary dialogue:*

The press release referred to was issued by the European Parliament Committee on Civil Liberties, Justice and Home Affairs (the Committee). It related to a proposal for a European Parliament recommendation to the European Council on the re-negotiations for a new agreement with the United States (US) on the transfer of passenger name record (PNR) data. The proposal is set down for plenary vote by the European Parliament on 1 September 2006.

The Committee proposed, owing to time constraints, a two-step negotiation process in concluding a new EU/US Agreement. The first step would be a short-term agreement with the Council to cover the period from 1 October 2006 (which is the date of effect of the European Court of Justice decision) to 11 November 2007 (which is the date set down for review of the current EU/ US Agreement) with Members of European Parliament present as observers during the process of re-negotiating a short-term agreement.

The second step would be negotiation of a medium-term agreement with a clear legal framework which provides the European Parliament with full co-decision rights, based on European Union (EU) data protection principles and subject to the scrutiny of the European Court of Justice. In this regard, the Committee proposed that a dialogue be commenced this year in which parliamentary representatives from the EU, US, Canada and Australia would take part with a view to preparing for the 2007 review of the US Agreement and establishing a world standard for the transfer of PNR data if deemed necessary. The Committee also proposed that discussions be held in bodies such as International Civil Aviation Organisation (ICAO) and democratic debate in national parliaments.

3. *CEO Directions and Orders in relation to the use of firearms:*

Customs CEO Directions and Orders in relation to the use of firearms are attached as requested by the Committee. In Customs view it is not appropriate to release the *Rules of Engagement* menu document, as it is a protected and highly sensitive document that is shared with the Australian Defence Force. The exposure of this document could compromise operational security.

Further clarification of the passenger name record system

(a) Data obtained through the reservation system includes:

- name, title;
- date and place of ticket purchase;
- ticket details such as number, fare class, travel itinerary, payment mode;
- flight booking date;
- whether the passenger is a member of a tour group;

- check-in details such as number of hold baggage items and weight, whether bags are pooled, bag tag numbers, allocated seating, check-in time; and
 - reservation/ check-in agent remarks such as contact details, seating preferences, whether passenger is a frequent 'no show' for booked flights, travel agency details and any other information relevant to a passengers travel.
- (b) Customs does conduct predictive profiling on passenger information. The analysis software used by Customs automatically profiles against PNR data elements to identify passengers whose travel or other information indicates one or more factors that indicate risk.
- (c) Customs does not retain or store any passenger information unless the passenger has been identified undertaking an illegal activity or the information is needed as intelligence to assist in investigation of a suspected offence.

The Privacy Act applies to any personal information that is collected by Customs. Customs must comply with all aspects of that legislation, including in relation to the collection, use, retention, destruction and dissemination of any such data.

If the Committee requires any further information, I can be contacted on (02) 6275 6750 or by email: jeff.buckpitt@customs.gov.au.

Yours sincerely



Jeff Buckpitt
National Director
Border Compliance and Enforcement Division

CEO DIRECTIONS NO 1 OF 2006

SUBSECTION 189A(2) OF THE *CUSTOMS ACT 1901*

COMMONWEALTH OF AUSTRALIA

I, MICHAEL JOSEPH CARMODY, under subsection 189A(2) of the *Customs Act 1901*, give the following directions relating to the deployment of approved firearms and other approved items of personal defence equipment.

1. An authorised arms issuing officer shall ensure that a person to whom approved firearms or approved items of personal defence equipment are issued is the holder of a valid qualification in accordance with *CEO Order 1(2006) - Use of Force*.
2. Approved firearms and approved items of personal defence equipment must be deployed and used in accordance with *CEO Order 1 (2006) - Use of Force*.
3. Approved firearms and approved items of personal defence equipment shall be stored according to the guidelines set out in *CEO Order 1 (2006) - Use of Force*. Any failure to store any approved firearms or approved items of personal defence equipment in the manner provided therein shall be reported to the authorised arms issuing officer.
4. An officer may only use force in accordance with the procedures set out in *CEO Order 1 (2006) - Use of Force*. This includes in any of the following circumstances:
 - a) aiming or discharging a firearm;
 - b) using a baton against another person;
 - c) aiming or using a chemical agent;
 - d) using any compliance or restraint hold, strike, kick or other operational safety application against another person; or
 - e) using handcuffs or similar restraint against a person.

CEO Directions No 1 of 2005, dated 5 September 2005, is revoked.

This instrument takes effect on the day after it is registered.

Dated: April 2006

Michael Joseph Carmody
Chief Executive Officer of Customs

CEO DIRECTIONS NO 2 OF 2006

SECTION 183UC OF THE *CUSTOMS ACT 1901*

COMMONWEALTH OF AUSTRALIA

I, MICHAEL JOSEPH CARMODY, under section 183UC of the *Customs Act 1901*, give the following directions concerning the exercise of powers under the *Customs Act 1901*.

1. Rules of Engagement ("ROE") are the framework within which the Australian Customs Service ("Customs"), as an organisation, may use force to achieve an objective.
2. The planning factors behind the determination of ROE are provided in *CEO Order 2 (2006) - Rules of Engagement*. *CEO Order 2 (2006) - Rules of Engagement* also provides for the operational aspects of ROE, including clarification of authority, classification of ROE and the consequences of breaches of ROE.
3. ROE for any Customs operation will be drawn from the menu of ROE operating rules, incorporated in *CEO Order 2 (2006) - Rules of Engagement*. During Customs operations, Customs officers will only use force where such force is necessary to achieve an objective and where the use of such force is within the limits defined by the ROE, as they are declared for any Customs operation.

CEO Directions No 2 of 2005, dated 5 September 2005, is revoked.

This instrument takes effect on the day after it is registered.

Dated: April 2006

Michael Joseph Carmody
Chief Executive Officer of Customs