

# CHAPTER 4

## COMMITTEE VIEW

4.1 The committee acknowledges concerns raised by the Law Council in relation to aspects of the proposed regimes in the Bill, including the apparent absence of broad consultation with interested stakeholders and the lack of clarity contained in the Bill with respect to certain of its key elements. The committee is surprised at the apparent expedited introduction of the Bill and notes that the Bill's proposals were not revealed during the committee's inquiry into the Border Compliance Bill which took place only three months ago. The committee acknowledges the Law Council of Australia's criticism that inadequate opportunities were provided for consultation on the Bill, but notes advice from Customs indicating that consultation did take place with the Passenger Facilitation Taskforce (which has expressed its satisfaction with the Bill).<sup>1</sup> The committee suggests that, in the light of the Law Council's criticism, Customs give consideration to developing more wide-ranging consultation mechanisms prior to introducing future amendments into Parliament.

4.2 The committee also shares the concerns raised about uncertainty as to how the proposed arrangements will actually work. The practical and operational impact of the proposed regimes, including their interrelationship and possible overlap, is not readily comprehensible from a simple reading of the Bill and the EM. The Bill is lengthy and the regimes it seeks to set in place appear complex; yet in some respects, it comprises a fairly minimalist framework for the regimes by omitting fundamental details which might have assisted the committee to gain more readily an understanding of how the regimes will operate.

4.3 As a result, the committee has been obliged to place a large number of questions on notice to Customs, and to rely on information provided by Customs in its responses to these questions to 'fill in the gaps'. Unfortunately, however, time constraints have not allowed the committee to consider these responses as comprehensively as it would have liked. While the extensive amounts of information provided by Customs in its answers have ultimately been of assistance, the committee is of the view that some of the details provided in these answers would have been more appropriately placed in the Bill itself or, at the very least, included as background information in the EM or Second Reading Speech. In this context, the committee particularly notes the helpful nature of the flow charts which were provided to the committee as part of the answers.

4.4 The committee also considers that Customs' communications about the application of the powers in the Bill were both conflicting and wrong. Customs appears to have provided the committee with conflicting advice: on the one hand, '(t)he import control measures in the [Bill] ... will not operate in the commercial air or

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1 Australian Customs Service, Answers to Questions on Notice, Question No. 3.

sea cargo environments'<sup>2</sup> and '(t)he commercial air and sea cargo environments are excluded from the regime via their omission from the Bill';<sup>3</sup> yet, on the other hand, '(t)he post-importation permission arrangements are intended to apply to all environments'.<sup>4</sup> Clearly both positions cannot be correct: in future the committee recommends that Customs make it absolutely clear, at the outset, the environments in which the regimes are intended to operate and the persons to whom the regimes are intended to apply.

4.5 Having said this, however, the committee concurs with the broad purposes of the Bill and sees the merit in streamlining procedures dealing with the importation of low-end prohibited items to reduce the administrative burden for Customs. In addition, the goods detention regime that applies across all Customs/trade environments will be of benefit to industry. Given the more thorough explanations and assurances by Customs in its answers to questions on notice in relation to the operation, interaction and implications of the proposed regimes, the committee does not consider that major amendments to the Bill are necessary. However, the committee is of the view that certain aspects of the proposed regimes should be more clearly enunciated. The committee puts forward a series of recommendations which it considers will aid interpretation of the proposed regimes by those to whom the committee understands they are intended to apply, and which aim to improve the application and operation of the regimes in a practical sense.

#### **Recommendation 1**

**4.6 The committee recommends that the type of prohibited imports subject to the surrender regime under new Subdivision GB be identified prior to the Bill being considered by Parliament and prior to any implementation of the regime.**

#### **Recommendation 2**

**4.7 The committee recommends that the type of prohibited imports subject to the post-importation regime under new Subdivision GC be identified prior to the Bill being considered by Parliament and prior to any implementation of the regime.**

#### **Recommendation 3**

**4.8 The committee recommends that the guidelines for serving infringement notices under new section 243ZG of the Bill be released for comment and consultation prior to implementation of the import control regime.**

4.9 The committee notes Customs' reference to the EM as a means of explaining the limitation of the section 234ZH infringement notice regime, but instead prefers as

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2 Australian Customs Service, *Submission 1*, p. 1.

3 Australian Customs Service, *Answers to Questions on Notice*, Question No. 39.

4 Australian Customs Service, *Answers to Questions on Notice*, Question No. 4.

a matter of general principle that such limitation of the power should not be contained in ancillary aids to interpretation but instead in the actual text of the law (for which such aids are no substitute). Accordingly:

#### **Recommendation 4**

**4.10 The committee recommends that the Bill be amended to contain a specific statement to make absolutely clear that the power of the CEO to issue an infringement notice under new section 243ZH includes the power to issue an infringement notice outside a section 234AA place, but that its application outside a section 234AA place is limited only to a section 234ABA area, the postal environment and circumstances where baggage is unaccompanied.**

#### **Recommendation 5**

**4.11 The committee recommends that new subparagraph 243ZI(1)(e)(ii), relating to matters to be included in an infringement notice, be amended to specifically provide that the phrase 'in any other case' relates only to the postal environment and circumstances where baggage is unaccompanied.**

#### **Recommendation 6**

**4.12 The committee recommends that a comprehensive public education campaign, aimed at those to whom the import control regime is intended to apply, be conducted in relation to the measures proposed in the Bill.**

#### **Recommendation 7**

**4.13 Subject to the preceding recommendations, the committee recommends that the Senate pass the Bill.**

**Senator Marise Payne**

**Committee Chair**

