APPENDIX 2

Questions on Notice from the Senate Legal and Constitutional Legislation Committee

Question Number	Question
1	Can you provide examples of the range of prohibited goods that would be subject to the procedures outlined in schedule 1- import controls?
2	Will ACS take into consideration the total value of a prohibited import in deciding whether to issue an infringement notice? a. Does ACS have an upper limit or threshold in mind (provide if applicable) above which infringement notices will not be issued or will be unlikely to be issued?
3	Can ACS outline the types of persons or entities that the proposed scheme is aimed or directed towards? For example airline passengers, importers of parcels, general air freight, freight forwarders. a. If any of the above groups are contemplated to be subject to the proposed scheme, can ACS provide details as to who has been consulted and when, and can the minutes or outcomes of these consultations be provided to the committee. If not why not? When will they be consulted? b. If no consultations occurred, how is it proposed to take any of the views of these groups into consideration, if the bill is now drafted? If their views were sought and provided, can the ACS provide details of them and indicate what parts of the bill were changed as a result of this?
4	This question relates to the extent to which the new infringement notice regime could be applicable to importers and exporters rather than merely passengers and their luggage in a s234AA place. The regime sets up: - a surrender of goods mechanism under section 209 N - a detention of goods under section 209U - an infringement notice scheme dealing with concealed goods under section 243ZH. ACS has indicated that the infringement notice regime will only apply to ship and aircraft passengers. You will note however that only the surrender of goods regime under Section 209N and the infringement scheme s243ZH are limited to goods in a s234AA place. Section 209U which covers goods detained makes no reference to suggest that it is limited to s234AA places. These regimes are intended to replace or substitute for the operation of Section 203B which when we determine what that applies to, applies to containers and

Question Number	Question
	conveyances as well as simply passengers at airports and customs designated Section 234AA areas. Therefore, 1 of the 3 pillars to the regime seemingly may have application outside the limitation of Section 234AA places. a. In relation to this detention scheme, does it apply outside of section 243AA areas (ACS indicated that it may apply to the postal environment)? b. Could it also apply to the shipping container environment or the air container environment? c. Can ACS provide the definition and other examples of a 234AA place? d. Can you please explain how this will interact with the accredited client program and any other infringement schemes, or advise how you intend to limit the application? e. Will the infringement notice regime be applicable to persons other than passengers with their luggage? For example brokers, importing businesses or freight forwarders. i. If so, will the penalties that apply differ and how so? ii. If so, who will be deemed to be the owner of the goods for the purposes of the regime?
5	What is the penalty regime (i.e. range of penalties, civil/criminal forfeiture regime), and how is it calculated? a. How will the penalty regime be applied to ensure fairness and avoid unjust outcomes or inconsistent treatment of persons or entities? b. How will recovery of unpaid penalties be recovered? c. How much revenue is projected to be obtained from introducing the proposed scheme?
6	Has the ACS considered an alternative low-cost procedure to providing importers with the right to apply to a court for compensation in respect of goods that have been surrendered? (The Law Council has argued that the costs of applying to a court would likely exceed the amount of compensation)
7	Have any efficiency gains been forecast from the introduction of the new scheme? If so, provide details.
8	What training of ACS staff has been undertaken to date, in respect of the proposed scheme? a. What type of training of staff is contemplated for staff of the proposed scheme? b. Have the relevant unions been consulted about the proposed changes? If not, why not?
9	Have the regulations contemplated in sections 209M and 209T been drafted, if not why not? If yes, can you provide a copy?

Question Number	Question
10	Are the directions of the CEO under 209R specified? a. If yes, can you provide a copy? If not, why not? b. What types of directions are contemplated under these directions?
11	Have the guidelines provided for under section 243ZG been developed? If they have been can the ACS provide a copy, if not why not?
12	Can the ACS provide a diagrammatic description (i.e. flow chart) of how the proposed scheme, including the infringement notices under this bill, will work?
13	In respect of the discretion the customs officer has in deciding to use the power under 209N, can ACS outline the training or provide a copy of the guidelines that will assist Customs officers in carrying out there duties?
14	What systems or procedures or internal reviews are in place or will be put in place to ensure that officers carry out their duties diligently?
15	What review mechanisms are available to persons subject to the exercise of a customs officer discretion contemplated in the new proposals?
16	Is there a complaint handling procedure in place to deal with the use of the discretion? a. If so, can you provide a copy of it? If not why not?
17	Can you provide a copy of those items under the PI regulations that will be subject to the regime? a. Can this list be changed, if so what processes will be adopted when changes to the PI regulations are contemplated? b. Are the PI regulations disallowable instruments?
18	Will both the infringement scheme and the post-importation declaration procedures apply to postal articles, either mail or parcels? If not why not?
19	What procedures are provided to ensure the under subdivision GC a person can be given the option of obtaining a post-importation permission? a. Is any decision on this matter made by the Customs officer subject to either internal or external review? b. Is it subject to judicial review?
20	What procedures are in place to ensure the integrity of the system? a. If there are procedures in place, can they be provided to the committee?

Question Number	Question
21	What discretion is available for a customs officer to decide that there was no intention by the person subject of investigation not to conceal the goods in accordance with the relevant section? (ie what happens where a person is unaware that they have concealed a prohibited item?) a. If this discretion exists, is it too broad and open to abuse? b. If this discretion does not exist, how are ACS personnel expected to determine whether an intention existed?
22	Will this proposed scheme be available to be used by part time or casual employees of customs? If yes, what safeguards are put in place to ensure the power is exercised correctly?
23	Can any of the time periods specified in the Bill be extended? a. If so can you provide outline how any extension would operate and on what basis the periods could be extended? b. If not, why not in the cases of hardship or if there exists reasonable grounds?
24	This question relates to the disposal of surrendered goods and forfeited goods which are classified as prohibited imports. Does the use of the term disposal open up the possibility that the goods are not necessarily destroyed? For example, that the goods can be disposed of through sale rather than disposed of through destruction. a. If so, under what circumstances might the goods end up not being destroyed?
25	In relation to Section 209V (Detained goods to be secured), why were the additional instructions of the equivalent ss204 (3) to (5) not applied here in relation to this new regime for detention of goods?
26	How does the new system apply in the circumstances where a person's suitcase contains a prohibited import or when a parcel containing multiple items contains a prohibited import? a. Are all contents deemed to be forfeited or just the prohibited item?
27	With regards to Section 243ZA subsection (4) as it exists under the Act, every other reference to infringement notice has been modified in this Division (now subdivision). Why has this subsection not been modified to include the terms "served under this subdivision" or similar?

Question Number	Question
28	In the ACS submission on the Bill, it was indicated that passengers must pay the infringement notice before leaving the ACS controlled area to remove liability for the offence and the proposed model requires the customs officer to accompany the passenger to the duty collection area while the notice is paid: a. How labour intensive is this likely to be? b. Why are these people not to be allowed to leave until they have paid? c. Does ACS intend to escort people to a place they can obtain the required funds (e.g. an ATM)? d. What will happen should a person wish to pay the penalty but not have immediate access to electronic funds? e. In the above circumstances will the ACS allow the person to arrange for a third party to arrange the funds to be brought to the duty collection area? For example a friend or relative to bring the required cash: f. In the situation where someone can arrange for a friend or relative to drop the money off at the airport please advise as to whether the ACS is planning to keep a Customs officer in accompaniment until the friend or relative arrives with the cash? g. Does ACS intend to set any time limits for the person to arrange the payment of the penalty? If so, provide details.
29	Will there be a public education campaign to inform the travelling public of the new regime?
30	Will there be a trial period before the regime officially commences?
31	There appears to be a drafting error in Item 5 of Schedule 1 – does paragraph 203(3)(e) of the Customs Act exist?
32	Proposed section 209N refers to 'the available options' for dealing with the goods and the consequence of exercising each of these options. a. What are these options? Can you provide the committee with a copy of the options? b. What are all the relevant consequences of exercising the options? Can you provide the committee with a copy of these?
33	Can you provide the committee with an explanation of what 'concealed' actually means in the context of the proposed regime and provide the committee with details of all the circumstances/situations where the term is intended to apply?

Question Number	Question
34	Proposed paragraph 209X(1)(j) refers to notices being served in a foreign country. a. How is this intended to operate in practice? b. What legislation underpins the operation of this proposed paragraph (eg mutual assistance legislation)? c. Is a formal relationship with relevant countries required? d. What will happen if no diplomatic relationship between Australia and the relevant country exists?
35	The committee has previously requested a flow chart of how the infringement notices regime will operate (Q.11). a. Can the ACS also provide flow charts of how the post-importation permission scheme will operate and how the seizure of goods scheme will operate – essentially there will be 3 separate regimes in operation. b. Could the ACS also set out how the 3 separate processes will interrelate?
36	Why must a passenger pay an infringement notice before leaving a section 234AA area? Why can't the passenger be given a certain period of time (eg 28 days) to pay (cf parking infringement notices etc)?
37	Why has a distinction been made in proposed subparagraphs 243ZI(1)(e)(i) and (ii) between persons in section 234AA areas and 'in any other case'? What does 'in any other case' mean? Please provide the committee with details of what this is intended to cover. If it is intended to only cover the postal environment, why isn't this specifically mentioned in the Bill/EM?
38	Is there a definition of the passenger processing area or the postal environment? If not, why not?
39	How does the bill actually differentiate between the areas of postal environment and the commercial air or sea cargo environments?
40	What is the definition of the commercial air or sea cargo environments that will be used in the bill to differentiate these services from the actual areas of passenger processing or postal environments? If there is no definition, how will the ACS decide which is commercial air or which is postal environments?
41	Can ACS provide examples of what is said to be in the commercial air environment and what is in the postal environments?
42	Will all parcel post be subject to the new regime proposed in the bill?
43	Can ACS demonstrate in the bill how the above areas are separated? If not, can customs explain how the bill will not have application to the commercial air or sea cargo areas?

Question Number	Question
44	Can ACS confirm that the infringement notice scheme can apply in any area subject to a 203B seizure, if yes can ACS explain why it will not operate in the commercial area of sea cargo or air cargo? If yes, can customs explain how the bill will not apply in these areas?
45	Will the infringement notice scheme and the detention scheme operate in the international postal exchanges? If yes, can you provide a list of those sites?
46	Will the bill apply to the air parcel post operators such as Fed Ex and DHL etc.? If not, why not? If not, can you explain how the bill does not apply to these operations?
47	Can a person be prosecuted under the bill as well as having the goods detained and post import permission sought? If not, can you explain in the bill where that outcome is excluded, if yes, can you explain what decision-making process will be used to decide whether to prosecute or not? Will this be dependant on whether a good is granted permission or not or can a person be prosecuted irrespective of whether the importer is granted permission to import the good or not? What safeguards are in place to ensure that the detention regime and the post import permission regime operates fairly?

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 1

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

1. Can you provide examples of the range of prohibited goods that would be subject to the procedures outlined in schedule 1- import controls?

The answer to the Committee's question is as follows:

As a part of the policy implementation process Customs will determine which prohibited imports controlled under the Prohibited Imports Regulations it considers lower risk community and consumer protection related items. These prohibited imports will then be prescribed by regulation as subject to the surrender bin regime and/or the infringement notice scheme.

Customs is aiming to address the large number of low risk, high volume prohibited items that are bought through Australian airports on a daily basis. Items such as nunchakus, electric fly swatters, and electric shock devices will be subject to this regime.

Customs believes the method of addressing prohibited items should be commensurate with the level of threat posed to society. As such the proposed surrender bin and infringement notice regimes compliment the seizure process to provide a tiered response to the importation of prohibited items.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 2

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

2. Will ACS take into consideration the total value of a prohibited import in deciding whether to issue an infringement notice?
    a. Does ACS have an upper limit or threshold in mind (provide if applicable) above which infringement notices will not be issued or will be unlikely to be issued?

The answer to the Committee's question is as follows:

The proposed Infringement Notice Scheme (INS) takes into consideration the low risk and low value of the prohibited items when prescribing goods for inclusion in the scheme. However, when deciding whether to issue an infringement notice the total value of a prohibited item is not the only consideration.

An infringement notice will be issued to those passengers who attempt to import a certain prescribed prohibited item by concealing the item, or have regularly attempted to import prohibited items.

The introduction of the INS will allow an intermediate sanction (commensurate with the level of threat posed to society) to be imposed where prosecution is deemed inappropriate but some sanction is warranted.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 3

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

3. Can ACS outline the types of persons or entities that the proposed scheme is aimed or directed towards? For example airline passengers, importers of parcels, general air freight, freight forwarders.
    a. If any of the above groups are contemplated to be subject to the proposed scheme, can ACS provide details as to who has been consulted and when, and can the minutes or outcomes of these consultations be provided to the committee. If not why not? When will they be consulted?
    b. If no consultations occurred, how is it proposed to take any of the views of these groups into consideration, if the bill is now drafted? If their views were sought and provided, can the ACS provide details of them and indicate what parts of the bill were changed as a result of this?

The answer to the Committee's question is as follows:

The surrender bin regime and the INS will operate in the passenger processing environment. The INS will also operate in the postal environment. These regimes will not operate in the commercial air or sea cargo environments.

The proposed scheme is aimed at airline passengers and items in the postal stream.

a. Customs has advised members of the Passenger Facilitation Taskforce of the Bill and its effect. Participants at the meeting indicated their satisfaction with the proposed initiatives and did not request any changes or amendments. Please see below for Passenger Facilitation Taskforce, Aviation and Industry Consultation participants.
b. Customs has not undertaken direct consultation with passengers as it is envisaged that the people who will most likely be subject to the regime will be first time, one off importers.

Passenger Facilitation Taskforce, Aviation and Tourism Industry Consultation participants

- Airport Coordination Australia
- Australia Pacific Airports Melbourne
- Australian Airports Association Adelaide
- Board of Airline Representatives of Australia
  BARA
- Brisbane Airport Corporation
- Cairns Port Authority
- Darwin International Airport
- Gold Coast Airport
- Jetstar
- Qantas

- Sydney Airport Corporation Limited SACL
- Tourism and Transport Forum Australia
- Tourism Australia
- Virgin Blue
- Westralia Airports Corporation

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 4

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

4. This question relates to the extent to which the new infringement notice regime could be applicable to importers and exporters rather than merely passengers and their luggage in a s234AA place.

   The regime sets up:
   - a surrender of goods mechanism under section 209 N
   - a detention of goods under section 209U
   - an infringement notice scheme dealing with concealed goods under section 243ZH.

   ACS has indicated that the infringement notice regime will only apply to ship and aircraft passengers. You will note however that only the surrender of goods regime under Section 209N and the infringement scheme s243ZH are limited to goods in a s234AA place. Section 209U which covers goods detained makes no reference to suggest that it is limited to s234AA places.

   These regimes are intended to replace or substitute for the operation of Section 203B which when we determine what that applies to, applies to containers and conveyances as well as simply passengers at airports and customs designated Section 234AA areas. Therefore, 1 of the 3 pillars to the regime seemingly may have application outside the limitation of Section 234AA places.

   a. In relation to this detention scheme, does it apply outside of section 243AA areas (ACS indicated that it may apply to the postal environment)?
   b. Could it also apply to the shipping container environment or the air container environment?
   c. Can ACS provide the definition and other examples of a 234AA place?

   d. Can you please explain how this will interact with the accredited client program and any other infringement schemes, or advise how you intend to limit the application?
   e. Will the infringement notice regime be applicable to persons other than passengers with their luggage? For example brokers, importing businesses or freight forwarders.
      i. If so, will the penalties that apply differ and how so?
      ii. If so, who will be deemed to be the owner of the goods for the purposes of the regime?

The answer to the Committee's question is as follows:

a. The detention of goods under section 209U is wholly related to the post importation permission amendments. It enables detention of the prohibited or restricted goods by Customs while a permission is sought, rather than immediate seizure. It therefore operates outside of a section 234AA place.

b. The post importation permission arrangements are intended to apply to all environments. The surrender bin arrangements and infringement notice scheme do not apply to shipping container and air container environments.

c. A section 234AA place is a place that has been set aside that is to be used by officers of Customs for questioning passengers disembarking from or embarking on a ship or aircraft or for examining the personal baggage of such passengers or as a holding place for such passengers. Such a place must be identified by signs displayed at or near the place. An example of such a place is the baggage hall at major Australian international airports.

d. The scheme will not have any interaction with the Accredited Client Program or other infringement notice schemes.

e. The infringement notice scheme will be applicable in the passenger and postal environments. It will not apply to brokers, importing businesses or freight forwarders.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 5

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

5. What is the penalty regime (i.e. range of penalties, civil/criminal forfeiture regime), and how is it calculated?
    a. How will the penalty regime be applied to ensure fairness and avoid unjust outcomes or inconsistent treatment of persons or entities?
    b. How will recovery of unpaid penalties be recovered?
    c. How much revenue is projected to be obtained from introducing the proposed scheme?

The answer to the Committee's question is as follows:

The penalty regime is determined by statute. Paragraph 243ZI(1)(d) provides that a penalty of 2 penalty units ($220) is payable. This is the same penalty as the Quarantine regime.

a. As there is no discretion regarding the amount of penalty, issues of fairness and unjust outcomes do not arise. If the matter proceeds to Court, the Court imposes the penalty.
b. If the penalty is not paid, Customs retains the discretion to prosecute the offender.
c. This regime was not developed in order to generate revenue for Customs. It is instead an administration efficiency regime. Customs has not undertaken an assessment of the projected revenue as it is difficult to fully determine the number of people who will be subject to an infringement notice prior to implementation. Customs undertakes on-going review of all its business practices at airports. The surrender bin and INS regimes will become part of this on-going review.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 6

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

6. Has the ACS considered an alternative low-cost procedure to providing importers with the right to apply to a court for compensation in respect of goods that have been surrendered? (The Law Council has argued that the costs of applying to a court would likely exceed the amount of compensation).

The answer to the Committee's question is as follows:

Customs has not provided an alternative low-cost procedure to provide importers with the right to apply to a court for compensation in respect of goods that have been surrendered. This is because there is no general compensation in respect of goods that have been surrendered as they are prohibited imports and an offence occurred at the time of their importation.

The right to apply for compensation in respect of goods that have been surrendered only applies if it is later proved that the goods were not prohibited imports.

If an importer chooses not to surrender a prohibited item, the item will be seized in accordance with current processes. The importer will then have the opportunity to apply for the return of the goods under the seizure regime.

In respect of the Law Council submission, the compensation procedures in the Bill are based on existing compensation procedures in the Customs Act.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 7

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

7. Have any efficiency gains been forecast from the introduction of the new scheme? If so, provide details.

The answer to the Committee's question is as follows:

The surrender bin regime and the INS are being introduced as administration efficiency regimes. Customs has not undertaken a full assessment of the projected efficiency gains, as it is difficult to fully determine the number of people who will be subject to these schemes prior to implementation. Customs undertakes on-going review of all its business practices at airports. The surrender bin and INS regimes will become part of this on-going review

Presently, all prohibited items that are imported must be seized, regardless of their perceived threat to the community. This is a time-consuming and resource intensive process, impacting on the efficiency of Customs operations at airports. The introduction of the surrender bin regime and the INS will provide sanctions appropriate to the level of threat to the community and will reduce the time spent by Customs officers on administration and the level of post-seizure claims made on seized items.

Implementation of the proposed regimes would result in a number of specific savings. The major saving would be in the hours that are currently spent preparing files for the prosecution of low value prohibited imports. For example in Melbourne approximately 120 cases per year are recommended for prosecution in the passengers environment. Of these approximately two thirds eventuate in prosecution action, however the remaining one third are eventually deemed not suitable for legal action. These remaining cases still require a number of hours work to determine a course of action. This would include Record's of Interview, Briefs of Evidence and preparing Customs Officers for possible court appearances. Other direct savings would include the reduction in hours for officers involved in the Detained Goods Management process and the reduction of time involved in the completion of seizure notices and goods detained forms for low value prohibited imports.

With the implementation of the surrender bins and infringement notices these saved hours of work could be re-directed into high priority work such as targeting terrorism and illicit drugs.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 8

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

8. What training of ACS staff has been undertaken to date, in respect of the proposed scheme?
   a. What type of training of staff is contemplated for staff of the proposed scheme?
   b. Have the relevant unions been consulted about the proposed changes? If not, why not?

The answer to the Committee's question is as follows:

To date no training has been undertaken in respect of the proposed scheme.

a. Training will be delivered to Customs Officers at airports before the implementation of the proposed scheme.

   This training is currently being scoped with input from clients and stakeholders in Customs. The training will be delivered as a pilot and evaluated to ensure relevant feedback from officers and their managers is included in the future training sessions. Once the initial rollout of the training has been conducted it will be integrated into the Customs Trainee program to ensure all relevant staff receive the training when they join Customs.

b. Unions have not been consulted about the proposed changes; this scheme will streamline the process of dealing with prohibited imports in the air passenger environment, thereby lessening the workload, rather than create an additional workload.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 9

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

9. Have the regulations contemplated in sections 209M and 209T been drafted, if not why not? If yes, can you provide a copy?

The answer to the Committee's question is as follows:

The regulations contemplated in sections 209M and 209T have not yet been drafted. The content of those regulations is still to be decided, in consultation with the relevant authorising agencies (e.g. the Therapeutic Goods Administration, the Department of Environment and Heritage, the Australian Radiation Protection and Nuclear Safety Authority etc) who have policy responsibility for prohibited imports.

The goods under 209T will be a subset of goods currently restricted or prohibited, and may include goods ranging from pharmaceuticals prescribed by a doctor to goods containing radioactive substances.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 10

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

10. Are the directions of the CEO under 209R specified?
    a. If yes, can you provide a copy? If not, why not?
    b. What types of directions are contemplated under these directions?

The answer to the Committee's question is as follows:

The directions of the CEO under 209R are not yet specified.

a. Customs does not have the power to specify the directions until the Bill has been passed. However, the directions will be specified in time for the implementation of the schemes and will reflect current disposal practices.

b. As the goods are prohibited imports, the goods would most likely be destroyed. The only other option may be disposal of those prohibited items that have breached trademark laws. Disposal in this instance would constitute donation of the items to a charity with the consent of the trademark holder.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 11

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

11. Have the guidelines provided for under section 243ZG been developed? If they have been can the ACS provide a copy, if not why not?

The answer to the Committee's question is as follows:

The content of the guidelines are still being developed. Customs will have up to 6 months after Royal Assent to develop all of the necessary procedures and guidelines in relation to these new regimes.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 12

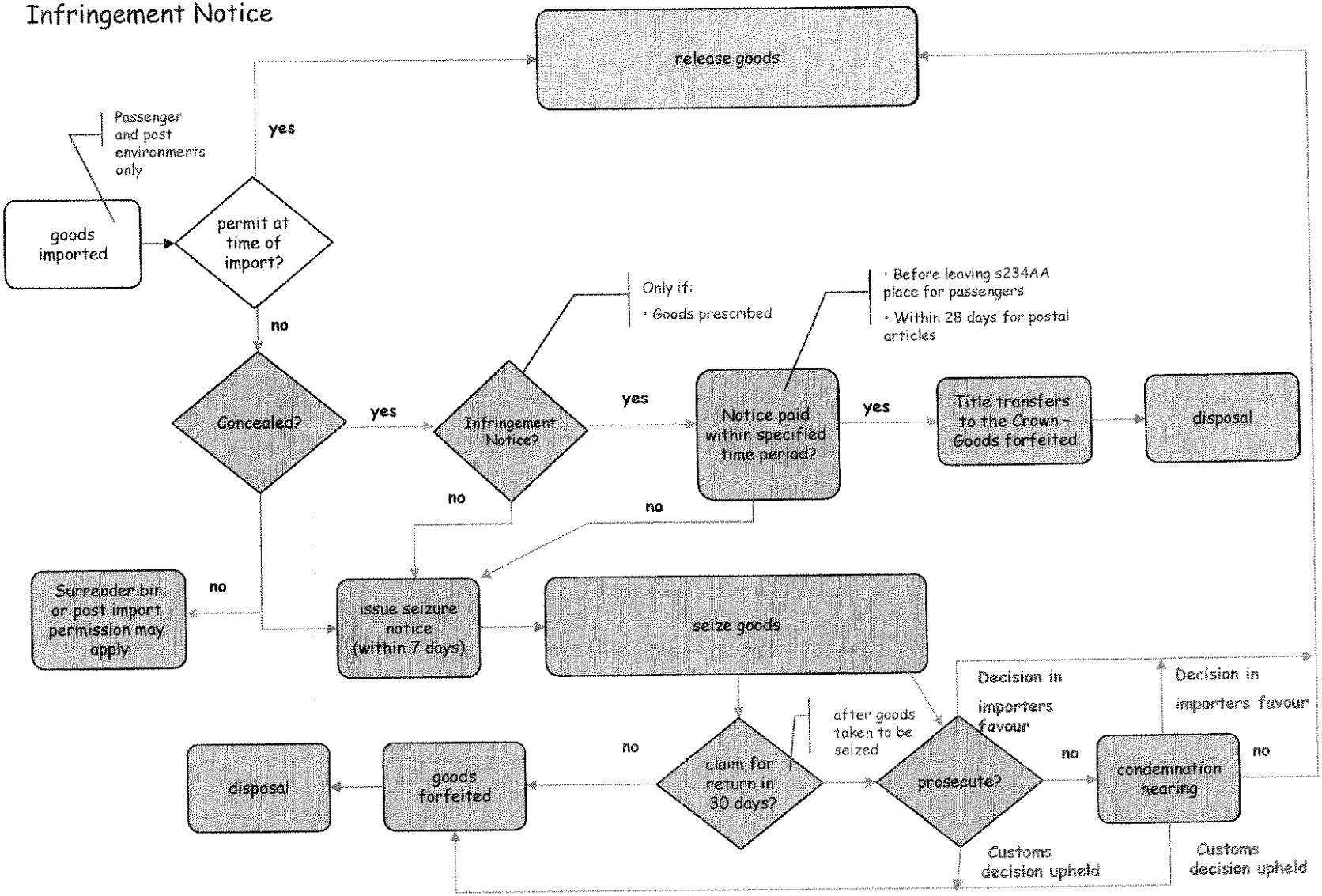
The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

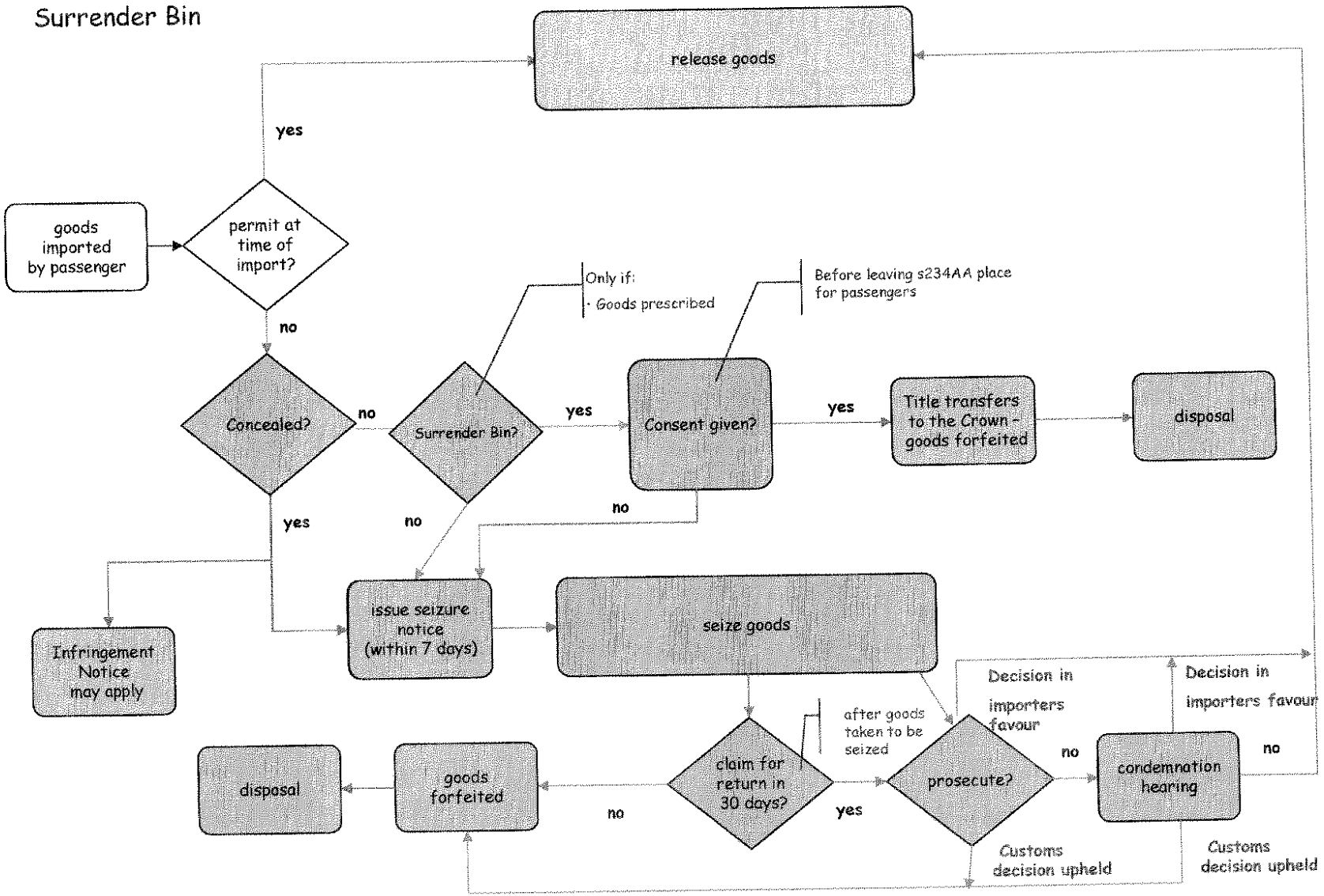
12. Can the ACS provide a diagrammatic description (i.e. flow chart) of how the proposed scheme, including the infringement notices under this bill, will work?

The answer to the Committee's question is as follows:

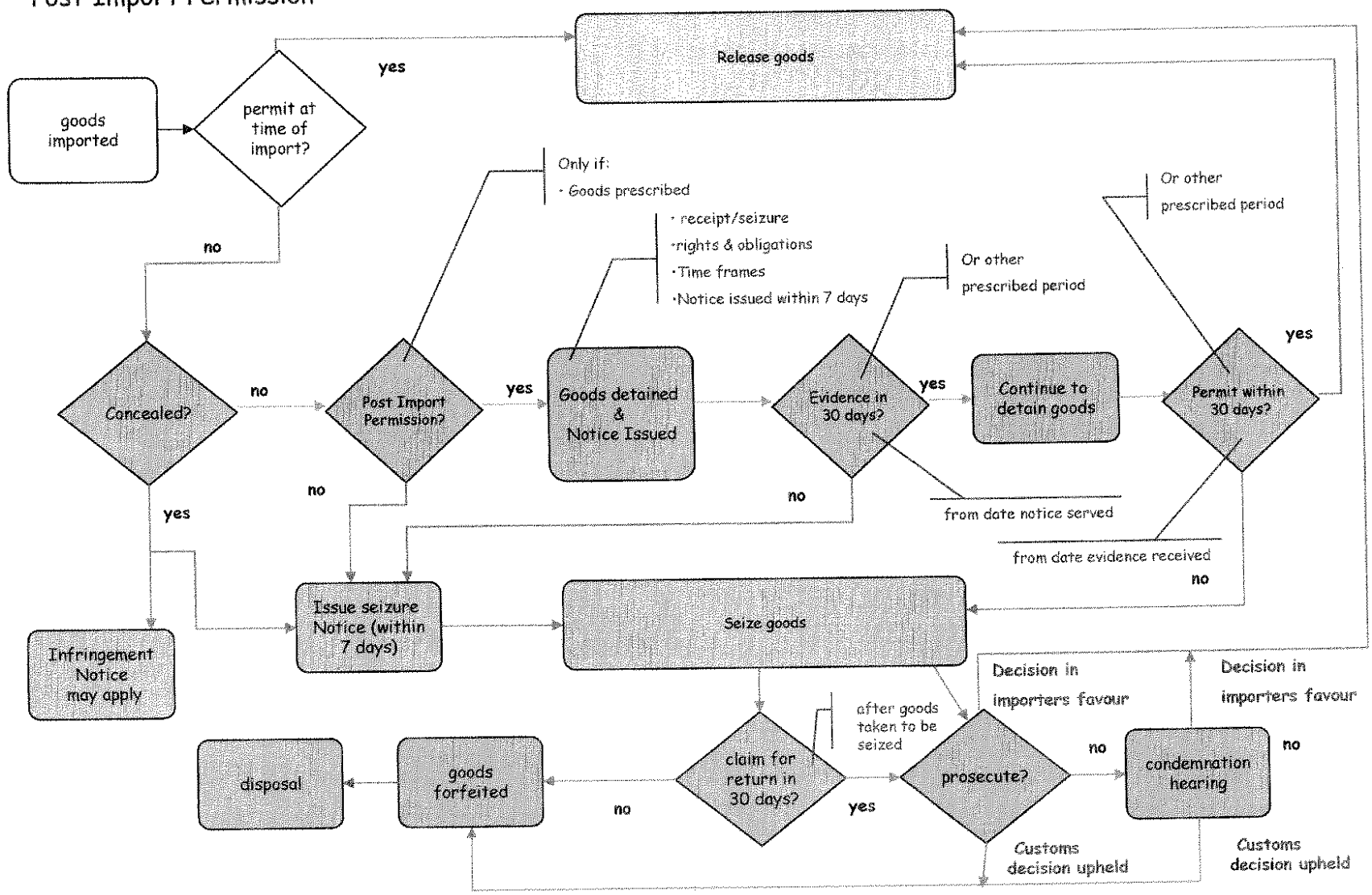
See attached flow charts.

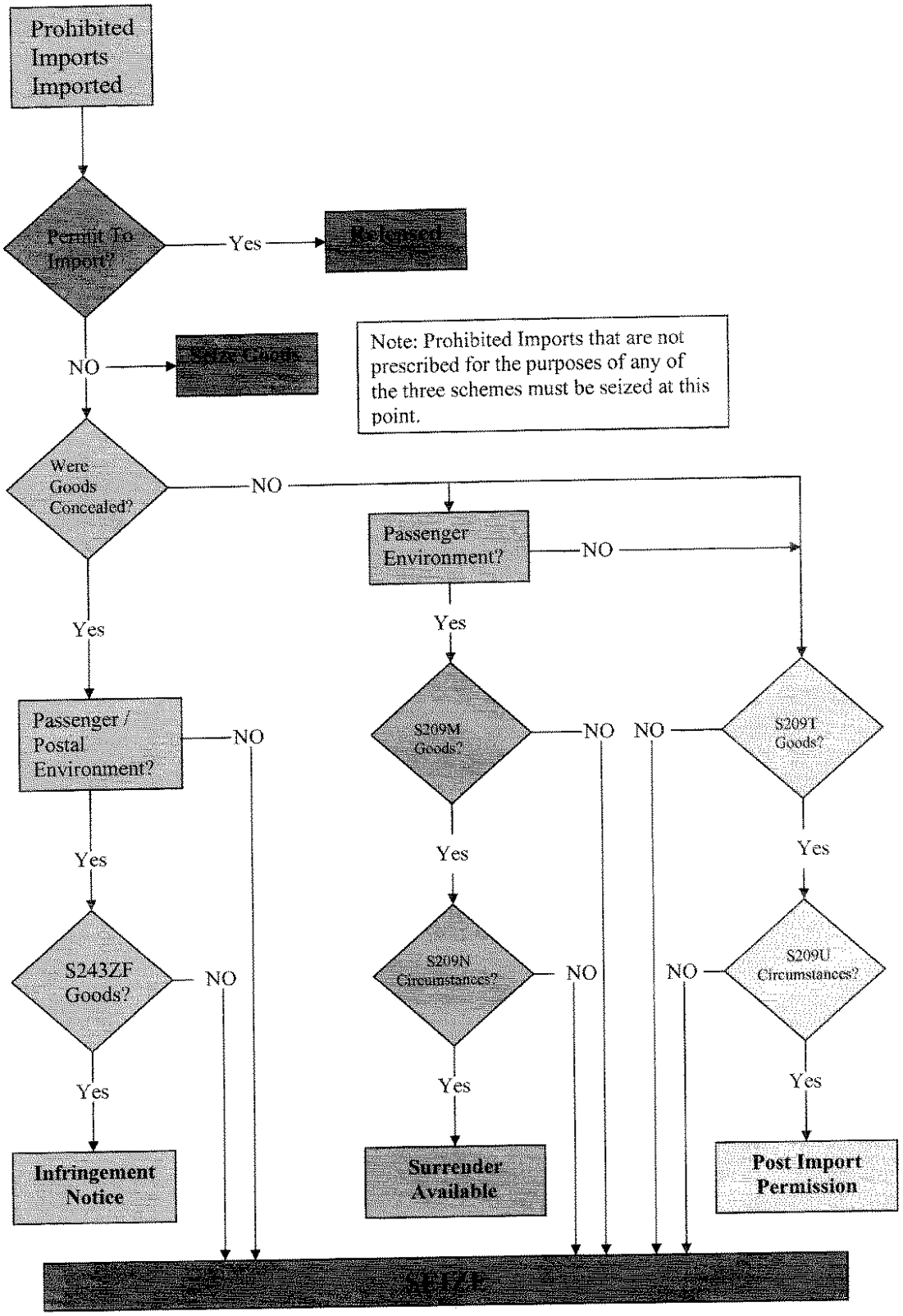
Infringement Notice




Surrender Bin
release goods
yes
goods imported by passenger
permit at time of import?
no
Concealed?
no
Surrender Bin?
Only if:
· Goods prescribed
yes
Consent given?
Before leaving s234AA place for passengers
yes
Title transfers to the Crown - goods forfeited
disposal
yes
no
no
Infringement Notice may apply
issue seizure notice (within 7 days)
seize goods
Decision in importers favour
Decision in importers favour
after goods taken to be seized
claim for return in 30 days?
prosecute?
no
condemnation hearing
no
disposal
goods forfeited
no
yes
Customs decision upheld
Customs decision upheld

Post Import Permission




Prohibited Imports Imported
Permit To Import?
Yes
Released
NO
Seize Goods
Note: Prohibited Imports that are not prescribed for the purposes of any of the three schemes must be seized at this point.
Were Goods Concealed?
NO
Yes
Passenger Environment?
NO
Yes
Passenger / Postal Environment?
NO
Yes
S243ZF Goods?
NO
Yes
Infringement Notice
S209M Goods?
NO
Yes
S209N Circumstances?
NO
Yes
Surrender Available
NO
S209T Goods?
Yes
S209U Circumstances?
NO
Yes
Post Import Permission
SEIZE

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 13

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

13. In respect of the discretion the customs officer has in deciding to use the power under 209N, can ACS outline the training or provide a copy of the guidelines that will assist Customs officers in carrying out there duties?

The answer to the Committee's question is as follows:

As outlined in Question 8, Customs officers at airports will attend training sessions on the proposed scheme before it is implemented.

A number of administrative guidelines, Standing Operating Procedures (SOPs) and forms will be developed for the scheme. These will be circulated to all officers at airports and copies provided to staff during relevant training sessions.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 14

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

14. What systems or procedures or internal reviews are in place or will be put in place to ensure that officers carry out their duties diligently?

The answer to the Committee's question is as follows:

As mentioned in Question 13 a number of administrative documents such as guidelines, SOPs and forms will be developed to provide consistent application of the scheme.

Customs undertakes on-going review of its business practices and officer competency at all airports. Once implemented, the surrender bin regime and INS will be included in this continuous review, both in terms of business processes and officer competency and performance.

In addition, the new regimes will be subject to the normal range of internal and external audits that are conducted on various Branches and programs in Customs.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 15

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

15. What review mechanisms are available to persons subject to the exercise of a customs officer discretion contemplated in the new proposals?

The answer to the Committee's question is as follows:

Passengers may ask to speak to a duty manager, or they may make use of the complaints and compliments processes. Please see question 16 for more information on Customs complaints and compliments procedures.

Regardless of the measure imposed (surrender, INS, seizure or prosecution), the person has committed an offence by importing a prohibited item. Customs is providing the person with an alternative to seizure and prosecution which removes any liability for the offence.

Standard administrative appeals processes are available to all persons subject of an administrative regime that imposes a penalty, however the item will not be returned because of its prohibited nature.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 16

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

16. Is there a complaint handling procedure in place to deal with the use of the discretion?
    a. If so, can you provide a copy of it? If not why not?

The answer to the Committee's question is as follows:

There is a complaints handling procedure in place to deal with use of the discretion. Customs has a sound and long-established complaints presence at international airports. Its Complaints & Compliments brochure is widely publicised, provides information in 12 languages, and is supported by a freecall number. Information on progressing complaints to the Ombudsman, local members, or Minister for Justice and Customs is also provided in the brochure.

Complaints and compliments signage is prevalent at airports and Customs provides several options for complainants to lodge complaints, including:

- submission of the complaints brochure at the airport
- freecall number
- reply paid postal address
- fax number
- internet feedback form
- information on how to lodge a Ministerial or Ombudsman complaint.

A copy of the Complaints and Compliments brochure is attached.

Customs Complaints & Compliments

Customs Complaints and Compliments is designed to give you an opportunity to comment on any aspect of your dealings with us.

We use your comments to provide feedback on how service can be improved.

Our commitment to you

Customs is committed to:

- dealing with complaints and compliments quickly and effectively
- seeking satisfactory outcomes
- meeting our service standards.

Customs aims to provide a high standard of service to all our clients. Our staff are committed to:

- being honest
- being fair
- being courteous and helpful
- being flexible
- avoiding conflict of interest
- applying a high level of professionalism in everything we do.

Our standards

Customs recognises your right to comment on our services and we are interested in what you have to say, be it a complaint or a compliment.

If you have a complaint we will investigate it promptly.

If you write to us or email us
We aim to acknowledge your communication within five working days and to respond within 15 working days of receipt of your email or written correspondence. If we cannot fully answer your query in that time, we will give you an interim response and advise you as to when a final response can be expected.

If you telephone a Customs Office during business hours
We will respond to your query, or take your details and arrange for the appropriate person to return your call as soon as possible.

Referral to Other Organisations

If the comments included in this brochure relate to an organisation other than the Australian Customs Service, Customs will refer the comments to the relevant organisation and advise you of the contact details.

If you do not want your comments referred please state this clearly in the comments box on the following page.

Complaints & Compliments

Completed comment sheets may be given to a Customs officer, placed in one of the boxes provided, or posted to Customs free of charge. If you prefer, you can ring Complaints and Compliments staff on FREECALL - 1800 228 227 (during office hours)

My contact with Customs was in (USE BLOCK LETTERS) _____ on ___/___/___

at _____

I was / was not satisfied with the service I received because: (please enclose sheet if insufficient space for comments)

_____

What I would like to see happen is:

_____

TEAR OFF, MOISTEN, FOLD AND SEAL

Given Names _____ Family Name _____

Address _____ Telephone _____

Today's Date ___/___/___

Email _____

Would you like a reply? YES ☐ (please tick box and ensure you have completed your contact details).
NO ☐ Customs will reply within 15 working days of receipt of your comments.

All information will be treated as confidential.

Arabic
إذا أردت التعليق على أي عنصر من عناصر الخدمة التي نقدمها، يرجاء الاتصال بطاقم موظفينا العاملين بإدارة خدمة العملاء على الرقم **1800 228 227**، وهو خط مجاني، أو قم بملء الاستمارة المرفقة.

Chinese (Simplified)
如果您想对我们服务的任何方面发表意见，请打免费电话 **1800 228 227** 和我们的客户服务人员联系，或填写所附的表格。

Chinese (Traditional)
如果您對我們的服務有任何意見，請打免費電話**1800 228 227**聯絡我們的客戶服務人員，或填寫隨附的表格。

Greek
Αν επιθυμείτε να διατυπώσετε σχόλια για οποιαδήποτε άποψη της υπηρεσίας μας, παρακαλείσθε να επικοινωνήσετε με το προσωπικό εξυπηρέτησης πελατών μας στον αριθμό **1800 228 227** χωρίς χρέωση ή να συμπληρώσετε το συνημμένο έντυπο.

Indonesian
Jika Anda ingin berkomentar tentang aspek apapun dari pelayanan kami, silakan menghubungi karyawan pelayanan pelanggan kami dengan nomor bebas bea **1800 228 227** atau silakan mengisi formulir terlampir.

Italian
Se desiderate formulare dei commenti in merito a qualsiasi aspetto del nostro servizio, rivolgetevi ai nostri addetti al servizio alla clientela al numero verde **1800 228 227** oppure compilate il modulo in allegato.

Japanese
当方業務につきまして、どのようなことでもコメントをされたい方は、**1800 228 227**(トールフリー)の顧客サービス担当者にご連絡いただくか、添付のフォームにご記入ください。

Korean
저희 서비스와 관련하여 의견이 있으시면, 무료로 이용하실 수 있는 **1800 228 227**번으로 전화하여 저희 고객 서비스 상담원에게 말씀을 해 주시거나 첨부된 양식에 기입해 주십시오.

Malay
Jika anda ingin memberi komen mengenai sebarang aspek perkhidmatan kami, sila hubungi kakitangan pelayanan pelanggan kami pada nombor bebas tol **1800 228 227** atau isilah borang yang disertakan.

Thai
หากท่านต้องการแสดงข้อคิดเห็นเกี่ยวกับการบริการของเราไม่ว่าจะเป็นในด้านใด โปรดติดต่อเจ้าหน้าที่แผนกบริการลูกค้าโดยโทรฟรีที่หมายเลขโทรศัพท์**1800 228 227** หรือกรอกแบบฟอร์มที่แนบมาด้วยนี้

Spanish
Si desea hacer un comentario sobre algún aspecto de nuestro servicio, llame a nuestro personal de atención al público al **1800 228 227** (llamada gratuita) o complete el formulario adjunto.

Vietnamese
Nếu quí vị muốn phê bình về mọi khía cạnh liên quan tới dịch vụ của chúng tôi, xin vui lòng liên lạc với Phòng Quản Trị Nhân Viên Phục Vụ số điện thoại miễn phí **1800 228 227** hay điền mẫu đơn đính kèm.

Delivery Address:
GPO Box 9834
IN YOUR CAPITAL CITY

No stamp required
if posted in Australia

Complaints & Compliments
Australian Customs Service
Reply Paid 9834
IN YOUR CAPITAL CITY

How to contact us

Customs would like to work with you to resolve your complaint.

You may contact Customs Complaints and Compliments via:

- Freecall - 1800 228 227
- Facsimile - 02 6275 8099
- Email - comments@customs.gov.au
- Internet - www.customs.gov.au
- Speak to a Customs officer
- Freepost (no stamp required):
  Complaints and Compliments
  Australian Customs Service
  Reply Paid 9834
  (In your capital city)

Customs Information and Support Centre:

General inquiries or requests for information should be directed to 1300 363 263 (for the cost of a local call) or email information@customs.gov.au

At any time you may take your complaint to a body which is not part of Customs, such as:

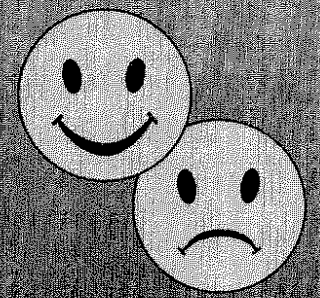
- The Commonwealth Ombudsman
  GPO Box 442
  Canberra City ACT 2601, or
  Internet: www.comb.gov.au
- Your Federal Member of Parliament
- the Minister for Justice and Customs
  c/- Parliament House
  Canberra City ACT 2600

November 2003

Australian Government
Australian Customs Service

Complaints & Compliments

A guide to Customs complaints and compliments procedures



Freecall 1800 228 227
www.customs.gov.au

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 17

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

17. Can you provide a copy of those items under the PI regulations that will be subject to the regime?
    a. Can this list be changed, if so what processes will be adopted when changes to the PI regulations are contemplated?
    b. Are the PI regulations disallowable instruments?

The answer to the Committee's question is as follows:

Please refer to question 1 for a response regarding those items that will be subject to the surrender and infringement notice regimes.

a. Yes, this list can be changed and in doing so, the relevant agencies that have policy responsibility for prohibited imports would be consulted. Any changes that are made will be communicated to customs officers through training, the intranet, and airport advices.

b. Yes.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 18

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

18. Will both the infringement scheme and the post-importation declaration procedures apply to postal articles, either mail or parcels? If not why not?

The answer to the Committee's question is as follows:

Both the infringement notice scheme and the post importation regime will apply to the postal environment. They will apply to both mail and parcels.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 19

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

19. What procedures are provided to ensure that under subdivision GC a person can be given the option of obtaining a post-importation permission?
    a. Is any decision on this matter made by the Customs officer subject to either internal or external review?
    b. Is it subject to judicial review?

The answer to the Committee's question is as follows:

A person may be given the option of applying for a post import permission if the goods they are importing are eligible goods for the purposes of the regime, the goods have not been concealed in any way and the officer believes that the person has not previously had an application to import those goods refused.

In the passenger environment, if the goods are also eligible for the surrender bin scheme, the passenger may also be given the option to surrender the goods.

Guidelines covering the post import permission procedures have not yet been drafted.

The decision to not allow a person to apply for a post import permission means that the goods will be seized under the current seizure provisions. The owner of the goods has 30 days from seizure in which to lodge a claim for the return of those goods.

Where a claim for the return of goods is made, the matter is subject to judicial review. If no claim is made then the goods are forfeited to the crown.

THE SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 20

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

20. What procedures are in place to ensure the integrity of the system?
    a. If there are procedures in place, can they be provided to the committee?

The answer to the Committee's question is as follows:

All of the regimes proposed will be subject to standard operating procedures, guidelines and internal and external audit. In addition, all Customs officers will be assessed on their competency to implement the regimes through the continuous performance assessment process that Customs has in place.

The post importation permission arrangements are an extension of the existing provisions governing the control and seizure of prohibited and restricted goods. The post importation permission arrangements simply provide a window to eligible importers to seek a required permission even though the goods have already arrived in Australia.

For any importer denied the opportunity by Customs to seek a permission after importation because the goods were not prescribed, not declared or were concealed, the existing arrangements will continue to apply. Additionally any importer subsequently denied a permission by the authorising authority after importation reverts back into the existing arrangements.

All importers who have goods seized under both the existing and the proposed provisions, may still make a claim for the goods, and proceed to a hearing by magistrate for determination.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 21

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

21. What discretion is available for a customs officer to decide that there was no intention by the person subject of investigation not to conceal the goods in accordance with the relevant section? (ie what happens where a person is unaware that they have concealed a prohibited item?)
    a. If this discretion exists, is it too broad and open to abuse?
    b. If this discretion does not exist, how are ACS personnel expected to determine whether an intention existed?

The answer to the Committee's question is as follows:

Section 209N(2) of the Bill states:

> Without limiting the meaning of ***concealed*** in subparagraph (1)(a)(ii), a person is taken to have concealed goods from Customs if the person was required to give information about the goods to Customs in accordance with section 71, 71K or 71L and the person failed to do so.

In the airport environment, all people and accompanied baggage entering Australia are required to be declared to Customs. Passengers make this declaration by completing the Incoming Passenger Card (IPC) prior to their arrival to Australia. The IPC is issued in multiple languages.

The IPC requests the following information:

> Are you bringing into Australia:
>
> 1. Goods that may be prohibited or subject to restriction such as medicines, steroids, firearms, weapons of any kind or illicit drugs.

The IPC also instructs that where passengers are unsure of the status of the goods, that they answer in the affirmative.

Customs officers also reconfirm the declaration with passengers at the beginning of baggage examinations by asking a set of standard questions including if the passenger has any items to declare. During this process, the Customs officer is making an assessment of the passenger and their level of compliance. Customs officers undertake significant training and make these assessments on a daily basis drawing on their experience of these situations to make their decisions. Passengers dissatisfied with the Customs officers' decision may also request to speak with the Customs Duty Manager.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 22

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

22. Will this proposed scheme be available to be used by part time or casual employees of customs? If yes, what safeguards are put in place to ensure the power is exercised correctly?

The answer to the Committee's question is as follows:

All Customs employees will have the power to administer the proposed schemes, including part time and full time employees. Part time employees are provided with the same level of training as full time employees and exercise the same powers as full time Customs employees.

Customs also employs intermittent and / or irregular employees in the airport environment. These employees are only located at Sydney and Adelaide airports and undertake limited duties mainly on the primary line. Intermittent / irregular employees are provided with all training relevant to their limited duties.

Customs does not employ casual employees.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 23

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

23. Can any of the time periods specified in the Bill be extended?
    a. If so can you provide outline how any extension would operate and on what basis the periods could be extended?
    b. If not, why not in the cases of hardship or if there exists reasonable grounds?

The answer to the Committee's question is as follows:

Most of the time periods specified in the Bill cannot be extended.

The time periods used in relation to the surrendering of goods or paying of an infringement notice in the passenger environment require these actions to be done before the person leaves the s234AA place. This is to ensure that the matters are finalised before the passenger leaves the Customs area.

Concerns of hardship are alleviated by the passengers access to electronic funds available through the Customs Duty Collector. Should a passenger be unable to pay the infringement notice before departing from the 234AA area, Customs will seize the prohibited item in accordance with current processes. Fundamentally, this represents no change to the existing process. Even if the passenger chooses to pay the infringement notice, the goods will not be returned to the passenger.

The time period for the payment of an infringement notice in the postal environment and other infringement notices for unauthorised use of electronic items is 28 days. This is considered sufficient time to allow importers to pay the infringement notice. This time period runs concurrently with the seizure notice.

The time period specified in the Bill for Customs to serve a detention notice (7 days) for goods that have been detained cannot be extended. This is the same time period that applies to the serving of seizure notices.

The application and grant periods for post import permissions are 30 days unless another period is prescribed by regulation. The intention is to commence the scheme with these periods being 30 days. It is felt that this time period will allow importers sufficient opportunity to apply for a required permission, and as no cost is involved, no hardship provisions for this aspect are considered necessary.

The time period during which a person may lodge a claim for the return of goods seized is already in the Customs Act (section 205C).

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 24

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

24. This question relates to the disposal of surrendered goods and forfeited goods which are classified as prohibited imports. Does the use of the term disposal open up the possibility that the goods are not necessarily destroyed? For example, that the goods can be disposed of through sale rather than disposed of through destruction.
    a. If so, under what circumstances might the goods end up not being destroyed?

The answer to the Committee's question is as follows:

Customs does not dispose of prohibited items through sale.

Prohibited items may be either destroyed or disposed of. Disposal of prohibited items may occur for those items not considered a high risk or threat to the community. For example, prohibited items that infringe copyright/trademark law may be disposed of rather than destroyed with the permission of the trademark owner. Disposal in this situation would constitute donation of the item(s) to a charity.

Customs may also dispose of some prohibited items by retaining them for use in travelling road shows or community education campaigns. These items would be used to demonstrate to the community examples of items that cannot be bought into Australia for public safety reasons.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 25

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

25. In relation to Section 209V (Detained goods to be secured), why were the additional instructions of the equivalent ss204 (3) to (5) not applied here in relation to this new regime for detention of goods?

The answer to the Committee's question is as follows:

The provisions of s204 (3) and s204 (5) were not applied to s209V because only officers of Customs will be detaining goods under subdivision GC.

The provisions of s204 (4) were not applied to s209V because it is not intended for narcotic goods to be prescribed for the purposes of subdivision GC. Narcotics by their nature require strict handling and storage procedures that include transfer of custody to the Australian Federal Police.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 26

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

26. How does the new system apply in the circumstances where a person's suitcase contains a prohibited import or when a parcel containing multiple items contains a prohibited import?
    a. Are all contents deemed to be forfeited or just the prohibited item?

The answer to the Committee's question is as follows:

In circumstances where a passenger's suitcase contains a prohibited import and where the passenger has not concealed the item, a Customs officer may provide the owner of the goods with an option to surrender the goods rather than have the goods seized. An infringement notice will be issued to those passengers who attempt to import a prohibited item by concealing the item. In both of these instances only the prohibited item is forfeited.

In circumstances where a parcel containing multiple items contains a prohibited import, an infringement notice may be issued. Surrendering the goods will not be an option available in this environment. As with the passenger environment, only the prohibited item is forfeited.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 27

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

27. With regards to Section 243ZA subsection (4) as it exists under the Act, every other reference to infringement notice has been modified in this Division (now subdivision). Why has this subsection not been modified to include the terms "served under this subdivision" or similar?

The answer to the Committee's question is as follows:

This is a drafting oversight that will be addressed, but in the context, it is clear that subsection 243ZA(4) would be referring to an infringement notice served under Subdivision A.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 28

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

28. In the ACS submission on the Bill, it was indicated that passengers must pay the infringement notice before leaving the ACS controlled area to remove liability for the offence and the proposed model requires the customs officer to accompany the passenger to the duty collection area while the notice is paid:
    a. How labour intensive is this likely to be?
    b. Why are these people not to be allowed to leave until they have paid?
    c. Does ACS intend to escort people to a place they can obtain the required funds (e.g. an ATM)?
    d. What will happen should a person wish to pay the penalty but not have immediate access to electronic funds?
    e. In the above circumstances will the ACS allow the person to arrange for a third party to arrange the funds to be brought to the duty collection area? For example a friend or relative to bring the required cash:
    f. In the situation where someone can arrange for a friend or relative to drop the money off at the airport please advise as to whether the ACS is planning to keep a Customs officer in accompaniment until the friend or relative arrives with the cash?
    g. Does ACS intend to set any time limits for the person to arrange the payment of the penalty? If so, provide details.

The answer to the Committee's question is as follows:

a. This proposed process is considered to be less labour intensive than current practices. Accompanying the passenger to the Customs Duty Collectors office is a similar process to that already in use by Customs and Quarantine for other matters. In all cases, the Duty Collector is located in the Customs Hall.

b. Passengers will not be prevented from leaving the 234AA area, however if they choose to leave the area without paying the infringement notice, the item(s) will be seized and the person is liable for the offence. Payment is necessary prior to departure from the 234AA area as payment of the notice results in a transfer of the title of the goods to the Commonwealth and the goods will not be returned to the passenger.

c. Customs does not intend escorting people to a place where they can obtain the required funds. Customs officers will escort the passenger to the Duty Collectors office located in the baggage examination area (section 234AA), which has the existing infrastructure to support the payment (including electronic payment) of infringement notices.

d. Customs does not foresee this as an issue as the existing infrastructure for electronic payment already exists at the Duty Collectors office.

e. In circumstances where a passenger does not have immediate access to funds, Customs will allow for the person to arrange for a third party to be brought to the duty collection area.

f. Customs does not foresee this as a likely or common occurrence. However, in circumstances where a passenger has arranged for money to be delivered to the airport, Customs would keep an officer with the person until the friend or relative arrives with the payment.

g. Customs will not set any time limit for the person to arrange for the payment of the infringement notice. The only requirement is that the infringement notice is paid before the passenger leaves the 234AA area in order to discharge the passengers' liability. Although, Customs does recognise that in this environment time is a limiting factor, and not all airports operate on a 24/7 basis.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 29

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

29. Will there be a public education campaign to inform the travelling public of the new regime?

The answer to the Committee's question is as follows:

Yes.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 30

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

30. Will there be a trial period before the regime officially commences?

The answer to the Committee's question is as follows:

There will not be a trial period before the regime officially commences, as the scheme is required to be implemented within six months of Royal Assent.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 31

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

31. There appears to be a drafting error in Item 5 of Schedule 1 – does paragraph 203(3)(e) of the Customs Act exist?

The answer to the Committee's question is as follows:

Paragraph 203(3)(e) doesn't exist in the current legislation. This paragraph was included as a new paragraph in the Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006, currently before parliament. This paragraph will exist in the revised legislation after the Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006 is passed.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 32

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

32. Proposed section 209N refers to 'the available options' for dealing with the goods and the consequence of exercising each of these options.
    a. What are these options? Can you provide the committee with a copy of the options?
    b. What are all the relevant consequences of exercising the options? Can you provide the committee with a copy of these?

The answer to the Committee's question is as follows:

a. The options are surrendering the goods, seizure of the goods or prosecution.

b. Surrender – the passenger will not be liable for an offence against the Customs Act, and Customs will have no power to take further action.

   Seizure – the good will be seized and held by Customs for thirty days to provide the passenger with the opportunity to apply for their return. However, the liability for the offence will remain and Customs may choose to prosecute.

   Prosecution – Customs will seize the goods and begin prosecution against the passenger.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 33

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

33. Can you provide the committee with an explanation of what 'concealed' actually means in the context of the proposed regime and provide the committee with details of all the circumstances/situations where the term is intended to apply?

The answer to the Committee's question is as follows:

Please see question 21 for a definition of 'concealed'.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 34

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

34. Proposed paragraph 209X(1)(j) refers to notices being served in a foreign country.
    a. How is this intended to operate in practice?
    b. What legislation underpins the operation of this proposed paragraph (eg mutual assistance legislation)?
    c. Is a formal relationship with relevant countries required?
    d. What will happen if no diplomatic relationship between Australia and the relevant country exists?

The answer to the Committee's question is as follows:

Paragraph 209X (1)(j) mirrors the equivalent provision of S205A(e) which has been in operation for more than 10 years, and ensures the seizure notices are consistent. The answers to each specific question are:

a) Paragraph 290X(1)(j) is simply effected by the posting of the seizure notice to the registered overseas address. In turn the overseas entity may contact their Australian representative to make a claim (if desired) on their behalf.

b) None, other than this provision.

c) No

d) Not relevant

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 35

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

35. The committee has previously requested a flow chart of how the infringement notices regime will operate (Q.11).
    a. Can the ACS also provide flow charts of how the post-importation permission scheme will operate and how the seizure of goods scheme will operate – essentially there will be 3 separate regimes in operation.
    b. Could the ACS also set out how the 3 separate processes will interrelate?

The answer to the Committee's question is as follows:

a. See flow charts at question 12.

b. All three processes will only interrelate in the passengers environment. The infringement and post import permissions will also interrelate in the postal environment.

   Where prohibited imports are imported in any environment (passengers, post or cargo) without a required permission, they have been declared to Customs and are eligible goods for the purposes of s209T (post import permission), Customs may allow the owner of the goods to apply for a post import permission.

   Where prohibited imports are imported in the passengers environment without a required permission, and those goods have not been concealed, Customs will have the discretion to allow the passenger to surrender the goods (if they are eligible under s209M) or to apply for a post import permission (if they are eligible under s209T).

   Where prohibited imports are imported in the passengers or postal environment, without a required permission, and the goods have been concealed, Customs will have the ability to issue an infringement notice, if the goods are eligible for an infringement notice under s243ZF.

   Regardless of eligibility for the above schemes, seizure and prosecution remain an option. Where prohibited imports that are not eligible goods for s209M, s209T or s243ZF are imported, Customs is required to seize those goods.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 36

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

36. Why must a passenger pay an infringement notice before leaving a section 234AA area? Why can't the passenger be given a certain period of time (eg 28 days) to pay (cf parking infringement notices etc)?

The answer to the Committee's question is as follows:

The passenger must pay the infringement notice before leaving the Customs controlled area to remove liability for the offence, and to transfer title of the item(s) to the Commonwealth. The proposed model requires the Customs officer to accompany the passenger to the duty collection area while the notice is paid. This is necessary because payment of the notice results in a transfer of title of the goods to the Commonwealth. Should the passenger choose not to pay the infringement notice before leaving the Customs controlled area, the goods will automatically be seized and Customs may prosecute the person for the offence.

This approach has been adopted due to the nature of the airport environment. Thousands of people pass through an airport daily, many staying in the country for very short periods. To allow for a 28 day payment period would require extensive, time-consuming and expensive administration controls, with little or no result for the work.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 37

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

37. Why has a distinction been made in proposed subparagraphs 243ZI(1)(e)(i) and (ii) between persons in section 234AA areas and 'in any other case'? What does 'in any other case' mean? Please provide the committee with details of what this is intended to cover. If it is intended to only cover the postal environment, why isn't this specifically mentioned in the Bill/EM?

The answer to the Committee's question is as follows:

In the context of the INS 'in any other case' means those areas, where an infringement notice can be served which is not the 234AA area. It is intended to cover the postal environment and unaccompanied baggage. Paragraph 124 of the EM specifically mentions these environments.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 38

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

In the Customs submission at page one, the penultimate paragraph says, "The import control measures … are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments."

Is there a definition of the passenger processing area or the postal environment? If not, why not?

The answer to the Committee's question is as follows:

The passenger processing area is a section 234AA area. For a definition of a section 234AA area please refer to question 4(c).

An International Mail Centre is defined under section 77F of the Customs Act as a place approved in writing by the CEO for the examination of international mail. There are seven designated International Mail Centres as listed in question 45.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 39

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

In the Customs submission at page one, the penultimate paragraph says, "The import control measures … are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments."

How does the bill actually differentiate between the areas of postal environment and the commercial air or sea cargo environments?

The answer to the Committee's question is as follows:

The Bill sets out those areas where the regimes will apply – 234AA and 'in any other case'. The 'in any other case' areas are listed as the post and unaccompanied baggage (paragraph 124 of the EM). The commercial air and sea cargo environments are excluded from the regime via their omission from the Bill.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 40

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

In the Customs submission at page one, the penultimate paragraph says, "The import control measures … are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments."

What is the definition of the commercial air or sea cargo environments that will be used in the bill to differentiate these services from the actual areas of passenger processing or postal environments? If there is no definition, how will the ACS decide which is commercial air or which is postal environments?

The answer to the Committee's question is as follows:

Please refer to questions 38 and 39 for a response.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 41

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

In the Customs submission at page one, the penultimate paragraph says, "The import control measures … are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments."

Can ACS provide examples of what is said to be in the commercial air environment and what is in the postal environments?

The answer to the Committee's question is as follows:

Please refer to question 38 for a definition of the postal environment. As previously stated this regime does not apply to the commercial air environment.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 42

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

In the Customs submission at page one, the penultimate paragraph says, "The import control measures … are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments."

Will all parcel post be subject to the new regime proposed in the bill?

The answer to the Committee's question is as follows:

Yes. All parcel post that enters the country through an International Mail Centre will be subject to the regime.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 43

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

In the Customs submission at page one, the penultimate paragraph says, "The import control measures … are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments."

Can ACS demonstrate in the bill how the above areas are separated? If not, can customs explain how the bill will not have application to the commercial air or sea cargo areas?

The answer to the Committee's question is as follows:

Please refer to question 39 for a response.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 44

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

In the Customs submission at page one, the penultimate paragraph says, "The import control measures … are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments."

Can ACS confirm that the infringement notice scheme can apply in any area subject to a 203B seizure, if yes can ACS explain why it will not operate in the commercial area of sea cargo or air cargo? If yes, can customs explain how the bill will not apply in these areas?

The answer to the Committee's question is as follows:

The areas to which 203B applies are much broader than those in which the Infringement Notice Scheme (INS) applies. However, there is some overlap such as 234AA areas, 234ABA areas, the postal environment and unaccompanied baggage. Only where there is overlap will the two systems operate.

For the reasons stated in question 39, the INS will not apply in the commercial air and sea cargo environments.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 45

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

In the Customs submission at page one, the penultimate paragraph says, "The import control measures … are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments."

45. Will the infringement notice scheme and the detention scheme operate in the international postal exchanges? If yes, can you provide a list of those sites?

The answer to the Committee's question is as follows:

Yes.

International Mail exchanges operated by Australia Post are located in each Australian capital city except Canberra and Hobart, with two operating in Sydney. There are seven (7) International Mail Centres in total:

- Sydney – Mascot
- Sydney – Clyde
- Melbourne
- Brisbane
- Perth
- Adelaide
- Darwin

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 46

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

In the Customs submission at page one, the penultimate paragraph says, "The import control measures … are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments."

46. Will the bill apply to the air parcel post operators such as Fed Ex and DHL etc.? If not, why not? If not, can you explain how the bill does not apply to these operations?

The answer to the Committee's question is as follows:

The bill has no effect on the operators of express courier services. These operators already have existing reporting obligations under the Customs Act with accompanying penalty provisions.

The surrender of goods is limited to the passenger environment by virtue of s209N (1). The new infringement notice arrangements are limited to the passenger and postal environments by the practicality of its application, and therefore will be established by policy and guidelines.

The post importation permission arrangements apply to all environments, to ensure all importers are given the opportunity to avail themselves of this option, which ensures a fairer application of the permission arrangements.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 47

The Committee asked the following question in relation to the Inquiry into the *Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006*:

In the Customs submission at page one, the penultimate paragraph says, "The import control measures … are intended to operate in the passenger processing and the postal environments. They will not operate in the commercial air or sea cargo environments."

47. Can a person be prosecuted under the bill as well as having the goods detained and post import permission sought? If not, can you explain in the bill where that outcome is excluded, if yes, can you explain what decision-making process will be used to decide whether to prosecute or not? Will this be dependant on whether a good is granted permission or not or can a person be prosecuted irrespective of whether the importer is granted permission to import the good or not? What safeguards are in place to ensure that the detention regime and the post import permission regime operates fairly?

The answer to the Committee's question is as follows:

Application for a post import permission does not preclude the possibility that an importer may later be prosecuted for an offence. However, a prosecution may not proceed until the outcome of the application for a permission is known, as the goods would no longer be prohibited imports if a permission were granted.

The decision making process on prosecution is governed by a number of factors, and will be unchanged by these amendment provisions. They include:

1. The nature of the prohibited or restricted goods.

2. Whether the goods have been declared or concealed, i.e. was there any intent to mislead Customs.

3. The volume or value of the goods (for example a single item versus a commercial quantity)

4. The known history of the offender.

5. The circumstances of the offence, and the relevant evidence to support a prosecution.

The new permission arrangements are covered by the existing safeguards that apply to the seizure of prohibited and restricted goods. Any goods seized by Customs may later be the subject of a claim for return by the importer, within a statutory deadline. Such claims are then subject to a hearing by magistrate who makes a determination on the status of the goods, and as appropriate, orders the return of the goods or issues a condemnation order.

It is important to note that the current legislation usually requires an importer to obtain any required permissions prior to the arrival of the goods in Australia. In certain circumstances, however the importer may have been unable to obtain the necessary permission, or have been unaware of the requirement to obtain a permission, before the goods have arrived. The new post importation permission arrangements are intended to ensure these importers are not unfairly disadvantaged, and are of themselves intended as a safeguard measure to assist importers to conform with the law.