

THE ROLE OF THE AUSTRALIAN CUSTOMS SERVICE

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Today's topic is directly related to the main role of the Australian Customs Service ... and that is what we describe as the flow of legitimate goods and people across our borders with minimum disruption and intervention.

Customs has other important functions such as coastal and offshore surveillance, border related revenue collection, GST from next year, Customs duties/sales tax.

The Minister for Justice and Customs, Amanda Vanstone yesterday spoke of the illegal art trade and how it is growing ... it is now up there in the big league with drugs and guns.

She spoke of the important role law enforcement can play through border controls and the investigation of reported theft. I will speak in the context of the border control aspects.

Art crime is not an issue we in Customs have extensive experience about.

Having said that it is clear that in today's criminal environment, criminals specialise in making money and are no longer to be only involved in drugs or theft or any other single activity. If there's money to be made they're into it.

For the past 5 years I was responsible for all Customs investigations involving non-narcotic goods which we intended to prosecute ... and in all that time not one case could be said to fall under the title of "art crime".

In that time I did become embroiled in what could be described as censorship debates ... the difference between art and pornography ... and requests to use the prohibited imports regulations to deny entry of an exhibit or exhibition into Australia. But that's another issue.

Customs regulates import/export of prohibited goods ... that is goods which by their nature are dangerous, offensive, not approved for use in Australia, etc ... however it is not illegal under Customs legislation to import or export stolen or fake goods including artworks. In other words, from a Customs perspective, who owns goods is not a primary issue - a secondary issue by all means.

Could I stress here that I am referring to actual Customs legislation and not to other legislation such as the Commonwealth or State Crimes Acts that do apply to stolen goods.

Particularly this does not mean that Customs is not interested in or able to be involved in combating art crime.

Customs interest in this area stems from either the control of imported goods and goods to be exported or from powers derived from other Commonwealth legislation.

For instance Customs closely cooperates with and regularly undertakes joint operations with the Australian Federal Police, State Police Forces, International Police and Law Enforcement Agencies in exercising powers under the Crimes Act and other legislation.

Customs is always interested in smuggled goods of any description ... the illegal entry to and exit from Australia of protected objects ... and the enforcement of intellectual property and copyright laws at the border.

It's these three (3) aspects [smuggled goods, protected objects and copyright] that I would like to address in detail this afternoon.

Before doing so I would like to describe the context within Customs conducts operations.

Last financial year Customs facilitated 15.4 m people crossing our borders as legitimate travellers ... nearly 3m containers of goods arrived in this country ... there were over 100,000 international flights and 200,000 international sea voyages in and out of Australia. That's a lot of traffic ... and a lot of potential opportunities for anyone to spirit goods in and out of the country.

Customs intervenes when there is something suspicious ... whether we believe documentation is inaccurate, or answers to questions are implausible or that there is something else that's suspicious.

Otherwise we aim to facilitate 97-98 % of goods and people through Customs control quickly.

As summary of what we achieved at the border last year ... last year Customs intercepted and seized over 500kg of heroin, near 300kg of cocaine. We seized other drugs. We seized performance enhancing drugs ... we seized currency and a multitude of quarantine goods, 55,000 separate seizures in fact.

We also seize commercial goods which have been smuggled ... that is not declared or undervalued for duty or tax purposes.

Last week in Sydney there was a public Customs auction involving a Rolls Royce motor car, 17000 litres of scotch whisky, jewellery. Not an unusual collection.

But where's the art?

The point I'm trying to make here is that there are a wide array of goods which we find ... art is or could be one of those, though, as I have said previously not one where we in Customs see much activity.

We deal with prohibited goods including narcotics, precursor chemicals, guns, weapons, knives, child pornography, environmentally hazardous chemicals and gasses, banned drugs and therapeutic substances, to name the main ones. If we can deal with these... why not art? And to some extent we are involved in this area.

Customs constitutional authority is given legislative expression through the *Customs Act 1901*, the *Customs Tariff Act 1995*, and related legislation.

Specifically the Customs (Prohibited Import) Regulations and the Customs (Prohibited Export) Regulations provide schedules of goods that are expressly prohibited or restricted from free entry to and exit from Australia.

Nowhere in these Regulations is there a mention of stolen goods, art fakes or art frauds ... were those goods to be covered in Customs legislation ... I wonder how they would be described anyway

'Smuggled' Goods

As I have already said one of Customs mandates is to collect the revenue that is payable on imported goods.

Revenue is not only Customs duty but also wholesale sales tax and, as of 1 July 2000, ...GST.

When revenue is payable on goods and the goods are smuggled or imported and exported unlawfully the Customs Act provides Customs with extra powers to detain and seize such goods. That is when the revenue is cheated.

That being said, it is invariably the case that when stolen art enters Australia it will not be properly reported or declared to Customs anyway.

If such goods are detected by Customs while in our control we can and will take appropriate action.

However the interception of stolen art will always be problematic unless intelligence or advance alerts are available.

Customs clearance procedures are highly automated ... there is an increasing reliance on technology such as x-rays for goods as well as people, and particle analysers.

The selection criteria of what person to question or box to open is based on sophisticated risk management profiling and targeting.

Nevertheless without specific intelligence to support the targeting the prospect of intuitive or random checks intercepting stolen artwork is not high.

It is worth emphasising that art, whether it's good, bad, or even fake, so long as it is properly and accurately described to Customs, and has no Customs duty, then the chances are it will receive little attention from Customs

And how would Customs know whether the artwork in front of them was genuine or a forgery? We must have suspicions in order to seize someone's goods. How would we develop our thinking on that?

Six months ago you all might have read about the gold nugget exported from Australia without a permit under the cultural heritage legislation. That incident didn't involve stolen goods or fake goods ... rather the problem arose from an incorrect classification and description of the goods on Customs documentation such that Customs didn't intervene.

From such a simple error arose a story which lasted two months.

What happens I hear you ask if someone deliberately provides false and misleading information to Customs?

And the answer is that when such persons are caught, not only do they answer charges for illegal export but also charges about false and misleading representation, possible criminal charges if the intent can be proved. It's not worth it.

Protected Objects

A pertinent aspect of Customs role is our border responsibilities regarding protected objects.

The *Protection of Movable Cultural Heritage Act 1986* controls the export and import of significant aspects of Australia's moveable cultural heritage and provides for the return of the cultural property of other countries which have been exported to Australia illegally.

In processing export entries Customs takes steps to ensure that objects protected under this Act have the necessary permits for exportation.

We cooperate closely with the Department of Communications, Information Technology and the Arts in this regard. Again electronic profiling can allow for the interception of particular goods that are brought to the notice of the Customs.

Customs will seize protected objects that do not have the necessary permit when the Minister issues a notice and the objects are under Customs control.

Copyright

I will briefly mention copyright issues.

The border interception provisions in the *Copyright Act 1968* provide protection to artists over unauthorised copying of their work.

The provisions require that border interception be copyright owner-initiated and not simply the independent action of the Customs.

The provisions are also directed to commercial consignments and not to personal importations.

So what can we do about all this?

I've already mentioned cooperation between agencies on operational and intelligence issues.

Significantly we also actively encourage the public and the international transport industry to contact Customs with any suspicions or evidence they may have that compliance with the law is being compromised.

If you want us to help you, you must help us first.

Could I extend that same invitation to you all here today. The greater the intelligence base that Customs has at our disposal, to ensure that only legal cargo crosses Australia's border, the better equipped we will be to reduce crime and protect the public.

Closing Comments

In closing I think it important to stress that Customs role as the border manager extends to all illegal movement of cargo across Australia's borders.

However we don't claim to be art experts ... if you wish our assistance please talk to us.

We can and do help in enforcing transborder movements which are the interest of police and other authorities.

We invite the public and the trade to bring any suspicions of illegal activity to our attention.

We guarantee to treat any such information confidentially and to act upon the information in an appropriate and responsible way.

Customs looks forward to your co-operation.