



SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

SIXTH REPORT

OF

2002

**Application of Absolute and Strict Liability Offences
in Commonwealth Legislation**

26 June 2002

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MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator T Crossin
Senator J Ferris
Senator B Mason
Senator A Murray

TERMS OF REFERENCE

Extract from **Standing Order 24**

(1)

- (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
 - (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTH REPORT OF 2002

The Committee presents its Sixth Report of 2002 to the Senate.

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CHAPTER 1

INTRODUCTION AND BACKGROUND

Introduction

On 28 June 2001 the Senate referred the following matter to the Committee for inquiry and report:

The application of absolute and strict liability offences in Commonwealth legislation, with particular reference to:

- (a) the merit of making certain offences ones of absolute or strict liability;
- (b) the criteria used to characterise an offence, or an element of an offence, as appropriate for absolute or strict liability;
- (c) whether these criteria are applied consistently to all existing and proposed Commonwealth offences; and
- (d) how these criteria relate to the practice in other Australian jurisdictions, and internationally.

The Committee received 12 submissions, a list of which is set out in Appendix 1. The Committee held one day of hearings; a list of the witnesses is set out in Appendix 2.

The Committee did not receive sufficient evidence for it to draw any conclusions about strict and absolute liability in State, Territory or overseas jurisdictions.

In May 2002, the Australian Law Reform Commission (ALRC) issued Discussion Paper 65, *Securing Compliance: Civil and Administrative Penalties in Federal Regulation*, as part of its continuing inquiry into this matter. The Committee has not been able to consider the discussion paper in any detail but notes that relevant proposals in the paper, such as those addressing fairness, accountability and infringement notices, are similar to the conclusions reached by the Committee.

Commonwealth policy and practice in relation to strict and absolute liability

The Committee received evidence from the Attorney-General's Department on Commonwealth policy and practice on strict and absolute liability. In this context, strict liability offences are those which do not require guilty intent for their commission, but for which there is a defence if the wrongful action was based on a reasonable mistake of fact. Absolute liability offences are those which do not require a guilty intent, but for which there is no defence of a reasonable mistake of fact.

The Attorney-General's Department advised that the *Criminal Code*, which has been progressively applied to Commonwealth offences since 1997 and which has applied to all such offences from 15 December 2001, provides general principles of criminal responsibility applicable to all Commonwealth offences. Section 5.6 of the Code creates a rebuttable presumption that to establish guilt fault must be proven for each physical element of a Commonwealth offence. If it is intended that no fault element apply then the element must be expressly provided as one of strict liability (section 6.1 of the Code) or absolute liability (section 6.2 of the Code). The difference between the two is that the defence of mistake of fact under section 9.2 of the Code is available for strict liability but not for absolute liability offences. The existence of strict liability or absolute liability does not make any other defence unavailable. Defences available to an accused other than those removed by making a matter one of strict or absolute liability remain available to him or her.

Harmonisation of Commonwealth strict and absolute liability offences

The Attorney-General's Department advised that since 1997 it had undertaken a project to harmonise existing offences to ensure that they operated appropriately under the *Criminal Code*. The exercise was designed to maintain the status quo, by making explicit the application of strict and absolute liability offences which previously were rarely expressed in this way. This often involved adjusting the wording of offences to meet the requirements of the *Criminal Code*.

The Attorney-General's Department emphasised that harmonisation was not intended to be a fresh approach to the policy merits of fault, strict and absolute liability, but was a process to determine the original character of each offence. The Attorney-General's Department pointed out that it would not be appropriate to apply many of these strict or absolute liability provisions to new offences.

The Attorney-General's Department also scrutinises proposed Commonwealth strict and absolute liability offences to ensure a consistent approach across agencies. The

Legislation Handbook requires Commonwealth departments to consult on proposed provisions which create criminal offences and impose pecuniary or imprisonment penalties.

Attorney-General's Department guidelines

The Attorney-General's Department has issued guidelines for the application of strict and absolute liability, the main points of which are set out below:

- Commonwealth offences should generally require proof of fault, but there are circumstances where strict or absolute liability may be appropriate;
- Commonwealth policy in the *Criminal Code* reflects the common law position that fault must be proven for each element of an offence, the only exceptions being where there is express legislative provision that an offence or element of an offence carries absolute or strict liability;
- The appropriateness of strict liability must be considered in relation to each element of every offence to which it is proposed to be applied;
- Strict liability has been applied in the following cases:
 - to regulatory offences, particularly those which relate to the environment or public health;
 - where it is difficult for the prosecution to prove a fault element because a matter is peculiarly within the knowledge of the defendant;
 - to overcome the "knowledge of law" problem, where an element of the offence expressly incorporates a reference to a legislative provision;
- If strict liability is applied:
 - the penalty should not include imprisonment;
 - the maximum penalty should in general be no more than 60 penalty units (\$6,600 for an individual and \$33,000 for a body corporate);
- Absolute liability should apply only to:
 - elements of offences relating only to jurisdiction;
 - offences not punishable by imprisonment of more than 10 penalty units;
 - where inadvertent errors including those based on a mistake of effect ought to be punished;

- Infringement notices are acceptable for:
 - relatively minor offences;
 - offences with a high volume of contraventions;
 - where a penalty must be imposed immediately to be effective;
 - where only strict or absolute liability offences are involved;
 - where the physical elements of an offence are clear cut.

Relevant provisions in the *Criminal Code*

The provisions in the Criminal Code relating to strict and absolute liability are set out below:

Strict liability

Section 6.1 provides:

- (1) If a law that creates an offence provides that the offence is an offence of strict liability:
 - (a) there are no fault elements for any of the physical elements of the offence; and
 - (b) the defence of mistake of fact under section 9.2 is available.
- (2) If a law that creates an offence provides that strict liability applies to a particular physical element of the offence:
 - (a) there are no fault elements for that physical element; and
 - (b) the defence of mistake of fact under section 9.2 is available in relation to that physical element.
- (3) The existence of strict liability does not make any other defence unavailable.

Absolute liability

Section 6.2 provides:

- (1) If a law that creates an offence provides that the offence is an offence of absolute liability:

- (a) there are no fault elements for any of the physical elements of the offence; and
 - (b) the defence of mistake of fact under section 9.2 is unavailable.
- (2) If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence:
 - (a) there are no fault elements for that physical element; and
 - (b) the defence of mistake of fact under section 9.2 is unavailable in relation to that physical element.
- (3) The existence of absolute liability does not make any other defence unavailable.

CHAPTER 2

MERITS OF STRICT LIABILITY

Introduction

The Committee received submissions from six Commonwealth agencies which administer legislation providing for strict liability, as follows:

- Department of Education, Training and Youth Affairs (DETYA)
- Australian Prudential Regulation Authority (APRA)
- Department of Defence
- Environment Australia
- Australian Customs Service (ACS)
- Australian Securities and Investments Commission (ASIC)

These submissions described the strict and absolute liability provisions administered by each agency. The rationale of the submissions was the merits and advantages of such provisions, the criteria under which they were made, and the perceived benefits which they brought to public administration. The rest of this Chapter sets out the main merits of strict and absolute liability as identified by the Commonwealth agencies.

More effective supervision of regulatory schemes

The most important merit of strict liability in the view of the Commonwealth agencies appeared to be greater efficacy in the supervision of regulatory schemes.

The APRA submitted that an effective enforcement regime is crucial for a prudential regulator, otherwise the entire supervisory framework will be undermined, with only one highly publicised incident necessary to erode confidence in the financial system. The APRA has therefore moved some offences from being fault based to being ones of strict liability or to being both depending upon the circumstances. This was done on the basis that it is essential that enforcement provisions deter. Strict liability means that prosecutions are more easily commenced and convictions more easily obtained. The APRA explained that as a regulator it

aimed for negotiated “rectification of contraventions”. It was therefore necessary that enforcement provisions provide an adequate incentive for this and to ensure that any agreed rectification will actually occur.

The ASIC similarly advised that its strict liability provisions related to regulatory offences with relatively low maximum penalties. In this context, the ASIC advised that it regulates an area where people go by choice. Instances of this are company directors, superannuation trustees and financial advisers. Such people should not only refrain from consciously doing wrong, but also take active steps to fulfil their obligations, with strict liability penalties for failure to comply. In addition, consumers put their trust in these classes of people, which is another reason why they should be required to take active steps to ensure the integrity of the supervisory scheme. The ASIC submitted that a sophisticated regulatory regime requires that certain positive obligations are placed upon participants. If no punishment results from a breach of these obligations, then non-compliance is likely to rise. The ASIC noted that as a regulator, it was in a different position from more traditional law enforcement agencies such as the police, dealing as it did with crimes unlike assault or theft. Financial regulators deal with more complex offences where the criminal conduct is particularly sophisticated. These are all considerations put forward by ASIC to justify the use of strict liability.

The Department of Defence advised that regulations dealing with discipline should provide for strict liability offences. Defence accepted a benchmark of a maximum penalty of imprisonment for 6 months, but argued that it should not be applied inflexibly. For instance, some Defence penalties relating to the operational effectiveness of the ADF exceeded the benchmark. While this may appear to breach the Attorney-General’s Department guidelines, any such offences were ameliorated in that they were approved by the Minister for Justice and included a broad-based defence of reasonable excuse.

Environment Australia advised that strict liability provides a necessary and adequate deterrent for breaches of relatively straightforward regulatory provisions with minor penalties. Strict liability is beneficial where offences need to be dealt with expeditiously to ensure public confidence in the regulatory regime. Strict liability is also justified where a person agrees to conditions attached to an approval and where public confidence in the merit of such an instrument may be significantly undermined by a person’s failure to comply with them. In addition, it is appropriate where the regulator is readily able to assess the truth of the matter and to be easily able to conclude truly that an offence has been committed. Such cases would include those where capacity to comply is a relatively straightforward one over which the potential offender has control.

The Australian Customs Service submitted that the imposition of strict liability was a significant part of recent amendments to penalties for non-compliance with regulatory requirements. Regulatory regimes based on self-assessment would be undermined without strict liability.

Inability to enforce fault provisions

The ASIC advised that many offences could not be effectively prosecuted if it was necessary to prove fault. An instance of such a case is where the prosecution had to prove that the accused intended to refrain from lodging a document when he or she failed to do so. One factor in deciding whether strict liability is appropriate is the prospect the prosecution would have of establishing that a breach of the provision was intentional. Another test is whether the defendant is well-placed to take extra care to ensure that the offence is not committed. It may be that the requirement for proof of intention would make a provision unenforceable. It is damaging to the credibility of the legal system if offences are incapable of enforcement.

The APRA submitted that in some cases it was unable to effectively prosecute breaches of legislation and standards because of the difficulty of proving fault. Many enforcement provisions are, in effect, virtually unenforceable particularly where a failure to act is an element. In these cases, evidence of intention or of recklessness is often difficult to establish. As a result of this, strict liability is considered appropriate for regulatory offences relating, for instance, to the lodgment of documents or the provision of documentary information. An APRA witness told the Committee:

“Where we became aware of instances of, in my view, profound breaches of the law—to the point that we recommended to the DPP that prosecution take place—the advice we received was that the behaviour could not reasonably be proven on a fault liability basis. In particular, in the instances we were concerned about, we were dealing with acts of omission by people holding themselves out as professionals in that industry and looking after other people’s money.”¹

The witness continued:

“...in prior years the fault liability provision obtained and our advice from DPP had been that it was virtually impossible to prove a reckless or deliberate failure to lodge a return in the absence of a confession.”²

¹ Evidence, p.17 (Mr Brown)

² Evidence, p.22 (Mr Brown)

Optimum use of resources

Environment Australia submitted that offences should be ones of strict liability where they are “intuitively” against community requirements and the public good, while minimising resource demands and procedural uncertainties associated with more complex compliance action. In evidence to the Committee, Environment Australia advised that the expression “intuitively” against community requirements was intended to reflect accepted community standards for public interest; strict liability would be applied only in areas that already had a fairly well established public interest component. The community should understand the offence, which should also have a history of strict liability.³ Strict liability enables matters to be dealt with expeditiously where this is necessary to ensure public confidence in the regulatory regime. It is also effective where low penalties mean that prosecution action would not be cost effective.

The DETYA advised that strict liability, in its case in the form of infringement notices, was an alternative to court prosecution, which is time consuming and costly for both the prosecution and defendants. Strict liability enabled less serious offences to be finalised quickly and efficiently. The procedure was particularly advantageous where it was not an appropriate use of resources to prosecute for a first or single offence. DETYA submitted that, in such cases, an offender might not otherwise be punished. Also, offenders would be less likely to admit their guilt if the consequences were a higher penalty and a criminal record following a court trial.

The ACS advised that strict liability is designed to reduce risks to the community and the revenue. The advantages of such schemes are lower cost, more efficiency and a low key application of sanctions to breaches.

The ASIC submitted that, as a regulatory body, it is never able to investigate all matters which come to its attention. It was necessary, therefore, to balance the resources needed to investigate a complaint with the likely regulatory outcome. Any requirement to establish intent will affect the level of resources needed for investigation and prosecution. Consequently, action on a matter may be unjustified where the maximum penalty is low and a mental element is required. In such cases, strict liability may be appropriate.

³ Evidence, p.37 (Ms Martin)

Appropriate defences and checks and balances

The Commonwealth agencies emphasised that the consequences of strict liability were tempered by appropriate defences and adequate checks and balances.

The ASIC submitted that the general defence of mistake of fact for strict liability offences, which needs to be proved by the accused only on the balance of probability, addresses many of the concerns which might otherwise exist about the fairness of strict liability. There are additional broader safeguards in that strict liability is regarded as a serious matter, which is prosecuted only after careful consideration on a case-by-case individual basis. The ASIC advised that a formulaic or mechanistic approach was not suitable for deciding these matters.

The APRA advised that there was a misunderstanding that strict liability means a reversal of the onus of proof. In reality, however, the burden of proof on the defendant is evidentiary only, which is a considerably lower standard than for the prosecution, which must then prove the elements of the offence beyond reasonable doubt.

The APRA submitted that there were also comprehensive internal checks and balances in its administration of strict liability offences. For instance, APRA supervision is based initially on consultation and cooperation, then rehabilitation and rectification. Enforcement action is not taken lightly and is a last resort in the small number of cases where negotiation fails.

The Defence Department advised that the need for efficient prosecution by strict liability was balanced by the provision of a broad based defence for circumstances where the contravention appears reasonable. The ACS pointed out that under infringement notices, alleged offenders had the safeguard of final determination by a court if they disputed liability.

A witness from Environment Australia told the Committee:

“In approaching the law design issue, when considering whether a particular offence should be strict liability, we seek to set a balance between public interest and the rights and obligations of individuals. Most of the strict liability offence provisions in the act include a range of additional statutory exemptions aimed at ensuring they do not operate unduly harshly in day-to-day practical circumstances. Obviously these exemptions are in addition to the mistake of fact defence that is available for strict liability.”⁴

⁴ Evidence p.36 (Ms Martin)

The witness continued:

“In a compliance approach what you are really after—and I think this is particularly true for environmental laws—is a behavioural change so that people do not do the things that actually contravene the act; therefore, a prosecution is not necessarily a measure. Numbers of prosecutions are not necessarily a measure of your success in obtaining compliance with the act. We very much look more broadly at a more developed approach in compliance so that if we can find out if somebody is going to do something to contravene the act, and we intervene so their behaviour is different and we do not have to prosecute, that is a successful compliance outcome without prosecution. ... We go through quite a considered process as to whether prosecution is the appropriate remedy for the behaviour.”⁵

Infringement notices

The ACS advised that strict liability offences were suited to infringement notice procedures, under which a lesser penalty was imposed administratively as a first alternative to court prosecution. In accordance with recommendations of the Senate Legal and Constitutional Legislation Committee, the ACS scheme will be administered through Chief Executive Officer guidelines, which will be disallowable by either House.⁶ Penalties, in accordance with Commonwealth criminal law policy, are one fifth of those which a court could impose if a matter was prosecuted in the first instance. Penalties were set on the basis that an alleged offender should not be pressured either to pay a low penalty to avoid dispute, or to contest in court an unrealistically high penalty. The ACS scheme will be monitored through an internal audit process and reviewed within three years of the passage of its legislative framework, that is by 20 July 2004.

The DETYA emphasised that, in accordance with Commonwealth criminal law policy, infringement notices were available only for strict liability offences, with lighter penalties than for a court prosecution. Environment Australia noted that most infringement notices result in prompt payment. Infringement notices were strongly supported because they enabled minor offences to be dealt with in an expedient, efficient, appropriate and effective way. They should, however, be limited to offences where there are clear cut physical elements.

⁵ Evidence p.40 (Ms Martin)

⁶ Senate Legal and Constitutional Legislation Committee; Inquiry into the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001, Import Processing Charges Bill 2000, and the Customs Depot Licensing Charges Amendment Bill 2000: May 2001; Recommendation 1, p.55.

Two-tier offences

The APRA advised that two-tier or parallel offences improve enforcement. These provide an option to proceed under a fault liability limb of an offence if there is adequate evidence of the requisite mental element, or under a strict liability limb where evidence of such intent is insufficient. There are safeguards for those affected in that penalties are lower for the strict liability limb and proceedings must be under one or other of the limbs, with no provision to change. Environment Australia submitted that two-tier offences provided flexibility and increased the range of regulatory options. They are a mechanism to tailor responses more appropriately to specific contraventions according to the individual circumstances of each case.

Absolute liability

The ASIC advised that under its legislation absolute liability is appropriately very rare, with only one instance of one element in an offence. This instance is essentially a precondition of an offence and is not a matter upon which the state of mind of the accused is relevant. The Defence Department submitted that it administered some absolute liability offences or elements of offences which should continue to apply.

CHAPTER 3

CONCERNS ABOUT STRICT LIABILITY

Introduction

In addition to the submissions from Commonwealth agencies, the Committee received three submissions from the Customs and International Transactions Committee of the Business Law Section of the Law Council of Australia. In contrast, however, to the submissions from the Commonwealth agencies, which emphasised the merits of strict liability from the perspective of administration, the Law Council submissions highlighted adverse consequences from the viewpoint of those affected by such provisions.

The Law Council submissions were a case study of the strict liability provisions in the *Customs Act 1901* which were enacted in June 2001 but at the time of the submissions had yet to come into operation. In these submissions, the Law Council presents a more bleak outlook than the Commonwealth agencies of the likely effect of these provisions. The Law Council paints a picture of broad misconceptions behind the provisions, together with deficiencies in their actual administration. A number of factors which had been expressly cited as merits by the Commonwealth agencies were also mentioned by the Law Council, but in the context of a detriment to those affected.

The Committee has decided to include the concerns of the Law Council in some detail because it was the only organisation apart from Commonwealth agencies (leaving to one side the brief but valuable submission from the Queensland Attorney-General and Minister for Justice, the Hon Rod Welford MP) to make a submission and the only body outside the public sector to submit. In these circumstances the Committee decided that the Law Council submissions, which were the only ones to put the views of people actually affected by strict liability, should be given a fair degree of attention. In addition, a detailed case study can often highlight broader principles more clearly than abstract generalisations. In this context the concerns of the Law Council about aspects of the Customs Act have a broader application.

The Committee notes that the Senate Legal and Constitutional Legislation Committee has reported on the amendments of the Customs Act which are the

subject of concern by the Law Council.⁷ That report includes a discussion of the penalty regime under those amendments, including the new strict liability provisions. The Senate Standing Committee for the Scrutiny of Bills has drafted this present report with the intention that the reports of the two committees will complement each other. Persons who are interested in this topic should consult both reports for a fuller treatment of strict liability under the Customs Act. For instance, the Legal and Constitutional Legislation Committee report was tabled before passage of the legislation, whereas the submissions to the Standing Committee for the Scrutiny of Bills were made after the amendments were enacted. Those submissions, therefore, concentrate more on the administrative rather than the legislative aspects of the strict liability provisions.

The Committee also draws the attention of interested persons to the Senate debate on the amendments to the Customs Act.⁸ The result of those proceedings was that the Senate confirmed previously existing strict liability offences which were preserved by the bill, deleted strict liability elements from 10 proposed offences and preserved the balance of the proposed strict liability provisions. Senator Murray, who moved the successful deletions, advised the chamber that it was hard to find the balance of judgment that individual offences did or did not warrant strict liability. Senator Murray observed that possibly there should have been a couple more or a couple less.⁹ The Committee has accordingly decided to set out all of the concerns of the Law Council which was, as noted above, the only submitter apart from Commonwealth agencies. The Law Council submissions were also more lengthy and detailed than those from the Commonwealth agencies. The Committee, however, wishes to make clear that the above considerations do not mean that the Committee endorses the views of the Law Council. For instance, the Committee does not agree with the proposition advanced by the Law Council that the Customs Act is unsuited for strict liability offences.

The position of the Law Council was well-described in its evidence to the Committee, as follows:

“Those offences will not start for some time, but when you have an industry such as Customs where huge amounts of transactions take place, huge amounts of reporting, and information has to come from third parties, often overseas, or from clients, there are going to be difficulties in ensuring 100 per cent compliance. As a result, to then impose strict liability does not necessarily assist the industry, because I think the industry is sufficiently aware of its responsibilities. Having strict liability just means

⁷ Op cit.

⁸ Hansard: 20 June 2001, pp.24691, 24779; 21 June 2001, p.24822.

⁹ Hansard: 21 June 2001, pp.24824, 24826.

that one person is going to end up with the difficulty of facing a prosecution for something which other people have created for them, and there are a whole lot of issues associated with that.”¹⁰

The Committee also received a submission from the Family Law Section of the Law Council of Australia, which addressed strict liability and family law. This submission was emphatic in its rejection of strict liability as a possible element of offences in that area of the law.

The Committee also received a submission from the Queensland Attorney-General and Minister for Justice, the Hon Rod Welford MP, which warned in strong terms of the dangers of strict liability.

The rest of this Chapter sets out the concerns of the Law Council and the Queensland Attorney-General. In particular, the Chapter will outline the problems identified by the Law Council in the administration of the strict liability scheme introduced by amendments of the Customs Act.

Overview of the concerns of the Law Council

The Law Council submitted that strict liability was acceptable only for offences which are readily understood and easily proven and where failure to comply is obvious, unacceptable and deserving of punishment. Speeding and parking offences are instances of the appropriate application of strict liability. The Customs Act, however, does not meet these criteria. The Law Council advised that the Customs Act, its associated acts and the regulations rely on unclear and complex provisions, which will result in guaranteed regular breaches even by expert practitioners, but through inadvertence or oversight rather than deliberate act. Strict liability is inappropriate for many customs offences, which do not apply merely to minor offences relating to self-assessment of import and excise duty.

The Law Council cited a number of reports to support its position. The Australian Law Reform Commission (ALRC) report on *Customs and Excise* (1992) set out the disadvantage of a strict liability infringement notice scheme, as follows:

- a lack of court scrutiny;
- the risk that innocent people will pay the infringement notice penalty to avoid the expense of contesting proceedings; and

¹⁰ Evidence p.48 (Mr Hudson)

- the possibility of “net widening” with the automatic issue of an infringement notice where there would otherwise be a caution or a warning.

The Law Council submitted that the New South Wales Law Reform Commission noted additional disadvantages in its discussion paper on *Sentencing* (1996), as follows:

- failure to consider the circumstances of individual cases;
- dispensing with the traditional common law protection of mens rea;
- reversing the onus of proof; and
- diminishing the moral content of particular offences.

The Law Council noted that the ALRC discussed the possible use of infringement notices in two other separate reports. In one, the ALRC recommended the introduction of such a scheme for minor breaches in relation to quarantine and home distilling. The scheme did not include any additional sanctions such as licence suspensions. In the other, the ALRC recommended the introduction of infringement notices for certain minor customs and excise offences. The report recommended both internal and external AAT review of these penalties. The Law Council submitted that the present expansion of strict liability under the Customs Act clearly goes far beyond such infringements.

The Law Council noted that one of the stated justifications for the expansion of strict liability offences under the Customs Act was that the old provisions were clumsy. The view of the Law Council, however, is that the administration of the old legislation was clumsy, not the legislation itself. Similarly, it had been asserted that the expansion was justified because of a relatively high level of non-compliance, but the changes will not alter this. In fact, the Law Council advised that the error was in the administration of the old system, which will not be remedied by increased strict liability.

The Law Council advised that the Border Security Legislation Amendment Bill 2002, which provides for new strict liability offences affecting customs, will enable the ACS to obtain personal information about people from third parties such as airlines and travel agents. The Law Council advised that this was an entirely inappropriate use of strict liability. Also, the categories of personal information may be expanded by regulation, which has implications for personal rights.

The Law Council also noted that the Bill was intended to deter terrorism but, in its view, strict liability would be unlikely to cause problems for terrorists.

The Law Council submitted that, in summary, strict liability was a blunt instrument unsuitable for the customs industry, given the great magnitude of transactions, their complexity, the detail with which they must be reported and the difficulties from information provided by third parties in Australia and overseas. The Customs Act and the industry is not appropriate for strict liability on either a philosophical or jurisprudential basis. As noted above, however, the Committee wishes expressly at this stage to record that it does not accept these sweeping and generalised propositions.

Adverse effect on small and medium enterprises

The Law Council advised that the strict liability changes would oblige all affected businesses to operate on a 24 hours a day, seven days a week basis, at considerable expense. This would have a detrimental effect on all such businesses, but would be particularly severe on small and medium enterprises. Smaller entities would be disadvantaged in compliance and legal matters compared to larger organisations. For instance, compared with bigger companies they will find it more difficult to pay for proper legal defences, especially given the absence of AAT review.

In evidence to the Committee the Law Council estimated the costs of defending a customs prosecution, as follows:

“If you had made the decision to defend it and, depending on the quantum, if it was brought, for example, at Federal Court level it would cost probably tens of thousands. It could conceivably be thousands of dollars and possibly tens of thousands of dollars, depending upon the lawyer and depending upon the counsel if indeed you retain separate counsel. Queens Counsel these days cost seven or eight thousand dollars a day. That is just for appearing, let alone preparation time. So it can become expensive, which is a disincentive to actually defend the prosecution when you look at the cost to defend.”¹¹

The Law Council suggested that the increased penalties in the new scheme and the greater number of potential offence applications may have a disproportionate effect on smaller entities. The same penalties on a strict liability basis regardless of the size of the enterprise may force the smaller ones out of business. In this context the penalty structure may not be fair or appropriate. The administrative regime for the scheme should take into account the reduced capacity of smaller enterprises to comply with the extensive new obligations. The Law Council noted that the Scrutiny of Bills Committee had previously reported that penalties which may be seen to be adequately severe to coerce compliance by substantial entities may be horrendous to other smaller potentially affected entities.

¹¹ Evidence p.58 (Mr Hudson)

The Law Council pointed out that the scheme requires those affected to have adequate management and resources and to undertake appropriate training. The guidelines, however, do not provide for this adequacy to be assessed against the size and assets of individual parties.

Additional costs

The Law Council submitted that in the context of the Customs Act strict liability would increase costs. This was in contrast to advice from the Commonwealth agencies that costs would be reduced.

As noted above in relation to harmful effects on small business, the Law Council advised that the new strict liability scheme would result in greater costs for all affected parties. The industry would be unable to absorb these additional liabilities and responsibilities because of its low level of fees and charges. The extra costs would therefore be passed on to clients.

The Law Council was also concerned at the allocation of liability for the payment of penalties. It questioned the extent to which there should be recourse against customers or third parties who, perhaps by no conscious fault, have caused the strict liability breach. If these parties, who may be overseas, decline to pay, affected enterprises must meet the cost out of their own resources and eventually pass it on to users.

The Law Council also raised the position of claims under professional indemnity insurance for strict liability penalties resulting not from any fault by the supposed offender, but from actions of third parties. The position here is most unclear, with the possibility of considerable disadvantage for those affected.

Compliance records

The Law Council was particularly concerned about the administration of the “compliance records” of people affected by the new strict liability provisions. Its first concern was that there was no clear indication of what constitutes a compliance record, described by the Law Council as an elusive term fundamental to the administration of the strict liability regime. Discretions about whether to issue an infringement notice or to prosecute are to a considerable degree governed by a person’s compliance record. It is, however, uncertain as to what this includes. For instance, it is not known whether it will include oral or written warnings, notices

issued (whether paid or not), the results of internal review (whether successful or not) and past prosecutions (whether successful or not).

The Law Council noted that parties will apparently not have access to their compliance record to challenge its terms or to delete incorrect or stale information or infringement notices improperly issued. In this context, freedom of information procedures are too slow and costly to assist. The Law Council was especially concerned at the consequences which follow if the recipient of an infringement notice declines to pay. In these cases, the Law Council advised, the stale infringement notice remains on the record and may be taken into account as part of the compliance record when the ACS subsequently decides whether to issue further infringement notices or to initiate court prosecution. Even if an infringement notice is paid the Law Council noted that the fact of the issue is not deleted from the compliance record and may be used for future decisions on other notices or court action.

The Law Council recommended that the guidelines should clearly explain these consequences. They should also provide for a right of access to compliance records and a streamlined process to review all material on the record. Parties should be entitled to remove stale or paid notices and wrong or outdated information. The ACS itself should also be obliged to review all compliance records every two years to delete such information.

Possible adverse effect on licence holders

In accordance with its concerns about the administration of strict liability provisions, the Law Council questioned the effect of infringement notices on the holders of licences under the Customs Act. It pointed out that a person's compliance record, including paid and unpaid stale notices, may be used to trigger action to suspend, vary, revoke or not to renew a customs broker licence or a warehouse/depot operator licence. However, the guidelines do not address the real effect of the issue or payment of an infringement notice on relevant licence holders. In particular, they do not disclose that the issue of an infringement notice may influence future formal action in relation to the status of a licence, which depends on a perception of compliance with the Act.

The Law Council recommended that its suggested regular review of compliance records by the ACS should include notification of the effect on licence procedures of any infringement notices (stale or paid), decisions to prosecute, liability for any strict liability offence and the compliance record as a whole. For instance, the mere issue or payment of an infringement notice should not trigger any action adverse to a licence holder, especially if the contravention was due to actions of third parties.

In this context the Law Council noted that, in the absence of external review of a decision to issue an infringement notice, a person may pay the notice for simple commercial expediency, even if there was a good defence. In many cases it would not be worth the time and trouble of waiting to see if there is a court prosecution and then to defend it.

Absence of external review and internal review deficiencies

The Law Council was concerned that there was no external merits review by the Administrative Appeals Tribunal of decisions to issue an infringement notice or subsequently to prosecute. There was also no external review if the ACS breached its own guidelines. Judicial review by the Federal Court under the Administrative Decisions (Judicial Review) Act is available, but this relates to process rather than merit and in any case is generally precluded due to cost. A recipient of an infringement notice or other aggrieved parties may seek only internal review. The Law Council submitted that this was not only inequitable, but also contrary to the provisions of the International Convention on Simplification and Harmonisation of Customs Procedures.

The Law Council advised that the absence of external review was made worse by the lack of transparency in decisions to issue a notice or to prosecute. This ill-defined discretion has the possibility of abuse. The Law Council pointed out that there was not even an obligation to provide a statement of reasons for these decisions. It recommended that such provision should be automatic and to the standard of statements of reasons under the ADJR Act.

The Law Council submitted that there were considerable deficiencies even in the internal review process, as follows:

- no information on how an internal review should be conducted;
- no requirement for review by an independent person different to the original decision maker;
- no application form or indication of who may make an application;
- no requirement to make a decision within a set time or even to make a decision;
- no indication that an application will stay the expiry of the time for payment of a notice, pending the outcome of the review;
- no requirement for statement of reasons for the review outcome;

- no requirement for interest to be paid where review is successful after a notice has been paid; and
- no review on the grounds that the ACS has breached its own guidelines or applied them in an inconsistent way.

The Law Council also submitted that under the Border Security Legislation Amendment Bill 2002 there was no provision for people to be advised of their rights and remedies under the Privacy Act.

Problems with administration of strict liability

The Law Council raised a number of areas where it advised that administration of the customs scheme was deficient, as follows:

- (a) There were problems with the form of the infringement notice. For instance, the present guidelines advised merely what “must” and “may” be included in a notice, which may result in uncertainty as to what is actually a notice. This will cause identification and consistency problems. The form of infringement notice should be prescribed by regulation, drafted in plain language, with a warning at the top that the notice is important. The notice should clearly state that the ACS is still entitled to prosecute even if the notice is withdrawn;
- (b) There is a lack of clarity as to whom can be delegated the right to issue an infringement notice. A copy of the instrument of delegation should be provided at the same time as the issue of a notice;
- (c) Consultation with industry in relation to the new strict liability offences has been unsatisfactory. There should have been extensive consultation, with the ACS obliged to take into account the valid concerns of industry. Consultation in relation to commencement was notably deficient, with pressure to quickly approve the measures;
- (d) Strict liability offences should have adequate safeguards, particularly in the form of checks and balances. However, this has not happened in the present case. For instance, strict liability here has been accompanied by additional ACS powers of control, search, monitoring and questioning. Also, there are additional reporting obligations for affected parties. Further, there is no express legislative entitlement to an exception for a mistake of fact for an infringement notice;

- (e) The guidelines for the scheme are unsatisfactory, being non-binding and expressed in insufficient detail. Also the relationship between the guidelines and the “high level” principles is unclear;
- (f) It is important to ascertain whether adequate resources have been made available for administration and enforcement. For instance, there should be enough resources to ensure a thorough review of each application to withdraw an infringement notice. Also, every official with the power to issue infringement notices should receive comprehensive training;
- (g) The liability for administrative penalties has been extended to four years, which will not result in the proper administration of justice, removing all certainty from transactions;
- (h) Liability may result from the actions of third parties, particularly contracting third parties overseas. Strict liability in these circumstances is unfair on the Australian party, who will often be making self-assessment entries under significant commercial pressure with incomplete information;
- (i) There is a large number of affected activities, each of which could result in an offence. This will create a huge pool of possible contravening behaviour. It is unlikely that the ACS has the capacity to investigate properly each of these contravening acts, so the decision whether to investigate and to issue an infringement notice or initiate court prosecution, will be selective. This is likely to result in inconsistency, regardless of principles and guidelines;
- (j) The ACS has indicated that it will take into account the extent to which a party has relied on ACS advice when deciding whether to issue an infringement notice. There is no specific requirement, however, to preclude the issue of a notice if a party has relied on ACS training material; and
- (k) The ACS has indicated that a party’s efforts to comply with regulatory requirements are relevant to a decision to issue an infringement notice. However, it should be made clear that this includes industry training, separate from ACS training.

Inadequate review of operation of scheme

The Law Council was critical of the introduction of the new penalty regime before the ALRC reports on Civil and Administrative Penalties. It recommended that the new regime should be reviewed in light of the final ALRC report, with relevant recommendations implemented. There should, in addition, be an independent review of the strict liability offences 12 months after their commencement; the

proposed review two years after commencement was too long, given the likely problems. This should be followed by a regular review with public input every 12 months.

Conclusions on Law Council submissions on strict liability and the Customs Act

At the start of this Chapter, the Committee gave its reasons for setting out, in some detail, the concerns of the Law Council about strict liability under the Customs Act. Nevertheless, the Committee warned that this did not mean that it endorsed those concerns. The view of the Committee is that the submissions and evidence of the Law Council were helpful, particularly as a case study highlighting the need for safeguards in the day-to-day administration of the Customs Act. The Committee concludes, however, that the impact of the Law Council submissions would have been greater if they had not been so uncompromising.

Danger in strict liability

The Queensland Attorney-General and Minister for Justice, the Hon Rod Welford MP, advised that in Queensland strict or absolute liability may be imposed only by express exclusion of the Criminal Code, which in practice is rare. There is danger in seeking to erode fundamental concepts of criminal liability, which should be excluded only where the interests of the public are paramount. The Attorney-General noted that jurisdictions where strict or absolute liability is rare generally have few difficulties in bringing proper proof to court.

Strict liability and family law

The Law Council (Family Law Committee) advised that there was no historical use of strict or absolute liability in family law. Strict liability was not appropriate for family law penalties, which occur in a serious context, unlike typical strict liability provisions which are minor summary offences. Family law offences usually occur while other litigation is pending and may impact on it. Unlike a speeding conviction, family law actions can't be considered in the absence of evidence as to the mental elements of an offence; there were often significant motivating factors behind the conduct of litigants in the Family Court. In the context of family law no two offences would ever be the same in terms of fault elements, unlike typical strict liability offences.

The Law Council submitted that family law litigation involved two parties, with the potential for parties to seek to use offence provisions spuriously. There was potential for an increase in litigation if parties consider it beneficial to their case to press for prosecution. These were not considerations which apply to other strict liability offences.

CHAPTER 4

PRINCIPLES AND RECOMMENDATIONS

Introduction

The Committee has concluded that the following principles and recommendations should be the framework of Commonwealth policy and practice in relation to strict and absolute liability.

Basic principles

The Committee concluded that there were certain basic principles which should constitute the starting point for Commonwealth policy on strict and absolute liability, as follows:

- fault liability is one of the most fundamental protections of criminal law; to exclude this protection is a serious matter;
- strict liability should be introduced only after careful consideration on a case-by-case basis of all available options; it would not be proper to base strict liability on mere administrative convenience or on a rigid formula;
- the Commonwealth *Criminal Code* should continue to provide general principles of criminal responsibility applicable to all Commonwealth offences, with a central provision being section 5.6, which creates a rebuttable presumption that to establish guilt fault must be proven for each physical element of an offence;
- the *Criminal Code* should continue to provide that the presumption that fault must be proven for each element of an offence may be rebutted only by express legislation provision under section 6.1 for strict liability and section 6.2 for absolute liability;
- the general defence of mistake of fact with its lower evidentiary burden is a substantial safeguard for those affected by strict liability; the *Criminal Code* should continue to expressly provide for this defence;

- the *Criminal Code* should continue to expressly provide that strict or absolute liability does not make any other defence unavailable;
- strict liability should, wherever possible, be subject to program specific broad-based defences in circumstances where the contravention appears reasonable, in order to ameliorate any harsh effect; these defences should be in addition to mistake of fact and other defences in the *Criminal Code*.
- strict liability offences should, if possible, be applied only where there appears to be general public support and acceptance both for the measure and the penalty; and
- strict liability offences should be applied only where the penalty does not include imprisonment and where there is a cap on monetary penalties; the general Commonwealth criteria of 60 penalty units (\$6,600 for an individual and \$33,000 for a body corporate) appears to be a reasonable maximum.

Merits of strict liability and criteria for its application

The Committee concluded that the supposed merits of strict liability and criteria for its application should be subject to strong safeguards and protections for those affected. The principles governing such protection are set out later in this Chapter. It should be noted, however, that the Committee has included qualifications on some of the following principles relating to merits of strict liability identified by Commonwealth agencies:

- strict liability may be appropriate where it is necessary to ensure the integrity of a regulatory regime such as, for instance, those relating to public health, the environment, or financial or corporate regulation; as with other criteria, however, this should be applied subject to other relevant principles;
- strict liability should not be justified by reference to broad uncertain criteria such as offences being intuitively against community interests or for the public good; criteria should be more specific;
- strict liability may be appropriate where its application is necessary to protect the general revenue;
- strict liability should not be justified on the sole ground of minimising resource requirements; cost saving alone would normally not be sufficient, although it may be relevant together with other criteria;

- strict liability may be appropriate where it has proved difficult to prosecute fault provisions, particularly those involving intent; as with other criteria, however, all the circumstances of each case should be taken into account;
- strict liability may be appropriate to overcome the “knowledge of law” problem, where a physical element of the offence expressly incorporates a reference to a legislative provision; in such cases the defence of mistake of fact should apply;
- two-tier or parallel offences are acceptable only where the strict liability limb is subject to a lower penalty than the fault limb, and to other appropriate safeguards; in addition, it should be clearly evident that the fault limb alone would not be sufficient to effect the purpose of the provision;
- infringement notices should be used only for strict liability offences and are acceptable subject to the usual safeguards;
- absolute liability offences should be rare and limited to jurisdictional or similar elements of offences; in contrast to the present Commonwealth policy absolute liability should not apply to offences in their entirety in relation to inadvertent errors including those based on a mistake of fact; and
- absolute liability may be acceptable where an element is essentially a precondition of an offence and the state of mind of the offender is not relevant; such cases should be rare and carefully considered.

Principles of protection for those affected by strict and absolute liability

The Committee concluded that agencies have not given enough attention to the interests of parties affected by strict and absolute liability. It has, therefore, developed the following principles which should be taken into account when deciding on the need for such offences and the form they will take:

- the process of deciding whether to introduce strict liability for an offence should recognise that this may have adverse effects upon those affected; the legitimate rights of these people should be paramount and take precedence over administrative convenience and perceived cost savings in program administration;
- agencies should acknowledge that there may be areas where existing strict liability offences or the way they are administered may be unfair; in these cases agencies should review the offences under the general coordination of the Attorney-General’s Department;

- strict liability should not be implemented for legislative or administrative schemes which are so complex and detailed that breaches are virtually guaranteed regardless of the skill, care and diligence of those affected; any such scheme would be deficient from the viewpoint of sound public administration;
- strict liability offences should be designed to avoid the likelihood that those affected, particularly by the issue of an infringement notice, will pay the lower penalty simply because it is easy and convenient to do so, rather than spend the money and time to pursue what might be a legitimate defence; any agency which encouraged this tendency would be acting improperly;
- strict liability should depend as far as possible on the actions or lack of action of those who are actually liable for an offence, rather than be imposed on parties who must by necessity rely on information from third parties in Australia or overseas; offences which do not apply this principle have the potential to operate unfairly;
- strict liability has the potential to adversely affect small and medium enterprises; steps should be taken to ameliorate any such consequences arising from the different compliance and management resources of smaller entities;
- any potential adverse effects of strict liability on the costs of those affected should be minimised to the extent that this is possible; in particular, parties who are subject to strict liability should not have their costs increased as a consequence of an agency reducing its costs;
- external merit review by the AAT or other independent tribunal of relevant decisions made by agencies is a core safeguard of any legislative or administrative scheme; every agency which administers strict liability offences should review those provisions to ensure that this right is provided;
- new and existing strict liability schemes should have adequate resources to ensure that they are implemented to maximise safeguards; a lack of proper resources may result in the inadequate operation of those safeguards;
- strict liability should not be accompanied by an excessive or unreasonable increase in agency powers of control, search, monitoring and questioning; any such increase in powers may indicate that the legislative and administrative scheme has structural flaws;
- there should be a reasonable time limit within which strict liability proceedings can be initiated; it would be unfair to those affected if they were to be charged perhaps years after an alleged breach;

- as a general rule, strict liability should be provided by primary legislation, with regulations used only for genuine administrative detail; it would be a breach of parliamentary propriety and personal rights for regulations to change the basic framework or important aspects of a legislative scheme; and
- the use of strict liability in relation to the collection of personal information about members of the public from third parties has the potential to intrude into the legitimate rights of the people whose details are being collected; in such cases the entire process should be transparent, with all affected members of the public being notified of their rights and remedies under the Privacy Act.

Principles for the sound administration of strict liability

The Committee concluded that, in addition to conceptual safeguards, schemes of strict liability should also be administered in a way which provides maximum protection for those affected:

- administration of strict liability in the form of non-legislative procedures may have as significant an effect as acts and regulations; such non-legislative matters should therefore be subject to the same protections and safeguards as the legislative structure of the scheme;
- licence holders who hold a licence on condition that they comply with an act may be prejudiced by the inappropriate use of strict liability to vary, suspend, cancel or not renew their licence; processes in relation to licences should be conducted in a transparent manner with adverse decisions subject to external independent merits review;
- compliance records have the potential to operate unfairly to the detriment of those affected; such records should be subject to comprehensive safeguards, including a limit on what they may include, access by those to whom a record relates and the ability to require deletion of stale or incorrect information;
- professional indemnity insurance in the context of strict liability penalties, especially those caused not by the putative offender but by third parties who may be overseas, has the potential to operate unfairly; agencies should be sensitive to this problem and consult with industry groups on ways to alleviate its consequences;
- comprehensive internal review procedures are an essential safeguard for strict liability; as with other aspects of administration of strict liability these should be transparent and detailed, clearly providing a process which is both independent and credible;

- the use of infringement notices should include safeguards for those affected, including detailed prescription of the form of a notice; the form itself should indicate all of the safeguards to which it is subject;
- consultation with industry is essential before any decision to introduce or vary strict liability, with the valid concerns of industry being taken into account; industry consultation should be genuine, not a formality to legitimise plans already finalised;
- it is undesirable if a strict liability scheme includes a large number of offences creating a substantial pool of contravening behaviour, resulting in selective and possibly inconsistent enforcement; to avoid this, agencies should ensure that enforcement guidelines are detailed and unambiguous and accompanied by adequate training;
- every scheme of strict liability should be administered through detailed, binding guidelines which should be agreed between the relevant agency and industry and tabled in both Houses; breach of the guidelines by an agency should preclude prosecution of those affected by the breach; and
- every scheme of strict liability should be subject to an independent review 12 months to two years after its commencement, with further review depending on the findings of the first review; industry should be given the fullest opportunity to participate in each review.

Application of criteria to existing and proposed Commonwealth strict and absolute liability offences

The Committee concluded that the application of criteria to Commonwealth strict and absolute liability should be subject to the following principles:

- the harmonisation process with its focus on maintaining the status quo in relation to strict and absolute liability in light of the introduction of the *Criminal Code* has been a useful exercise by the Attorney-General's Department;
- the Attorney-General's Department should have a mandatory role in coordinating laws proposed by all Commonwealth agencies which provide for strict or absolute liability, with the object of ensuring a consistent approach; the Attorney-General's Department should undertake this function to the extent that it does not do so already; and
- the Attorney-General's Department should coordinate a new major project to analyse the substantive policy merits of existing harmonised strict and absolute

liability offences; the object of the project should be to amend these provisions where necessary to achieve consistency of safeguards across all agencies.

Recommendations

1. The *Criminal Code* provisions relating to strict and absolute liability are appropriate and adequate and do not require amendment at this time.
2. The Legislation Handbook should require agencies to abide by the above principles when developing new or amending legislation which includes strict or absolute liability; the Attorney-General's Department should coordinate this process.
3. The Attorney-General's Department should coordinate a new project to ensure that existing strict and absolute provisions are amended where appropriate to provide a consistent and uniform standard of safeguards. This should also be included in the Legislation Handbook.
4. Agencies should take into account the above principles in the day-to-day administration of strict and absolute liability offences. The principles should be included where applicable in agency guidelines.

Barney Cooney
Chairman

ORGANISATIONS AND INDIVIDUALS WHO PRESENTED WRITTEN PUBLIC SUBMISSIONS AND ADDITIONAL INFORMATION TO THE INQUIRY

List of Submissions

1. Department of Education, Training and Youth Affairs
2. Australian Prudential Regulation Authority
3. Department of Defence
4. Attorney-General, Queensland Government
5. Law Council of Australia (Business Law Section)
6. Environment Australia
7. Australian Customs Service
8. Law Council of Australia (Family Law Section)
9. Law Council of Australia (Business Law Section)
10. Australian Securities and Investments Commission
11. Law Council of Australia (Business Law Section)
12. Attorney-General's Department

**WITNESSES WHO APPEARED BEFORE THE COMMITTEE AT
HEARINGS**

Wednesday, 1 May 2002, Committee Room 1S3, Parliament House, Canberra

Attorney-General's Department

Mr Karl Alderson, Principal Legal Officer, Criminal Justice and Security Branch

Mr Ricky Nolan, Legal Officer, Criminal Law Reform, Criminal Law Branch

Australian Prudential Regulation Authority

Mr Roger Brown, Senior Manager, Rehabilitation and Enforcement (SW)

Department of Defence

Lieutenant Colonel Andrew Dunn, Director, Military Justice

Colonel Ian Westwood, Chief Judge Advocate

Department of Environment and Heritage

Ms Stephanie Martin, Assistant Secretary, Policy and Compliance Branch,
Approvals and Legislation Division

Mr Wayne Fletcher, Director, Legislation and Policy Section

Mr Laurence Hodgman, Director, Compliance and Enforcement Section

Law Council of Australia

Mr Andrew Hudson, National Chairman, Customs and International Transactions
Committee

Australian Customs Service

Mr Stephen Goggs, National Manager, Commercial Compliance Branch

Ms Sharon Nyakuengama, Acting Director, Compliance Policy Unit, Commercial
Compliance Branch

