

**Parliament of the Commonwealth of Australia**

**The House of Representatives Standing Committee  
on Finance and Public Administration**

# **A TOUR OF DUTIES**

**The Final Report on an Inquiry  
into Aspects of the Australian Customs Service**

**April 1991**

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## FOREWORD

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This is the second and final report of a wide ranging inquiry into aspects of the Australian Customs Service. This report focuses on the Program Management Structure of the Service and the Import/Export Control Sub-program. In so doing it gives an overview of the allocation of roles or 'duties' within the ACS, and the operations of the Sub-program whose first objective is 'the collection of the correct amount of customs duties and other revenue.'

In terms of number of submissions to the inquiry, it was the Import/Export area which excited most interest. Amendments to the Customs Act which took effect in July 1989 provided the base for much criticism of attitudes and administration in Import/Export Control. The administrative penalties which came into force at that time have clearly caused considerable consternation among importers and their customs agents, and have been seen as the underlying cause of a perceived deterioration in relationships between the Customs Service and the trading community.

In reviewing the concerns expressed to it, the Committee formed the opinion that, while it was the penalty provisions which had provoked the outcry from the commercial community, other factors also determined the nature of relationships.

Wider considerations such as ACS recruitment, training, and staff rotation policies and its consultative processes clearly affect public response to ACS operations. Effective administration of statutory controls, and the development of appropriately co-operative relationships with clients, depend on the types of persons entering and staying in the Service, their relevant knowledge, expertise and breadth of vision and their ability and willingness to work co-operatively with others in the trading community. The Committee has therefore addressed these areas in some depth in this report.

Despite shortcomings highlighted in this report the Committee remains impressed by overall ACS administration and by the commitment of its personnel to the achievement of corporate goals. The Committee has enjoyed its interaction with the ACS and has appreciated the co-operation extended to it in the course of the inquiry.



**STEPHEN MARTIN, MP**  
**CHAIRMAN**



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## Members of the Committee

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**Chairman:** Mr S P Martin, MP

**Deputy Chairman:** Hon I B C Wilson, MP

**Members:** Mr J N Andrew, MP  
Mr J H Beale, MP (to 10.10.90)  
Mr R A Braithwaite, MP  
Dr R I Charlesworth, MP  
Mr B W Courtice, MP  
Mr A J Downer, (from 10.10.90)  
Mr S C Dubois, MP  
Mr R F Edwards, MP  
Mr R P Elliott, MP  
Mr G Gear, MP  
Mr R S Hall, MP

**Secretary:** Mr D R Elder

## Members of the Subcommittee

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The Subcommittee appointed to undertake the inquiry comprised:

**Chairman:** Mr S P Martin, MP

**Members:** Mr J N Andrew, MP  
Mr S C Dubois, MP  
Mr R P Elliott, MP  
Mr G Gear, MP

**Subcommittee Secretary:** Ms G M Skinner

**Adviser:** Mr D J Abbey

**Inquiry Staff:** Mrs A J Garlick

## Terms of Reference of the Committee

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The Standing Committee on Finance and Public Administration is empowered to inquire into the report on any matters referred to it by either the House or a Minister including any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter, report or paper.

## Terms of Reference of the Subcommittee

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1. Examine the Program Management Structure of the Australian Customs Service which has been in operation since 1 September 1987 with particular reference to
  - . management reporting systems
  - . devolution of authority
  - . control mechanisms
  - . efficiency of administration
  
2. Review the Import/Export Control Sub-program, as a major ACS Sub Program with regard to
  - . techniques for processing entry clearance transactions for both imports and exports
  - . the relationship with importers, exporters and bodies associated with the transport, storage and clearance of goods
  - . the scope for electronic initiatives to improve the processing of clearance transactions to the benefit of the Customs and parties involved in importing and exporting
  - . the level of staffing necessary for Customs to process the transaction level, to secure correct payment of duty, and to minimise tax avoidance and evasion
  
3. Report on
  - . Coastwatch
  - . Drug Detector Dog Unit
  - . Drug Interceptions

as major elements of ACS operations.

The Auditor-General's Audit Report No 17 1989/90 on the Australian Customs Service - Passenger and Crew Processing has also been referred for inquiry and report.

## Abbreviations

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AAT	Administrative Appeals Tribunal
ACS	Australian Customs Service
CAFA	The Customs Agents Federation of Australia
CAIA	The Customs Agents Institute of Australia
CMC	Corporate Management Committee
EDI	Electronic Data Interchange
FAC	Federal Airports Corporation
FMIP	Financial Management Improvement Program
ISC	Inter-State Commission
PMB	Program Management and Budgeting
PSU	Public Sector Union
RM	Regional Manager
RMD	Release on Minimum Documentation
SES	Senior Executive Service
TAFE	Technical and Further Education

## **SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

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### **2. Program Management Structure of The Australian Customs Service**

Observation of changes made over time in the wording of the ACS Mission Statement and Corporate Goals provides evidence of an ongoing commitment by the ACS to re-examine its purpose and objectives. The Committee concludes that the Service continues to demonstrate a willingness to review its corporate direction and to alter the parameters of that direction as appropriate. (2.13)

The Committee notes that while the traditional role of the Collector has changed, many regionally based commentators look to the time when the Collectors were in direct control of activity in their domains. In conjunction with the evolutionary process occurring in other areas of ACS administration, the role of the Collector has undergone significant development in recent years. While some uncertainty clearly persists about the precise nature of the Collector's tasks, the Committee supports the view of the ACS that the Collector's position must remain in order to provide direct linkage to the Comptroller-General, and to insure that national and corporate objectives retain due prominence in ACS regional operations. (2.40)

**The Committee recommends that the position of Collector of Customs be retained in the Program Management Structure of the ACS, to fulfil the necessary role of maintaining awareness and commitment to corporate as well as Sub-program objectives in the regions. (2.41)**

The Committee recognises the importance that a hierarchical system of committees plays in providing co-ordination, overview and policy direction across Sub-programs. The Committee endorses this committee system as an appropriate control device within the program structure. (2.46)

The Committee acknowledges the progress made by the ACS since 1987 in developing and refining statements of objectives and performance indicators. It notes however that there is still room for improvement in devising appropriate performance indicators which will accurately measure the achievement of desired outcomes. (2.54)

**The Committee recommends that the ACS improve its performance indicators so that they more accurately measure the achievement of desired outcomes. (2.55)**

The Committee notes that for the reporting period 1990-91 the ACS met or exceeded most of its targets. In a climate of static or decreased resources but increased workload the Committee considers these results to be indicative of efficiency in administration. (2.65)

The Committee believes that the ACS continues to deserve its reputation, first noted in the course of the FMIP inquiry, of being a leader in implementation of FMIP reforms and in particular Program Management and Budgeting. The program structure introduced in September 1987 has proved to be a successful one for an organisation administering a range of programs in a complex and changing environment. The Committee is impressed by the progress that the ACS has made in fine-tuning that model, and by its commitment to continued monitoring of management practices in order to rectify shortcomings. While there are areas remaining which require further improvement the Committee is confident that the ACS is committed to, and capable of, taking the necessary steps towards those improvements. (2.66)

### **3. Import/Export Control Sub-Program**

While it recognises that the 1989 CELA legislation has been in operation only since July 1990 and that some adjustment period was to be expected among the ACS and its clients, the Committee considers that in its present form the legislation appears to be too harsh in its effects on owners and agents. In particular the Committee believes that the concerns expressed about the lack of provision for minor errors or 'errors' which arise from a difference in opinion as to tariff classification are justified. (3.30)

The Committee also believes that changes in ACS administration of the legislation may ameliorate some of the antipathy towards the penalty provisions. (3.31)

#### **The Committee recommends:**

- . **that in late 1991 the 1989 CELA legislation be formally reviewed by an independent body such as the Australian Law Reform Commission;**
- . **that the legislation be amended to introduce a sliding scale of penalties, and to include the recognition that what are now deemed to be classification "errors" could in some cases be interpreted as differences in opinion rather than misleading statements; and**
- . **that the ACS conduct a review of its administration of the penalty provisions with a view to ensuring the exercise of appropriate discretion in their application. (3.32)**

The Committee believes that a viable alternative to the present 'Red/Green' system and the associated penalty provisions could be provided by an RMD system of cargo release. Such a system would enable collection of the correct amount of duty in an unpressured time frame, while continuing to ensure community protection. (3.35)

**The Committee recommends that when practicable the ACS move to a Release on Minimum Documentation system. (3.36)**

The Committee agrees that consistency in tariff classification would be increased by improving the quality of primary decision making. This in turn is dependent on the adequacy of training. It is important to be sure that the training packages in place meet their objectives. (3.47)

The Committee endorses the ACS decision to establish a central dispute settling body in Canberra. This move, which was sought in many of the submissions to the inquiry, should increase the confidence of importers and their agents by providing a degree of certainty in rulings which was lacking in the preceding system. (3.48)

The Committee believes that the allegations of port shopping have been sufficiently substantiated to warrant further inquiry. If port shopping does occur to a significant extent it needs to be addressed not only from an equity perspective but also in terms of a possible loss to revenue. (3.49)

**The Committee recommends that:**

- . the training prospectus put in place in 1990 be evaluated in late 1991 with respect to its success in developing adequate classification skills in Import/Export Control officers.
- . the ACS conduct an investigation to gain an accurate measure of the extent of 'port shopping', in order to remove possible inequities and to gauge the potential loss to the revenue caused by such practices. (3.50)

#### **4. Relationships Between the ACS Import/Export Sub-Program And The Commercial Community**

On the evidence presented to it the Committee was unable to establish the existence or extent of alleged abuses of power by investigation and audit officers. The Committee noted that an inquiry into the ACS conduct of the Midford case, and associated issues, was referred in December 1990 to the Public Accounts Committee. The 'practice, propriety and method of the ACS of gathering evidence for prosecutions and dealing with the public in the course of... investigations' is one of the matters referred to that inquiry. As the evidence the Committee received regarding alleged abuses of power was inconclusive, judgement in these areas is best left to the more specific Public Accounts Committee Inquiry. (4.19)

The Committee considers that the views expressed to it by various agencies, and the findings of the AGB:McNair survey, are indicative of shortcomings in relationships between the ACS and the trading community. This is in contrast to the Committee's findings for other aspects of the ACS which it has examined. The cause of these difficulties has not clearly emerged but would appear to be due to in part to the tendency, in the commercial area of Import/Export Control, to adopt a law enforcement approach to the collection of customs duty. Resentment by the agents industry of the penalty provisions of the CELA legislation would also appear to be a contributory factor. (4.31)

The Committee recommends that a Customs Consultative Committee be established to provide a forum which meets regularly at national level, for the discussion of Customs issues relevant to those in the trading community. Such issues could include administrative procedures, draft legislation where appropriate, and changes in policy. Membership of the committee could be drawn from Customs agents' associations, the Law Council, customs consultants, and importers' representatives. (4.32)

## 5. Electronic Initiatives

The Committee considers that there is a need for importers to become more aware of the policy and practice of the ACS and its operations. To facilitate this the establishment of a representative importers' organisation is desirable. (5.21)

The electronic initiatives implemented, and planned, in the processing of imports and exports have the potential to achieve significant reform both in the trading community and on the waterfront, and real monetary savings of considerable magnitude. The integral role of the ACS in initiating and pursuing these developments to date is commendable. The Committee considers that the ACS should continue to provide leadership in the community based electronic initiative area. (5.24)

The Committee recommends that:

in view of the important role played by electronic initiatives in achieving waterfront reform, and the integral role of the played by the ACS in their development and implementation, sufficient funding should be allocated in the Budget process to ensure that the overall project can be completed within the planned time frame.

in advance of the advent of paperless trading, appropriate legislation be drafted to overcome the current legal difficulties inherent in electronic exchange of documentation. (5.25)

## 6. Other Matters Relevant To the Import/Export Sub-Program

The Committee has sympathy with the position of the CAIA that it is unreasonable, on redline and amberline entries where declarations on classification, valuation and concessions are considered by the ACS at the time of importation, for the ACS to retain the power to enter premises and inspect documents. The provision of Section 39 (1B), in the Committee's view, raises the expectation that circumstances will exist in which goods may be released unconditionally. It is reasonable to assume that prior examination by the ACS would provide sufficient grounds for this to occur. If this were not the intention of the legislation the Committee sees no reason for its existence. Further the Committee sees no reason to treat 'one-off' importations of private citizens differently from commercial shipments, and considers that this is an insufficient reason for the inclusion of Section 39 (1B) in the legislation. (6.7)

**The Committee recommends that the ACS review Section 39 (1A) and (1B) of the Customs Act. The review should take account of the original intention of the legislation, and the circumstances in which Section 39 (1B) may apply. If it is concluded that there are no such circumstances then Section 39 (1B) should be repealed, in order to remove a source of expectation, and subsequent confusion among importers and agents, that unconditional release is possible. (6.8)**

The Committee considers that the present priorities accorded to control of imports and exports ensure an appropriate allocation of ACS resources. In a climate of resource restraint it is unwarranted to base control over exports on other than assessment of risk. (6.11)

The Committee considers that the issue of uniformity in State legislation on importation of offensive weapons, is one which should be resolved in the first instance at the level of the Police Ministers Council and then formalised in federal legislation. It would then be possible for Customs Officers to decide on a consistent basis whether to grant or refuse permission to import specific goods. (6.14)

## **7. Recruitment, Training and Rotation**

The Committee notes that the ACS has in place an extensive training program, but it is also mindful of the criticisms of internal training and the suggested emphasis on a commercial perspective received in evidence. An early external evaluation of the program is desirable. (7.8)

**The Committee recommends that an external evaluation be conducted in July 1992 of the Import/Export training program adopted in July 1990. The adequacy of the internal training components should receive particularly close scrutiny. (7.9)**

**The Committee recommends that the 'Staff Mobility Policy', implemented in 1991, be promoted not only among staff but also among clients. The changes outlined in December 1990 should overcome many of the shortcomings of the previous Rotation Policy, and ensure the emergence of a more flexible and sensitively applied policy, which will be more readily accepted by both staff and clients. (7.16)**

The adequacy or otherwise of recruitment, training and rotation procedures in the ACS, and particularly the Import/Export Control Sub-program can be seen to underlie all of the contentious issues arising in this phase of the Inquiry. These issues included the administration of the CELA penalties, the accuracy and consistency of tariff and valuation decisions, the development of appropriately co-operative relationships with commercial contacts and the adequacy and success of consultative mechanisms. All of these depend on the types of persons entering and staying in the Service, their relevant knowledge, expertise and breadth of vision and their ability and willingness to work co-operatively with others in the trading community. (7.26)

While the ACS has some programs, in place or planned, to effect improvements in *training and staff rotation practices*, the Committee considers that it is also desirable to increase the mix of educational qualifications and employment background in the Service. (7.27)

**The Committee recommends that:**

- . **recruitment campaigns be conducted at tertiary training institutions to increase the mix of educational qualifications within the service;**
- . **the involvement of ACS senior staff in programs such as the Executive Development Scheme, and exchange programs to broaden employment experiences, be actively promoted within the Service. (7.28)**

### **8. Matters Arising from the First Report on the Inquiry**

While it regrets that the information contained in the review of Sydney Airport security conducted for the FAC was not made available to it during the first phase of this inquiry, the Committee concludes that its results and recommendations are consistent with the findings of this Committee. (8.8)

The Committee is persuaded by the arguments of those seeking the development of international airports in the Whitsunday area that the ability to fly passengers directly to their destinations may enhance the competitiveness and attractiveness of their holiday packages. The Committee believes that with innovation and a requirement of 'user pays', the necessary ACS facilities could be established in the area. Passenger processing could be provided by staff drawn from Cairns and Brisbane, supplemented by ACS personnel already in Mackay and possibly by appropriately trained local part-time staff. However, the Committee remains concerned about the implications a proliferation of such gateways could have for deployment of ACS resources. In particular it is concerned that any thinning of already stretched resources to cover the necessary passenger processing operations may detract from the ability to adequately protect the barrier. (8.25)

**The Committee recommends that any future decisions to approve the establishment of a new international airport take account of:**

- . **the accessibility and adequacy of existing facilities;**
- . **the cost to the public purse;**
- . **the effect on ACS resource deployment; and**
- . **the feasibility of part-time ACS employment. (8.25)**

# 1. CONDUCT OF THE INQUIRY

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## **Background to the Inquiry**

1.1 On 7 September 1989 the House of Representatives referred to the Committee the Auditor-General's Report No 17 of 1989-90, Australian Customs Service - passenger and crew processing. Subsequently a wider inquiry into the Australian Customs Service (ACS) was discussed with the Minister of the time.

1.2 No progress was made on that inquiry due to the dissolution of the House prior to a general election.

1.3 The audit report and terms of reference for the present inquiry were re-referred to the Committee by the Minister for Small Business and Customs on 17 May 1990.

## **The Conduct of the Inquiry**

1.4 The inquiry was advertised on 26 May 1990 in the major daily newspapers and submissions were sought directly from relevant Commonwealth Government Ministers, State Governments and interested organisations.

1.5 At a meeting on 1 June 1990 the Committee resolved to appoint a subcommittee to conduct the inquiry. The inquiry commenced on 21 June 1990 with an informal briefing by senior ACS managers. This was a useful forerunner to a wide ranging program of inspections and briefings to familiarise the Committee with the workings of those elements of the Customs Service with which the inquiry was concerned. The inspections were conducted between 22 June 1990 and 29 November 1990 and took members as far afield as Melbourne, Broome and Cairns. A list of the inspections and informal discussions undertaken is at Appendix A.

1.6 Submissions were received from Ministers, Commonwealth, State and local government agencies, industry and other associations and individuals. A list of all submissions authorised for publication is at Appendix B.

1.7 Evidence was taken at eight public hearings between 26 July 1990 and 18 February 1991 from a total of fifty-six witnesses. A list of witnesses is at Appendix C.

1.8 The transcripts of the public hearings and other evidence authorised for publication have been incorporated in separate volumes and copies are available for inspection in the Committee secretariat and the Parliamentary Library. References to evidence in the text of this report relate to page numbers in these volumes.

1.9 At a meeting held on 23 August 1990 the Committee resolved to divide the inquiry into two parts, and to prepare two reports. The first was to cover issues relating to Passenger Processing and Barrier Control, while the second was to concentrate on Program Management Structure and the Import/Export Control Sub-program.

### **The First Report on the Inquiry**

1.10 The first report on the inquiry, *Risky Business - the 37 000 Kilometre Challenge* was tabled on 15 November 1990. The report dealt with:

. Audit Report No 17 1989-90, Australian Customs Service - passenger and crew processing

. Coastwatch

. Drug Detector Dog Unit

. Drug Interceptions.

1.11 These aspects were grouped together for the first report, as they are all concerned with the protection of the Customs Barrier - the metaphorical description of operations designed to protect the Australian community from unlawful importation and exportation of prohibited and restricted goods, particularly illegal drugs.

1.12 The first report also contained comment on specific program management issues which related to the aspects under discussion.

### **The Scope of this Report**

1.13 This report concentrates on the remaining terms of reference covering the Program Management Structure and the Import/Export Control Subprogram. It also covers matters relevant to the first report which have arisen since its tabling.

## 2. PROGRAM MANAGEMENT STRUCTURE OF THE AUSTRALIAN CUSTOMS SERVICE

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### Program Management in the Public Service

2.1 During the 1980's a number of budgetary and financial management reforms were introduced in the public sector. These reforms were directed at achieving greater value for money from government expenditure by improving efficiency and making programs more effective.

2.2 A major element of the reform strategy was the Financial Management Improvement Program (FMIP) introduced into the Australian Public Service in 1984. The FMIP approach encourages value for money management through changes which:

- . streamline the budget allocation and appropriation process;
- . improve the systems by which departments and agencies make decisions, manage and evaluate achievements; and
- . enhance public accountability and scrutiny.

2.3 Program Management and Budgeting (PMB) is one of the main instruments for achieving the FMIP aims of more efficient and effective programs with an emphasis on the outcomes achieved by programs ('results oriented management'). It was expected that through PMB departments and agencies would be able to improve both corporate management and accountability to Parliament for results.

2.4 Program structures were developed for all agencies with management to take place by program. Each program has its own objectives which flow from overall departmental goals and objectives. Thus program structures provide the framework which links corporate objectives and strategic decision-making with the operational objectives and practices of program areas. Program areas manage their own resources to achieve the programs' objectives.

2.5 Within program management, organisational structure can be closely aligned to the program structure.

2.6 To achieve this alignment most departments and agencies undertook significant organisational adjustments. For others more substantial changes were necessary.

2.7 The Australian Customs Service was among those departments which undertook major reorganisation. It was recognised as being one of the leaders in adoption of PMB principles and an enthusiastic participant in FMIP reforms.

2.8 ACS management, while being well satisfied with progress so far in implementing reforms, continues to acknowledge that reform is still in an evolutionary phase and that progress depends on continuing to develop and learn.<sup>1</sup>

### **The Role of the ACS**

2.9 The mission of the ACS, as detailed in the 1990-91 Corporate Plan, is:

to achieve through the Customs Program, and within an overall framework of risk management, the most effective and efficient delivery of Government policy on:

- . revenue collection in regard to imported goods and certain locally produced goods;
- . encouragement of the development of local industry through the application of tariffs, quotas, bounties and subsidies;
- . control of the importation or exportation of certain goods or classes of goods;
- . civil coastal surveillance; and
- . co-operation between agencies in the achievement of their respective missions and goals.<sup>2</sup>

2.10 Re-examination of the wording of the mission statement by the ACS over a period of three years is indicative of the evolutionary process which has been characteristic of its approach to FMIP reform. The most recent version of the statement focuses on the specific areas of Government policy the ACS is required to deliver, rather than on the means of delivery described in earlier statements. Thus it has become more oriented towards outcomes and less focused on the processes of program delivery.

2.11 The 1990-91 mission statement is also distinguished by its incorporation of the application of risk management. Risk management, an important principle underlying the FMIP process, has been adopted by the ACS as a means of balancing its control responsibilities against its responsibilities to facilitate international trade and travel.

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<sup>1</sup> ACS Corporate Plan 1990-91, p. 5

<sup>2</sup> *ibid*, p.13

2.12 Ongoing change is also evident in the Corporate Goals of the ACS. The list of five Corporate Goals in the 1988-89 Annual Report had grown to eight by the time of presentation of the 1990-91 Corporate Plan. Moreover, the wording of some goals had altered to contain implicit measures of performance. For example the 1988-89 goal of *Interception* was delineated as 'to improve interception of prohibited goods, including narcotics'.<sup>3</sup> Its counterpart in 1990-91 is termed *Drugs Interdiction* and in expanded form is defined as 'to significantly reduce the availability of imported illicit drugs within the community'.<sup>4</sup>

### ***Conclusion***

2.13 Observation of changes made over time in the wording of the ACS Mission Statement and Corporate Goals provides evidence of an ongoing commitment by the ACS to re-examine its purpose and objectives. The Committee concludes that the Service continues to demonstrate a willingness to review its corporate direction and to alter the parameters of that direction as appropriate.

## **The Organisational Structure**

### **Prior to 1987**

2.14 One of the first Commonwealth Departments established after Federation was the Department of Trade and Customs. Since that time, Customs has had a number of different titles and has been located in a variety of portfolios. Since 1982, Customs has been part of what is now the Department of Industry, Technology and Commerce.

2.15 In 1985 the Australian Customs Service was established as an independent statutory body, under the control of the Comptroller-General of Customs, who is directly responsible to the Minister for Small Business and Customs. Overall responsibility for the portfolio rests with the Minister for Industry, Science and Technology.

2.16 Implementation of Program Budgeting by the ACS occurred in 1985. At that time it was simply a financially based program and had little impact on overall management.

2.17 The structure of the organisation remained as it had been for many years, with Central Office in Canberra having hierarchical lines of control to Collectors of Customs in the seven Customs regions. The seven regions, which were

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<sup>3</sup> ACS Annual Report 1988-89, p. 18

<sup>4</sup> ACS Corporate Plan, 1990-91, pp 14-17

also constructed on hierarchical lines, had considerable autonomy in day to day operations related to broad national objectives. In consequence it was possible that Collectorates could at times stray from operating in a cohesive manner consistent with national intent.

### **1987 Re-organisation**

2.18 On 1 September 1987 the organisation underwent a major restructure. ACS responsibilities were distributed between six operational and three servicing Sub-programs. In mid 1988 The Coastwatch Sub-program was added, raising the number of operational Sub-programs to seven. The operational Sub-programs are Industry Assistance, Import/Export Control, Inland Revenue, Barrier Control, Coastwatch, Passenger Processing and Investigation, while the support Sub-programs are Inspectorate, Co-ordination and Services, and Systems.

2.19 As indicated in figure 2.1 the operational Sub-programs report to the Deputy Comptroller-General while the corporate support Sub-programs are directly responsible to the Comptroller-General.

2.20 Each Sub-program is headed by a National Manager located in Central Office in Canberra. The program structure is reflected in the regions, which generally align with State/Territory boundaries. Regional Sub-program managers report directly to their respective National Manager. Figure 2.2 illustrates the linkage between Sub-programs and Corporate Goals.

2.21 The Committee understands that the organisational structure will undergo minor modification from 1 July 1991. At that time the Inspectorate Sub-program will be merged with elements of the Co-ordination and Services Sub-program. The resulting sub-programs will be titled Corporate Services and Executive Services. As a result of this change the Collectors of Customs in the various regions will report directly to the Comptroller-General.

### **Devolution of Authority**

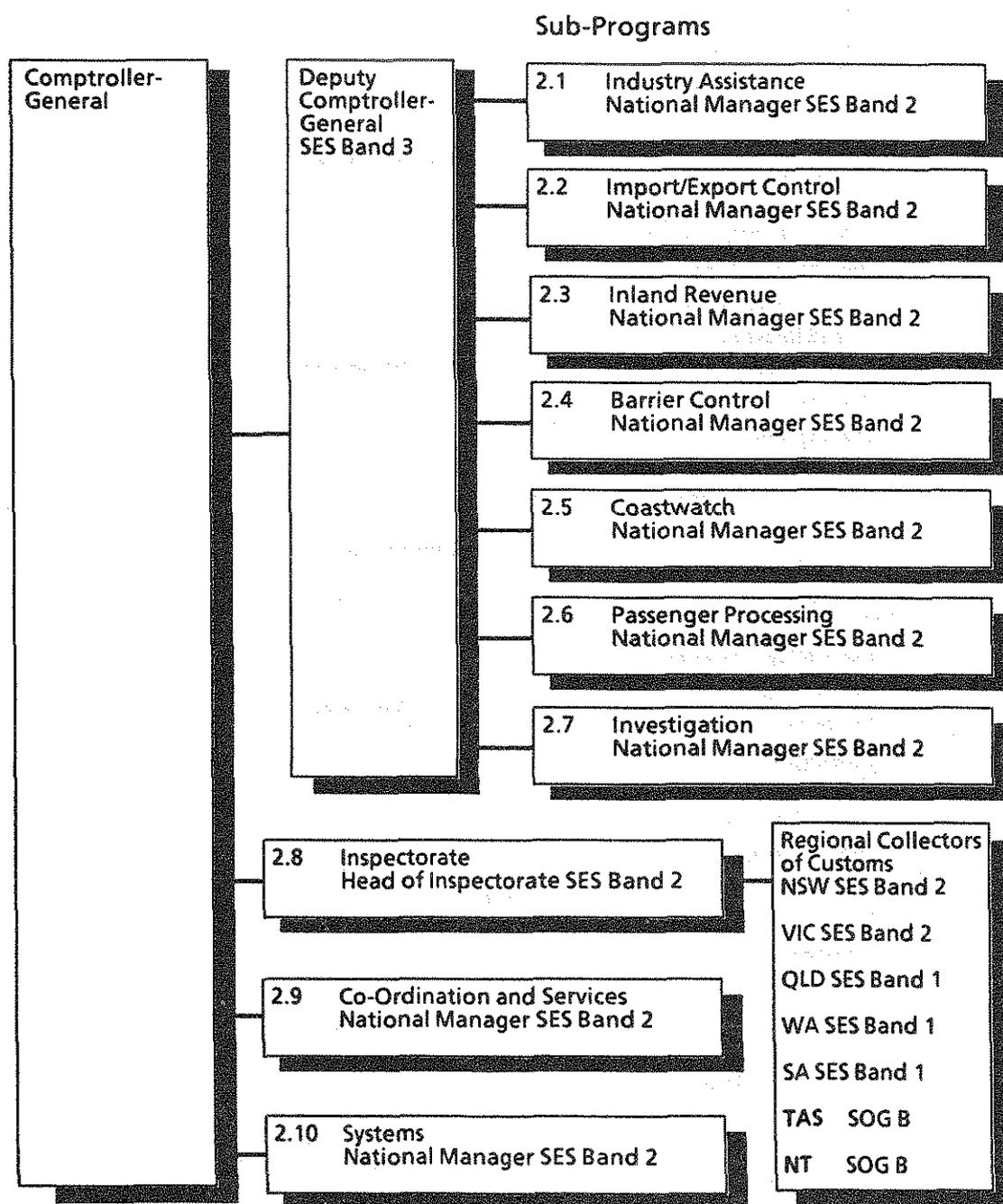
2.22 A central principle underlying the FMIP was the concept of devolution. The aim was to give individual managers greater scope to achieve the policy outcomes sought by each organisation and the government overall while retaining cohesion, consistency and a corporate focus.<sup>5</sup>

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<sup>5</sup> House of Representatives Standing Committee on Finance and Public Administration, *Not Dollars Alone*, September 1990, AGPS Canberra, p. 60

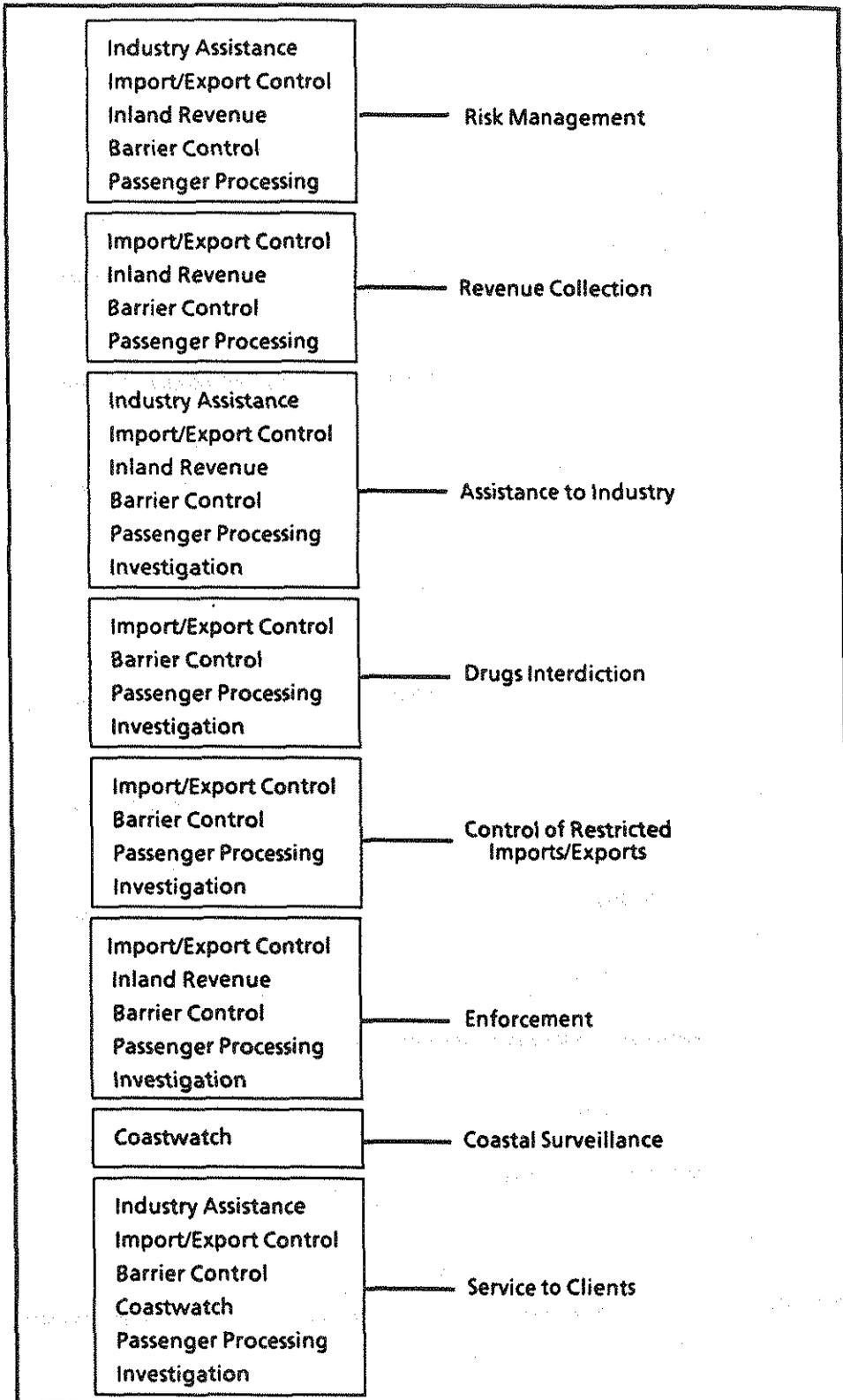
FIGURE 2.1

PROGRAM AND SENIOR MANAGEMENT STRUCTURE



**CORPORATE GOALS/SUB-PROGRAM**

**FIGURE 2.2**



2.23 In April 1989 the Deputy Comptroller-General defined devolution in simple terms as 'the placement of real authority as close to the work face as is consistent with informal decision making.'<sup>6</sup> He also categorised devolution in the public sector in 3 ways:

- . devolution of function;
- . devolution of corporate services and control; and
- . devolution of financial autonomy.

2.24 The result of the 1987 ACS reorganisation was to transfer to the national Sub-programs the functional autonomy previously found in the regions. By June 1989, in a submission to this Committee's FMIP inquiry, the Deputy Comptroller-General could report the following devolution as having occurred:

- . resource management devolved through national Sub-program management to regional managements;
- . powers to create, abolish and reclassify positions devolved to national Sub-program managers;
- . powers to direct officers to temporarily perform duties of a higher position devolved to national Sub-program managers; and
- . expenditure approval and the delegation for the certification of accounts devolved to national and regional Sub-program managements.<sup>7</sup>

2.25 The ACS submission to this inquiry stated that devolution of administrative responsibilities and authority to Sub-programs had been extensive. Categories of devolution were listed as travel; vehicle management; running costs (salaries/administrative expenses); certification of expenditure in regard to travel, purchasing, credit card transactions; powers to create and reclassify positions; and recruitment.<sup>8</sup> In essence the Sub-programs had been provided with the responsibility to implement their policies and the financial independence to undertake that implementation on a day to day basis.

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<sup>6</sup> *Management Perspectives on Devolution*. Department of Finance Discussion Paper, August 1989, p. 5

<sup>7</sup> FMIP Inquiry Submissions, p. S55

<sup>8</sup> Evidence, p. S41

2.26 The implementation of Program Management and its associated devolution of power is considered by the ACS as having been a successful venture which has produced great benefits. However it has not been without its problems.

2.27 An early difficulty, as described by the Deputy Comptroller-General in evidence to the FMIP inquiry, was to keep program managers corporate minded as well as program minded. A contributing factor to this problem was the implementation of the program restructure before the production of a Corporate Plan. The effect in the intervening six months was that some managers 'got away from the corporate direction.'<sup>9</sup>

2.28 The Comptroller-General also noted, in evidence to this inquiry, that in the early stages of the new structure, the independence of National Managers was encouraged, in order to allow them to establish themselves and their functional roles.<sup>10</sup>

2.29 Similar criticisms of the situation as it was after the restructure were made in submissions to the current inquiry. One noted that from 1 September 1987 'Regional Managers ... began to take little or no concern for other programs apart from their own.'<sup>11</sup>

2.30 A retired customs officer, reflecting on the introduction of program management from a regional perspective, described the restructure process as dividing the ACS workforce into separate 'tribes' which then had to fight for the 'meagre resources available.' The long term result of devolution according to this submission was that the shedding of responsibility from Central office led to ignorance in the states of what constituted national policy. The alleged result was that state policy was then devised and different rules transpired in different states.<sup>12</sup>

2.31 Such alleged differences in rulings between states was an issue often raised in evidence relevant to the Import/Export Control Sub-program. They will be treated in greater depth in Chapter 3.

2.32 The development of the initial and subsequent Corporate Plans, and associated Corporate Goals and Strategies assisted efforts to ensure that ACS managers developed and maintain a corporate outlook. Responsibility for achievement of individual Corporate Goals is shared by several Sub-programs. Figure 2.2 indicates the overlap which occurs. This shared responsibility leads to cooperation between Sub-programs and an assumption by staff of corporate as well as Sub-program accountability.

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<sup>9</sup> FMIP Inquiry Transcripts, p. 96

<sup>10</sup> Evidence, p. 377

<sup>11</sup> Evidence, p. S141A

<sup>12</sup> Evidence, p. S220

2.33 A mechanism designed to counteract the tendency of managers to be program minded and lose sight of a corporate perspective is provided in the position of the Collector of Customs in each region. The role of the Collector is discussed in the following paragraphs.

### **The Role of the Collector**

2.34 The 1987 restructure brought with it significant changes to a traditional Customs position - that of the Collector of Customs. Prior to the reorganisation the Collector operated in each state, with the delegated authority of the Comptroller-General and held overall functional responsibility for program delivery.

2.35 From 1987 the Collector was no longer responsible for program delivery in a direct sense. The role became that of Chief Executive in a region and representative of the Comptroller-General. As Chief Executive, the Collector is expected to provide a focal point for the overall leadership and cohesion of ACS staff, to ensure that high standards of service, morale and communication are maintained throughout the region, and to monitor program delivery.<sup>13</sup>

2.36 Submissions to the inquiry indicated that the change in the role of the Collector was not widely understood and was even considered as having rendered the position powerless and open to being abolished. A former officer submitted:

With each RM [Regional Manager] reporting to a National Manager., the RM can and does ignore the Collector when it suits. What then is the real position of the Collector? Is he just a figure head? Does he have any real power? It would seem from the Customs Act that the Collector is the only person who has a delegation to perform certain functions, but if it were not for this legal requirement, the Collector would not exist.<sup>14</sup>

The Public Sector Union observed:

One of the results of the change to a Program Management structure, has been that the role of the Collector has become less identifiable.

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<sup>13</sup> Evidence, p. S39

<sup>14</sup> Evidence, p. S141A

This has left the Collector in a position were (sic) there is no real power in the position. There are two possibilities for addressing this. Remove the Collector altogether, and allow the relevant program managers to take full control of their program, by reporting solely to their National manager....

The alternative, is to increase the power of the Collector in order to make the programs perform as a more cohesive unit.<sup>15</sup>

2.37 The Comptroller-General acknowledged that in the early stages there had been some confusion about the role of the Collector, even among the Collectors themselves, and that as he travels around regions, staff continue to ask questions about the role. He explained that some of the confusion probably stemmed from initial instructions given to the Collectors to withdraw from program delivery in order to allow national and regional managers to establish their positions. It was not until late 1988 that Collectors were 'asked to move to their full role as collector.'<sup>16</sup>

2.38 In recognition of the confusion surrounding the Collector's role the Comptroller-General issued a staff message in December 1988 which continues to be the definitive statement of the Collector's role. More recently in June 1990 the Victorian Collector issued a State specific note on the Collector's role as a response to continuing uncertainty expressed by senior managers in his region.

2.39 The Comptroller-General's statement detailed the role as one of:

- . providing a focal point for overall leadership and cohesion of Customs staff within a region;
- . enhancing the corporate Customs image;
- . monitoring work performance including program delivery in the region;
- . co-ordinating and providing independent assessment at regional level in relation to ACS evaluation activity;
- . responsibility for Sub-collectors, including a watching brief on resources and activities;

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<sup>15</sup> Evidence, p. S331

<sup>16</sup> Evidence, p. 377

- ensuring application of national management policies in relation to such matters as recruitment, uniforms, industrial relations, training and staff development;
- ensuring the provision of corporate services to the region;
- co-ordinating management responses in industrial disputes; and
- overseeing all aspects of audit and security for the ACS in the region.<sup>17</sup>

### ***Conclusion***

2.40 The Committee notes that while the traditional role of the Collector has changed, many regionally based commentators look to the time when the Collectors were in direct control of activity in their domains. In conjunction with the evolutionary process occurring in other areas of ACS administration, the role of the Collector has undergone significant development in recent years. While some uncertainty clearly persists about the precise nature of the Collector's tasks, the Committee supports the view of the ACS that the Collector's position must remain in order to provide direct linkage to the Comptroller-General, and to insure that national and corporate objectives retain due prominence in ACS regional operations.

### ***Recommendation***

2.41 **The Committee recommends that the position of Collector of Customs be retained in the Program Management Structure of the ACS, to fulfil the necessary role of maintaining awareness and commitment to corporate as well as Sub-program objectives in the regions.**

### **Control Mechanisms**

2.42 A system of management forums has been designed to co-ordinate the National and Regional levels of management. Matters and decisions relating to corporate-level management are considered by the Corporate Management Committee (CMC). The CMC now consists of the Comptroller-General, the Deputy Comptroller-General, the Head of Inspectorate and the National Manager, Co-ordination and Services. The CMC is advised by a number of senior management sub-committees including the Audit and Evaluation Committee, the National Operations Committee, the Legislation Review Committee and the Security Committee.

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<sup>17</sup>

Exhibit 45

2.43 To co-ordinate program management, National Managers meet weekly and all Central Office senior executive officers monthly. Both meetings are chaired by the Comptroller-General.

2.44 Regular Steering Committee Meetings of Regional Managers within each Sub-program are designed to foster cross-regional co-ordination. These meetings are chaired by the relevant National Manager. In addition Collectors' Conferences are held biannually and meetings of Sub-Collectors (Outport Managers) are arranged as required.

2.45 The role of the Collector as outlined above can also be seen as a control mechanism, providing a watch on the priority accorded by the regions to corporate objectives.

### **Conclusion**

2.46 The Committee recognises the importance that a hierarchical system of committees plays in providing co-ordination, overview and policy direction across Sub-programs. The Committee endorses this committee system as an appropriate control device within the program structure.

### **Management Reporting Systems**

2.47 The ACS has a formalised process of Management Reporting Systems. National Managers are required to report periodically to the Comptroller-General or the Deputy Comptroller-General as appropriate, providing summaries against key policy objectives and details of performance. Collectors at present report to the Head of Inspectorate and from July 1991 will report direct to the Comptroller-General.

2.48 All sub-programs have internal reporting systems built around the goals, objectives and performance indicators contained in the Corporate Plan. These form the basis of the internal management of the Sub-programs and the reporting to the Deputy Comptroller-General.

2.49 The development of performance indicators, as required by PMB principles, has proved difficult. In June 1989, in evidence to the Committee's FMIP inquiry the Deputy Comptroller-General acknowledged the difficulties inherent in designing adequate performance indicators:

We struggle with that, in that it may take 10 years to get a really good set of performance indicators based on outcomes.<sup>18</sup>

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<sup>18</sup> FMIP Inquiry Transcripts, p. 102

2.50 In evidence to the FMIP inquiry the Deputy Comptroller-General also observed that the key to good performance indicators was well defined objectives. Perusal of ACS Annual Reports and Corporate Plans indicates that progress has been made in this regard. Statements of Sub-program objectives have been refined in several instances to be stated in terms of outcomes rather than processes. The following example from the Passenger Processing Sub-program illustrates the development which has taken place. The first objective has been defined variously as:

Improve the interception at Australian international airports of prohibited goods including narcotics carried by passengers and crew;<sup>19</sup>

To increase annually the number and significance of interceptions of prohibited and restricted goods at Australian international air and seaports to improve the ACS contribution to community protection;<sup>20</sup> and

To improve community protection by increasing annually the number of interceptions of narcotics and other prohibited goods.<sup>21</sup>

2.51 The derivation of adequate performance indicators for such objectives however has proven difficult. For the objective discussed above performance information continues to be expressed in terms of level of interceptions and comparisons with previous years. (The most recent Corporate Plan also lists a measure of staff training.) A more accurate measure, as discussed in the Committee's first report<sup>22</sup>, of the extent of community protection achieved may be a measure of the level of narcotics and prohibited goods in the community, its rate of change and the contribution which ACS's interceptions have made to this.

2.52 In making this suggestion the Committee recognises the practical problems involved and that the measurement of effectiveness in drug interception has been a longstanding conundrum for law enforcement agencies. The difficulties experienced by the ACS in the development of performance indicators in this area, and in others, are not unique.

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<sup>19</sup> ACS Annual Report, 1988-89, p. 107

<sup>20</sup> ACS Corporate Plan, 1989-90, p. 29

<sup>21</sup> ACS Corporate Plan, 1990-91, p. 59

<sup>22</sup> *Risky Business - the 37 000 Kilometre Challenge*, op cit., pp 69-76

2.53 In its report of the FMIP inquiry, the Committee noted that the pace of development of good performance indicators had been generally slow, and recommended that Departments and agencies should make a concerted effort to develop performance information that assists decision-making and accountability.<sup>23</sup>

### ***Conclusion***

2.54 The Committee acknowledges the progress made by the ACS since 1987 in developing and refining statements of objectives and performance indicators. It notes however that there is still room for improvement in devising appropriate performance indicators which will accurately measure the achievement of desired outcomes.

### ***Recommendation***

2.55 ***The Committee recommends that the ACS improve its performance indicators so that they more accurately measure the achievement of desired outcomes.***

2.56 Separate monitoring arrangements for the Executive to assess the overall performance of the ACS are, at present, provided through the Inspectorate Sub-program and the Resource Management Component.

2.57 The role and objectives of Inspectorate are to carry out program evaluation and internal audit functions as well as specific tasks associated with corporate health and issues affecting a range of programs. The 'Inspectorate' concept came from the belief that to improve standards top management needed an independent monitoring capacity.

2.58 The objective of the Resource Management component is to provide, within agreed time frames and standards, a co-ordinated range of specialist financial services to assist Sub-programs towards achieving Corporate goals by advising the ACS Executive on corporate financial issues, and providing Sub-programs with resources management advice and information to enable them to make sound decisions about resource usage and measure efficiency and effectiveness.

### **Efficiency of Administration**

2.59 While, as noted above, the Committee received few submissions which addressed the issues discussed in this chapter, comments were received relevant to efficiency of administration.

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<sup>23</sup> *Not Dollars Alone*, op cit., p. 79

2.60 The Customs Agents Federation of Australia observed under this heading:

The current system of constant staff rotation may achieve versatility but it may also be wasteful of particular talent in specialised areas.<sup>24</sup>

This opinion, again under the heading 'Efficiency of Administration' was echoed in other submissions. The question of rotation of staff in fact became an important issue in the inquiry and as such is treated separately in Chapter 4.

2.61 In addressing the question of efficiency in general terms the Comptroller-General reported considerable support amongst ACS clientele for the changes that had occurred:

They can get their decisions quicker, they can get issues reviewed more rapidly and they are much more confident that they know where to go in the organisation when there is an issue they want addressed.<sup>25</sup>

2.62 An exception to this would appear to be in the Import/Export Control area, where the Committee received many criticisms of speed of decision making and review processes. These specific criticisms are considered in more detail in Chapter 3.

2.63 In examining efficiency of administration overall the Committee took note of the Summary of Achievements presented graphically in the 1989-90 Annual Report (Chapter 4). The Committee observed that while some performance targets were not met many were achieved and in some cases achievements were notable.

2.64 Measurement of efficiency involves a consideration of the relationship between outputs and inputs of a program. The Committee notes that the ACS achieved such results in a period in which ACS financial resources increased by 13.8% and the Average Staffing Level decreased by 0.5%. In the same period the annual number of travellers into Australia increased by 4.4%, import entries by 7.2%, overseas vessels requiring clearance by 2.5%, international mail articles by 10.2%.<sup>26</sup>

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<sup>24</sup> Evidence, p. S193

<sup>25</sup> Evidence, p. 379

<sup>26</sup> ACS Annual Report, 1990-91, p. 21

## Conclusions

2.65 The Committee notes that for the reporting period 1990-91 the ACS met or exceeded most of its targets. In a climate of static or decreased resources but increased workload the Committee considers these results to be indicative of efficiency in administration.

2.66 The Committee believes that the ACS continues to deserve its reputation, first noted in the course of the FMIP inquiry,<sup>27</sup> of being a leader in implementation of FMIP reforms and in particular Program Management and Budgeting. The program structure introduced in September 1987 has proved to be a successful one for an organisation administering a range of programs in a complex and changing environment. The Committee is impressed by the progress that the ACS has made in fine-tuning that model, and by its commitment to continued monitoring of management practices in order to rectify shortcomings. While there are areas remaining which require further improvement, the Committee is confident that the ACS is committed to, and capable of, taking the necessary steps towards those improvements.

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<sup>27</sup>

FMIP Transcript, P. 94

### 3. IMPORT/EXPORT CONTROL SUB-PROGRAM

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#### The Objectives of the Import/Export Control Sub-program

3.1 The purpose of the Import/Export Control Sub-program, as described in the ACS Corporate plan, is to administer statutory controls over Australia's imports and exports and to provide both protection to the community and assistance to commerce and industry.<sup>1</sup>

3.2 The sub-program objectives are:

- to collect the correct amount of duties and other revenue;
- to administer controls over Australia's imports and exports for community protection and other purposes;
- to operate systems for the entry and clearance of imports and exports within time frames comparable with commercial interests and overall Customs control;
- to deliver the intended level of assistance to industry; and
- to facilitate the development of Australia's commerce through the application of advanced technology to Customs processing.

In meeting these objectives the ACS is continually striving to balance its enforcement objectives of barrier control, revenue collection and industry assistance with facilitation of trade.

3.3 Import processing forms a major part of the operations of the sub-program. This process involves the preparation of import documents, known as 'entries' which detail the customs duty and other requirements applicable to the goods involved.

3.4 In 1985 a 'Red/Green' system of processing was devised, in recognition that in a time of resource constraints and consistent with a risk assessment approach it was no longer possible or necessary to carry out 100 per cent checks on import documentation. It also sought to accommodate commercial needs for the speedy clearance of goods from Customs control.

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<sup>1</sup> ACS Corporate Plan 1990-91, p. 41

3.5 Under the red/green system the 90 per cent of entries are considered low risk and speedily processed down a 'green line', within four hours. The assumption is that the documentation supplied and duty self-assessed by the importer are correct. The remaining entries are termed 'red line' and are directed to an Audit Bay or to another area for further examination.

3.6 A key development in the entry and clearance process in recent years has been the evolution and implementation of electronic data interchange systems. These systems, known generally as electronic initiatives, are operational both within the ACS and between it and its clients.

3.7 Submissions on Import/Export Control to the inquiry focused mainly on four issues - the penalty provisions of the Customs and Excise Legislation Acts (CELA) of 1989, consistency or the lack of it in Tariff Classification, relationships *between the ACS and importers and their agents, and staff training*. The first two are discussed in this chapter, while relationships, staff training, electronic initiatives and other matters are considered in subsequent chapters.

### **The Penalty Provisions of the CELA Legislation**

3.8 The Customs and Excise Legislation Amendment Acts (CELA) which came into force on 1 July 1989 were devised as a precursor to a fully automated system for the clearance of imported goods. The legislation is designed to place a higher level of responsibility on the owner of the goods, or his or her Customs Agent, to provide full and accurate information to enable the correct duty to be calculated.

3.9 The major features of the legislation include:

- . administrative penalties for an error in entry (import documentation) which results in a shortpayment of duty;
- . the obligation on importers to keep commercial documents relating to import transactions for a period of five years; and
- . powers for authorised Customs Officers to visit commercial premises to inspect and copy documents relating to import transactions.

3.10 An administrative penalty may be applied in respect of an error committed 'knowingly, recklessly or otherwise.'<sup>2</sup> The penalty prescribed is twice the amount of duty shortpaid. Applications may be made for remission of the penalty and recourse may be had to the Administrative Appeals Tribunal against a decision by the ACS not to approve a remission.

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<sup>2</sup> Customs Act 1901, Section 243T

3.11 Provision exists for the importer or agent to obtain classification or valuation advice/ruling from the ACS prior to or at the same time as an entry is lodged. An importer may also indicate on the entry lodged with the ACS that there is reason for uncertainty about some aspect of the entry. Such lodgements are protected from penalty to the extent of the acknowledged uncertainty.

3.12 In 1989-90 1.7m Customs clearance documents were lodged. Of these 636 (0.04%) were subject to administrative penalties. Approximately 50 per cent of the penalties served were for incorrect tariff classification and 20 per cent related to valuation.

3.13 At the time of the introduction of the penalty provisions almost all remission applications were rejected. Over time, with experience and the modification of ACS guidelines for the granting of remissions, there has been an increase in the proportion of remission applications which are approved at least in part. About half of the penalties imposed in 1989-90 were subject to remission applications, of which 60 per cent were approved in full or part.

3.14 In 1989-90 the number of requests for formal tariff and valuation advice increased around ten-fold and averaged 2100 and 200 requests respectively each month. This has occurred as a consequence of the introduction of administrative penalties, because requests for formal advice provide a safeguard against penalty imposition. The resources required to meet this increased demand resulted in a decreased ability to carry out audit activity. When audit work increases it may result in an increase in penalty notices served as a proportion of total entries.<sup>3</sup>

3.15 The 1989-90 Annual Report states that a random sample of import entries over the 12 month period since the introduction of the legislation indicated a 50 per cent drop in the error rate on entries, the bulk of which were errors adverse to the revenue.<sup>4</sup>

3.16 Approximately three quarters of the submissions to the inquiry relevant to Import/Export Control addressed the CELA legislation and associated administrative penalties. Criticisms ranged over the concept of the legislation, its administration and its outcomes.

3.17 The Chamber of Commerce and others maintained that the imposition of penalties is a judicial function which has been inappropriately placed with bureaucrats.<sup>5</sup>

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<sup>3</sup> ACS Annual Report, p. 59

<sup>4</sup> *ibid*, p. 58

<sup>5</sup> Evidence, pp. 155, S216, S447

3.18 Some submissions asserted that the prime objective of the Import/Export Subprogram should be the protection of Australian industry rather than the raising of revenue, and that the penalty provisions accomplish nothing in relation to protection. Late collection of duty was then viewed as a tax which does not provide protection at the time it is needed, ie at the time of importation.<sup>6</sup>

3.19 Customs agents and the Queensland Premier's Department argued that many importers would prefer full check on entry and resultant certainty, to a four hour clearance time accompanied by the threat of subsequent penalties.<sup>7</sup> However, the results of a survey of client perceptions of the Import/Export Control Subprogram carried out in 1990 found speed of service to be a crucial factor for many clients.<sup>8</sup> The survey, carried out by AGB:McNair, was commissioned by the ACS to gauge the requirements and expectations of the commercial sector, and reactions to both current and proposed services and facilities.

3.20 It was often argued that the penalty provisions are too severe particularly in relation to 'innocent' errors and 'errors' which are the result of differences in opinion on classification and valuation. Several submissions stressed that classification and valuation are not exact sciences.<sup>9</sup>

3.21 While recourse can be had to the AAT or the Federal Court in cases of dispute several submissions maintained that for many importers this requires a financial and time expenditure which they may be unable to afford.<sup>10</sup>

3.22 The Law Council argued strongly that where a self assessment system is in operation it should be accompanied by 'basic safeguards - binding rulings, good quality primary decision making and proper liaison.' It suggested that training for Customs Officers was crucial and that a Customs Liaison Committee similar to those operating in the tax area should be established.<sup>11</sup>

3.23 Though the ACS guidelines make it clear that discretion should be exercised, and that a penalty is not to be automatically imposed it was suggested by the Ombudsman and others that discretion is not always applied by Customs Officers.<sup>12</sup>

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<sup>6</sup> Evidence, pp. 267, S137, S194, S223

<sup>7</sup> Evidence, p. S252

<sup>8</sup> AGB:McNair, *Client's Perceptions of the Import/Export Control Subprogramme*, May 1990, p. 46

<sup>9</sup> Evidence, p. 267, p. S692

<sup>10</sup> Evidence, pp. 190, S448. Qld Premier sub, Sub 67

<sup>11</sup> Evidence, pp. 205, 218, S297

<sup>12</sup> *Commonwealth & Defence Force Ombudsman Annual Report 1989-90*, p. 43; Evidence, p. S448

3.24 While discretion may be applied in deciding whether or not to impose a penalty, the legislation does not provide discretion in the amount of penalty to be applied. The prescribed penalty - 200 per cent of the duty shortpaid must be applied in all cases. It was argued that it is inefficient to have a mandatory penalty which can only be reduced by a subsequent remission. If discretion could be applied in penalty rates then many remission applications may be unnecessary.

3.25 The Chamber of Commerce recommended a sliding scale of penalties rather than remissions. The ACS response to this suggestion was that it would be very difficult to construct the necessary guidelines to embrace every contingency.<sup>13</sup>

3.26 Late in 1990 the Tax Office, however, announced that a similar concept would apply to self assessment of income tax. Penalties will depend on the extent to which the taxpayer failed to exercise due diligence.

3.27 The attention of the Committee was also drawn to Article V111 (3) of the General Agreement on Tariffs and Trade, to which Australia is a party. The article states:

No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

3.28 The Chamber of Commerce also drew the Committee's attention to a scheme suggested by the Law Reform Commission in a Discussion Paper.<sup>14</sup> Under this arrangement the importer would have the choice of immediate penalty payment or of opting to take the matter to court where the penalty imposition and amount would be decided by the judiciary. The Chamber acknowledged that such a system would be expensive in terms of time and costs.

3.29 Many attributed a perceived decline in relationships between the ACS and the importing community to the penalty provisions. It was suggested that, as a result of acrimony over penalties, the parties are now functioning as adversaries where they previously co-operated.<sup>15</sup>

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<sup>13</sup> Evidence, pp. 156, 332

<sup>14</sup> Law Reform Commission Discussion Paper No 42, April 1990, p. 28

<sup>15</sup> Evidence, pp. S203, S251, S445

### ***Conclusions***

3.30 While it recognises that the 1989 CELA legislation has been in operation only since July 1990 and that some adjustment period was to be expected among the ACS and its clients, the Committee considers that in its present form the legislation appears to be too harsh in its effects on owners and agents. In particular the Committee believes that the concerns expressed about the lack of provision for minor errors or 'errors' which arise from a difference in opinion as to tariff classification are justified.

3.31 The Committee also believes that changes in ACS administration of the legislation may ameliorate some of the antipathy towards the penalty provisions.

### ***Recommendations***

3.32 **The Committee recommends:**

- . **that, in late 1991, the 1989 CELA legislation be formally reviewed by an independent body such as the Australian Law Reform Commission;**
- . **that the legislation be amended to introduce a sliding scale of penalties, and to include the recognition that what are now deemed to be classification 'errors' could in some cases be interpreted as differences in opinion rather than misleading statements; and**
- . **that the ACS conduct a review of its administration of the penalty provisions with a view to ensuring the exercise of appropriate discretion in their application.**

3.33 The Committee was impressed by the suggestion of the Customs Agents Federation that the ACS introduce a Release on Minimum Documentation (RMD) system for cargo release. Under an RMD system community protection and tariff protection are split. Community protection requirements must be met at the barrier but goods can then be released with agreed duty being paid later.<sup>16</sup>

3.34 The Committee pursued this suggestion with the ACS. It was reported that ACS management had investigated how such a system works in other countries such as Canada and New Zealand, and that moves towards paperless entry processing were considered to provide a 'real window of opportunity' to move

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<sup>16</sup> Evidence, pp. S190, 283

towards an RMD system. Some problems were identified in data collection, which would impinge on Treasury and the Bureau of Statistics. It was not considered that a significant increase in staff resources would be required if such a change were implemented.<sup>17</sup>

### ***Conclusion***

3.35 The Committee believes that a viable alternative to the present 'Red/Green' system and the associated penalty provisions could be provided by an RMD system of cargo release. Such a system would enable collection of the correct amount of duty in an unpressured time frame, while continuing to ensure community protection.

### ***Recommendation***

3.36 **The Committee recommends that when practicable the ACS move to a Release on Minimum Documentation system.**

### **Tariff classification**

3.37 Allegations of inconsistency in classification of the same goods between individuals and between regions were raised in submissions from the Chamber of Commerce, the Law Council, the Customs Agents Federation of Australia, the Customs Agents Association of Queensland and the Customs Agents Institute of Australia (Queensland Division), and in some submissions from individuals. The resulting uncertainty for importers trying to make sound business decisions was reported to be of considerable concern.

3.38 It was also alleged that the ACS often preferred not to follow the AAT interpretation in subsequent disputes, thereby causing further uncertainty for importers. In his annual report<sup>18</sup> the Ombudsman referred to remarks made by Mr Justice Davies in giving his reasons for judgment in *Collector of Customs v LNC (Wholesale) Pty Ltd* (21/11/89). Justice Davies observed:

It has been rumoured for some time that the Collector of Customs has been reluctant to give effect to decisions of this Court and of the Administrative Appeals Tribunal, reluctant to change a decision once made, and reluctant to give practical effect in monetary terms to a decision of the Collector.

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<sup>17</sup> Evidence, pp. 336-339

<sup>18</sup> op. cit., p. 41

3.39 The LNC case concerned a dispute whether, on highly technical grounds, the ACS was obliged to give effect to certain decisions of the court and the AAT. The dealings over the case had lasted for several years and had taken the applicant to the Federal Court or the AAT on four separate occasions. The Ombudsman also referred to a Supreme Court case, *Dahlia Mining Company Ltd and Anor v Collector of Customs* (6/10/89) which concerned whether, in the absence of a specific effectuating provision as found in section 167(2) of the Customs Act, decisions of the AAT were enforceable.<sup>19</sup>

3.40 In AAT decision No. V89/162 *Re The Bicycle Corporation Pty Ltd and Collector of Customs* (15/12/89) Deputy President I R Thompson outlined the ACS case that previous decisions of the AAT in similar disputes had been wrong. He upheld these decisions and observed that :

Consistency [in decision-making by the Tribunal] is particularly important in decisions relating to commercial and fiscal matters where businessmen adapt the conduct of their business to accord with what the Tribunal has decided particularly where its decision has not been made the subject of an appeal to the Federal Court.

3.41 It was often suggested in evidence that an improved standard of primary decision-making would lessen the instances of inconsistency. Several submissions called for an upgrading in the training available to Customs Officers as a way of achieving this result. One possibility raised was for Customs Officers to undertake part or all of the same training as is undertaken by Customs Agents. It was not clearly established however that such joint training would increase consistency in classification among Customs Officers and between regions.<sup>20</sup>

3.42 In response to assertions of inconsistency the Comptroller-General maintained that while there was a problem with inconsistency it was not of the dimension represented by the agents. He reported that agents had told him that the reason they had pursued an 'inconsistency kick' was to demonstrate that Customs Officers were fallible, in the hope that when it came to inflicting automatic penalties, those officers might, likewise, accept that the agents were also only human.<sup>21</sup>

3.43 Action being undertaken by the ACS to improve consistency includes the establishment of a computerised database of previous decisions made by the Customs Service, and by the AAT, so that all officers making subsequent decisions will have that information available to them. This information will also be made available on-line to Customs agents.<sup>22</sup>

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<sup>19</sup> ibid

<sup>20</sup> Evidence, pp. 180,183, 215-216, 229, 271, S450

<sup>21</sup> Evidence, p. 396

<sup>22</sup> Evidence, pp. 355-356

3.44 The ACS also listed training as a method of improving classification skills. As of July 1990 it had in place a series of training modules, many of which are self paced and workplace based. No evaluation of the training package has yet been carried out.<sup>23</sup>

3.45 Much of the evidence received early in the inquiry from ACS clients expressed concern about dispute settling mechanisms in regard to tariff classifications, and sought the re-establishment of a central appeal body. The Committee was subsequently informed by the National Manager, Import/Export Control, that it had been decided to centralise the final dispute settling process within Tariff Branch in Industry Assistance in Canberra. The announcement of this decision was welcomed by the Committee and subsequently by client organisations affected.<sup>24</sup>

3.46 Allegations of 'port shopping' were made in evidence given by several agencies.<sup>25</sup> 'Port shopping' refers to the practice of routing shipments to clear them at a port providing the most favourable duty rate. This practice can only be possible if classifications vary between ports. In evidence given *in camera* the Law Council gave specific example of commodities for which port shopping was common. Due to the confidential nature of this evidence the Committee was unable to refer it to the ACS for response. In general the Comptroller-General asserted that the extent of the practice had been overstated, although he did not entirely discount it.

### ***Conclusions***

3.47 The Committee agrees that consistency in tariff classification would be increased by improving the quality of primary decision making. This in turn is dependent on the adequacy of training. It is important to be sure that the training packages in place meet their objectives.

3.48 The Committee endorses the ACS decision to establish a central dispute settling body in Canberra. This move, which was sought in many of the submissions to the inquiry, should increase the confidence of importers and their agents by providing a degree of certainty in rulings which was lacking in the preceding system.

3.49 The Committee believes that the allegations of port shopping have been sufficiently substantiated to warrant further inquiry. If port shopping does occur to a significant extent it needs to be addressed not only from an equity perspective but also in terms of a possible loss to revenue.

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<sup>23</sup> Evidence p. 357

<sup>24</sup> Evidence, p. S693

<sup>25</sup> Evidence, pp. 170,186, 222

***Recommendations***

3.50 The Committee recommends that:

- the training prospectus put in place in 1990 be evaluated in late 1991 with respect to its success in developing adequate classification skills in Import/Export Control officers.
- the ACS conduct an investigation to gain an accurate measure of the extent of 'port shopping', in order to remove possible inequities and to gauge the potential loss to the revenue caused by such practices.

## 4. RELATIONSHIPS BETWEEN THE ACS IMPORT/EXPORT SUB-PROGRAM AND THE COMMERCIAL COMMUNITY

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4.1 In the first phase of the Customs inquiry which reviewed other elements of ACS operations, no concern about ACS relationships was expressed by clients either in evidence or in informal discussion. In many instances the opposite pertained with Coastwatch clients for example commenting on the excellence of the relationship.

4.2 In regard to the Import/Export areas however, the belief that relationships between the ACS and client agencies have declined in recent years was prevalent in evidence received from client agencies. The following phrases taken from different submissions are illustrative of the perceptions put to the Committee:

- . the ... effect of the deficiencies in management and performance has been a deterioration of the relationships between the Australian Customs Service, the importing community and the customs agents profession<sup>1</sup>;
- . the ACS perceives itself as being something apart from the Commercial community<sup>2</sup>; and
- . a fair percentage of Customs officers view it as their responsibility to make importing as difficult as they can<sup>3</sup>.

4.3 Some witnesses qualified such criticisms by suggesting that on the whole relationships are good at the senior level but have deteriorated at the lower operational levels, particularly since the advent of the 1989 CELA legislation and associated penalties.<sup>4</sup>

4.4 An AGB:McNair survey commissioned by the ACS to review client perceptions of the Import/Export Control Sub-program also found that 'the ACS does not have a very positive image among its clients.' It was seen to be:

- a traditional organisation which is slow to change;

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<sup>1</sup> Evidence, p. S294

<sup>2</sup> Evidence, p. 174

<sup>3</sup> Evidence, p. 294

<sup>4</sup> Evidence, pp. 219, 228, S190

- a bureaucratic system which creates unnecessary red-tape; and
- a system which is not sympathetic to commercial needs.

4.5 An attitude of intransigence has been said to permeate negotiations with the ACS. The Law Council, and others, furnished the Committee with copies of correspondence between themselves and the ACS to illustrate this attitude, and to allow the Committee to gain an understanding of the difficulties they have experienced in negotiations with ACS officers.<sup>5</sup>

4.6 Some assertions went as far suggesting that clients feared retribution from Customs if complaints were made or decisions went against the ACS at AAT hearings. The evidence offered for these assertions was of a generalised, anecdotal nature rather than detail of specific instances.

4.7 The Law Council sought to give evidence *in camera* on the grounds that clients were not prepared to allow their names to go forward to the inquiry as they were afraid of repercussions. This was echoed in the evidence of another witness who claimed:

The worst difficulty I found in coming to this Committee was ...to get someone - anyone - to allow me to put their names forward as an example. They would not allow it because they were frightened of the repercussions.<sup>6</sup>

A former Customs Officer also stated: 'Many feel that to challenge Customs will only cause subsequent victimisation.'<sup>7</sup>

4.8 A representative of the Customs Agents Federation of Australia stated that the penalty legislation and recourse to the AAT had created an adversarial approach, and when Customs Officers lose a case they lose face and 'aim to get square next time.'<sup>8</sup>

4.9 However when it was suggested to the Comptroller-General that clients may be reluctant to come forward with complaints against the ACS because they feared some form of retribution he replied: 'I laugh at that. We are a professional organisation - we are not in the business of retribution.'<sup>9</sup>

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<sup>5</sup> Evidence, p. 209, 289, pp. S536-S543, Exhibits 29, 35  
<sup>6</sup> Evidence, p. 323  
<sup>7</sup> Evidence, p. S224  
<sup>8</sup> Evidence, p. 290  
<sup>9</sup> Evidence, p. 402

4.10 The National Manager, Import/Export Control reported that Regional Managers had been advised that:

one of the things I will judge them on at the end of the year is the way in which they handle their relationship with the customs agents community and anybody else they deal with.

However he also believed that:

if there is a mood, for example, among the Queensland customs agents community that says that they have a resistance policy towards the administrative regime, often the 'them and us' situation is occurring on the other side of the counter and not on my side of the counter.<sup>10</sup>

4.11 The Comptroller-General asserted that contrary to the findings of the AGB:McNair survey the relationship with agents was very good at the national level while at the state level it was satisfactory overall. He cited in particular an occasion on which the ACS and members of CAFA had given a joint presentations at international conference.<sup>11</sup> In subsequent correspondence from CAFA the Committee was informed that this presentation concerned the introduction of electronic initiatives and did 'not constitute grounds to say friction does not exist between the ACS and the customs industry in other areas.'<sup>12</sup>

4.12 The Comptroller-General postulated that in Brisbane and to a lesser extent Adelaide friction between agents and the ACS had resulted mainly because the agents regarded themselves as being under more of a threat from the ACS electronic initiatives than those in major ports. With the advent of electronic clearance processes, business formerly conducted in these smaller ports may be transferred to larger ports. The Comptroller-General stated that there may also be a view among Brisbane agents that if they attack the ACS on the question of relationships, the ACS might be prepared to be more accommodating on the subject of administrative penalties.<sup>13</sup>

4.13 The Customs Agents' Institute of Australia (CAIA) (Queensland Division) and the Customs Agents' Association of Queensland in a response to this evidence maintained that the information provided by the Comptroller-General was of a 'hearsay nature'. The nexus of the relationship between the parties was said to stem from the introduction of the CELA legislation of 1989:

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<sup>10</sup> Evidence, p. 363

<sup>11</sup> Evidence, p. 392

<sup>12</sup> Evidence, p. S691

<sup>13</sup> Evidence, pp. 392-394

At that time a decision was taken by the CAIA to place the relationship between the ACS and the CAIA on what could be considered as a more professional basis. From that date members of the CAIA, in a manner similar to that of the ACS, were no longer willing to accept errors made by the ACS on correspondence or documentation flowing between the parties.<sup>14</sup>

4.14 Allegations of abuses of power by investigation officers were put forward by the Law Council. The ACS responded that the general nature of the allegations made it impossible to reply with any degree of specificity. Another witness also alleged, however, that:

with the investigation officers - I am firmly of the opinion that they work on the basis of the end justifies the means... The whole training outlook and philosophy of the investigation officers is wrong.<sup>15</sup>

4.15 The Law Council alleged further that of the 'two or three dozen raids' conducted over the last two to three years the vast majority were fruitless with the parties involved being innocent.<sup>16</sup>

4.16 Figures subsequently supplied to the Committee by the ACS were inconclusive in determining the success level of raids. Of 59 Section 214 warrants issued in 1989-90 four have resulted in prosecution, nine cases have been dropped, 36 are still under investigation, eight have resulted in administrative penalties being issued and two cases have been settled by agreement.<sup>17</sup>

4.17 A CAFA representative also reported that on numerous occasions Customs officers undertaking audits had presented in an aggressive and threatening manner.<sup>18</sup>

4.18 In response Import/Export Control representatives said that they had never heard of that kind of problem in audit work.<sup>19</sup> In regard to the Law Council allegations the Comptroller rejected completely the 'generalised allegations.' He added that 'in the enforcement environment, one of the first defences against any enforcement officer is to claim harassment, or undue process.'<sup>20</sup>

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<sup>14</sup> Evidence, Sub 68

<sup>15</sup> Evidence, p. 322

<sup>16</sup> Evidence, p. 235

<sup>17</sup> Exhibit 41

<sup>18</sup> Evidence, p. 291

<sup>19</sup> Evidence, p.366

<sup>20</sup> Evidence, pp. 400-401

## *Conclusion*

4.19 On the evidence presented to it the Committee was unable to establish the existence or extent of alleged abuses of power by investigation and audit officers. The Committee noted that an inquiry into the ACS conduct of the Midford case, and associated issues, was referred in December 1990 to the Joint Statutory Committee on Public Accounts. The 'practice, propriety and method of the ACS of gathering evidence for prosecutions and dealing with the public in the course of... investigations' is one of the matters referred to that inquiry. As the evidence the Committee received regarding alleged abuses of power was inconclusive, judgement in these areas is best left to the more specific Public Accounts Committee inquiry.

4.20 The desirability of a good public image is recognised by the ACS in its 1989-90 Annual Report. Under the heading 'External Relations', are listed public awareness campaigns on Electronic Initiatives, changes to the Drawback/Texco Export Concession Scheme, Commercial Fraud, Coastwatch, and Endangered Species and international contacts and liaison arrangements are enumerated.<sup>21</sup> No mention is made however of local consultative mechanisms.

4.21 Both the Customs Agents Federation of Australia (CAFA) and the Law Council suggested that suitable liaison structures could provide a means of resolution of the current problems they perceive between themselves and the ACS. CAFA particularly sought adequate consultation on legislation before it goes to Parliament.<sup>22</sup> The Law Council suggested the establishment of a formal liaison committee, similar to the Taxation Liaison Committee and Sales Tax Liaison Committee, established by the Commissioner of Taxation.<sup>23</sup>

4.22 A similar liaison body was suggested by a former Customs Officer now employed in a commercial firm :

The ACS should be encouraged to meet regularly with consultants and customs agents either as a total body or as individual groups to encourage an interchange of information and to discuss issues of common interest e.g. proposed changes to legislation, new processing systems, recent judicial findings etc.<sup>24</sup>

4.23 In response to these proposals an Import/Export representative advised that he was unsure how much practical effect a customs liaison committee would have in relation to Customs agents. It was argued that close consultation already occurs between the ACS and the agents industry 'on legislation or anything else.'

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<sup>21</sup> Evidence pp. 106-107

<sup>22</sup> Evidence, p. 297

<sup>23</sup> Evidence, p. 205

<sup>24</sup> Evidence, p. S144

While such close consultation occurs on the principles which are going to be included in legislation agents are not given copies of draft legislation 'because of a fairly strong view in the organisation that that is a matter reserved for the Parliament.'<sup>25</sup>

4.24 The National Manager outlined consultative arrangements in place which he appeared to believe were adequate to overcome some of the perceptions that Customs' mode of operation was one of confrontation rather than co-operation. In each state the Collector leads the senior management team into formal monthly discussions with the regional local Customs Agents Association. The minutes of those meetings are seen by the National Manager. Issues arising at these meetings may then be included on the agenda of the six monthly meetings at national level with the Customs Agents Federation.<sup>26</sup>

4.25 The Comptroller-General in response to a question on consultation listed a series of agencies with which the ACS has contact.<sup>27</sup> It is only with the Customs Agents Associations and the Customs Agents Federation however that such meetings take place on a regular and predictable basis.

4.26 The Law Council's proposal for a formal liaison committee has met opposition from the Comptroller-General, although in late December 1990 some shift in ground appeared to have taken place. In correspondence between the ACS and the Law Council over its submission to this inquiry the Law Council observed that:

all of the problems raised in the Law Council's submission could have been adequately dealt with to the satisfaction of the Service and all interested parties if a body were set up along the lines of the Sales Tax Liaison and Taxation Liaison Committees in which the Law Council is involved and which have been operating successfully for some time.<sup>28</sup>

4.27 In response the Comptroller wrote:

Until there is some indication of a more constructive approach on the part of your Council to liaison with the ACS there seems no point in pursuing dialogue.<sup>29</sup>

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<sup>25</sup> Evidence, pp. 345-346

<sup>26</sup> Evidence, p. 365

<sup>27</sup> Evidence, p. 380

<sup>28</sup> Exhibit 35, letter dated 18 October 1990

<sup>29</sup> Exhibit 35, letter dated 14 November 1990

4.28 In further correspondence however the Comptroller-General referred to an earlier Law Council proposal for formal liaison to be established with the Collectorates. He wrote:

I would be happy to receive further details and have discussions with the Law Council on more constructive arrangements for dialogue but I would flag that some machinery in my view needs to be considered at the national level.<sup>30</sup>

4.29 This apparent reluctance, prior to December 1990, of the Comptroller-General to institute such formal liaison mechanisms may be viewed as reflecting the characteristic of being 'inward looking' ascribed to the ACS by the Ombudsman in his 1989-90 Annual Report. He observed that:

complainants have alleged excessive willingness on the part of Customs to litigate; reluctance to accept views of the courts and the Administrative Appeals Tribunal that are contrary to its own; reliance on highly technical legal interpretations; harshness in its administration of penalty policies; and unwillingness to hear representations or to reconsider decisions.<sup>31</sup>

4.30 All of these criticisms have also been levelled at the ACS in one or more of the submissions put to this inquiry.

### ***Conclusion***

4.31 The Committee considers that the views expressed to it by various agencies, and the findings of the AGB:McNair survey, are indicative of shortcomings in relationships between the ACS and the trading community. This is in contrast to the Committee's findings for other aspects of the ACS which it has examined. The cause of these difficulties has not clearly emerged but would appear to be due in part to the tendency, in the commercial area of Import/Export Control, to adopt a law enforcement approach to the collection of customs duty. Resentment by the agents industry of the penalty provisions of the CELA legislation also appears to be a contributory factor.

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<sup>30</sup> Exhibit 42, letter dated 20 December 1990

<sup>31</sup> Commonwealth & Defence Force Ombudsman Annual Report op cit, p. 40

***Recommendation***

4.32       The Committee recommends that a Customs Consultative Committee be established to provide a forum which meets regularly at national level, for the discussion of Customs issues relevant to those in the trading community. Such issues could include administrative procedures, draft legislation where appropriate, and changes in policy. Membership of the committee could be drawn from Customs agents' associations, the Law Council, Customs consultants, and importers' representatives.

## 5. ELECTRONIC INITIATIVES

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5.1 A stated objective of the Import/Export Control Sub-program is to facilitate the development of Australia's commerce through the application of advanced technology to Customs processing.<sup>1</sup> To achieve this aim the ACS has adopted Electronic Data Interchange (EDI) as a strategy. In so doing it recognises that it shares common goals with its clients to keep costs to a minimum by moving and clearing cargo as efficiently as possible while ensuring that community protection is maintained.

5.2 Electronic transfer of information means cargo information can be processed more quickly and the cargo itself can be moved more speedily from discharge areas. The reduction in paperwork is expected to save time and money for all concerned. With its procedures streamlined, the ACS will have less need for administrative intervention in the trading process so traders will be able to meet ACS requirements more quickly and simply.

5.3 Additionally, the Inter-State Commission (ISC) Report, *Waterfront Investigation* (March 1989) suggested that the application of modern communications technology to improve information flow was vital to the successful reform of the industry. A trade industry community network, Tradegate, was subsequently established to facilitate the introduction of electronic initiatives across the whole trading community. This network, Tradegate, incorporated in August 1989, had the ACS as one of its initial and most significant shareholders.

5.4 It is anticipated by the ACS that its initiatives will take some years to implement. A long-term outcome is an expected reduction of up to 200 in Import/Export Control staff during the next ten years.

5.5 The first ACS initiative in the area of EDI was the Export Integration system (EXIT). EXIT is a 'dial-up' electronic system designed to replace the Export Return Scheme, the traditional paper based method of administering exports. An objective of EXIT is to provide export approval to EXIT users within ten minutes of export entries being sent from their computers.

5.6 Both the ACS and clients reported some teething problems with the implementation of EXIT. The difficulties included slow response times and bad connections. These problems have been addressed in further developments of the system and it is expected that they will have been resolved in the most recently released version.<sup>2</sup>

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<sup>1</sup> ACS Corporate Plan 1990-91, p. 41

<sup>2</sup> Evidence, pp. 51, 199; ACS Annual Report 1989-90, p. 56

5.7 The financial year 1989-90 saw the introduction of Electronic Funds Transfer (EFT) for duty payments. The EFT facility was added to the existing COMPILE (Customs On-line Method of Preparing from Invoices Lodgeable Entries) system. The EFT system aims to save importers time and money in the movement of goods and to provide the ACS with a more cost effective duty collection system. It also provides the ACS with an opportunity to eliminate paper in the import sector.

5.8 The first phase of a Cargo Automation system was also implemented in 1989-90. Cargo Automation is a system for assessing information on imported cargo, using automated risk profiles concerned with revenue fraud and prohibited goods, and for performing accounting functions on cargo. It is based on the electronic transmission of cargo information, such as waybills and manifests, to the ACS before the arrival of the vessel or aircraft in Australia.

5.9 An automated entry system, the Interim EDI for Input of Customs Entries (EDIFICE), became available for commercial use in June 1990. This system allows importers and agents to transfer import entry data automatically to the ACS COMPILE system from their own computer, and eliminates the need to re-key data. This should result in a decrease in human error, as well as lowered costs for users and faster entry creation.

5.10 In contrast to the criticisms received of other aspects of the Import/Export Control Sub-program, submissions to the inquiry were in general supportive of the ACS Electronic Initiatives. Similarly the AGB:McNair survey reported that the ACS has 'a positive image among its clients in terms of initiatives in the field of computer technology.'<sup>3</sup>

5.11 The Customs Agents Federation was particularly enthusiastic in its support for the continued introduction of EDI technology, and the importance of the central role of the ACS in the community network. The corollary of this observation was the argument that any resources sought by the ACS to achieve the goal of the trading community embracing EDI, should be made speedily and freely available.<sup>4</sup>

5.12 Specifically CAFA desired more speedy introduction of planned developments. A particular complaint was a perceived delay in the introduction of the electronic entry, following a trial conducted in motor vehicle industry. CAFA suggested the introduction of the initiative to industry section by section.<sup>5</sup>

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<sup>3</sup> AGB: McNair survey, op cit., p. 15

<sup>4</sup> Evidence, p. S192

<sup>5</sup> Evidence, p. 298

5.13 The ACS outlined the difficulties involved in such a process compared to a single conversion for all industry at one time. The determination of industry categories would be an initial problem, followed by the need to make industry specific arrangements on permits and regulations.<sup>6</sup>

5.14 CAFA's assessment of the importance of the ACS role in EDI development was supported by the Chief Executive Officer of Tradegate, who also applauded the initiative of Customs in this area. He also sought to promote further involvement by Customs within the community to ensure that the joint needs of Customs and the community were met, particularly in the area of cargo automation.<sup>7</sup>

5.15 Moreover, the EDI network was also seen to have the potential to assist in the speedy transfer of information, which would in turn enable more rapid decision making on questions of classification and valuation.

If the information can flow through electronically ... from overseas, through networks overseas, into the Tradegate process network here and thence through to Customs, that would give people in Customs and in the community the ability to assess what that information means even before the goods reach Australia. That is theoretically possible and it is technically possible, but it is only possible if the community work together to achieve it.<sup>8</sup>

5.16 This last observation reflected a concern raised in evidence by both the ACS and agents, of the need for education of overseas suppliers and importers in policy and practice, not only in relation to EDI but also general ACS operations. Importers in particular needed to be more aware of the desirability of seeking early advice on classification, valuation and quota matters.<sup>9</sup>

5.17 The lack of knowledge among importers is demonstrated further by the results of the AGB:McNair survey which reported that 76 per cent of importers leave all their dealings to their appointed Customs Agents. Spontaneous awareness of electronic initiatives among importers is at one-third the level (31%) of that among Customs Agents.<sup>10</sup>

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<sup>6</sup> Evidence, pp. 347-348

<sup>7</sup> Evidence, p. 242

<sup>8</sup> Evidence, p. 242-243

<sup>9</sup> Evidence, pp. 190, 194, 300, 350

<sup>10</sup> AGB: McNair Survey, op cit., pp. 20, 27

5.18 A contributing problem may be the lack of a cohesive organisation to represent importers and to provide a conduit for liaison with the ACS. While associations of sectional industry importers exist there is no overall co-ordinating body. In the absence of such a body the customs agents' associations and CAFA have taken on de facto representational role.<sup>11</sup>

5.19 Attempts have been made by the agents to ameliorate these difficulties. The CAIA runs brief courses on import procedures to educate the importing community on aspects such as finance, insurance, transportation of goods, facilitated clearance and administrative penalties.<sup>12</sup>

5.20 Some frustration was still evident however in agents who had endeavoured to improve the quality of information supplied by the importers on whose behalf they acted. One agent recounted his experience of designing a form to be filled in by importers to ensure all necessary information was provided to secure a decision from the ACS. Of some 140 sent out approximately five were returned.<sup>13</sup>

### ***Conclusion***

5.21 The Committee considers that there is a need for importers to become more aware of the policy and practice of the ACS and its operations. To facilitate this the establishment of a representative importers' organisation is desirable.

5.22 The potential benefits of a single electronic trading infra-structure, as outlined by Tradegate, included direct and indirect savings resulting from more cost-effective practices and more efficient movement of goods. The current trading chain involves an embedded paperwork cost which has been estimated to be between 3.5 and 5 percent of the value of the goods moved. It was also reported that estimates have indicated that a reduction of one day in the dwell time of every container vessel could result in a saving of \$30 000 per ship per visit or \$100-200 million per annum.

5.23 Some practical problems remain to be solved before such benefits can be reaped. Questions of security, confidentiality and authentication of information need to be considered and appropriate legislation drafted. The Law Reform Commission has indicated in discussion with Committee members that these problems are not insurmountable, while Tradegate has suggested that much could be achieved with the use of smart card technology.<sup>14</sup>

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<sup>11</sup> Evidence, pp. 301-302

<sup>12</sup> Evidence, pp. 194-195

<sup>13</sup> Evidence, p. 299

<sup>14</sup> Evidence, pp. 243-244

## ***Conclusion***

5.24 The electronic initiatives implemented, and planned, in the processing of imports and exports have the potential to achieve significant reform both in the trading community and on the waterfront, and real monetary savings of considerable magnitude. The integral role of the ACS in initiating and pursuing these developments to date is commendable. The Committee considers that the ACS should continue to provide leadership in the community based electronic initiatives area.

## ***Recommendations***

5.25 The Committee recommends that:

- in view of the important role played by electronic initiatives in achieving waterfront reform, and the integral role of the ACS in their development and implementation, sufficient funding should be allocated in the Budget process to ensure that the overall project can be completed within the planned time frame.

- in advance of the advent of paperless trading, appropriate legislation be drafted to overcome the current legal difficulties inherent in electronic exchange of documentation.



## 6. OTHER MATTERS RELEVANT TO THE IMPORT/EXPORT SUB-PROGRAM

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6.1 This chapter deals briefly with three matters raised in the course of the inquiry which the Committee believes warrant comment or action. These are Section 39 (1A) and (1B) of the Customs Act, the control of prohibited exports and the importation of dangerous goods.

### Sections 39 (1A) and 39 (1B)

6.2 Sections 39 (1A) and (1B) concern conditional and unconditional release of entered goods. Under Section 39 (1A) goods are released subject to the condition that documentation is retained for a period of five years, and may be subject to audit under the provisions of Section 214 of the Act. Under Section 39 (1B) a Collector may determine that future verification of information will not be required and that subsequently subsection (1A) does not apply.

6.3 Evidence received by the Committee from the Legislation Committee of the Customs Agents' Institute of Australia suggested that the intention of Section 39 (1B) was to allow unconditional release of goods which had been entered by either the red or amber line process. Goods cleared without examination via the green line would, in contrast, be subject to Section 39 (1A) which grants conditional release. The Legislation Committee Chairman informed the inquiry that in practice all cargo was being released conditionally. The matter had been raised with the ACS on a number of occasions but had not been resolved to the satisfaction of the agents.

6.4 The Committee subsequently raised the matter with representatives of the Import/Export Control Sub-program, and was informed that Section 39 (1B) had never been applied because it 'is not possible, logistically, to examine commercial entries to the point where you would clear them unconditionally for all time.' The intention of the legislation, in the light of this limitation, was unknown.<sup>1</sup>

6.5 Further research by the ACS revealed that Section 39 (1A) was included in the legislation to clarify that the entry/inspection power granted in Section 214 does not apply unless clearance is given on the condition that there may be later verification. Section 39 (1B) was included simply to give flexibility to waive requirements and no consideration has since been given to the circumstances in which it might be applied.

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<sup>1</sup>

Evidence, p. 344

6.6 The ACS advised further it would not consider applying Section 39 (1B) for commercial shipments, but 'that it might have potential application in relation to "one-off" importations by private citizens.'<sup>2</sup>

### ***Conclusion***

6.7 The Committee has sympathy with the position of the CAIA that it is unreasonable, on redline and amberline entries where declarations on classification, valuation and concessions are considered by the ACS at the time of importation, for the ACS to retain the power to enter premises and inspect documents. The provision of Section 39 (1B), in the Committee's view, raises the expectation that circumstances will exist in which goods may be released unconditionally. It is reasonable to assume that prior examination by the ACS would provide sufficient grounds for this to occur. If this were not the intention of the legislation the Committee sees no reason for its existence. Further the Committee sees no reason to treat 'one-off' importations of private citizens differently from commercial shipments, and considers that this is an insufficient reason for the inclusion of Section 39 (1B) in the legislation.

### ***Recommendation***

6.8 **The Committee recommends that the ACS review Section 39 (1A) and (1B) of the Customs Act. The review should take account of the original intention of the legislation, and the circumstances in which Section 39 (1B) may apply. If it is concluded that there are no such circumstances then Section 39 (1B) should be repealed, in order to remove a source of expectation, and subsequent confusion among importers and agents, that unconditional release is possible.**

### **Control of Prohibited Exports**

6.9 Evidence from the Department of Arts, Sport, the Environment, Tourism and Territories, and the PSU suggested that the control of prohibited exports should be accorded greater priority than is presently given. The Department of Defence also sought an increase in ACS resources to cope with an anticipated increased workload arising from implementation of improved controls over export of defence equipment.<sup>3</sup>

6.10 The ACS agrees that controls over exports generally are less stringent than those over imports. They are based on intelligence rather than random examinations, in accordance with risk assessment based allocation of limited resources. Resource allocation to meet Department of Defence requirements is considered a matter for the government to decide in the context of overall Budget priorities.

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<sup>2</sup> Exhibit 37

<sup>3</sup> Evidence, pp. 310, 330, 490

### ***Conclusion***

6.11 The Committee considers that the present priorities accorded to control of imports and exports ensure an appropriate allocation of ACS resources. In a climate of resource restraint it is unwarranted to base control over exports on other than assessment of risk.

### **Importation of Dangerous Goods**

6.12 The Tasmanian Premier drew the attention of the Committee to the system applying to the importation of dangerous goods. At present, Customs officers will permit offensive weapons to be imported into Australia if the relevant police authority agrees. As Tasmania has no legislation which prohibits the importation or possession of offensive weapons, the police in that state have no basis on which to refuse to grant permission for importation.

6.13 The Premier submitted that there should be a uniform approach as to what offensive weapons may or may not be imported and that, to achieve this, Custom officials should be empowered to grant or refuse permission to import, without reference to State police.

### ***Conclusion***

6.14 The Committee considers that the issue of uniformity in State legislation on importation of offensive weapons, is one which should be resolved in the first instance at the level of the Police Ministers Council and then formalised in federal legislation. It would then be possible for Customs Officers to decide on a consistent basis whether to grant or refuse permission to import specific goods.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities.

2. It is essential to ensure that all data is entered correctly and consistently to avoid any discrepancies or errors.

3. Regular audits and reviews should be conducted to verify the accuracy and integrity of the information.

4. The second part of the document outlines the various methods and techniques used for data collection and analysis.

5. These methods include direct observation, interviews, and the use of specialized software tools.

6. Each method has its own strengths and limitations, and it is important to choose the most appropriate one for the specific study.

7. The third part of the document provides a detailed overview of the data analysis process.

8. This process involves identifying patterns, trends, and relationships within the collected data.

9. Statistical methods and software are often used to facilitate this process and to draw meaningful conclusions.

10. The final part of the document discusses the importance of reporting the results of the study in a clear and concise manner.

11. This includes the preparation of reports, presentations, and the publication of findings in relevant journals.

12. Effective communication is crucial for ensuring that the research findings are understood and acted upon.

13. The document concludes by emphasizing the need for ongoing research and the continuous improvement of research methods.

14. It is hoped that this document will provide a valuable resource for researchers and students alike.

15. Thank you for your attention and interest in this important field of study.

16. The author is grateful to the many individuals and organizations that have supported this research.

17. Please do not hesitate to contact the author if you have any questions or need further information.

18. Your feedback and comments are highly appreciated and will be used to improve future editions.

19. The author is confident that this document will be a valuable addition to your library.

20. Thank you once again for your support and interest in this research.

## 7. RECRUITMENT, TRAINING AND ROTATION

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### Introduction

7.1 Throughout the inquiry the issues of training and rotation have interested the Committee. In the first report on the inquiry, recommendations relevant to specific programs were made in these areas. As the inquiry progressed the questions of adequacy of training and desirability of the rotation policy continued to arise. While the emphasis in the following discussion is on training in the Import/Export Control Sub-program, as this was the area in which most criticism was received, the conclusions and recommendations apply equally to the ACS as a whole.

### Training

7.2 Training and staff development are regarded as joint responsibilities of managers and supervisors at all levels together with the Training section in Co-ordination and Services. Technical training has been devolved to Sub-programs with individual officers having primary responsibility for their own development. Training programs are workplace based.<sup>1</sup>

7.3 The Import/Export Control Training Prospectus lists a series of learning modules, many of which are designed to be self instructional and self pacing, while others are delivered as workshops. The courses listed are: Orientation, Valuation Information and Tariff, Community Protection, Entry Processing, Customs and Business Skills, Customs and Commercial Law, Audit and Corporate Management and Personal Skills.<sup>2</sup>

7.4 The ACS explained that self paced learning has been adopted where possible, because traditional methods had been found to be expensive and disruptive to normal work flow. Self paced training is reported to be less disruptive to workflow, to reduce the number of persons absent from their workplace at any one time and to be an effective method for the transfer of knowledge.<sup>3</sup>

7.5 The ACS advised that the modules have been well received by trainees and managers. From 1 July to 30 September 1990 the modules had been completed by 105 officers, with the expected number for the full year 1990/91 being 395.<sup>4</sup>

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<sup>1</sup> ACS Annual Report, p. 101

<sup>2</sup> ACS Import/Export Control Training Prospectus p. 4

<sup>3</sup> Exhibit 37

<sup>4</sup> Exhibit 37

7.6 Several submissions attributed the perceived shortcomings of the ACS to its training or rotation policies or both. Training was often criticised as being inadequate and calls were made for training to be conducted by external sources to ensure a broadening of vision in Customs staff. Adequate training in audit was particularly sought. Several suggestions were received for Customs Officers to undertake the same TAFE courses as customs agents. Training in elementary legal studies, elementary accounting and elementary finance was considered essential by the Law Council.<sup>5</sup> Several of these topics are included in the current prospectus.

7.7 The Customs Agents Federation felt that training should address the view of many Customs Officers that it was their responsibility to make importing as difficult as they can in order to protect Australian manufacturers. The National Manager, Import/Export advised that he had asked his Regional Managers 'to address this as a topic within training courses which they address or which they attend and to expunge this idea that the importer is the enemy or the customs agent is the enemy.'<sup>6</sup> The Committee agrees that this is desirable but believes it may be better addressed in a more structured manner than by the ad hoc approach outlined.

### ***Conclusion***

7.8 The Committee notes that the ACS has in place an extensive training program, but it is also mindful of the criticisms of internal training and the suggested emphasis on a commercial perspective received in evidence. An early external evaluation of the program is desirable.

### ***Recommendation***

7.9 The Committee recommends that an external evaluation be conducted in July 1992 of the Import/Export training program adopted in July 1990. The adequacy of the internal training components should receive particularly close scrutiny.

### **Staff Rotation**

7.10 At the time of the inquiry the ACS had in place a policy, dating from 1989, of rotating staff once every three years. Rotation took place within as well as between Sub-programs. The policy arose from Government policy on multi-skilling and structural efficiency principle negotiations.<sup>7</sup>

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<sup>5</sup> Evidence, pp. 166, 180, 187, 208, 229-230

<sup>6</sup> Evidence, pp. 294, 365

<sup>7</sup> Evidence, p. 386

7.11 The ACS believes it is particularly important to pursue a rotation policy to ensure Customs Officers do not get too close to their clients and thus to avoid opportunities for corruption.<sup>8</sup>

7.12 Band 1 officers were programmed to rotate every 12 months in order to give them the broadest possible experience. For Band 2 officers and above postponement of rotation was possible providing it could be proved that specialist training or extensive experience was required and that rotation would not have been in the best interest of either the officer or the ACS.

7.13 Rotation was often seen to be the cause of a perceived stripping of expertise from tariff classification and valuation areas. It was described as 'making jacks of all trades, masters of none.' The Public Sector Union (PSU) reported that rotation had been seen by some of their members as a tool to punish people. The PSU believed that rotation had not been marketed properly and that insufficient resources had been available to committees arranging rotations. The PSU noted, however, that in October 1990 it had reached agreement with the ACS on nineteen principles in relation to rotation.<sup>9</sup>

7.14 During inspections at centres around Australia, Committee members spoke informally with Customs officers and heard varying opinions about the benefits and drawbacks of the rotation policy. The Committee was informed of some specific instances of valued officers, e.g. the Operations Manager, Sydney Airport, leaving the Service because they did not wish to be rotated from their current position.

7.15 In late December 1990 the ACS advised that in the new year it would work with the PSU to produce a Human Resource Development Policy for the ACS. The policy will encompass staff mobility (rotation) and career planning, training, study assistance and selection procedures. The Staff Mobility Policy was to be based on the existing Rotation Policy, but implemented and enhanced in line with the nineteen principles agreed with the PSU in October 1990. Key elements of change were to be:

- an emphasis on career planning and development not moves for moves' sake;
- staff to be consulted regarding their career choices;
- an acknowledgment that at least at the Band 3 and above levels the concept of career streaming into broadly defined paths is an acceptable option for some while others will wish to move across broad streams;

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<sup>8</sup> Evidence, p. 387

<sup>9</sup> Evidence, pp. 167, 310

- the acknowledgment of the importance of training for the new position; and
- local arrangements to be developed in consultation with the PSU for implementation at the regional level.

These changes are welcomed by the Committee.

### *Recommendation*

7.16 The Committee recommends that the 'Staff Mobility Policy', implemented in 1991, be promoted not only among staff but also among clients. The changes outlined in December 1990 should overcome many of the shortcomings of the previous Rotation Policy, and ensure the emergence of a more flexible and sensitively applied policy, which will be more readily accepted by both staff and clients.

### **Recruitment and Its Effect on ACS Culture**

7.17 If staff are attracted to the ACS by its law enforcement aspects and are recruited accordingly then it follows that difficulties may arise in staff attitudes and motivation when they are transferred across Sub-programs. The skills and approach required to perform well in an interception role may well be at odds with the commercial world of imports/exports. As one witness put it:

it is sometimes difficult for those agencies of government who have to police legislation to differentiate between where they stop policing the legislation and where they start assisting the importing community.<sup>10</sup>

7.18 Another witness suggested that current staff mix is a manifestation of staff selection criteria going back to the 1970s and 1980s when the ACS was looking to have staff perform in a barrier function or in passenger or cargo control. The necessary technical competence in areas such as audit work is, as a result, quite limited.<sup>11</sup>

7.19 On the wider issue of qualifications, attention was drawn to the low level of tertiary qualifications in the ACS. At June 1990 9 per cent of ACS staff held tertiary qualifications. Figures for some other Commonwealth agencies were: Department of Social Security 11 per cent, Australian Federal Police 13 per cent, Department of Veterans Affairs 17 per cent, Australian Taxation Office 21 per cent.<sup>12</sup>

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<sup>10</sup> Evidence, p. 216

<sup>11</sup> Evidence, p. 107

<sup>12</sup> Department of Finance, *Australian Public Service Statistical Bulletin B, 1989-90*, pp. 47, 68

7.20 The Comptroller-General indicated that he is not happy with this current low level and that management will seek to improve both the level and the esteem in which qualifications are held within the Service:

The general Customs view is that tertiary qualifications do not generally assist you in performing the work of the Customs officer.<sup>13</sup>

7.21 The ACS conducts a Studies Assistance Scheme including a bursary scheme to assist staff to undertake part-time tertiary study at Universities and TAFE Colleges. Two hundred bursaries were available for first semester 1991. Corporate funding is also available to provide scholarship awards for full-time undergraduate and post graduate tertiary study. ACS preferred areas of study are Accounting, Statistics, Economics, Computing, Politics, Law and Public Administration. In 1990, 378 bursaries and 10 scholarships were granted.

7.22 In his criticisms of ACS administration contained in his Annual Report, the Ombudsman referred to the tradition of internal promotion which had been characteristic of the ACS. He noted the tendency of agencies to become inward-looking when 'top managers have been part of the organisation for a long period so that they have absorbed its values in the absence of critical assessment sharpened by outside working experience.'<sup>14</sup>

7.23 In 1989-90, 3 per cent of the total 1482 promotions in the ACS were from other departments. Of 63 agencies listed in the APS statistical bulletin only three had a smaller percentage of promotions from outside, and thirteen a percentage less than 10.<sup>15</sup>

7.24 The ACS recognises the desirability of outside recruitment at the management level. In evidence to the FMIP inquiry the Deputy Comptroller-General spoke of the concerted effort being made to recruit from outside the ACS for SES (Senior Executive Service) positions, in order to bring a different perspective and to provide specific skills.<sup>16</sup>

7.25 Staffing information provided in the 1989-90 ACS Annual Report lists movements in and out of the ACS for that financial year. In that time one SES officer exited from Customs on promotion or transfer while there were two movements in at that level.<sup>17</sup> These figures are indicative of a stability in

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<sup>13</sup> Evidence, p. 384

<sup>14</sup> Commonwealth & Defence Force Ombudsman Annual Report, op cit., p. 10

<sup>15</sup> *Australian Public Service Statistical Bulletin B 1989-90*, op cit., p. 83

<sup>16</sup> FMIP Transcript, p. 97

<sup>17</sup> ACS Annual Report 1989-90, p. 152

management which is desirable, but may also indicate that there is still room for a further broadening of perspective among those in ACS management positions. Consequently the Committee encourages the ACS to actively seek to broaden the employment experiences of its staff.

### ***Conclusions***

7.26 The adequacy or otherwise of recruitment, training and rotation procedures in the ACS, and particularly the Import/Export Control Sub-program can be seen to underlie all of the contentious issues arising in this phase of the Inquiry. These issues included the administration of the CELA penalties, the accuracy and consistency of tariff and valuation decisions, the development of appropriately co-operative relationships with commercial contacts and the adequacy and success of consultative mechanisms. All of these depend on the types of persons entering and staying in the Service, their relevant knowledge, expertise and breadth of vision and their ability and willingness to work co-operatively with others in the trading community.

7.27 While the ACS has some programs, in place or planned, to effect improvements in training and staff rotation practices, the Committee considers that it is also desirable to increase the mix of educational qualifications and employment background in the Service.

### ***Recommendations***

7.28 **The Committee recommends that:**

- . **recruitment campaigns be conducted at tertiary training institutions to increase the mix of educational qualifications within the service; and**
- . **the involvement of ACS senior staff in programs such as the Executive Development Scheme, and exchange programs to broaden employment experiences, be actively promoted within the Service.**

## 8. MATTERS ARISING FROM THE FIRST REPORT ON THE INQUIRY

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### *Security at Sydney Kingsford Smith Airport*

8.1 The first report on the inquiry, *Risky Business - the 37 000 Kilometre Challenge*, reported on Coastwatch, the Drug Detector Dog Unit, Drug Interceptions and Audit Report No 17, 1989-90, Australian Customs Service - passenger and crew processing. It was tabled in the House of Representatives on 15 November 1990. In considering the Audit Report the Committee reviewed security at Sydney Kingsford Smith Airport, drew conclusions based on the evidence available, including that given by the Federal Airports Corporation (FAC), and made appropriate recommendations.

8.2 Less than a week before the tabling of its report the Committee was informed by a journalist of the Parliamentary Press gallery of the existence of a report prepared for the FAC on security at Sydney Airport. The report, which predated both the FAC submission to the inquiry and the appearance of FAC representatives at a public hearing, was said to have concluded that Australian airports could become the targets for terrorism.

8.3 Media articles at the time stated that the report had concluded that Australia's 'security systems were wide open.'<sup>1</sup> These observations were of concern to the Committee as such serious shortcoming in security had not been brought to its attention in the course of its inquiry. The Committee was particularly disturbed that the existence of the report and its findings had not been indicated by the FAC.

8.4 At the request of the Committee information on the security report was subsequently forwarded by the FAC, with the explanation that:

'an internally initiated study of strategies for future airport security management at Sydney Airport was not a matter which the Corporation's officers had considered in the context of responding to the AAO [Australian Audit Office] report.'<sup>2</sup>

8.5 The documentation provided included an initial diagnosis of security completed in May 1990, and a draft report of a subsequent comprehensive security review. The initial diagnosis, with references to below standard security and vulnerability to terrorism appeared to be the document on which media reports were based.

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<sup>1</sup> Sunday Herald, 11 November 1990, p.1; Courier Mail, 12 November 1990, p.3

<sup>2</sup> Exhibit 43

8.6 The more extensive review concluded that security arrangements were generally adequate but that there were many features which only marginally met minimum standards. Major problems were seen to be criminal in nature (e.g. pilfering, smuggling and illegal immigration) with the threat from terrorist activity negligible to low but likely to change at short notice. The major terrorist threat was to foreign carriers using Australian ports.<sup>3</sup>

8.7 The recommendations arising from the report were compatible with those made by this Committee in its first report. Some such as those relating to perimeter surveillance and security, and the issuing of staff security passes resembled the Committee's recommendations in detail, while others expanded on similar themes or dealt with areas outside of this Committee's inquiry.

### **Conclusion**

8.8 While it regrets that the information contained in the review of Sydney Airport security conducted for the FAC was not made available to it during the first phase of this inquiry, the Committee concludes that its results and recommendations are consistent with the findings of this Committee.

### **Establishment of International Airports**

8.9 In its first report, in the context of discussing resource implications for the ACS, the Committee expressed concern over the proliferation of international airports in Australia. It observed:

The Committee particularly noted the suggested establishment of new international terminals at both Hamilton Island and Proserpine. The Committee considers that such duplication of services in close proximity is untenable, and that plans to redevelop Proserpine as an international airport should be discarded. Before opening the recently completed Hamilton Island terminal careful assessment should be made of its likely effects on other northern airports, and the demands it will place on already stretched Customs resources.<sup>4</sup>

8.10 Considerable reaction was generated by this observation. Brief articles appeared in the publication *Inside Tourism*<sup>5</sup> and in the *Sun-Herald*<sup>6</sup> newspaper quoting, in part, the view of the Committee, and resulting in the interpretation by some that the Committee had supported and endorsed the establishment and operation of the Hamilton Island terminal, while condemning the plans for

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<sup>3</sup> Draft Review of Security at Sydney Airport, pp. 1-2

<sup>4</sup> *Risky Business - the 37 000 Kilometre Challenge*, op cit., p. 27

<sup>5</sup> 26 November 1990

<sup>6</sup> 16 December 1990

Proserpine. Parties with a stake in the development of each airport then contacted the Committee seeking the opportunity to put their views directly. Evidence was subsequently received by submission, and from witnesses at a public hearing, from a number of concerned organisations.

8.11 At the commencement of the public hearing the Chairman noted that this Committee does not have the authority to grant international airport status to any location. The Committee would not therefore seek to determine whether it should be Proserpine or Hamilton Island or both to which international status was granted. Its function was and is to conduct inquiries, in this case into the Australian Customs Service, and to make recommendations to the Parliament for ultimate decision by the Government. Future decisions on matters affecting either the ACS or airports therefore lies with the Government.<sup>7</sup>

8.12 Developers and Shire Council representatives from the Proserpine area described the upgrading of Proserpine airport to international status as being an essential element in plans to develop international standard resorts in the area. Initial international operation would be by way of charter flights.

8.13 A similar position was taken by the Chief Executive of Hamilton Island, who wishes to begin operation, on a back to back charter basis, of the international airport facilities already in place on the island.

8.14 Both groups considered that operating through existing international gateways is not an attractive or competitive alternative. It was asserted that the unit cost of dedicated charter operations was lower, as a result of maximising the passenger carrying capacity of the aircraft involved, and of flying the most direct route possible from point of origin to destination. The fare component of holiday packages is then lower, resulting in a lower overall cost.<sup>8</sup>

8.15 A further relevant aspect in marketing Australian destinations, particularly to Japanese consumers, was seen to be the time factor:<sup>9</sup>

Generally, they have seven days and the quicker they can be got to where they want to go, and the quicker they can get back to where they have come from, the more attractive the package.<sup>10</sup>

The time delays involved in connecting international and domestic flights was therefore considered to impact adversely on securing international tourism.

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<sup>7</sup> Evidence, p. 411

<sup>8</sup> Evidence, pp. 424 - 425

<sup>9</sup> Evidence, pp. 436, 443

<sup>10</sup> Evidence, p. 436

8.16 The use of regular flights through existing major gateways was also seen to have the disadvantage of discouraging tourists from exploring other than major centres. Rather than avail themselves of domestic flights to more remote centres tourists continue to travel with the international carriers.<sup>11</sup>

8.17 Neither group considered that it would be feasible to operate through an international facility at the alternative location. Emphasis was given to discomfort involved in transfers over water and, in Hamilton Island's case, to the associated land transfer.<sup>12</sup>

8.18 A submission from Qantas raised issues which cast some doubt on the viability of the proposed charter flights. In regard to the Japanese market it was pointed out that the major Japanese airports are very congested which may make it difficult to arrange flights from that country. Qantas also believed that most European, American and Asian tourists would prefer to travel more extensively through Australia rather than stay at a single resort.<sup>13</sup>

8.19 The crux of the discussion for the Committee, however, is not the desirability or viability of the airports but rather the effect on ACS operations and resources, given that any international entry point must be serviced by its staff. Additional resources would be necessary implying also an increase in related costs.

8.20 Both those wishing to establish international facilities at Proserpine and those from Hamilton Island expresses willingness to meet these costs on a user pays basis:

we expect, within reason ... - to cover the costs of human resources to do what we are seeking<sup>14</sup>

We have offered to meet all costs including reimbursements to relevant government departments for the provision of associated services eg customs officers etc. This will further include costs of transportation from their nearest permanent base of operations. ... Accommodation if required would also be made available on a no cost basis.<sup>15</sup>

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<sup>11</sup> Evidence, p. 477

<sup>12</sup> Evidence, pp. 420-421, 459

<sup>13</sup> Evidence, p. S680

<sup>14</sup> Evidence, p. 428

<sup>15</sup> Evidence, p. S571

8.21 However, the reimbursement of monetary costs does not entirely resolve the resource difficulties faced by the ACS in meeting the requirements of the proposed international services. Logistical problems in staff deployment also arise. The National Manager, Passenger Processing advised that at present there is no capacity to draw staff from either Cairns or Brisbane to service ad hoc charter flights. Possibilities do exist to provide staff on weekends on an overtime basis, but concerns of an occupational health and safety nature could then arise.<sup>16</sup>

8.22 The possibility of employing part-time officers was raised by the Hamilton Island representative. The ACS response to this suggestion was one of concern over the conflict of interest which could arise for a Hamilton Island employee, tenant or resident being involved in the clearance of international visitors to that island. The concept of part-time staff generally had also been examined previously by the ACS but had not been seen as a reality in overcoming the difficulties.<sup>17</sup>

8.23 The Committee understands the reluctance of the ACS to appoint local part-time officers solely to undertake passenger processing at any future international charter airports. A possible solution could be a mix of local part-time staff with full-time Customs officers drawn from major gateways.

8.24 The practicality of providing part-time staff may be limited, however, by the extensive training which would be necessary. Officers within the ACS, transferring from general administrative duties to passenger processing, undertake three weeks full-time training to work as baggage examiners. Extensive experience in baggage examination, and its associated tasks such as taking records of interview, is necessary before undertaking further training, of two weeks theory and one week practical experience, to become a primary officer. (Primary officers receive passengers on disembarkation and assess what further processing is appropriate.) For persons who are not already ACS staff, additional basic training would be required in ACS roles and functions. The costs of these extensive training programs would form a significant component of the 'user pays' costs to be reimbursed by those requiring the passenger processing service.

### ***Conclusion***

8.25 The Committee is persuaded by the arguments of those seeking the development of international airports in the Whitsunday area that the ability to fly passengers directly to their destinations may enhance the competitiveness and attractiveness of their holiday packages. The Committee believes that with innovation and a requirement of 'user pays', the necessary ACS facilities could be established in the area. Passenger processing could be provided by staff drawn from Cairns and Brisbane, supplemented by ACS personnel already in Mackay and

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<sup>16</sup> Evidence, p. S689

<sup>17</sup> *ibid*

possibly by appropriately trained local part-time staff. However, the Committee remains concerned about the implications a proliferation of such gateways could have for deployment of ACS resources. In particular it is concerned that any thinning of already stretched resources to cover the necessary passenger processing operations may detract from the ability to adequately protect the barrier.

### ***Recommendation***

**8.25 The Committee recommends that any future decisions to approve the establishment of a new international airport take account of:**

- the accessibility and adequacy of existing facilities;**
- the cost to the public purse;**
- the effect on ACS resource deployment; and**
- the feasibility of part-time ACS employment.**

**Stephen Martin, MP**  
**Chairman**

**April 1991**

## APPENDIX A PROGRAM OF ACTIVITIES UNDERTAKEN BY SUBCOMMITTEE - 1990

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21 June	Canberra	Briefing by Australian Customs Service
22 June	Sydney	Discussions with Law Reform Commission  Visit to Sydney Airport to view passenger processing
12 July	Sydney	Briefing and Inspections on Drug Interdiction and Port Security
13 July	Port Kembla	Briefing and Inspections on Port Security and Risk Assessment
16 - 19 July	Darwin and Broome	Briefing and Inspections on Coastwatch and Barrier Control
5 - 6 August	Melbourne	Briefing and Inspections on Import/Export Control and Drug Interception
14 - 16 August	Mackay and Brisbane	Briefing and Inspections on Drug Interdiction and Port Security
5 - 6 September	Cairns	Briefings and Inspections on Coastwatch relevant to Great Barrier Reef Marine Park, Passenger Processing at a privately owned airport. Attendance at Regional Managers' meeting
29 November	Sydney	Briefing and Inspections on Import/Export Control



## APPENDIX B LIST OF SUBMISSIONS

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No.	Name of person/organisation
1	Richard Jennings Security Risk Management
2	Mr Kevin M Lawrence
3	Australian Customs Service
4	Australian Customs Service
5	M. de Jongh
6	P J Jenkins
7	C. Stokes & Co. Pty. Ltd.
8	E. J. Cooper
9	A C (Tony) Claydon
10	Steve Qazim
11	W. J. Glass
12	Federal Airports Corporation
13	Ms. Carol Grant A.C.A.I.A.,
14	Ian Pearse
15	BDW Aviation Services
16	The Customs Agents Federation of Australia
17	R. Livingstone-Ward
18	C.J. Fitzpatrick

- 19 Tom Cavanagh
- 20 D. P. Firstbrook
- 21 Excelsior Export Enterprises
- 22 Tradegate Australia Ltd
- 23 Inbound Tourism Organisation of Australia Limited
- 24 C H Davey
- 25 The Customs Agents Institute of Australia (Queensland Division)  
and The Customs Agents Association of Queensland Inc
- 26 The Customs Agents Association of South Australia
- 27 Australian Community Action Network
- 28 Department of Transport and Communications
- 29 Law Council of Australia
- 30 Department of Defence
- 31 Connor Anderson Customs Pty Ltd
- 32 Public Sector Union
- 33 Australian Federal Police
- 34 National Crime Authority
- 35 Qantas
- 36 Office of the Premier - Western Australia
- 37 Minister for Immigration, Local Government and  
Ethnic Affairs
- 38 The Premier of South Australia
- 39 The Australian Chamber of Commerce
- 40 Commonwealth Department of Primary Industries and Energy

- 41 The Returned Services League of Australia
- 42 Minister for the Arts, Sport, the Environment, Tourism  
& Territories
- 43 Commissioner, Western Australia Police
- 44 Minister for Foreign Affairs and Trade
- 45 E. J. Cooper
- 46 R G Spanswick
- 47 Office of the Premier - Tasmania
- 48 The Customs Agents Institute of Australia
- 49 Queensland Department of the Premier, Economic and Trade  
Development
- 50 J B Richardson
- 51 Council of the Shire of Bowen
- 52 Wildlife Preservation Society of Queensland, Proserpine/Whitsunday  
Branch
- 53 Keith Williams/Hamilton Island Enterprises Pty Ltd
- 54 Ansett/Aqua Del Rey
- 55 Kumagai Gumi Co Ltd
- 56 Whitsunday Shire Council
- 57 B M Reynolds
- 58 Qantas
- 59 Whitsunday Tourism Association Inc
- 60 Whitsunday Development Bureau
- 61 Rigby Consulting

- 62 Cusack & Associates
- 63 Colin H Davey
- 64 Whitsunday Chamber of Commerce Inc
- 65 Qantas
- 66 Australian Customs Service
- 67 The Customs Agents Federation of Australia
- 68 The Customs Agents Institute of Australia and the Customs Agents'  
Association of Queensland Inc
- 69 The Customs Agents Institute of Australia
- 70 Puritan Man

## APPENDIX C

### LIST OF EXHIBITS

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No.	Description
1.	Australian Customs Service Annual Report 1988-89
2.	Australian Customs Service Corporate Plan 1989-90
3.	Australian Customs Service Corporate Plan 1990-91
4.	Australian Customs Service: Drug Initiatives May 1989
5	Australian Customs Service Barrier Control Victoria: House of Representatives Committee, Documentation for Members
6	Australian Customs Service NSW: Passenger Processing Facts Sheet, Sydney Kingsford Smith Airport
7	Australian Customs Service Information Technology Plan 1989-93
8	Information on the Import/Export Control Sub-Program (Victoria) compiled for the House of Representatives Standing Committee on Finance and Public Administration August 1990
9	Electronic Initiatives Australian Customs Service
10	Australian Customs Service Information Kit
11	Australian Customs Service Industrial and Employee Relations Handbook
12	Law Reform Commission Research Paper, No 1, February 1989
13	Law Reform Commission Discussion Paper No 35, February 1989
14	Law Reform Commission Discussion Paper No 38, May 1989
15	Law Reform Commission Discussion Paper No 41, September 1989

- 16 Law Reform Commission Discussion Paper No 42, April 1990
- 17 Law Reform Commission Discussion Paper No 43, April 1990
- 18 Master Plan for Passenger Processing at Australian Airports August 1988. ACS and Department of Immigration, Local Government and Ethnic Affairs
- 19 Australian Customs Service: Export Concessions Drawback/TEXCO, December 1989
- 20 Australian Customs Service: Training Prospectus Import/Export Control, July 1990
- 21 Tradegate Express News Issue No 1 April 1990
- 22 Tradegate Express News Issue No 2 August 1990
- 23 Inbound Tourism Organisation Australia 1990 Edition
- 24 Australian Customs Service: Barrier Control Action Plan 1990-91
- 25 Administrative Penalties Data (Graph) supplied by Chamber of Commerce
- 26 Administrative Penalties Data (Table) supplied by Chamber of Commerce
- 27 Copies of correspondence and submission supplied by the Law Council of Australia, from the Law Council of Australia to various ministers concerning CELA legislation,
- 28 Questionnaire, provided by the Customs Agents Federation of Australia, to be submitted by clients to assist in the correct assessment of valuation and classification.
- 29 Correspondence, supplied by Mr Vos, between Mr D R Vos and the Australian Customs Service.
- 30 Copies provided by Mr E J Cooper of Article VIII (3) of the General Agreement on Tariffs and Trade, a similar recommendation of the Customs Co-operation Council and the Customs Norm developed by the Customs Co-operation Council
- 31 Copy of title page and forward of the volume *Customs Technique*, as issued by the Customs Co-operation Council

- 32 Australian Customs Service Annual Report 1989-90
- 33 Staff Message re Ombudsman's report issued 20 November 1990 by Comptroller-General, Australian Customs Service
- 34 Copy of letter dated 20 November 1990 from Comptroller-General, Australian Customs Service to Professor D C Pearce, Commonwealth Ombudsman
- 35 Copies of correspondence dated 18 October 1990, 14 November 1990 and 5 December 1990 between the Law Council of Australia and the Comptroller-General, Australian Customs Service
- 36 Matters agreed between the Australian Customs Service and the Public Service Union on the implementation of Rotation Policy
- 37 Information supplied by the Australian Customs Service on training in the Import/Export Control Sub-program, and on Section 39 (1A) and (1B) of the Customs Act
- 38 Guidelines for Self Paced Learning
- 39 Information provided by Australian Customs Service on bursaries, assistance schemes and number of permanent staff with tertiary qualifications at June 1990
- 40 Information provided by the Australian Customs Service on sub-program training
- 41 Information provided by the Australian Customs Service on Section 214 Actions 1989-90
- 42 Australian Customs Service Staff Minute entitled Career Development in a Changing World
- 43 Copy of letter dated 20 December 1990 from Australian Customs Service Comptroller-General to Secretary-General, Law Council of Australia
- 44 Information on Sydney Kingsford Smith Airport Security Review supplied by the Federal Airports Corporation
- 45 Australian Customs Service Comptroller-General's staff message dated 29 December 1988 on the role of the Collector
- 46 All staff message dated 8 June 1990 from Collector of Customs for Victoria on the role of the Collector



## APPENDIX D LIST OF WITNESSES APPEARING AT PUBLIC HEARINGS

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Witness/organisation	Date(s) of appearance
<b>Ansett Australia</b>	
Mr James Victor Kimpton Manager Aviation Policy	18.2.91
Mr John Richard Langford Senior Airport Development Engineer	18.2.91
<b>Ansett Transport Industries Limited</b>	
Mr Robert Malcolm Roberts Director, Corporate Services and Company Secretary	18.2.91
<b>Aqua Del Ray International</b>	
Mr Paul Lambert Baynes Director	18.2.91
<b>Aqua Del Ray Pty Ltd and Aqua Del Rey Air Industries Pty Ltd</b>	
Mr Christopher Laurence Hughes Spokesperson	18.2.91
<b>Australian Chamber of Commerce</b>	
Mr Robert Brent Davis Chief Economist	30.10.90
Mr Robert Livingstone-Ward Counsellor	30.10.90

Mrs Denise Catherine Whidburn  
Development Officer 30.10.90

**Australian Customs Service**

Mr James Allan Conlon  
National Manager  
Coastwatch 17.9.90

Mr John Drury  
National Manager  
Import/Export Control 14.11.90

Mr Darren James Jenkins  
Assistant National Manager  
Import/Export Control 14.11.90

Mr Leslie George Jones  
National Manager  
Passenger Processing 26.7.90

Mr Francis Ivor Kelly  
Comptroller-General 5.12.90

Mr John Raymond Maloney  
Regional Manager  
Passenger Processing, New South Wales 26.7.90

Mr Peter Charles Naylor  
Manager - Tariff  
Industry Assistance 14.11.90

Mr Denis O'Connor  
Acting Comptroller-General 17.9.90  
Deputy Comptroller-General 5.12.90

Mr Barry John Salmon  
Assistant National Manager  
Passenger Processing 26.7.90

Mr Martin William Smith  
Chief Inspector, Tariff Uniformity and Information  
Industry Assistance 14.11.90

Mr Peter James Toohey  
Director, Electronic Initiatives  
Import/Export Control 14.11.90

Mr Colin Felice Vassarotti  
National Manager  
Barrier Control 17.9.90

**Australian Federal Police**

Mr Peter John Lamb  
Assistant Commissioner  
Investigations 17.9.90

Commander William James Stoll  
Operations Coordination Division 17.9.90

**Australian National Audit Office**

Mr Russell Charles Coleman  
Executive Director 26.7.90

Mrs Alice Dobes  
Senior Director  
Audit Operations 26.7.90

Mr Edward McGovern Hay  
Acting Group Director 26.7.90

**Customs Agents Association of Queensland Inc**

Mr Colin Hugh Davey  
Past President 30.10.90

Mr Charles John Fitzpatrick  
Member 30.10.90

Mr John Fullbrook  
Vice-President 30.10.90

**Customs Agents Federation of Australia**

Mr Athol Hutchinson Flynn  
Executive Director 31.10.90

Mr John Daniel Ross Hunter  
Victorian State Executive Member 31.10.90

Mr Haydn Joseph James  
President 31.10.90

Mr Neil Slaughter  
Vice-President 31.10.90

**Customs Agents Institute of Australia**

Mr Edward Kenneth Anderson  
Chairman  
Legislative Committee 30.10.90

Mr Robert Lawrence Fraser  
Counsellor, New South Wales Division and  
Member of the Legislation Committee 30.10.90

**Customs Agents Institute of Australia (Queensland Division)**

Mr Wayne Francis  
President 30.10.90

Mr Stephen John Morris  
Vice-President 30.10.90

**Department of Transport and Communications**

Ms Anne Buttsworth  
Principal Adviser  
Domestic Aviation Division 26.7.90

Ms Rhondda Nicholas  
Director, Policy and Standards  
Aviation Security Branch 26.7.90

Mr Raymond Turner  
Assistant Secretary  
Aviation Security Branch 26.7.90

Mr James Mortimer Weber  
Director, Operations  
Aviation Security Branch 26.7.90

**Federal Airports Corporation**

Mr Jack Ford Moffat  
General Manager Operations and Regional  
Trunk Airports 26.7.90

Mr Grantley William Woods  
Manager Operations, Sydney Airport 26.7.90

**Hamilton Island Enterprises Pty Ltd**

Mr Keith Williams  
Chief Executive 18.2.90

**Law Council of Australia**

Mr Paul Damien Blake Baker  
Chairman  
Customs Committee of the Business Law Section 30.10.90

Mr Jonathan Slonim  
Chairman of the Tariff Subcommittee of the Customs Committee  
of the Business Law Section 30.10.90  
5.12.90

**National Crime Authority**

Mr Geoffrey Ernest Sage  
Senior Legal Adviser 17.9.90

**Public Sector Union**

Mr Charles Franklin  
Secretary  
Customs National Delegates Committee 14.11.90

Ms Julie Pagonis  
National Industrial Officer 14.11.90

**Qantas Airways Ltd**

Mr Trevor Long  
Customs and Facilitation Manager 18.2.91

**Richglen Holdings Pty Ltd**

Mr Laurence Graham Stroud  
Chief Executive 18.2.91

**Tradegate**

Mr Andrew James Robertson  
Chief Executive Officer 30.10.90

**Whitsunday Shire Council**

Mr Frederick William Dray  
Deputy Chairman

18.2.91

Mr John Patrick Dunne  
Shire Clerk

18.2.91

Mr Glen Alfred Patullo  
Chairman

18.2.91

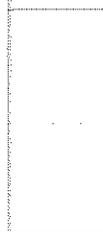
**Private Citizens**

Mr Ernest James Cooper  
Barrister-at-Law

14.11.90

Mr Robert Grant Spanswick

30.10.90



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