

Chapter 29

THE DELIBERATELY VAGUE LETTER

I believe that there is nothing deceptive in my communication to the Department of Industry, Technology and Commerce. Until today, I have never been given the opportunity to explain those words.

Midford's Tariff Advisor - 17 September 1991¹

Introduction

29.1 As indicated in Chapters 6 and 7, it was the discovery by Customs of a particular letter during the raid on Midford's premises and impoundment of their documents that led the ACS to the opinion that Midford and its Tariff Advisor had deliberately deceived the Commonwealth in relation to the quota issue. In view of the significance attached to this single letter and the extreme consequences that followed its discovery, it seemed appropriate that this Report should devote some special attention to that letter, the circumstances in which it was written and the explanation provided by its author.

29.2 In order to place the phrase 'deliberately vague' in context and to allow the Tariff Advisor 'the opportunity to explain those words', the Committee decided that both the letter and the Tariff Advisor's explanation should be quoted in full.

What the Letter Said

29.3 On 15 April 1985, Midford's Tariff Advisor wrote to Midford enclosing a draft letter addressed to DITAC that the Tariff Advisor proposed to send on behalf of the Company. This letter to Midford was headed 'Private and Confidential' and the text is reproduced below in its entirety:

Please find enclosed a letter which I propose to send to (the) Assistant Secretary, Apparel and Footwear Branch of the Department of Industry, Technology and Commerce.

1. Evidence, p. 406.

I have deliberately kept the letter relatively vague and not provided a lot of financial details. The reason I have done this at this stage is that I am hoping that the Department may simply see the application as one of minor restructuring rather than a complete change in Midford's operations in Malaysia.

The attached trade figures, particularly for 1984, emphasise how important Midford is. The only category where there are significant (sic) imports, other than those imported by you, is in knitted shirts.

The comparative costing information, which has just been received by telex, clearly highlights the lack of competitiveness of Malaysia when examined on an 'interest all' basis.

Could you please advise any amendments you have to this submission. I would like the Department to specify what additional information they may require (if any) prior to providing them with a full range of information.²

29.4 Attached was a three page draft letter plus a two page appendix containing three tables of figures.³ The draft was amended by Midford and the Tariff Advisor forwarded the letter to DITAC on 16 April 1985.⁴

29.5 It is evident that the Tariff Advisor inadvertently stated in the draft that 'Midford Malaysia will not own its own plant' when what was intended was that the Company would not own its own land and buildings, as amended by Midford.⁵ Although Customs seized on this point as 'evidence' that at the time Midford and its Advisor intended to sell all the plant, the other wording in the draft makes it clear that this is not so. In particular, the immediately preceding paragraph clearly stated that the restructuring proposed would enable Midford Malaysia to 'maintain its manufacturing facilities by moving the plant and equipment which will still be owned by Midford to one of the following companies.' Three companies were then listed.⁶

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2. Evidence, p. S335.
 3. Evidence, pp. S336-40.
 4. Evidence, pp. S549-53. See pp. S338-9 for handwritten amendments.
 5. Evidence, p. S338.
 6. Evidence, p. S338.

The Letter to DITAC

29.6 The letter to DITAC dated 16 April 1985 is reproduced below:

In March and April last year discussions and correspondence were conducted with your Department concerning the financial position of Midford Malaysia and Midford Australia.

Following those discussions and the responses given by you, discussions were held with a number of Australian manufacturers, retailers and importers with a view to selling all the Midford operations.

In the light of responses to this offer for sale, it has been decided to withdraw the company from sale and to restructure the major area in which losses are now being incurred, vis Midford Malaysia.

In view of the escalating losses being incurred by Midford Malaysia the Board has now no option but to consider the future of Midford Malaysia. The losses which are accumulating rapidly in Malaysia are largely a result of under utilization (of) its facilities in their current form.

The purpose of this letter is to gain approval for the restructuring of Midford Malaysia in a way which meets the off-shore criteria and will enable continued exports from Midford Malaysia.

Midford Malaysia was established in the Ulu Kelang Free Trade Zone in 1974. Over the 11 years accumulated losses of approximately A\$650,000 have occurred. It is anticipated that from the Malaysia operation this financial year losses will be of the order of A\$150,000.

The reasons for these losses are as follows:

1. Midford Malaysia is not as competitive as Korea, Hong Kong, China or Taiwan. Because of the overhead structure and under utilization of capacity, Midford Malaysia is not an economical and viable entity as presently structured.
2. Prior to 1983, Midford Malaysia developed trade with the EEC in an effort to better utilize its facilities. As

a result of its exports the company received quota allocations in the main to France, West Germany and the UK.

Performance against these allocations over the last 2 years has proved extremely disappointing as the attached tables show. The depreciation of the EEC currencies and the appreciation of the US dollar against the Malaysia Ringitt, have caused the company to increase the purchase price of its Malaysian products into Europe by 24%, simply on exchange rate variations alone.

All the orders that have been supplied in 1984-85 have been below production costs and they have been accepted to maintain factory turnover and help cover a proportion of fixed costs.

3. The Amercian (sic) market has, as a result of Government policy in the US, been closed due to the introduction of quota controls in category 848, Midford held a number of orders for Mens shirts which were cancelled as a result of this change in policy in the US.

As a result of these pressures and the growing extent of 'Malaysianization pressure', Midford wishes to restructure its activities in the following ways:

1. To re-organize the Company's presence in Malaysia by transferring title of its land and factories to another buyer.
2. To maintain its manufacturing facilities by moving the plant and equipment, which will still be owned by Midford, to other well established local manufacturing companies in Malaysia.
3. To maintain full control over Midford Malaysia's production within these manufacturing entities through Midford maintaining a styling office, raw material and ordering office and quality control office.

In effect, the only significant change from the current off-shore facility will be that Midford Malaysia will not own its own land and buildings, but will still control its manufacturing facilities within a much lower costs structure albeit within another manufacturing entity.

It should be noted that this trend towards the use of more efficient manufacturing facilities is also occurring in the Australian clothing industry.

It is submitted that this restructuring still remains within the guidelines for the special quota reserve as announced jointly on 12 October 1977. Those guidelines state:

That quota had been reserved for local companies that had invested in off-shore production facilities prior to the introduction of quotas with the objective of placing a substantial part of the output from those facilities on the Australian market.

Midford certainly met the criteria at the time and, in the proposed Company restructure, will still meet the criteria in having off-shore production facilities which will be geared substantially to the Australian market. Midford Malaysia also wishes to maintain utilization of its EEC and USA quotas.

The table below indicates the extent of imports from Malaysia by quota categories from 1982 to 1984. It can be seen from this table that Midford now represents almost all trade between Australian (sic) and Malaysia. It is not intended that this trade flow would be disrupted by this restructuring operation. In fact, unless the restructuring is permitted there is no doubt that trade would cease altogether.

If the Department considers it necessary to hold a meeting prior to giving approval for this proposal, could you please contact me as soon as possible.⁷

The Tariff Advisor's View

29.7 On 17 September 1991, Midford's Tariff Advisor gave evidence to the Inquiry that his letter to DITAC was 'not vague.'⁸ He said:

I believe that there is nothing deceptive in my communication to the Department of Industry, Technology and Commerce. Until today, I have never been given the opportunity to

7. Evidence, pp. S549-51.

8. Evidence, p. 404.

explain those words ... to the Australian Customs Service, the Department of Industry, Technology and Commerce or a court.⁹

29.8 He said of his letter that:

It does reflect the instructions given to me at the meeting with Midford on 10 April 1985, and that was to explore with the Commonwealth the issue of substantially reducing Midford's investment in Malaysia. ... the phrase 'relatively vague and not provided a lot of financial details' refers to two lots of information that had been provided between the meeting on 10 April 1985 at Midford's premises in Sydney and the formulation of the letter to the Department on 15 April 1985. That is information provided by (the Company) on the cost competitiveness of Midford Malaysia and recent figures prepared by the company secretary, comparing production costs between Midford Paramount - the Australian operation - and Midford Malaysia.

I believe the information which I put in the actual draft to the Department adequately covered this in general terms, and that further financial details in relation to these aspects were not necessary. It was my clear expectation that this letter would be the commencement of a process of discussion and negotiation with DITAC and the Department of Trade. That had been my experience on all previous negotiations with DITAC in matters concerning Midford.¹⁰

29.9 Midford's Tariff Advisor later submitted that in respect of the paragraph in his letter that commenced 'I have deliberately kept the letter relatively vague ...', that:

I appreciate that that paragraph, taken out of context, can be misconstrued, and that a vigilant investigator would be entitled to ask me to explain the covering letter to my client. But, to by-pass this essential part of the investigations process and then apparently ignore the explanation offered is unacceptable and, in fact, an outrage.

9. Evidence, p. 406.

10. Evidence, pp. 404-5. See also p. 432.

The context of this letter is most important if this Committee is to properly assess the most critical document the DPP and the ACS have tended in this alleged conspiracy. Background which bears on the interpretation of this letter and my relations with Midford and its Directors is important:

- i) My total contact with Midford during the calendar year 1985 comprised one physical meeting which took place on 10 April 1985. There were a series of telephone calls and exchanges of correspondence or telexes later that year, but Midford constituted a minor part of my consulting activity during 1985;
- ii) During 1986, there were only two meetings that took place with Midford: the first was in January 1986 to consider a submission to the then Industries Assistance Commission on its Draft Report on the TCF industries, and in July 1986 to consider submissions to the Government on the Industries Assistance Commission's Final Report about untying the quota in the post - 1988 environment;
- iii) I was not in a position to be aware of all of the details of Midford's operations, notwithstanding the fact that I had had a long association with the company. I had never attended a board meeting before 1987. I was not conversant with the fact that the company had engaged (another) consultant to advise on areas that I though were covered by our consultancy's retainer;¹¹ and
- iv) Consultants rely on the information they are given by clients and are not privy to records not provided to them.

Specifically in relation to the allegedly conspiratorial communication, I had no reason to doubt the nature of the restructuring proposal which was put to me by Midford at the meeting on 10 April 1985. My letter to (DITAC) which has been the central document in formulating the view about fraudulent activity, represented honestly and clearly the restructuring proposal put to me by Midford. That restructuring proposal involved the substantial reduction of Midford's offshore investment through the sale of its principal offshore asset (that is, its land and buildings) - and

11. The Consultant referred to in Chapter 6.

its intention to move its plant to another Malaysian clothing manufacturer.

It was this important change to Midford's investment in Malaysia which in my mind required DITAC's approval and which I hoped would be approved by DITAC. At the time of the meeting with Midford I had been given limited details about the nature and financial consequences of the proposed restructuring. It was unknown what impact the restructuring would have on Midford's Malaysian production costs and the effect it would have on its balance sheet. It was impossible to provide such data until a satisfactory arrangement had been entered into with another Malaysian manufacturer.

I anticipated that there would have been a series of negotiations with DITAC to resolve this matter. The above cited paragraph in fact states:

The reason I have done this at this stage ...

Another issue which has arisen during the course of this hearing is my handwritten notes of the meeting on 10 April 1985. This, with my covering letter cited above, is the sum total of the evidence on which the DPP sought to argue that I had a contrary intention at the time of writing the letter to DITAC. These notes clearly indicate, and I believe this is the only way which those notes can be understood, that Midford's machinery was to be 'transferred at no price to either (a firm) or (another firm).' Any other construction of those notes is a clear distortion of their meaning and does not represent the instructions I was given at the meeting. If there is any ambiguity (and there is not) in the meaning of those notes, it certainly did not meet the criminal onus of proof.

My letter to (Midford) of April 1985 cited above, which has been central to the prosecution, concluded with the following sentence:

I would like the Department to specify what additional information they may require (if any) prior to providing them with a full range of information.

This hardly smacks of the dissimulation and mendacious and nefarious activities of which we were accused.

The case also represents a misunderstanding of the relationship between a consultant and a client company. I support the proposition that consultants bear a very

significant duty of care to ensure that the facts that they present on behalf of their clients to government agencies reflect honestly and without dissimulation the information and instructions provided by the client. They also have the responsibility to advise the client of their understanding of government policy, and any written statements or advice that come from government which explains policy and its bearing on a company or industry.

However, consultants are not in a position to be privy to all of a clients strategic and commercial affairs, nor do they have a responsibility to act as watch-dogs over their clients' ongoing actions. As has emerged in this inquiry, my understanding of Midford's offshore quota obligations was different from that of key executives within the company. This is explicable by the fact that I did not have involvement with Midford in the late 1970's when the anomalies quota was provided to the company following Cabinet approval.¹²

Midford's View

29.10 Midford said quite simply of the letter that went to DITAC that 'It is not vague. You read it and you will see there is no vagueness in it whatsoever.'¹³

The View of Customs and the DPP

29.11 Both Customs and the DPP retained the view that Midford and its Tariff Advisor had made knowingly false representations in order to retain quota entitlements. It was not clear to the Committee, however, whether the repeated expression of such views followed an objective and dispassionate re-examination of all the evidence in its proper context, or simply represented attempts by the officers involved to publicly justify decisions taken at an earlier time. Comments elsewhere in this Report cover the generally pervasive attitude demonstrated by officers from both organisation towards expressions of views that are contrary to their own and the difficulties of obtaining an objective reappraisal of the matters at issue.

12. Evidence, pp. S7489-91.

13. Evidence, p. 280.

The Committee's View

29.12 As indicated in Chapter 21, the Committee considered that it was significant that both the Senior and Junior Counsel engaged by the DPP to lead the prosecution in the Midford committal hearings concluded, when they had examined the evidence in its chronological context, that the letter to DITAC was not intended to deceive.¹⁴

29.13 The Committee, after very closely examining this whole matter, shares that view.

14. Evidence, p. S2652.

Chapter 30

OTHER SUBMISSIONS RECEIVED

The Midford Paramount case is not ... an isolated instance.

*Midfords' Tariff Advisor*¹

Introduction

30.1 The Inquiry into the Midford Case and related matters generated a degree of interest from importers and others who had experienced problems in their dealings with Customs. As indicated in Chapter 1, the Committee unfortunately did not have the time or resources available to examine in any detail the issues raised in submissions and other evidence, that did not relate directly to the Midford matters. These submissions did, however, reinforce the views expressed to the Committee that the deficiencies identified in the Midford case were not isolated instances.²

An Ombudsman for Customs?

30.2 The submissions received, the comments contained in the Ombudsman's 1989-90 Annual Report and the general attitude displayed by Customs to administrative review, together with the deflections by the ACS of representations made by parties affected by or through various elected representations, all led the Committee to consider the adequacy of existing mechanisms for dealing with disputes arising between the ACS and the public it serves.

30.3 The Committee noted that the idea of creating a Customs Ombudsman or Inspector General of Customs has been considered from time to time.³

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1. Evidence, p. S29.
 2. Evidence, p. S29.
 3. Evidence, p. S1309.

30.4 The Customs Officers Association submitted that:

Regardless of the structure of Customs there is now clearly a need for an Inspector General of Customs. A permanent review officer (appointed from outside the Service) who would constantly audit the course and conduct of the ACS. No matter, whether it be raised from outside the Service or from within, should be beyond the jurisdiction of such an officer. His/her job would not be to fix problems but rather to identify the source of the problems. If the (Comptroller-General) did not then take steps to fix the problem then the Inspector-General could refer the matter to the Minister and if necessary, the Parliament.⁴

30.5 The Comptroller-General expressed to the Committee that in relation to the establishment of a Customs Ombudsman:

I originally floated the idea to seek a reaction from the community that we deal with. It has been discussed at the Customs national consultative council level, which is the peak body of importers, brokers, shippers, et cetera. Whilst it has not been finally determined, my assessment is that there is not much support for it on the grounds that there are sufficient avenues for reviewing and appealing decisions currently in existence and, above and beyond that, there is a Commonwealth Ombudsman that can formally investigate complaints about Customs.

My personal position is that I have floated the idea. I have sought reaction from all the interested players. There is a relatively negative response coming back. Therefore, I do not believe it has much weight attached to it. We should persist with the current review and appeal arrangements that are in existence.⁵

30.6 The Committee was unable to judge whether there had been any significant improvement in the operation of the current review and appeal arrangements or the resources able to be devoted by the Commonwealth Ombudsman to investigation of Customs matters since the Midford case.

4. Evidence, p. S1309.

5. Evidence, p. 2120.

Recommendations

30.7 The Committee recommends that:

- . the Government establish a dedicated unit within the Commonwealth Ombudsman's office to investigate individual complaints made against Customs. Additional resources should be provided by the Government to establish this unit. It should report to Parliament through the Ombudsman's Annual Report. The Committee considers that the present practice of Customs officers being seconded to the Ombudsman is unacceptable; and
- . matters raised in the public submissions to the Inquiry that do not relate specifically to the Midford case be investigated by the Ombudsman.

Chapter 31

LINES OF MINISTERIAL CONTROL

... the intention of appointing more than one Minister to administer a portfolio is to enhance ministerial control. By appointing additional Ministers, it will be possible to pay particular attention to specific priority areas.

*Advice from Prime Minister to
Minister dated 24 July 1987¹*

Introduction

31.1 Two of the Terms of Reference for the Inquiry required the Committee to examine Ministerial actions in addressing the propriety of administrative actions within the Industry, Technology and Commerce portfolio and the need for effective definition of the lines of Ministerial control of the Australian Customs Service.²

Existing Arrangements

31.2 For various reasons, the Committee was unable to address these two Terms of Reference in anything more than a cursory manner. However, in August 1992 the Portfolio Minister did provide the Committee with some detail in relation to the arrangements between himself and the Minister for Customs, which had been set out in correspondence with the Prime Minister in July and August 1987.

31.3 The relevant extracts from that correspondence provided by the Minister follow:

- Letter from the Prime Minister (dated 24 July 1987)

1. Evidence, p. S11426.
2. See Terms of Reference at Chapter 1.

to me:

... the intention of appointing more than one Minister to administer a portfolio is to enhance ministerial control. By appointing additional Ministers, it will be possible to pay particular attention to specific priority areas, while enabling the Cabinet Ministers to focus on the strategic direction of the portfolio and its contribution to government priorities.

The Portfolio Minister will be accountable to Parliament for the overall operation of the portfolio. Of course accountability for any actions carried out by or at the direction of another Minister, for which responsibility has been allocated, will rest with the Minister.

- My letter (dated 4 August 1987) in response:

I have asked (the then Minister for Customs) to take full responsibility for issues involving the management and day-to-day decision-making required in connection with the Customs Service, with the understanding that the Comptroller-General of Customs will have access to me in respect of policy matters, and particularly those which impinge on other areas of my responsibility.³

31.4 In respect of the Midford case, the Committee noted that the senior and junior Ministers were involved to varying extents over the duration of the case. The Committee ascertained from the Comptroller-General his understanding of the responsibilities of his position to report to the two Ministers. He advised that:

Witness - The working arrangements that I have with the respective ministers are that I report to the Minister for Small Business, Construction and Customs on the administration of Customs. So in regard to issues that I believe the Minister needs to be informed of, there is a system operating in the agency for briefs, information papers, submissions to go to that Minister. In areas where we know that the senior Minister has a portfolio interest, those documents are also copied for the information of (that Minister).

3. Evidence, pp. S11426-7.

With (the junior Minister), I have an arrangement that I meet with him at regular intervals to discuss issues, matters that the ACS is involved in. With (the senior Minister), the arrangement is more on an as required basis. So if there is something that (the senior Minister) wants to talk to me about, I will receive a request to go and meet with the Minister. Or if there is something that is particularly within (his) immediate purview, I might seek to talk to him about it, but again with the knowledge of my immediate Minister.

Committee - Just so I understand that, you report immediately to (the junior Minister) but you make copies of what you give to (him) available for (the senior Minister)

Witness - On those that we make a judgement that we believe (he) may have an interest in.

Committee - Okay. You must have some criteria on which you make that decision. Do you have a guideline, a manual, within the Department which would help officers make a decision as to which stream they took?

Witness - Yes, there are guidelines for the conduct of liaison with the respective Ministers' offices.⁴

31.5 Those guidelines were provided to the Committee.⁵ The two documents provided appeared to be of relatively recent issue and it is not clear what arrangements were in place during the earlier periods of the Midford case.

31.6 Whilst discussing the monthly and quarterly reporting mechanisms within Customs, the Comptroller-General said that:

A lot of the matters in the reports would have been reported to Ministers or the Minister on a progressive basis. I cannot recall that a particular monthly report as the reporting device went to the Minister. But individual issues from those reports would have been reported by either the national managers, the Deputy or the Comptroller.⁶

4. Evidence, p. 2053.

5. Evidence, pp. S11018-9.

6. Evidence, p. 2115.

31.7 Further clarification revealed that 'the Senior Executive Service of the Australian Customs Service has the responsibility for the preparation of briefs, the preparation of ministerial correspondence and the submission of that correspondence to Ministers.'⁷

31.8 From what the Committee observed, the National Manager Investigation did perform this role. It observed, in particular, that a number of ad hoc reports were forwarded to either or both Ministers. As indicated elsewhere in this Report, however, the Committee retained the impression that the respective Ministers could have been kept better informed by Customs and the judgements made about what and when to advise each Minister were not in all cases what the Committee would see in retrospect to be optimal. Nevertheless, the Committee recognises that the Ministers themselves have a key part to play in guiding the judgements made by Customs about the extent and frequency of reporting.

7. Evidence, p. 2115.

Chapter 32

MANAGEMENT OF ACS INVESTIGATIONS AND PROSECUTIONS

The attributes identified are a positive attitude to law enforcement, high level of oral and written communication skills, ... tertiary qualifications in law, accountancy and computing would be an advantage.

The desirable attributes of ACS Investigators¹

Introduction

32.1 The comprehensive failure of the committal proceedings and revelations about the methods of operation of the ACS investigators during the Inquiry were instrumental in focusing the Committee's attention on the management philosophies and practices adopted within Customs for the investigation and prosecution functions. Previous chapters have identified some aspects of concern to the Committee. Others are addressed below.

Education Qualifications of Investigators

32.2 The Senior Investigator in charge of the Midford Case told the Committee that he did not have any academic qualifications.² Further probing by the Committee revealed that he had attained the Intermediate Certificate sometime prior to 1955.³ The current equivalent is the School Certificate.

32.3 His Senior Inspector attained the Higher School Certificate in 1969.⁴ He also advised that he had not attended any TAFE and had no outside qualifications.⁵ With the exception of the NSW Director of Investigations, who

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1. Evidence, p. S6506.
 2. Evidence, p. 1257.
 3. Evidence, p. 1257.
 4. Evidence, p. 1260.
 5. Evidence, pp. 1260 and 1952.

volunteered to the Committee that he held a Law Degree,⁶ the qualifications of the other individual witnesses from the Investigations Sub-program were not ascertained. However, the former occupant of the position of Director of Quota Operations did advise that he held on economics degree.⁷

32.4 The ACS advised the Committee, in September 1991 that 19 per cent of its Investigations officers possessed tertiary qualifications. An indication of the types of tertiary qualifications held by the officers can be gained from a list showing the qualifications held by all officers within the Investigations Sub-program.⁸ However, it should be noted that approximately two thirds of the staff in the Sub-program are not investigators.⁹ Table 32.1 lists those qualifications.

Table 32.1

Tertiary Qualifications held by Officers in ACS Investigation Sub-program in 1991

Master of Arts
Bachelor of Accountancy
Bachelor of Economics
Bachelor of Science
Bachelor of Law
Bachelor of Applied Science
Bachelor of Business Administration
Bachelor of Business Accountancy
Diploma of Management
Diploma of Public Administration
Diploma of Science
Diploma of Secretarial Studies
Diploma of Criminal Justice & Community Welfare
Associate Diploma of Accountancy
Associate Diploma of Computing
Certificate of Education
Certificate of Law Enforcement Studies
Certificate of Export Management
Certificate of Commerce
Certificate of Electronics
Certificate of Meat Inspection¹⁰

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6. Evidence, p. 1784.
 7. Evidence, p. 1749.
 8. Senate Estimates Committee A, Additional Information Received - Volume 5, October 1991, p. 91.
 9. Evidence, p. S6489.
 10. Senate Estimates Committee A, Additional Information Received - Volume 5, October 1991, p. 91.

32.5 The Committee suspects that very few of the investigators hold tertiary qualifications relevant to their duties. It was also noted that 74 per cent of the Investigations officers have the Higher School Certificate or equivalent.¹¹

32.6 The ACS advised that it had not given any consideration to setting minimum education levels for Investigation officers.¹²

ACS Corporate Plan

32.7 The Comptroller-General was asked by the Committee in March 1992, 'Where did you start to identify that in fact the qualifications of your officers really were not adequate for the sort of work you are undertaking?' His response referred to a management plan in the ACS corporate plans and that 'in the latter part of last year we took decisions to endeavour to dramatically increase the number of tertiary qualified people in the ACS.'¹³ It seemed to the Committee that this may have been prompted by another parliamentary inquiry into Customs,¹⁴ in which the Comptroller-General advised that he planned to double the level of tertiary trained personnel in the ACS within a short period of time.

32.8 The Committee requested a copy of the management plan and was told it 'could have a copy of each of them.'¹⁵ However, the documentation provided consisted solely of the 1991-94 ACS Corporate Plan.¹⁶ Examination of this document did not reveal any obvious links to the claims made by the Comptroller-General.

32.9 It was interesting to note, however, that under the heading of 'Key Customs Targets for 1991-92' there was listed as the second item 'Co-operation with the (JCPA) Inquiry into the Midford Paramount Case and Related Matters'.¹⁷ No definition of 'co-operation' was provided.

11. *ibid.*

12. Evidence, p. S6508.

13. Evidence, p. 1843.

14. See House of Representatives Standing Committee on Finance and Public Administration Inquiry into the Australian Customs Service. Evidence pp. 383-4)

15. Evidence, p. 1844.

16. Evidence, pp. S6414-78.

17. Evidence, p. S6428.

32.10 The Investigations Sub-program listed six objectives, the last of which was:

Develop a professional and highly skilled workforce through needs-based, cost effective and performance related training and development opportunities which enhance Investigation Sub-program results and individuals' career prospects.¹⁸

32.11 The strategy listed to achieve this objective, however, was disappointing. It listed that the ACS would 'Continue to deliver current training courses to maintain the Sub-Program's skills base' (emphasis added) and seek increased access to corporate management and specialised training.¹⁹ It was the Committee's view that more could be done to improve the investigations workforce.

32.12 The five performance indicators listed that would purportedly measure how well the ACS was achieving its six objectives for the Investigations Sub-program were also considered to be inadequate.²⁰

Experience in Investigations Function

32.13 Both the Senior Investigator and Senior Inspector had several years experience in conducting investigations under the Customs Act prior to commencement of the Midford Case.²¹

32.14 The Senior Inspector said that he had participated in some 30 to 50 Customs investigations in the five or six years prior to the Midford case.²²

32.15 The Committee did not ascertain the extent of investigatory experience gained by the other ACS Investigations officers involved in the case but assumed it was roughly commensurate with that of the officers referred to above. There were certainly no claims made that the officers were new to the function.

18. Evidence, p. S6456.

19. Evidence, p. S6458.

20. Evidence, p. S6458.

21. Evidence, p. 1211.

22. Evidence, p. 1211.

Internal Training Courses

The Individual Officers

32.16 It was ascertained that the Senior Investigator and Senior Inspector had attended numerous in-house courses over the years.²³ The latter officer nominated that he had attended about 20 such courses.²⁴ Lists of the courses attended by each officer were provided.²⁵

32.17 The Senior Investigator was asked whether he had undertaken any formal training to gain knowledge of commercial law. He advised he had not, but referred to an in-house 16 week commercial course completed in 1984,²⁶ which 'focused on all the import procedures, valuation areas, classification of goods, and basically the importing process.'²⁷

32.18 An investigation course and an advanced investigation course were described by the Senior Inspector as the primary training provided. He said of these on the first day the Committee took evidence from Customs that 'If you are going into the investigation area ... you really must know about the law - about commercial transactions, banking (and) overseas money transfer.'²⁸

32.19 In view of some later disclosures, the Committee wholeheartedly agreed.

32.20 The witness indicated that the advanced course had been 'improved' in about 1986-87 and described it as a five week full time non-residential course involving guest lecturers which 'is very, very in-depth and ... includes a big module on law - in fact, most of it is probably law rather than techniques.'²⁹

32.21 In another context this witness told the Committee that 'I am sure that we should all have more tertiary qualifications than we have.'³⁰

23. Evidence, pp. 1257 and 1260.

24. Evidence, p. 1260.

25. Evidence, pp. S4372-3.

26. Evidence, p. 1258.

27. Evidence, p. 1258.

28. Evidence, p. 1259-60.

29. Evidence, p. 1260.

30. Evidence, p. 1452.

Training Available to Investigators

32.22 The ACS submitted that the work undertaken by the investigators is 'highly technical' in nature and that 'training is provided in all facets of ACS investigatory, legal and prosecution issues as well as the development of sound computer literacy and good interpersonal and liaison skills.'³¹ It added that the 'courses are provided both internally and externally by other law enforcement agencies, academic and commercial institutions.'³² Guest lecturers supplement the internal expertise.

32.23 The principal training undertaken is the Advanced Investigation Training Course, which 'usually complements many years of Customs field work in (other) enforcement areas' within the organisation.³³ It is intended to provide 'officers with investigative and inquiry skills traditionally taught to law enforcement agencies'.³⁴

32.24 Customs submitted that:

External lecturers are sought from Attorney General's, the office of the Director of Public Prosecutions, the Cash Transaction Reports Agency, the banking system, the judiciary, Police forces, and professional persons such as chartered accountants, lawyers and computer fraud experts to name a few. The course is subject to constant amendment to ensure that the content reflects the changing legislative, administrative and operational environment.

The course relies heavily on knowledge of relevant legislation eg; the Customs Act and Regulations, the Commonwealth Crimes Act, the Justices Act, the Evidence Acts and prior judgements handed down by the courts.

Major content areas include:

- . role and attitude of an investigation officer
- . principles of investigation

31. Evidence, p. S203.

32. Evidence, p. S203.

33. Evidence, p. S203.

34. Evidence, p. S203.

- . interviewing techniques
- . intelligence operations
- . commercial intelligence process
- . rules of evidence
- . elements of offences
- . considerations in a criminal prosecution
- . role of the Director of Public Prosecutions
- . review of the legal process
- . powers of officers
- . significant commercial enquiries
- . briefs of evidence
- . administrative law provisions, and
- . surveillance theory / informant handling.

Other internal courses are those relating to Surveillance Techniques, Basic and Advanced Intelligence, Methods of Instruction, legal workshops and Operational Command.

Further external courses available to officers include those organised by the Institute of Criminology, the Bureau of Criminal Investigation, AFP (Detective Training Course); other police forces; Attorney General's and the DPP.³⁵

32.25 When the Committee queried the extent of the course contents it was ascertained that the Advanced Course covered all the topics listed above during its five week duration, with the exception of administrative law and surveillance theory, which are separate courses.³⁶

35. Evidence, pp. S203-4.

36. Evidence, pp. S6510-11.

32.26 It was submitted by the ACS that 75 per cent of the 'operational staff within the Investigations Sub-program had attended the Advanced Course.³⁷ However, it was noted from figures provided by the ACS that whilst 85 per cent of the NSW staff had attended, only 25 per cent of the investigation component staff in Victoria had attended such training.³⁸ The reasons for this were not explored.

32.27 The Committee was also advised in mid 1992 that 78 of the current Investigations staff had attended the ACS Administrative Law Course,³⁹ which had earlier been described as 'a separate module delivered by Legal Services following the Advanced Investigation Course.'⁴⁰ As only 79 staff had attended the Advanced Course, the Committee assumed that its comments made in relation to attendance at that course applied equally to the Administrative Law Course.

32.28 In view of the shortcomings disclosed during the hearings, the Committee was particularly concerned to ascertain whether any training was given in the principles of natural justice and whether the course participants were tested or assessed on their absorption and understanding of the wide ranging material apparently presented. It was noted that the topic of natural justice was not listed by the ACS as a content of its courses. However, the answer provided by the ACS to this first question was an unexpanded upon 'Yes.'⁴¹ In relation to the Committee's other concern it was disclosed that:

Testing or 'evaluation' of Trainees occurs throughout the course. Session leaders check Trainees comprehension of content during sessions through questioning. Practical sessions are debriefed to identify Trainee errors or areas of improvement and to maximise other trainees learning. Written exams are conducted throughout the course to orient trainees theoretical knowledge to hypothetical situations and test their application of legislation in the field. Oral tests are also conducted at the end of the course to further test trainees knowledge and their ability to explain answers given.⁴²

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37. Evidence, p. S6513.
38. Evidence, p. S6513.
39. Evidence, p. S7559.
40. Evidence, p. S6510.
41. Evidence, p. S6512.
42. Evidence, p. S6514.

32.29 It was also added that:

Supervisors attend course debriefing and are asked to monitor trainees application of training in the field [usually by teaming trainees with experienced officers] and provide senior management and Training with feedback.⁴³

32.30 The Committee was also assured that the 'course is subject to constant amendment to ensure that the content reflects the changing legislative, administrative and operational environment.'⁴⁴ A further question put to the ACS was whether refresher courses and updates are conducted periodically for investigators who have previously completed the Advanced Course. Customs responded that 'staff can nominate to re-attend any portion of ACS training if they feel they need to refresh skills.'⁴⁵

32.31 The Committee noted that this was staff initiated, not management initiated. It also wondered whether in practice any investigators nominated themselves for re-attendance at courses. The Committee did not seek details of what, if any, refresher training had been undertaken by the officers involved in the Midford case.

32.32 The Comptroller-General advised the Committee that the ACS investigators who took the witness statements for the Midford case 'had no specific training in Crimes Act processes' and that 'there was no specific training course that officers attended before they undertook Crimes Act investigations.'⁴⁶

32.33 The Committee asked whether the witness thought that needed to be rectified. He said that 'Certainly training currently under contemplation does include improved elements for handling Crimes Act Investigations.'⁴⁷ (emphasis added) Further elaboration was not provided.

32.34 The widespread absence of knowledge of natural justice, administrative law, compilation of appropriate briefs of evidence, interviewing techniques, taking of statements, rules of evidence, and normal commercial or financial practices demonstrated by the ACS officers involved in the Midford case

43. Evidence, p. S6514.

44. Evidence, p. S203. Also see S6515.

45. Evidence, p. S6516.

46. Evidence p. 2094.

47. Evidence, p. 2094.

left the Committee with a lingering doubt that the training provided was as good as suggested by Customs. The overwhelming incongruity of the situation led the Committee to consider questions regarding the degree of suitability the officers demonstrated for the positions they occupied.

32.35 The Comptroller-General was asked whether he had made any decisions to engage or train specialists or seek secondments to improve the skills and technical knowledge available within the ACS in relation to Crimes Act investigations.⁴⁸ His view was that existing officers should acquire the additional skills via the upgraded Advanced Investigation Course. The question was put again, specifically in relation to engaging or training specialists, but was evaded.⁴⁹

32.36 In the Committee's view, upgrading of the Advanced Investigation Course is commendable, but would not assist those officers who had completed this course prior to the upgrading unless they self nominated to redo the course. The Comptroller-General referred to an acknowledgment by the DPP that officers very quickly became familiar with the subject matter of dealing with Crimes Act prosecutions. He also referred to a number of successful Crimes Act prosecutions.⁵⁰

32.37 However, the Committee is only aware of three ACS Crimes Act prosecutions⁵¹, one of which failed spectacularly. The Committee commented that the ACS 'was not overflowing with success' in this area.⁵² The comment from the DPP referred to by the Comptroller-General originated with its case officer.⁵³ In the Committee's view her comment should be examined in context and in any case, should be considered in the light of other comments made by the Magistrate, Defence Counsel and the Committee regarding the methods used to obtain, relevance and adequacy of the evidence gathered and presented for the Crimes Act prosecution brought against Midford and its Tariff Advisor.

32.38 The Committee noted that the ACS spent more than 6 per cent of its total payroll on eligible training under the Training Guarantee Act during 1990-91.⁵⁴ In fact, the Comptroller-General in December 1990 told another Parliamentary Committee that under the measurement rules '7.6 percent of the ACS

48. Evidence, p. 1858.

49. Evidence, p. 1858.

50. Evidence, p. 1858.

51. Evidence, pp. 2055-6.

52. Evidence, p. 1858.

53. Evidence, p. S139.

54. Australian Customs Service, Annual Report 1990-91, p. 201.

budget is devoted to training.⁵⁵ No breakdown of these figures was provided for individual Sub-programs. Customs was unable to advise what percentage of the Investigations Sub-program resources was devoted to training and professional development of the Investigations officers.⁵⁶ It was similarly unable to disclose how much was spent on technical training for Investigations officers as opposed to general corporate or management training.⁵⁷

32.39 The ACS was asked how its expenditure on technical training compared with other investigators such as Police or overseas Customs investigators. It advised that 'There is no data available to the ACS to make meaningful comparisons with other enforcement agencies or overseas Customs administrations.'⁵⁸ Because of the absence of collection of appropriate data, it was similarly unable to advise whether the percentage of training resources devoted to technical training of its investigators had changed over the years.⁵⁹

32.40 The Customs submission of February 1991 referred to a 'Training Needs Analysis' then currently being conducted, which was:

... to examine the roles and functions of officers in the Sub-program in accordance with the requirements of the Corporate Plan and to determine the skills required by officers to preform those functions effectively.

The (Analysis) is expected to identify issues which relate to the working environment of investigations officers and to offer solutions in the provision of relevant training. A non-comprehensive list follows:

- . electronic initiatives and their impact on work procedures,
- . operational command skills for managers,
- . technological skills required for the near future, and
- . advanced research skills and tools.⁶⁰

55. House of Representatives Standing Committee on Finance and Public Administration Inquiry into Australian Customs Service, Evidence p. 382.

56. Evidence, p. S6522.

57. Evidence, p. S6523.

58. Evidence, p. S6524.

59. Evidence, p. S6525.

60. Evidence, p. S204.

32.41 In March 1992 the Committee sought details of whether that review had been completed and, if so, the results. It was advised that 'The result ... was a clear definition of staff performance requirements in the Investigations environment as well as the knowledge and skills relating to their functions'.⁶¹

32.42 The response from the ACS continued that the Training Needs Analysis:

... resulted in action on organisational as well as identified training needs. For example, case management software was enhanced and organisational changes made to meet needs (Commercial Intelligence formed). Performance indicators were changed, clearer definitions of functional statements were developed. Changes to content and methodology of training are being developed. National and Regional training co-ordinators have been established. New curriculum has been designed for supervisors. The process of implementation is ongoing.⁶²

32.43 Details of the changes to the content and methodology of training were not ascertained by the Committee.

Recruitment Practices

32.44 Whilst the ACS major submission of February 1991 contained details of training provided to investigators, it did not specify where these officers were recruited from nor what attributes were considered desirable.

Where Do Investigators Come From?

32.45 The ACS advised that:

Investigation Operations staff are promoted or transferred into the Component from other areas of the Australian Customs Service. All Customs Officers receive basic enforcement training at the time of entry, more specialised

61. Evidence, p. S6520.

62. Evidence, p. S6521.

(investigative) training being provided at higher levels on a needs basis or on transfer into the Component. There is always scope for appointment of individuals from outside the Service direct to positions in Investigation, based on merit, who may possess particular skills or qualifications. As a general rule most staff would have gained experience in several areas of the ACS at the Customs Officer Band 1-3 level before working in Investigation.⁶³

32.46 When put to the test, it was ascertained that only four of the investigators current at May 1992 had been recruited from outside the Australian Customs Service.⁶⁴ It was not ascertained whether they had worked in other areas within the ACS prior to joining Investigations.

Desirable Attributes and Experience

32.47 Having established that minimum education standards were not currently required, the Committee sought the ACS views on the attributes and experience necessary for a good Customs investigator. It was advised that:

The attributes identified are a positive attitude to law enforcement, high level of oral and written communication skills, sound research and analytical skills, sound interpersonal and liaison skills combined with a broad background in both the enforcement and commercial areas of the Australian Customs Service or other law enforcement agencies. In addition tertiary qualifications in law, accountancy and computing would be an advantage.⁶⁵

32.48 Under the category of experience required the ACS stated that:

As reflected (above) a broad experience across all areas of the ACS, or in the case of external applicants experience in law enforcement/policing, legal/investigative work or accounting/audit work would be preferred.⁶⁶

63. Evidence, p. S6505.

64. Evidence, p. S7558.

65. Evidence, p. S6506.

66. Evidence, p. S6507.

32.49 It was the Committee's view that not all ACS officers are suitable for investigative activities. Indeed, it formed the opinion that in practice a little too much emphasis was placed on experience within the ACS and insufficient attention was paid to matching recruits to the particular demands of work of this nature.

32.50 The Comptroller-General confirmed to the Committee that Customs had had difficulties in recruiting officers to the Investigations Sub-program, at least since 1987.⁶⁷ The reasons for this were discussed, as revealed in the following extract of the transcript:

WITNESS - I think it is a simple fact that officers look at a range of jobs available at a particular level in the different areas of the Department. They can aspire to promotion. The jobs in investigation are generally regarded as more difficult than their counterparts elsewhere in Customs. The particular view I take is that it is an excellent training ground for officers; it is harder, but that harder environment fits them out better for their subsequent careers in the organisation.

CHAIRMAN - Why do you not upgrade them? Why does not Customs simply upgrade the pay, upgrade the status ... and upgrade the qualifications?

WITNESS - I think I detect behind me a great note of applause, Mr Chairman, saying yes, I should upgrade the investigation area ... I have a limited bucket of money. To do that means I have to cut off some resources to pay for that upgrade, and I then have a whole bevy of jobs elsewhere in the organisation knocking on the door saying, 'We are the same level as these people; we want an upgrade'. The union come in beating on my door also saying, 'We have upgraded those jobs, we want all these upgraded and, likewise, all the ones further down the line'. It does not work as easily as that.⁶⁸

32.51 The Committee was not convinced by arguments that pressure for flow on upgrading and relativities precluded implementation of an appropriate and realistic staffing establishment in the ACS Investigations units. A more efficient and effective investigative service providing complete and accurate briefs had much potential for savings by directing the investigative and prosecutorial efforts to best

67. Evidence, p. 1849.

68. Evidence, pp. 1849-50.

effect. In the Committee's view, to say that the ACS has a limited bucket of money simply means that it needs managing better.⁶⁹

32.52 For instance, within its existing resource limit, the Investigations Sub-program has the ability to trade off some of its lower grade positions that could be used to import more expertise. The Committee certainly did not envisage that there would be a wholesale and automatic upgrading of all existing positions. It is more a question of having staff of appropriate ability, expertise and experience to effectively perform the tasks required. A shift in the allocation of resources between the Investigations and Intelligence components of the Sub-program may also offer solutions. No doubt there are also many other options available that are worthy of consideration.

32.53 The Committee was disappointed with the reasons given by the Comptroller-General and with his ready dismissal of options without adequate assessment of their feasibility. In its opinion, the witness had exaggerated the difficulties involved.

The Need for Specialist Investigators

32.54 The move to undertaking Crimes Act prosecutions for selected cases that would traditionally have been subject to Customs Act proceedings was, in the Committee's view, inadequately planned and managed within the ACS. Evidentiary requirements and the standard of proof for Crimes Act cases are considerably more stringent than for the Customs Act.

32.55 In view of this trend, the Committee explored the question of whether there was a need for specialist investigators within the ACS to cope with the differing and increased requirements of Crimes Act investigations. The ACS plan to focus on large scale fraud presumably means that the Investigations officers will increasingly be dealing with more complex cases that will be prosecuted under the Crimes Act. Such a trend adds further weight to arguments that specialist expertise in Crimes Act investigations may be warranted.

32.56 The Committee asked Customs in March 1992 about the existing specialisations of Investigations staff. It submitted that 'The major areas of specialisation are general commercial fraud (majority of staff), fauna trafficking and other prohibited goods enquires.'⁷⁰ When questioned whether there were specialist

69. Evidence, p. 1850.

70. Evidence, p. S6529.

investigators within each region who concentrated on particular types of cases, the ACS replied that 'In major regions specific officers may be allocated to particular types of cases.'⁷¹ To the Committee, this response was not very definite or informative. However, the ACS did provide a more distinct response to a further question from the Committee which confirmed that there are currently no officers in the ACS who specialise in Crimes Act cases.⁷²

32.57 During the final public hearing for the Inquiry the Comptroller-General advised that:

... often you do not know the nature of an investigation until you are well into it. That indeed was the substance of the Midford case. As I have said before, it started off as a routine Customs undervaluation fraud. There was nothing special about it. The officers handling that were well versed in it. I recall from their evidence that they had done many such cases previously. Suddenly it exploded into major dimensions, involving the DPP. If you are asking me if at that stage in hindsight an elite squad should have been brought in, my initial response would be to say no, because you cannot traverse the ground that the preliminary investigators have already been over.⁷³

32.58 Notwithstanding the views expressed by the witness, the Committee noted that the matter that went to committal proceedings was detected very early in the investigation and the involvement of the DPP was first suggested on 10 December 1987, just days after the quota matter was discovered.

32.59 The Committee does not agree that involvement of appropriate expertise at that stage would have involved unnecessary traversing of old ground.

32.60 It seemed the witness was sharing more common ground with the Committee, however, when he later added that:

What I would see as a better arrangement is that that core of investigators who had done the routine investigation would

71. Evidence, p. S6528.
72. Evidence, p. S6530.
73. Evidence, p. 2094.

be drawn into a higher circle of investigation resource to handle the more important Crimes Act matters.⁷⁴

32.61 This is exactly what the Committee had in mind. The witness continued by stating that:

In future, we would be looking to inject at an early stage, when an investigation seemed to have the overtones of Crimes Act, some specialist knowledge: does this case require detailed accounting skills? - let us bring a cost accountant into it. Because of the legal ramifications, does it need the attachment of a specialist legal person? - that sort of contemplation.⁷⁵

32.62 The Committee notes that for such arrangements to work effectively, there would need to be more readily forthcoming recognition from the investigators that they were out of their depth and required assistance than was demonstrated during the Inquiry. The Committee would also wish that equal consideration be given to the need for expertise in investigation cases involving purely Customs Act matters. The problems highlighted in the Committee's examination of the ACS investigation of the financial accommodation issue seem adequate testament to the need for this. (See Chapters 14 and 15).

32.63 Notwithstanding the improvements foreshadowed by the Comptroller-General, the Committee remained of the view that there is merit in establishing within the ACS Investigations component, a number of officers with specialist knowledge and expertise in Crimes Act investigations.

Case Allocation Method

32.64 In connection with its examination of the need for specialist investigators, the Committee enquired of the ACS about the method used to allocate cases to particular staff within the Investigations area. Customs responded that:

Cases are allocated through Case Managers to case officers generally on an equitable workload basis. Individual officers on teams may be allocated cases on the basis of specific

74. Evidence, p. 2095.

75. Evidence, p. 2095.

commodities particularly for national operations, for example, fauna smuggling and the anabolic steroids operations.⁷⁶

32.65 It appeared to the Committee that there was scope for improved matching of the allocation of commercial fraud cases with the expertise, training, experience and developmental requirements of the individual investigators.

DPP Comments on Quality of Investigations

32.66 In a submission to the House of Representatives Standing Committee on Banking, Finance and Public Administration Inquiry into Fraud on the Commonwealth, the DPP commented that:

Many investigators lack a proper understanding of how to go about investigating a complicated case and how to construct a brief of evidence. It is hard enough for trained, experienced investigators to properly investigate a complicated fraud case. It is virtually impossible for an untrained, inexperienced investigator to do so. Many investigators have little or no training or experience and it is our perception that the general level of investigative skills remains low.⁷⁷

32.67 The Committee asked the Comptroller-General of Customs whether the statement applied to Customs. His response was:

Yes, it could in places. But surely you need to balance that, which is a general comment as I recall the evidence before that Committee, against what the DPP said about the Customs investigation officers involved in the Midford case. They did not make those comments.⁷⁸

32.68 The Committee's opinion was that the evidence spoke for itself. Earlier chapters have discussed its views on the opinion expressed by the DPP in respect of the ACS investigators involved in the Midford Case.

76. Evidence, p. S6527.

77. Evidence, p. 2129.

78. Evidence, p. 2129.

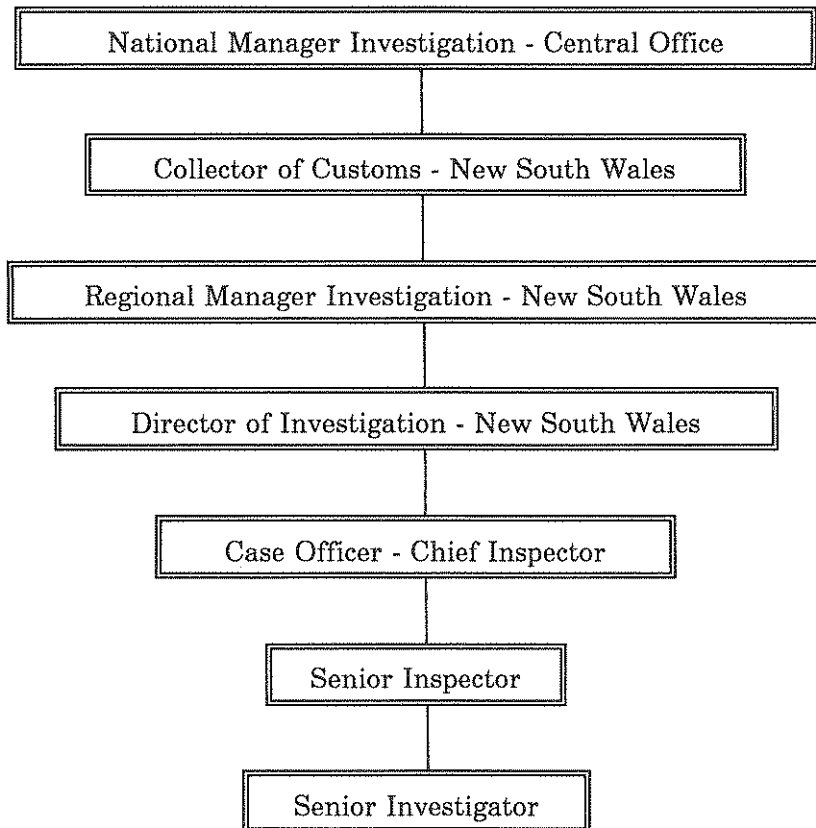
Structure of Investigations Sub-Program

32.69 The Investigations Sub-program is one of seven operational Sub-programs within Customs. There are three other Sub-programs within the ACS.⁷⁹

32.70 Figure 32.2 shows the organisation structure for the Sub-program of Investigations. Customs advised that in its view "There are no particular problems being experienced with the present structure."⁸⁰

Table 32.2

Organisation Structure - Investigation



79. ACS Annual Report 1990-91, p. 19.

80. Evidence, p. S6504.

32.71 Table 32.3 provides some overview statistics in relation to the Sub-program.

Table 32.3

Australian Customs Service - Overview Statistics
1987-88 to 1991-92

	1987-88	1988-89	1989-90	1990-91	1991-92
Average Staffing Level	386	366	352	364	342
Salaries	\$12.4M	\$11.9M	\$12.1M	\$13.1M	\$13.1M
Administration	\$ 1.6M	\$ 1.5M	\$ 1.9M	\$ 1.7M	\$ 3.4M
Revenue - Commercial Cases	N/A	N/A	4.2	\$ 3.9M	\$ 3.3M
Commercial Fraud Investigation Initiated	N/A	N/A	488	285	255
Prosecutions Completed	91	128	67	45	41

Source: ACS Annual Reports and S6490.

32.72 Within the overall Customs program there were 5 009 operative officers during 1990-91, 364 of which were included in the investigations function.⁸¹ Only 124 of these officers are Customs investigators.⁸² Table 32.4 details the staff numbers for the four components of the Investigations Sub-program.

81. Annual Report pp. 200-1.

82. Evidence, pp. 6490 and S7560 - Central Office staff are not investigators.

Table 32.4

Staffing Details for components of Investigations Sub-Program

Component	1988-89	1989-90	1990-91	1991-92
Investigation	177	152	150	138
Intelligence	140	150	166	157
Administration	24	25	25	29
Legal Support	24	25	22	21

Source: Evidence, p. S6490.

32.73 The Committee noted that the numbers of investigators had declined from 177 in 1988-89 to 138 in 1991-92. During this same period the numbers of Intelligence staff rose from 140 to 157.⁸³ Customs advised that this trend is not expected to continue in the future⁸⁴ and that "There is neither anecdotal, nor more importantly, any empirical evidence to suggest that staff changes over the past five years have affected performance levels."⁸⁵

32.74 However, the Committee noted that overall during this period there had been a general decline in the ACS performance record for commercial fraud investigations and prosecutions. Inadequacies in the data made available and changes in the system for collecting that data, together with the introduction in mid 1989 of an administrative penalty regime which reduced the number of small value prosecutions, all made more meaningful data comparisons difficult. The ACS Annual Report also disclosed that "The new investigation focus is on large scale fraud and other illegal activities."⁸⁶ Such a focus has important implications in view of the findings of this Inquiry.

83. Evidence, p. S6490.

84. Evidence, p. S7557.

85. Evidence, p. S6494.

86. Annual Report, p. 19.

The Comptroller-General told the Committee that:

In terms of organisation structure, I am very pleased with the program management organisation that was put in place in September 1987. It is standing the test of time. We have tinkered with it at the margin as workloads and priorities change but, fundamentally, it is working well for us. The House of Representatives Standing Committee on Finance and Public Administration endorsed that structure when it examined our import-export process. So structure-wise I think we are in good shape. That is not to say that as things change and priorities alter I will not make further changes to the structure; but as a platform I think it has bedded down well. Around the bureaucracy I think other agencies would also acknowledge that that is the way to go for the modern financial management improvement approach.⁸⁷

32.76 The basic structural arrangements in place in respect of the Investigations function were considered by the Committee to be adequate, with the exception of availability of legal expertise and specialist knowledge of Crimes Act investigations, as discussed elsewhere in this chapter. The root cause of many of the problems identified during the Inquiry could in most cases be traced to matters that would not be greatly affected by adjustments to the existing organisational structure. The Committee did note, however, that one submission suggested that there be within the ACS:

... a new structure, separating the facilitation and control functions into different structures with appropriate recruiting, training and resourcing.⁸⁸

Supervision of Investigators

32.77 Adequate supervision and effective checking of the technical work of investigators was one area that the Committee considered could be improved. The ACS advised that the method currently employed involved the following:

Case officers are supervised by Case Managers at the Chief Inspector (Senior Officer Grade C) level who allocate, monitor

87. Evidence, p. 2119.

88. Evidence, p. S1304.

and review cases. In major Regions a Director (Senior Officer Grade B) and then a Regional Manager (SES Band 1) is the next level of management. In other Regions Chief Inspectors report to Regional Managers at the Senior Officer Grade B level. Where a case officer is at the Inspector (Customs Officer Band 4) level there may be an intermediary level of supervision within teams at the Senior Inspector (Customs Officer Band 5) level.⁸⁹

Reporting Mechanisms

32.78 Customs was requested to provide details of the reporting mechanisms both within the ACS regions and to Central Office. It submitted that:

Monthly reports and Quarterly reports are supplied to the Deputy Comptroller-General through the National Manager, Investigation from each Regional Manager and Central office Director.

These reports contain statistical information on drug seizures at the Barrier, narrative information on significant operations, performance indicators and a financial analysis.

Ad hoc reports are made to Regional Managers and to Central Office on significant actions.

Performance Indicators are designed to gauge the performance of the sub-program. These are contained in with monthly reports which also contain narratives on significant actions.

Quarterly reports are also provided to the Deputy Comptroller General detailing the performance of the Sub-program over the preceding three months.

Regional Managers meet two or three times a year to discuss policy and to set strategies to achieve the corporate goals.

Additionally there are Regional and National Operation Committee meetings to monitor and plan operations across all Sub-programs.⁹⁰

89. Evidence, p. S6532.

90. Evidence, p. S6533.

32.79 The Committee requested copies of the written reports, which Customs subsequently provided.⁹¹

32.80 An example of the inadequate standard of reporting from NSW to ACS Central Office is provided in the September 1988 monthly report which covers the period during which the two ACS officers conducted investigations in Malaysia. It somewhat less than informatively states:

... two officers visited Malaysia in conjunction with the Midford case and obtained evidence from the supplier and other sources. Their actions were the subject of an injunction taken out in the Malaysian High Court and that matter is currently being pursued through the courts.⁹²

32.81 It is acknowledged, however, that other ad hoc reports on these matters were referred to the Central Office. The Committee found that they were only slightly more informative.⁹³

32.82 Even where briefs were prepared in an attempt to keep the Senior Customs Management informed, the Committee noted instances where they were incorrect or misleading. For instance, the Director of Investigations, then temporarily acting as Regional Manager, Investigations advised the National Manager, Investigations on 19 September 1988 that on Friday 16 September the two ACS officers in Malaysia 'became aware that an injunction may have been issued but were unable to confirm.'⁹⁴ This should be contrasted with the evidence discussed in Chapters 18 and 19 regarding the positive steps taken by the officers to avoid service of the injunction.

32.83 Another instance noted by the Committee was where the then Comptroller-General received a brief dated 7 January 1988 which said:

Documentation obtained during a Section 214 operation at MP indicated (Midford's Tariff Advisor and his firm) were aware of the ineligibility of garments for special offshore quota, yet they permitted the garments to be entered claiming quota entitlement.⁹⁵

91. Evidence, p. S8958.

92. Evidence, p. S9033.

93. Evidence, p. S8979-90.

94. Evidence, p. S8979.

95. Evidence, pp. 2046 and S6403.

32.84 It appeared that the officers involved in providing that advice were confused over the respective roles of the Tariff Advisor, Customs Agent and Importer.

32.85 Based on the Committee's understanding of the issues at hand, it put the view that surely only the Customs Agent or Midford itself could have permitted the garments to be entered, claiming quota entitlement.⁹⁶

32.86 The Comptroller-General agreed with the Committee that the advice was wrong and misleading.⁹⁷

32.87 Yet another brief, apparently provided in August 1989 by the NSW Director of Investigations to his National Manager incorrectly claimed that the documents taken in the section 214 raid some ten months earlier 'showed that Midford Malaysia Pty Ltd ... had been sold.'⁹⁸

32.88 The Comptroller-General conceded to the Committee that in relation to the briefings going to the top of the Customs Service, 'Both the timeliness and the quality were not good enough.'⁹⁹

32.89 He also referred to his opening remarks for an earlier hearing in which he said:

Customs needs to be more particular in providing briefings on cases and ensure that such briefings are brought to the attention of the appropriate level of management within the ACS.¹⁰⁰

96. Evidence, p. 2046.

97. Evidence, pp. 2046-7.

98. Evidence, p. S9001.

99. Evidence, p. 2049.

100. Evidence, pp. 2049 and 1808.

32.90 The opening statement also acknowledged that insufficient details had been provided regarding the events in Malaysia when questions were first raised on this matter in the Senate in October 1990.¹⁰¹ The Committee noted, however, that in fact the matter was actually raised for the first time in the 1989 Estimates hearings. On both occasions the Minister appeared to have been inadequately briefed.¹⁰²

32.91 The Committee sought the Comptroller-General's comments on what actions had been initiated to improve the acknowledged problems with ACS briefings.¹⁰³

32.92 He advised that:

The fundamental step that we have taken is to introduce a case management system which is a computerised record of investigation and prosecution activity, ... known by the acronym CAMS.¹⁰⁴

32.93 Further details on CAMS are provided below.

Case Analysis and Management Systems (CAMS)

32.94 The Comptroller-General described CAMS as a system that:

... enables investigation officers to input data during various phases of the investigation and prosecution process. Various levels of management can have access to this data to determine where cases are at and how progress has been achieved. That system is intended to inject and impose a discipline within the totality of our investigation process which was not always evident during the conduct of the Midford case.

101. Evidence, pp. 1807-8.

102. Evidence, p. 2056.

103. Evidence, p. 2050.

104. Evidence, p. 2050.

... It starts at the initial job phase and concludes once the prosecution case is finalised. So there is a tracking of each of the activities of the investigation process.¹⁰⁵

32.95 The Committee welcomed this initiative and requested that 'Customs draw up a document on CAMS so (it) could have more of an overview of it.'¹⁰⁶

32.96 However, Customs on 28 August 1992 instead provided what appears to be the user's manual,¹⁰⁷ including such vital information as how to start the system and the codes used to identify every country in the world.¹⁰⁸

32.97 Little more than a cursory examination of that material indicated to the Committee that any reports or briefings prepared using the system would only be as complete, accurate and timely as the data input to it. However, the Committee did not have the time nor resources at such a late stage of the Inquiry to examine the system in any detail.

The 'Please Explain' Procedure

32.98 One of the Midford directors gave evidence to the Committee that:

In a nutshell, as I see it, the problem for Customs was that it held certain erroneous perceptions which were not corrected by the company. We did not know that it held those erroneous perceptions. We were not given the opportunity to correct them and we were blockaded everywhere. ... We could not get Customs to talk to us. It had already formed its view. It had already judged us and set about our execution.¹⁰⁹

105. Evidence, p. 2051.

106. Evidence, p. 2052.

107. Evidence, pp. S11294-387.

108. Evidence, pp. S11375-7.

109. Evidence, pp. 13-14.

32.99 He later said about the Midford case that 'It is a shame that so much has been wasted in resources on this; it could have been settled by simple amicable discussion.'¹¹⁰

32.100 Another Midford director advised that in his experience in dealings with Customs over many years, where inevitably some matters arise where there are misunderstandings, discrepancies or things that are not clear:

The standard procedure was that it would send a 'please explain' notice - and it was called exactly that - to the customs agent and if it was satisfied with the explanation that was it. If it was not satisfied with the explanation it would send out what it calls a 'please see me' notice which is very serious.¹¹¹

32.101 Further references to Customs not following its usual procedures were also made.¹¹²

32.102 The Committee put to the Comptroller-General the question of whether Customs needed to make more use of some sort of 'please explain' mechanism.¹¹³ He responded that 'There is a whole train of 'please explains' that covers circumstances in Customs.'¹¹⁴

32.103 This was interpreted as confirmation that Customs had indeed departed from its usual procedures. The Chairman summed up the Committee's concerns by stating that:

Yes. It really was a case of act now and do the paperwork later; I guess that is the analogy that I am trying to come up with. There was an awful lot of haste in this and with the clinical overview of some three to four years or so later, we

110. Evidence, p. 106.

111. Evidence, p. 185.

112. Evidence, pp. 186 and 265.

113. Evidence, p. 1860.

114. Evidence, p. 1861.

can rationalise it in one way or another. But if we are trying to understand what was happening at the time, it causes some considerable concern. People's rights have got to be acknowledged at every step of the process, surely, and I guess what I am having a lot of trouble trying to come to grips with is: why the rush? We went through a lot of evidence about how (the DPP) wrote to your predecessor about the pressure, we had other DPP comments about pressure, and I guess one gets the feeling that Customs would have been very pleased that there was no room for a 'please explain' notice in this case. They spotted someone in a black hat and they got on their horse and chased him.¹¹⁵

Senior Management's Responsibilities

32.104 It seemed to the Committee that there were plenty of early warning signs for the Senior Management of Customs that should have been acted upon, including such matters as the displays of undue haste, pressure exerted for a particular result, by-passing of normal procedures, conflicts between ACS Central Office and the NSW collectorate, contrary legal opinions and Customs not providing the Company with its rights under the natural justice provisions. In the Committee's opinion the then National Manager, Investigations, in particular, could have done much more to ensure that the case was properly managed.

32.105 Almost without exception the matters found lacking during this case were within the control and authority of this officer within the Customs organisational structure. The poor management of the case and the lack of corrective action where it came to his attention that all was not running smoothly, particularly as this was to be somewhat of a test case under the Crimes Act and the largest investigation conducted by the ACS, all raise doubts about the managerial ability at this level within Customs.

115. Evidence, p. 1862.

Complaints Against ACS Investigators

32.106 The Comptroller-General advised another Parliamentary Committee that any complaints against an officer alleging harassment, undue process, illegal tactics, anything of that nature, would be referred to the internal affairs unit for independent investigation.¹¹⁶

32.107 The Committee noted that from time to time complaints do arise about the actions of Investigations staff. It asked Customs how these are investigated and actioned. Customs submitted that:

Complaints against investigation officers are investigated in the same way as complaints against any Customs officer. The majority of complaints are dealt with in accordance with administrative guidelines. Serious complaints indicating impropriety or breaches of State or Commonwealth statute would be referred to the Internal Affairs Unit. As a general rule complaints related to investigation activity are usually directed at the actions of the ACS rather than against individual officers and the usual administrative law regimes are utilised to investigate the complaints.¹¹⁷

32.108 Customs was requested to advise the nature of the administrative guidelines to which it had referred. The answer was:

The Personnel Management Manual, Volume 3, promulgated by the Public Service Commission, published by AGPS covers the code of conduct and appropriate actions regarding the behaviour of Commonwealth public servants.¹¹⁸

32.109 The Committee was left wondering why the original response did not simply say this in the first place.

116. Evidence, p. 291.

117. Evidence, p. S6534.

118. Evidence, p. 7562.

32.110 Details were sought of the number of complaints received over the last five years. Customs chose not to answer this question, but instead advised how many complaints had been investigated, as follows:

The Internal Affairs Unit handled the following complaints related to Investigation over the last five years:

NSW	12
VIC	1
QLD	1
SA	2
WA	1
TAS	-
NT	-
ACT	2
TOTAL	19

There were no other complaints which were investigated without referral to the IAU.¹¹⁹

32.111 The Committee noted that NSW alone accounted for more than 60 per cent of the cases. The Committee considered that this was another pointer or performance indicator of problems in the NSW Investigations Section. Brief details of the cases that arose in NSW were provided to the Inquiry.¹²⁰

32.112 It was the opinion of the Committee that Customs' neglect to provide the details sought by the Inquiry could be viewed as yet another attempt by the ACS to evade proper accountability.

32.113 Another potentially alarming discovery by the Committee was that the Internal Affairs Unit was staffed by a number of officers who had previously worked in the Investigations Section. The Committee did not pursue the numbers nor

119. Evidence, p. S6535.

120. Evidence, p. S6539.

enquire about whether ex-Investigations officers were strictly debarred from involvement in or access to information concerning investigations into their former workmates.

32.114 However, indications were received from the Customs Officers' Association that all is not perceived to be well with the Customs Internal Affairs Unit. In particular, it referred to the Service as being:

Over zealous in handling some matters and fairly indifferent on other occasions, particularly if those other occasions are likely to put the system under scrutiny.

- (i) Recently, a person in Sydney was sacked from his job on the basis of a Customs investigation and was later found not to have committed any Customs offence.
- (ii) Conversely, some years ago, the COA and other independent Officers complained of wrong doing by some Officers in Sydney. Only under some pressure did the Service eventually look into our allegations. Their inquiries have been described by some as a 'white wash.' Those raising the allegations were condemned by the Service and made to suffer.

The Officer who did much to cause the inquiry was deliberately denigrated. On the other hand, the Service closed ranks, stonewalled and rejected outright the possibility that anything was wrong with 'the system.' After some years those about whom the allegations were made have been arrested and charged by the Australian Federal Police. Clearly the effort in collecting evidence and proceeding towards prosecution in these respective matters does not indicate a balance/fairness or even handedness. [It is anticipated that item (ii) above may well be the next Customs matter to be the subject of an Inquiry].¹²¹

Planning of ACS Investigations

32.115 A notable absence during the Committee's examination of the ACS in relation to the various investigations Customs had conducted into Midford's operations was the planning for those investigations. Nowhere was it evident that

121. Evidence, pp. S1306-7.

Customs had planned its activities prior to commencement and monitored progress against such plans. Similarly, it was evident that data on the costing of the investigation activities undertaken were not routinely collected.

32.116 Whilst planning of investigations would always need flexibility to take into account unforeseen events, there appeared to be much scope for improving the economy, efficiency and effectiveness of Customs investigations by introducing formalised, budgeted plans. The increasing focus by the ACS on larger and more complex cases would seem to add even greater emphasis to the need for proper planning and costing. Listing of the tasks required to be performed at the outset would also assist in identifying where specialist expertise is required to be obtained from external sources and facilitate the matching of investigative tasks to the competencies of the core of ACS investigation officers.

The Customs Culture

32.117 There are many indications of the culture within Customs contained in this Report. The Committee believes that an organisation with over 5 000 staff spread right throughout Australia is likely to have many 'pockets' of sub-cultures that rise to prominence over time. It also fully recognises that changing the culture is not an easy task that can be accomplished overnight. Nonetheless, with so much said about problems with the ACS culture over the years, the Committee believes that more can and should be done to effect improvements.

32.118 The Committee noted that the Comptroller-General had advised another parliamentary inquiry in December 1990 that there was:

... a degree of apathy amongst Customs people generally to officers who are recruited with tertiary qualifications. The general Customs view is that tertiary qualifications do not necessarily assist you in performing the work of a Customs officer. The task of my management team is to change that culture around, so that all the staff recognise that with appropriate tertiary qualifications we can do the job of work more professionally and better than we are doing now.¹²²

32.119 Evidence was received that within the Investigations arena, ACS officers displayed and frequently voiced the attitude that all importers are crooks,

122. House of Representatives Standing Committee on Finance and Public Administration - Inquiry into the Australian Customs Service, p. 384.

and it is just a matter of catching them and that 'fraud is endemic' in the clothing industry. It appears, however, that the audits conducted by Customs have not shown this to be true.¹²³

32.120 The Customs Officers Association submitted that it was essentially the culture that has developed in Customs which is the core of the problem.¹²⁴ The Association also commented that the ACS culture requires of problems that 'the matter will be kept quiet in the first instance, fixed at all costs and buried forever. If nobody knows about it - it never happened.'¹²⁵

32.121 On the question of changing the culture within the ACS, the Comptroller-General said in August 1992 that 'For the last 12 months almost we have been working on the development of a people plan to take us a decade forward. Each element of that people plan revolves around some element of culture.'¹²⁶

32.122 Unfortunately, the Comptroller-General did not provide further elaboration.

Devolved Decision Making

32.123 The Comptroller-General of Customs advised the Committee that 'there is a conscious thrust in the Australian Customs Service, as throughout the Public Service generally, to delegate authority and responsibility as much as possible.'¹²⁷

32.124 The Committee is in total agreement with this trend but has reservations about:

- . judgements made by some organisations regarding the extent of that devolution;
- . prerequisite training that should accompany any transfer of authority and responsibility; and

123. See for example Evidence pp. 445-447.

124. Evidence, p. S1303.

125. Evidence, p. S1309.

126. Evidence, p. 2119.

127. Evidence, p. 1830.

the implementation of appropriate monitoring and feedback mechanisms or systems to ensure that those officers to whom any new powers or functions are transferred are fully equipped to handle their new responsibilities.

32.125 All too often cases come to attention where powers and functions are simply devolved, without ensuring the other ingredients essential for success accompany that transfer. Devolution in some notable cases has gone too far, either to inappropriately low levels in the organisation or to such an extent that it is counter productive for officers at the 'coalface' to be expected to possess the skills, knowledge and experience to cope with a highly technical but rare situation. Clearly, for some matters, there is merit in specialisation. In most modern nation wide organisations there are also some matters that are too important or sensitive to be devolved. Corporate consistency is also of importance and appropriate mechanisms need to be put in place to ensure this.

32.126 In relation to this topic the Comptroller-General advised the Committee that 'Whilst the Customs Act has some very extreme powers, I believe that officers exercise those powers in a very responsible fashion.'¹²⁸ The Committee, however, did not completely share this belief. The Ombudsman, AAT, Law Reform Commission and various others have also expressed contrary views.

32.127 The Committee asked the witness if the ACS officers involved in the Midford case were senior enough to be making the sorts of decisions they did, given that those decisions so materially affected people's lives.¹²⁹ He responded that 'I believe that the level of decision making is generally correct.'¹³⁰

32.128 As indicated throughout this Report, however, the Committee formed the opinion that further fine tuning and a certain amount of clawing back of previously devolved powers may still result in positive benefits for both the ACS and the Community.

32.129 On a related issue, the Comptroller-General put to the Committee that its activities:

... have caused a great deal of distress to individual officers who have had to appear before you. I feel for those officers,

128. Evidence, p. 1830.

129. Evidence, p. 1830.

130. Evidence, p. 1831.

not only because they have only been doing their job as they saw it but because, as relatively junior officers in the organisation, there has been a level of expectation placed on them by the Committee that they could not reasonably accommodate.¹³¹

32.130 Earlier he had also referred to the ACS witnesses as 'very middle level administrative service officers well below divisional head' level who would normally represent the ACS at parliamentary inquiries.¹³²

32.131 The Committee thought these comments reflected that the ACS had overlooked the distress caused to those on the receiving end of the actions taken by its officers and in addition responded that:

There is a fundamental paradox there. At one stage these people are senior enough to start a process that supposedly sends people to gaol, but at the other end of the process they are not equipped to answer the questions of a parliamentary committee about it. That is a problem.¹³³

32.132 It was also reminded of the comments by Midford's Tariff Advisor that:

There has not been even the slightest hint of remorse, an expression of concern for those affected, or any indication of an apology to those whose lives have been ruined as a result of this failed prosecution.¹³⁴

32.133 Towards the end of the final public hearing the Chairman said to the Comptroller-General that:

You referred to the officers that have been before the Committee and you said that, having come before us, they had been in some discomfort. Firstly, it is regrettable that there is some discomfort. But because this is an unpleasant

131. Evidence, p. 2126.

132. Evidence, pp. 2084-5.

133. Evidence, p. 2086.

134. Evidence, p. S7499.

experience for all of us, the Act under which this Committee operates and the terms of reference the Senate has given us means that the job has to be done. We have to ask questions and if that is uncomfortable, at the end of the day that is not our fault.

Secondly, there is a vast difference between whether people are up to the job and whether they possess the appropriate levels of skill and training, they being institutional questions, rather than an apologia that you just went through, which could be taken to read that they were really simply too dumb to account for their own actions. There is a very important distinction there. I do not know what you were intending to tell us there. But if Customs is a bottom heavy organisation, which it clearly is, with all of these immense delegated powers and these very real powers that the people who spent a great deal of time before us have, they have to be the ones accountable because Customs has made them so; and if this Committee is charged with the responsibility of trying to find out what did occur, in the vain hope that this may not occur again, we have no other choice than to question the people involved. Perhaps it is Customs that needs to reflect on that more than us. We did not push them out of the trench to face the gunfire, you did.

You said that you feel for those Customs officers. (The Committee) has gone through everything that the (Midford directors) had to face: the threat of 20 years gaol; a business lost down the drain; a great deal of personal discomfort over a very wide ranging period of time; a freezing of assets; and very significant costs – not to mention (Midford's Tariff Advisor) and some of the other people involved. But I want to remind you that a person died because – according to his widow – of the stress that was put on him over this whole Midford Paramount-Customs issue.¹³⁵

It is very easy to try to paint a picture of a few heartless parliamentarians dragging a few poor public servants up. If the same thing happens tomorrow, with a few public servants who are responsible for their own actions but were still put in that invidious situation by a bottom heavy structure over which a number of people had prevailed for a long period of time, and it causes the sort of injustice that has prevailed for this business and a whole lot of other people associated with it for a long period of time – not the least, the ramifications

135. Evidence, pp. S827-32.

for the one individual I just mentioned – then this Committee will, unfortunately, be back at this desk tomorrow doing the same job. We will not look forward to it any more than the public servants at the other end of the table.¹³⁶

Previous Reviews

32.134 The March 1981 Task Force Report into allegations about the Customs Service in NSW highlighted that there were problems with the provision of timely, clear and complete briefs from Customs.¹³⁷ It also reported on the absence of 'an adequate management system ... to control the processing of prosecution cases.'¹³⁸

32.135 Of more interest to the Committee was that the Task Force reported that:

Some uncomplimentary references were made to the Task Force, however, about lack of professionalism in investigations and prosecutions other than those looked at by the Task Force. The Task Force considers that it is important that these matters should be undertaken in a way that is thoroughly professional and above question. Therefore the Task Force would recommend a review of the appropriateness of the training given to personnel who undertake these duties and of the effectiveness of Departmental investigative activities.¹³⁹

32.136 The Committee noted that the 1983 report of the Review of Customs Administration and Procedures in New South Wales recommended that 'policies and practices enable the recruitment to management levels within the ACS of a wider range of competent managers with experience in other areas of public administration or industry.'¹⁴⁰

136. Evidence, pp. 2129-31.

137. Task Force Report, sections 2.53-4.

138. Task Force Report, section 2.64.

139. Task Force Report, section, 3.91.

140. Recommendation 17 - Review of Customs Administration and Procedures - New South Wales by Mr F. J. Mahony - April 1983.

32.137 That same report recommended that 'national staff selection procedures be reviewed',¹⁴¹ and highlighted problems with supervision and management within the New South Wales Collectorate of Customs. It also called for additional training to be made available in these areas.¹⁴²

32.138 The Committee noted that it was a poor reflection on Customs that similar findings and recommendations should be made more than a decade later.

Recommendations

32.139 The Committee recommends that:

- . the Australian Customs Service further develop and promptly implement effective strategies for improving the performance of its investigation workforce;
- . the Australian Customs Service further develop the performance measures for the Investigations Sub-program;
- . all Australian Customs Service investigators attend the Advanced Investigation Course within six months of joining the Investigations function;
- . action be taken to train all current Australian Customs Service investigators who have not attended the Advanced Investigation Course;
- . the Australian Customs Service improve its monitoring of training delivery to detect anomalies and deficiencies as revealed in the disproportionate attendance of Victoria based investigators at the Advanced Investigations Course;
- . all Australian Customs Service investigators receive structured legal training in the principles of natural justice and relevant aspects of administrative law;
- . short refresher courses and updates be regularly provided to Australian Customs Service Investigators;

141. Recommendation 19.

142. Recommendation 22.

- . a formal evaluation be conducted of the training provided to Australian Customs Service Investigations officers by a panel consisting of representatives from the Attorney General's Department, the Director of Public Prosecutions, the Australian Government Solicitor, the Law Council of Australia and the Customs Brokers Council of Australia;
- . specific training in Crimes Act investigation requirements be provided to Australian Customs Service investigators prior to engagement in Crimes Act investigations;
- . adequate consideration be given by the Australian Customs Service to engage or second specialists with skills and knowledge relevant to Crimes Act investigations and prosecutions;
- . the Australian Customs Service set and monitor target rates of training for Investigations staff, with particular emphasis on technical training;
- . the Australian Customs Service increase its efforts to recruit and retain suitably qualified staff to the Investigations function from institutions and organisations external to the Australian Customs Service;
- . the Australian Customs Service conduct a review of the staffing establishment in the Investigations component to determine whether any changes are required to better match classification levels with the complexity of work required to be performed;
- . the Australian Customs Service establish within the Investigations component a suitable number of officers with specialist knowledge and expertise in Crimes Act investigations;
- . where an Australian Customs Service investigation involves Crimes Act considerations, at least one member on the investigation team should have specialist knowledge and expertise in conducting such investigations;

- . the Australian Customs Service improve its efforts to match the allocation of commercial fraud cases with the expertise, training, experience and developmental requirements of individual Investigations officers;
- . supervision and checking of the more complex or technical work undertaken by Investigations officers be improved;
- . the Australian Customs Service examine and implement procedures designed to ensure briefs and reports on investigations are timely, accurate and informative;
- . the Australian National Audit Office give appropriate consideration to conducting an efficiency and skills audit of the Australian Customs Service Investigations function;
- . the Australian Customs Service introduce formalised systems for planning, budgeting and costing of all Investigations activities for commercial cases;
- . internal investigation into complaints against Australian Customs Service officers be carried out by officers with no present or past connection with the area under investigation;
- . officers carrying out the internal investigation provide a summary of their findings to the Comptroller-General outlining the nature of the complaint, the findings of the investigation and the action taken. This summary should also be provided to those making the original complaint; and
- . Customs report back to the Committee within twelve months of the tabling of this Report detailing the progress of the reforms recommended by this Inquiry.

The Hon G F Punch, MP
 Chairman
 17 December 1992

APPENDICES

APPENDIX A

CONDUCT OF THE INQUIRY

Appendix A details the public hearings, *in camera* hearings and inspections conducted by the Committee. Details of the extensions to the tabling date for the Committee's report on the Inquiry are also shown.

PUBLIC HEARINGS

8 August 1991

Witnesses

Tamota Pty Ltd

Dr B J MacDessi, Director

Dr J J MacDessi, Director

Mr L J MacDessi, Former Director

Mr S J MacDessi, Director

12 August 1991

Witnesses

Tamota Pty Ltd

Dr B J MacDessi, Director

Dr J J MacDessi, Director

Mr L J MacDessi, Former Director

Mr S J MacDessi, Director

Mr P North

29 August 1991

Witness

Mr J B Richardson

17 September 1991

Witness

Cramb Consulting Group Pty Ltd

Mr C H Rodger, Managing Director

4 November 1991

Witnesses

Department of Industry, Technology and Commerce

Mr A Caddy, Assistant Secretary, Development
Capital and Business Tax Branch

Dr M D Fitzpatrick, First Assistant Secretary,
Innovation Division

Mr D J McCarthy, Principal Adviser, Policy and
Projects Division

Mr J Morris, Environment Industry

Mr N R Stevens, Secretary

Mr T N Turnbull, Administrative Services Officer

8 November 1991

Witnesses

Department of Industry, Technology and Commerce

Mr A Caddy, Assistant Secretary, Development
Capital and Business Tax Branch

Mr A J Casey, Assistant Director, Australian
Space Office, Light Industry Division

Dr M D Fitzpatrick, First Assistant Secretary
Innovation Division

Mr J Gawin, Assistant Director, Business
Regulation Review

Mr D J McCarthy, Principal Adviser, Policy and
Projects Division

Mr J Morris, Manager, Environment Industry

Mr N R Stevens, Secretary

Mr T N Turnbull, Administrative Services Officer

Tamota Pty Ltd

Mr L J MacDessi, Former Director

Dr B J MacDessi, Director

Cramb Consulting Group Pty Ltd

Mr C H Rodger, Managing Director

25 November 1991

Witnesses

Director of Public Prosecutions

Mr P A Coghlan, Acting Director

Mr B A Doherty, Senior Assistant Director

Mr G Gray, Assistant Director

Mrs H Hannam, Principal Legal Officer

Mr P Walshe, First Deputy Director

13 February 1992

Witnesses

Australian Customs Service

Mr B O'Shannassy, Senior Inspector, Passenger
Processing

Mr B D Robinson, Chief Inspector, Investigations

19 February 1992

Witnesses

Australian Customs Service

Mr J M Chesworth, (retired)

Mr R J Doyle, Senior Inspector

Mr J C Hamilton, Chief Inspector, Internal
Affairs Unit

Mr J T Locker, Regional Manager, Industry
Assistance

Mr P R Paraggio, Director

Mr N E Petering, (retired)

Mr P D Ricketts, Chief Inspector

Tamota Pty Ltd

Mr L J MacDessi, Former Director

Cramb Consulting Group Pty Ltd

Mr C H Rodger, Managing Director

20 February 1992

Witnesses

Australian Customs Service

Mr B A Bissaker, National Manager, Industry
Assistance

Mr J M Chesworth, (retired)

Mr R J Doyle, Senior Inspector, Internal
Affairs Unit

Mr J C Hamilton, Chief Inspector, Internal
Affairs Unit

Mr J T Locker, Regional Manager, Industry
Assistance

Mr P D Ricketts, Chief Inspector, Australian
Customs Service

Mr J A Thurlow, Director, Investigation

Tamota Pty Ltd

Mr L J MacDessi, Former Director

Cramb Consulting Group Pty Ltd

Mr C H Rodger, Managing Director

17 March 1992

Witnesses

Australian Customs Service

Mr B A Bissaker, National Manager, Industry
Assistance

Mr J M Chesworth, (Retired)

Mr R J Doyle, Senior Inspector, Internal Affairs Unit

Mr J C Hamilton, Chief Inspector, Internal Affairs Unit

Mr J T Locker, Regional Manager, Industry Assistance

Mr R R Miller, Manager, Legal Services

Mr P R Paraggio, Director

Mr P D Ricketts, Chief Inspector

Mr N Schwager, Senior Inspector

Tamota Pty Ltd

Mr L J MacDessi

23 March 1992

Witnesses

Australian Customs Service

Mr B A Bissaker, National Manager, Industry Assistance

Mr R J Doyle, Senior Inspector, Internal Affairs Unit

Mr J C Hamilton, Chief Inspector, Internal Affairs Unit

Mr F I Kelly, Comptroller-General of Customs

Mr J T Locker, Regional Manager, Industry Assistance

Mr R R Miller, Manager, Legal Services

Mr P R Paraggio, Director

Mr N E Petering, (retired)

Mr P D Ricketts, Chief Inspector

21 May 1992

Witnesses

Australian Customs Service

Mr R C Benson, Chief Inspector, (retired)

Mr J M Chesworth, (retired)

Mr R J Doyle, Senior Inspector, Internal Affairs Unit

Mr J C Hamilton, Chief Inspector, Internal Affairs Unit

Mr L P Hogan

Mr B O'Shannassy, Senior Inspector, Passenger Processing

Mr P D Ricketts, Chief Inspector

Mr B D Robinson, Chief Inspector, Investigations

Mr N Schwager, Senior Inspector

Mr J A Thurlow, Director, Investigations

11 August 1992

Witness

Australian Customs Service

Mr F I Kelly, Comptroller-General of Customs

Observers

Australian National Audit Office

Mr M Maloney

Department of Finance

Mr L Hawke

Extensions to Tabling Date

When the Inquiry was initially referred to the Committee on 5 December 1990, the Senate specified that the report should be tabled by 15 May 1991. Five separate extensions to this time frame were obtained to 7 November 1991, 30 April 1992, 20 August 1992, 12 November 1992 and 17 December 1992 respectively.

APPENDIX B

SUBMISSIONS RECEIVED

Listed below are organisations and individuals that provided the Committee with submissions to the Inquiry. Some organisations and individuals made more than one submission to the Inquiry.

Organisations

Attorney-General's Department
Australian Customs Service
Australian Federal Police
Commonwealth Director of Public Prosecutions
Cramb Consulting Group Pty Ltd
Customs Officers Association of Australia
Department of Foreign Affairs and Trade
Department of Industry, Technology and Commerce
Senator J N Button, Minister for Industry, Technology and Commerce
Department of the Prime Minister and Cabinet
Law Council of Australia
Tamota Pty Ltd (formerly Midford Paramount Pty Ltd)
T J Hartigan, Corporate Services

Individuals

Mr L K Austin
Mrs S Bazos
Mr R C Benson
Mr R J Benson
Professor E F Cooper
Mr R Doyle
Ms R Hodgson
Mrs C Issa
Mr F Issa
Mr H B Issa
Mr B Liggins
Ms L Lyons
Mrs J Ramshaw
Mr J B Richardson
Mr P Ricketts

Mr H Singh
Dr B J MacDessi
Dr J J MacDessi
Mr L J MacDessi
Mr S J MacDessi

Further details of the above Submissions are as follows:

NO.	NAME	DATED	VOLUME	PAGE
1.	Mr S J MacDessi, Tamota Pty Ltd, formerly Midford Paramount Pty Ltd	14. 2.91	1	S 001
2.	Mr C H Rodger Director Cramb Consulting Group Pty Ltd	15. 2.91	1	S 026
3.	Mr J McCarthy First Assistant Secretary International Organisations and Legal Division, Department of Foreign Affairs and Trade	18. 2.91	1	S 120
4.	Mr P Coghlan, Associate Director, Commonwealth Director of Public Prosecutions	20. 2.91	1	S 122
5.	Mr J D Pyne Australian Government Solicitor Attorney-General's Department	20. 2.91	1	S 176
6.	Mr F I Kelly Comptroller-General Australian Customs Service	20. 2.91	2	S 184a
7.	Mr N R Stevens Secretary Department of Industry, Technology and Commerce	20. 2.91	3	S 726

8.	Mr L J MacDessi, former Chief Executive Officer and Director Midford Paramount Pty Ltd	15. 2.91	3	S 760
9.	Mr H B Issa	26. 2.91	3	S 793
10.	Dr J J MacDessi	25. 2.91	3	S 804
11.	Mr B J MacDessi	28. 2.91	3	S 811
12.	Mrs J Ramshaw	3. 3.91	3	S 827
13.	Mr P G Levy Secretary-General Law Council of Australia	8. 3.91	3	S 833
14.	Dr J J MacDessi Paediatrician	26. 3.91	4	S 842
15.	Mr F I Kelly Comptroller-General Australian Customs Service	2. 4.91	4	S 848
16.	Mr C Milner Executive Officer Human Rights and Social Law Unit Dept of Foreign Affairs & Trade	16. 4.91	4	S 871
17.	Mr P G Levy Secretary-General Law Council of Australia	22. 4.91	4	S 957
18.	Mr R J Benson Consultant Landerer & Co Solicitors and Attorneys	4. 6.91	4	S 963
19.	Mr F I Kelly Comptroller-General Australian Customs Service	5. 6.91	4	S 1223
20.	Mr L K Austin	11. 6.91	4	S 1235
21.	Mr J B Richardson Customs Agent/Broker	14. 6.91	4	S 1243
22.	Mr L J MacDessi	17. 6.91	4	S 1267

23.	Dr B J MacDessi	5. 8.91	5	S 1293
24.	Mr L J MacDessi	8. 8.91	5	S 1294
25.	Mr H Singh	8. 8.91	5	S 1297
26.	Mr P P Bennett Customs Officers Association of Australia	Undated	5	S 1302
27.	Mr T J Hartigan Director T J Hartigan Corporate Services	13. 8.91	5	S 1311
28.	Mr J B Richardson Customs Agent/Broker	14. 8.91	5	S 1312
29.	Ms R Hodgson Gilshenan and Luton	14. 8.91	5	S 1331
30.	Mr J B Richardson Customs Agent/Broker	23. 8.91	6	S 1370
31.	Ms R Hodgson Gilshenan and Luton	27. 8.91	7	S 1916
32.	Mr L J MacDessi	28. 8.91	7	S 1972
33.	Mr L J MacDessi	5. 9.91	7	S 1994
34.	Dr B J MacDessi	8.11.91	7	S 1998
35.	Director of Public Prosecutions	20.11.91	7	S 2000
36.	Dr M D Fitzpatrick First Assistant Secretary Innovation Division, DITAC	22.11.91	7	S 2034
37.	Mr G Gray Assistant Director Director of Public Prosecutions	28.11.91	7	S 2078
38.	Mr G Gray Assistant Director Director of Public Prosecutions	19.12.91	8, 9 & 10	S 2202

39.	Mr F I Kelly Comptroller-General Australian Customs Service	10. 1.92	11	S 3260
40.	Mr F I Kelly Comptroller-General Australian Customs Service	3. 2.92	12	S 3584
41.	Dr M D Fitzpatrick First Assistant Secretary Innovation Division, DITAC	31. 1.92	12	S 3708
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53.	Mr S J MacDessi Tamota Pty Ltd	19. 2.92	13	S 3926

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55.	Mr B Robinson Australian Customs Service	5. 3.92	15	S 4241
56.	Mr B O'Shannassy Australian Customs Service	9. 3.92	15	S 4242
57.	Mr J Richardson Customs Agent/Broker	10. 3.92	15	S 4244
58.	Mr J A Thurlow Australian Customs Service	12. 3.92	15	S 4249
59.	Mr J A Thurlow Australian Customs Service	12. 3.92	15	S 4251
60.	Mr J A Thurlow Australian Customs Service	13. 3.92	15	S 4254
61.	Mr L J MacDessi	17. 3.92	15	S 4265
62.	Mr F Issa	17. 3.92	15	S 4309
63.	Mr J B Richardson Customs Agent/Broker	19. 3.92	15	S 4312
64.	Mr F I Kelly Comptroller-General Australian Customs Service	23. 3.92	15	S 4330
65.	Mr J A Thurlow Australian Customs Service	22. 3.92	15	S 4332
66.	Mr J A Thurlow Australian Customs Service	22. 3.92	15	S 4344
67.	Mr F I Kelly Comptroller-General Australian Customs Service	23. 3.92	15	S 4346
68.	Mr L J MacDessi	23. 3.92	15	S 4441
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70.	Mrs C Issa	18. 3.92	15	S 4458
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81.	Mr J A Thurlow Australian Customs Service	14. 4.92	20	S 5969
82.	Mr J A Thurlow Australian Customs Service	22. 4.92	21	S 5977
83.	Mr J A Thurlow Australian Customs Service	21. 4.92	21	S 6000
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87.	Mr J A Thurlow Australian Customs Service	23. 4.92	23	S 6402
88.	Professor E J Cooper	8. 5.92	23	S 6404
89.	Mr J A Thurlow Australian Customs Service	8. 5.92	23	S 6406
90.	Mr J A Thurlow Australian Customs Service	14. 5.92	23	S 6486
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92.	Mr L J MacDessi (received 18 May 1992)	Undated	23	S 6555
93.	Dr J J MacDessi	18. 5.92	23	S 6573
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95.	Tamota Pty ltd	19. 5.92	24	S 6602
96.	Ms L R Lyons	28. 5.92	24	S 6644
97.	Dr M D Fitzpatrick Department of Industry, Technology and Commerce	28. 5.92	24	S 6646
98.	Mr J A Thurlow Australian Customs Service	5. 6.92	25	S 6975
99.	Mr R C Benson	5. 6.92	25	S 7086
100.	Mr B G Hurrell Australian Customs Service	16. 6.92	25	S 7091
101.	Mr C H Rodger Cramb Consulting Group Pty Ltd	15. 6.92	25	S 7356
102.	Mr G Gray Commonwealth Director of Public Prosecutions	12. 6.92	25	S 7366
103.	Mr C H Rodger Cramb Consulting Group Pty Ltd	18. 6.92	25	S 7370

104.	Mr J B Richardson	17. 6.92	25	S 7377
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106.	Mr T Turnbull Department of Industry, Technology and Commerce	24. 6.92	26	S 7445
107.	Mrs S Bazos	29. 6.92	26	S 7448
108.	Mr C H Rodger Cramb Consulting Group Pty Ltd	29. 6.92	26	S 7484
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113.	Mr L J MacDessi	3. 7.92	26	S 7553
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116.	Mr S J MacDessi Tamota Pty Ltd	7.6.92	28	S 8092
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121.	Mr B G Hurrell Australian Customs Service	13. 7.92	30	S 8557
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131.	Ms A Tinney Department of the Prime Minister and Cabinet	6. 8.92	35	S 10527
132.	Mr S J MacDessi Tamota Pty Ltd	7. 8.92	35	S 10530
133.	Mr M Rozenes QC, Director Commonwealth Director of Public Prosecutions	13. 8.92	35	S 10538
134.	Mr P Jackson Department of the Prime Minister and Cabinet	19. 8.92	35	S 10555
135.	Mr F I Kelly Comptroller-General Australian Customs Service	19. 8.92	35	S 10593

136.	Ms P A Wensley Department of Foreign Affairs and Trade	19. 8.92	35	S 10630
137.	Mr P Allen Department of Foreign Affairs and Trade	19. 8.92	35	S 10991
138.	Dr B J MacDessi	20. 8.92	35	S 10992
139.	Mr B G Hurrell Australian Customs Service	21. 8.92	36	S 10993
140.	Mr C H Rodger Cramb Consulting Group Pty Ltd	24. 8.92	36	S 10996
141.	Mr F I Kelly Comptroller-General Australian Customs Service	28. 8.92	36	S 10997
142.	Mr F I Kelly Comptroller-General Australian Customs Service	28. 8.92	36	S 10998
143.	Mr B G Hurrell Australian Customs Service	28. 8.92	36	S 11000
144.	Mr S J MacDessi Tamota Pty Ltd	31. 8.92	36	S 11379
145.	Mr G Gray Commonwealth Director of Public Prosecutions	24. 8.92	36	S 11385
146.	Mr G Gray Commonwealth Director of Public Prosecutions	24. 8.92	36	S 11424
147.	Senator J N Button Minister for Industry, Technology and Commerce	18. 8.92	36	S 11426
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149.	Mr C H Rodger Cramb Consulting Group Pty Ltd	7. 9.92	37	S 11435

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153.	Mr G Gray Commonwealth Director of Public Prosecutions	21. 9.92	37	S 11456
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155.	Mr S J MacDessi Tamota Pty Ltd	18. 9.92	37	S 11465
156.	Mr B G Hurrell Australian Customs Service	23. 9.92	37	S 11466
157.	Mr F Issa	20. 9.92	37	S 11468
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159.	Mr S J MacDessi Tamota Pty Ltd	20.10.92	37	S 11477
160.	Dr B J MacDessi	13.10.92	37	S 11478
161.	Ms L Lyons	19.10.92	37	S 11487
162.	Mr B G Hurrell Australian Customs Service	27.10.92	37	S 11495
163.	Mr J Waincymer	28.10.92	37	S 11549
164.	Mr C H Rodger Cramb Consulting Group Pty Ltd	27. 8.92	37	S 11554
165.	Mr S J MacDessi Tamota Pty Ltd	27.10.92	37	S 11558
166.	Mr S J MacDessi Tamota Pty Ltd	29.10.92	37	S 11561
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