

"Minding the gate."

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File 1 of A Submission to

The Joint Parliamentary Public Accounts and Audit Committee
Inquiry into Coastwatch / Customs

Compiled and Authored
by
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Attention: John Carter

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Inquiry into Customs, Coastwatch and Australia's future Customs needs
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17th August 2000 AD

Re: Submission to Inquiry

Enclosed is 'Minding the gate', my submission to this inquiry.

As previously discussed I am pleased to make this submission and would be happy to provide expanded and more detailed information including supplementary submissions where appropriate or direct input to public hearings if requested.

A number of the matters referred to herein undoubtedly require cross examination by the committee, and such an opportunity would be welcomed, to thoroughly test and scrutinise what has been said in this and other submissions.

Originally reading only the terms of reference, I felt that I would have only a few concerns to address. After obtaining the Audit Report 38 (referred to in the terms of reference), and referring back to submissions made to this inquiry, previous parliamentary and related inquiries, and a number of submissions made to them, I feel that I have now submitted what the terms of reference needed me to.

I do ask the committee to bear with the lengthy and admittedly, at times, meticulous and protracted nature of my submission. I hope that although it may at first seem overly so, in the laboring and detailing of what has been included, it will consequentially be of greater value and more assistance to the committee and the parliament.

Yours Sincerely

Michael D. Robinson

P.S. I will attempt to email these files to you, however enclosed are a number of computer floppy disks which contain the electronic document (written in Word 97) for you.

A. TABLE OF CONTENTS

Enclosed with hard copy

B. ACKNOWLEDGEMENTS

The author wishes to thank a number of people who have been as much a part of this collaborative submission as the author has. Their tenacious strength to persist through the research process for clarity, and assist with the compilation until this information could be understood, has been invaluable both to the author and the number of people who have collaborated with this work. In providing this submission to the parliament, the author acknowledges that tireless efforts of many people in an effort to ensure that members of the parliament will no longer be misled by some erroneous information which has been presented to previous inquiries.

Collectively these endeavors will hopefully correct a number of misleading and erroneous concepts which have been allowed to perpetuate, and in fact on many occasions have been actively cultivated by the Customs administration's one eyed view and short sightedness. Those errors passed on from previous governments and misconceptions and myths it is hoped will once and for all be exposed and rejected. In the process of making a complex issue clear enough to be understood while also being succinct enough to be comprehended, some history and narrative has been accepted as general knowledge. While it cannot be expected that the general public could know all this background, it can be reasonably be expected that the reports, reviews and studies referred to in the references are at least accessible to the committee should they desire that background.

In submitting this material, the author must also thank those who proof read the many drafts to ensure clarity and accuracy were paramount to the final submission.

Also, it must be acknowledged that during the many weeks and months of research, my family has tolerated the efforts involved.

It has been the viewpoint commonly held that one individual makes a submission like this to the committee, however in this individual's case, he is merely collating his own work with a number of other calibrations for the purpose of expediting the committee's inquiry. Over the past two years of research into this and related issues,

Some of those included;

Mr Bob Spanswick;

(a former Customs Officers, and former Federal Secretary of the Customs Officers Association of Australia), whose concern about the Australian community and experience, interpretation and viewpoint on the issue was greatly appreciated in ensuring that no issue went without proper scrutiny. Although some in the Customs bureaucracy have attempted to discredit his many expressions of concern over the years, hindsight has been valuable in demonstrating how accurate his expressions have been all the way along.

As a representative of the COA and more recently simply that of a concerned Australian, he has demonstrated his personal attitudes and aptitudes, expertise and commitment to a better and safer Australia. His expertise was greatly appreciated providing an experienced viewpoint, not as someone looking through documents or reading historical records, but as one who was there when the events took place and who was immersed in them.

Mr Peter Bennett;

(as a serving Customs Officer and Current Federal President of The Customs Officer's Association of Australia.) Whose public fight for accountability of the Customs administration and paper to the National Drug Summit 2000 have been of great assistance to those members of the public who have wondered at times if our concerns might have been misplaced. Even the small glimpses we have had into Peter's perspective through the veil of secrecy that the administration has surrounded the Customs officers with has been sufficient to remind us that the stakes are high enough to warrant our efforts.

Mr Craig Fleming;

(former Customs Officer, present Anti-Doping Manager for the Australian Olympic Committee). Whose expertise, credibility and high public profile combined with, his obvious and long standing public commitment to the protection and well being of the Australian interest, as well as his 'to the point' public comments, are constant reminders that there is still much to be done before we can rest confidently knowing that the nation is protected. His 'trouble' with Customs while still in the service, despite international acclaim, and resolve not to be gagged illegally by the service clearly was more than an inconvenience to him personally and professionally. Such people are the safeguards against threats by corrupt and / or incompetent enemies of the public good.

Mr Phillip Tzavellas;

whose tenacious and tireless promotion of patriotic concerns, ever vigilant media scrutiny, unceasing lobbying and sense of urgency as much as his contagious energy is awe inspiring to the point that no one who meets him, speaks to him or receives any correspondence from him is left in any doubt whatsoever as to the importance of ensuring that our nation is protected properly. Although his enthusiasm and forthrightness would be misplaced in some circles, the contacts he has and the background and factual

material provided to document his, often shocking statements, have shown that no matter what the issue, within days, sometimes hours evidence materialises from national and sometimes international sources.

As well as these, a number of comments and documents from people such as Rev. Fred Nile and Mrs Elaine Nile, The Festival of Light, Community Activist groups and numerous media documents and contacts who wish to remain undisclosed have all been drawn on.

In considering everything that has lead to our present day predicament, one cannot forget the authors, and committees of inquiry, and individuals who have been involved in one way or another in the process that have lead us to this point. Though there are many, the most recent and significant ones are mentioned in the references.

Finally one cannot forget the efforts of those small band of authors dating from Australia's beginnings to the present who have assisted in a better understanding of Customs in their publications which though few in number are irrefutable in their significance. These few authors referred to in the references section.

These people have publicly expressed their viewpoint, and in examining how they have arrived at their individual persuasions, the author has challenged many commonly held myths.

The resolve of the parliament to inquire into, report on, and ultimately address these issues is also acknowledged. If it were not for today's elected members taking an interest in resolving these issues, the public would undoubtedly be worse off and would in all likelihood continue to be worse off without any opportunity to improve that situation.

I also acknowledge the assistance of the committee secretary, Mr John Carter, and the helpfulness of parliamentary staff who quickly directed my initial inquiries to him in the absence of my knowing the name or contact details of the inquiry into Coastwatch. The author gratefully acknowledges their assistance.

*** POLITICALLY CORRECT DISCLAIMER**

Generally, references to 'he' and other such non-politically correct gender terminology have continued to be used in this submission.

In doing so, in the construction of this document, specific sections or even the relevant sentences is not intended to imply that only male officers, or male members of the community are being referred to. The use of only the masculine versions of some words, or only the feminine words, is for simplicity in the construction and reading to avoid unnecessary complication of the English language which it is felt would be too cumbersome to be useful.

The equality, acceptance and fairness has always been potentially included in the English language and discrimination both positive and negative (i.e., either inclusively or exclusively) has often been 'read into' material by the exclusive view of the reader when the writer had intended it to be inclusive.

It is hoped that readers are sensitive to the limitations of the author in regard to the new politically correct version of the English language, and reads this submission in the spirit with which it has been made.

C. NON-ENCLOSED REFERENCES

'Contraband and Controversy: the customs history of Australia from 1901.'
David Day, Published by Australian Government Publishing Service, Canberra,
1996, ISBN 0 644 33151 8. (Available from Government Information shops)

'Crosstech report' titled, Australian Customs Service, Survey of the industrial
environment, June 1988.

***'Risky Business – The 37,000 kilometre challenge, The First Report on an Inquiry
into Aspects of the Australian Customs Service.'*** The House of Representatives
standing Committee on Finance and Public Administration, October 1990.
ISBN 0 644 13379 1, Published by Australian Government Printing Service,
Canberra.

***'A Tour of Duties – The Final Report on an inquiry into aspects of the Australian
Customs Service'*** April 1991, (The final report by the above committee, sometimes
referred to as The Martin Inquiry.) ISBN 0 644 142529

***'Australian Customs Service – Submission to House of Representatives Standing
Committee on Finance and Public Administration – Inquiry into Aspects of Customs
. . .'*** June 1990

'Australian Customs Service – Annual Report 1998 – 1999'

***'Australian Customs Service – Submission to the Joint Committee of Public
Accounts and Audit – Inquiry into Coastwatch'*** – 9 June 2000.

'CUSTOMS LAW OF AUSTRALIAN' by Wollastone, Published by William Brooks and
Company, 1904, Sydney and

also ***'CUSTOMS AND EXCISE LAW'*** by Cooper, Published by Legal Books Pty Ltd.
1984, Sydney.

'The Inquiry into Lightstations' 1981, by its Department of Transport submission
to House of Representatives Inquiry on Expenditure.

'A Submission by Michael D. Robinson to The House of Representatives Standing Committee on Family and Community Affairs. Inquiry into the social and economic costs of substance abuse in Australian Communities. 19th July 2000 AD.'

. . . And Supplementary submission dated 1st August 2000 AD

'Australian National Audit Office, ANAO Report 38, 99/00 into Coastwatch / ACS.'
As referred to in the terms of reference for this inquiry.

'Hinds independent reports into Customs' both 1998 report, and 2000 report into Customs by Hinds. (Full reference unavailable at time of making this submission)

A number of documents including A submission to the House of Reps Family and Community Affairs committee inquiry into Substance Abuse made under my hand dated 19th July 2000 and supplementary date 1st August 2000 are referred to in passing and contain some relevant information.

Other references include correspondence, press clippings and other material included as attachments.

D. INTRODUCTION

Effectively, and directly as a result of restructuring, there was now no independent group of Customs officers that existed to address the control of goods that were not entitled to be entered under the Customs Act.

The effect has been in some way to 'enforce' import restrictions and prohibitions by the use of an honesty box system, the concerns about illegal 'boat people' bear that out.

This submission 'Minding the gate' is made to the committee as a compilation of opinions, research, considered recommendations and supportive documentation in the hope that the present and future Customs needs of Australia can be met. With limited time, and limited resources, particularly not knowing the required format if any, this submission is made in general addressing the terms of reference as they come, and the issues that arise in doing so.

The scope of the issues being examined by the inquiry are so restrictive that a number of core problems which fundamentally need to be addressed, are unlikely to be. The concerns of the committee cannot be dealt with strictly within the terms of reference. The terms of reference are dealt with, and in doing so, it was necessary to further examine fundamental issues underlying matters the superficial matters within those terms.

Therefore, 'Minding the gate' goes not only to the specific items in the terms of reference, but also to those fundamental to addressing the problems being examined. The approach has been taken in an attempt to lay out every aspect underpinning not only Coastwatch, but indeed the Customs to consider the role Coastwatch plays within that service. The title of 'Minding the gate' is intended to be a reminder to the reader that the underlying issues to be addressed are in fact those of Australia's border arrangements regarding control, law enforcement, and facilitation (of trade and travel).

**The public expectation is that 'someone' is watching the Australian Coast and protecting our national borders.
In doing so, that 'someone' is protecting us.**

The intention, construction and application of The Federal Customs Act 1901, at federation, is addressed in the history and background discussed in both '*CUSTOMS LAW OF AUSTRALIAN*' by Wollastone, Published by William Brooks and Company, 1904, Sydney and also '*CUSTOMS AND EXCISE LAW*' by Cooper, Published by Legal Books Pty Ltd. 1984, Sydney.

Presently neither the structure, staffing, policies, legislative arrangements, focus, direction or attitude of Customs addresses either the original intention or the present public expectations of Customs. The present jumble of uncoordinated departments, jumble of legislative arrangements and interference with officers has created an unsustainable tension in what can only be described as bordering on departmental meltdown.

In regard to law enforcement, particularly relating to primary prevention matters,

Customs currently has not got a group of officers who are;

recruited, selected and trained for that purpose,

Nor does it have a system that is designed specifically,

- for the protection of the community's economic, social and physical welfare, through the prohibition and restriction of certain imports and exports.

Initially a group of officers called searchers and watchers existed. They later developed into prevention and detection officers (section) and then that section was renamed Special Services Branch. Their functions were to prevent and detect unlawful importation and exportation of goods ***NOT*** entitled to be entered (into the system) or being diverted around the various system requirements under the provisions of the Customs and related Acts.

The remainder of Customs, known as the Clerical and Administrative employed section served the community by administering and applying the many Customs systems for the legitimate trade, excise etc and movement of the goods entitled to be entered into those systems.

Together they provided the dual roles of Customs - separately.

The Special Services branch sole responsibility was to address the matters specifically of the protection of the community's economic, social and physical welfare arising out of the prohibition and restriction of certain imports and exports. And of other related / matters and Acts regulatory

functions. Special services saw a need to form within it a separate group activity called the Narcotics Bureau, which dealt wholly and solely with narcotic goods. In 1980, that section as a result of a Royal Commission was transferred to the Australian Federal Police, and the remainder of the Special Services were transferred - by restructuring into the administrative and clerical section (the remainder of Customs).

Effectively, and directly as a result of that restructuring, there was now no independent group of Customs that existed to address the control of goods as previously mentioned. That is to say they became a part of the section that dealt with the conduct of business that related to the vast majority of the Act. And became part of the activities of officers of Customs that were dealing with all (and only) activities under the Customs Act that dealt with goods that were allowed to be entered under the Act.

Suddenly there became no clear delineation of the roles of officers i.e., law enforcement / control (Special Services Branch) and Processing / Compliance facilitation (Clerical / Administrative remainder section). Clearly the construction of the Act, its intention and application, was going to find difficulties at best with the new "Customs officer's" duties, as they require a new approach which was a "lumping together" of old duties to a new diametrically opposed duty / work function.

Prohibited imports are not entitled to be dealt with under the Act, as they are not entitled to be entered (into the system). The instant they are imported they are ipso facto forfeited to the Crown and are not the subject of the Act's procedures and regulatory provisions other than to provide for their seizure, powers there to, and penal provisions for such possession / movement.

Customs generally can be considered to have two clearly separate and distinctly unique roles. They are clerical (tariffs, duties and the like) and control and law enforcement (intercepting drugs, protecting the borders and control of prohibited imports at and inside those borders and smuggling). Coastwatch's responsibility to Customs rests only in a small role to provide a service of specifically tasked operations in response to a request by Customs who determines high risk areas and develops their own threat assessments.

Control and law enforcement officers, history has demonstrated, cannot be placed under the supervision of clerical and administrative supervisors. The author believes that a royal commission into the effectiveness of Customs and where it has gone wrong would prove this without any doubt. Bearing in mind the significance this has on the smooth operation of the continental establishment, and the magnitude of such an inquiry, only a royal commission would be capable of addressing the problem. The last royal commission into Customs only dealt with one single commodity of Customs, that of narcotic drugs and resulted in the

complete Customs officer concept being recommended and accepted by government.

The need to have separate and distinct officers who are capable and able to effectively protect the national borders and control prohibited imports at and inside those borders, and to combat smuggling, was and is the proper structural arrangement for an effective Customs service. Neither can such a role be effectively performed under the restrictive administrative and operational shackles placed on present day Customs officers. The effect has been in some way to 'enforce' import restrictions and prohibitions by the use of an honesty box system, the concerns about illegal 'boat people' bear that out.

The roles and expectations of CUSTOMS both in public perception and that of the government in its legislation are borne out in the original legislation, and in its intentions. Given the requirement by the nation to get the job done right, the disparaging results by Customs and The Australian Federal Police must lead any reasonable person to one conclusion;

Customs does not work properly and needs to be reviewed and restructured.

Over the past few years, perhaps more than two decades, the Australian public has grown increasingly concerned at the apparent lack of protection demonstrated by that 'someone'. Debate continues over issues such as harm prevention, harm minimisation and legalising drugs because it is said that prohibition has failed. What those wanting to legalise drugs don't say is how that will decrease the harms of failing to address the core problem. If we are to fix the systemic problems, then we reduce the supply of ALL prohibited goods, as well as also addressing facilitation issues such as tariffs, revenue raising etc.

There may be a lack of certainty who should be doing what and that is seen in the debate over whether the defence forces should be carrying out this function. All the Australian public is concerned about is that they can see that the 'gatekeeper' is not protecting us. The Australian public have now identified the problem and are "looking to the gatekeeper". As acknowledged by Professor David Day, in his official history of modern Customs, '*Contraband and Controversy*', the call for nothing less than a full judicial inquiry has been repeated often in recent years. Although unheeded nothing less than a full judicial inquiry will be able to consider the issue, and some say, that because of the magnitude of the matters it now requires nothing less than a royal commission.

The effectiveness of Coastwatch may well be determined by this Inquiry to be commendable, in 1990 fundamental problems in Customs were actually

vindicated by a parliamentary review as the inquiry only looked closely at certain issues regarding Coastwatch and not at the overall effectiveness. Such 'discreet' functional area considerations and 'program elements' included in the reviews have tended to subsequently also exclude any consideration of the overall service rather than just specific aspects. Eg. 1990 Parliamentary Report Risky Business p. point 1.16 – 1.19.

In the foreword of the report "Risky Business" in 1990 the Chairman makes a statement that the Committee 'endorses the direction taken by Customs' in the areas of balancing facilitation and control. One sees yet again how too narrowly defining the terms of reference and the scope, can be fundamentally flawed, despite this resounding endorsement, history has demonstrated that the report did not accurately represent a true picture of Customs in its entirety regarding all the functions of Customs.

Therefore, in consideration of whether or not a Coastguard should even be considered one must examine in what context such a decision is to be made. The criteria of such a decision must be the broad approach of the overall effectiveness of Customs, not the narrow approach of solely the effectiveness of Coastwatch.

If the parliament only wished to consider the specifically tasked applications of Coastwatch resources, context would be irrelevant, as the inquiry's scope would be too restrictive. To give an example the fishing line may be the best, most effective and efficient fishing line, but if you are mining for phosphorus, it doesn't matter how effective the line is, it's just not the appropriate tool for the results you want to achieve. If you wanted to erect shark netting, no matter how good the line is, it still has limitations on how it is used.

The parliament's concerns regarding Coastwatch, or rather the concern over the matters of breaches of the nation's borders generally is evidenced in the existence of this inquiry. That the parliament is concerned about context and particularly about overall results of the border control systems not in just isolated effectiveness of one tool in the resource pool but overall effectiveness is something that has not been dealt with for more than two decades. The rise in the concern over these matters due to their rising adverse impacts on the Australian community has led to the increasing public and government resolve to find a solution to the underlying problems that are causing these terrible symptoms to be exacerbated on the Australian people.

Coastwatch is a tool that is used by various "clients" in the manner of addressing specifically tasked actions. In the overall context, we must also examine the systems of determining those threats and allocating those

tasks to Coastwatch, and then also of managing those threats.

The issues such as seemingly unlimited supplies of illicit drugs, steroids, weapons, pornography and many other prohibited goods as well as illegal immigrants entering our nation unimpeded, can be then addressed with the fundamental question to be answered being not is Coastwatch effective, but are the principle systems which use the Coastwatch tool effective?

Since the late 1970's the restructuring, redirecting and constant changes of the Australian Customs service have created a culture of continual reviews. Each one, for want of a better description, was asked to find out what was wrong with only a specific aspect of Customs so that the whole Customs could serve its purpose better. In the last 24 years it could be said that the most controversial and greatest changes have taken place in Customs. In this time, also the failings of Customs are ever apparent in large measure and despite the virtually continual review and criticism culture of those failings, NOT ONE INQUIRY has undertaken a full measured consideration of the overall effectiveness of the Customs service. Each one of these inquiries, review and reports have looked at one issue discreetly, one separate aspect of Customs, or another matter closely but always without actually ever considering the basic issue of whether or not the overall Customs service was effective. If this is done, both of the 'dual roles' or 'work functions' that were asked of Customs by the Australian people would have had to been reviewed in conjunction as well as considering how the present, ineffective mess, has occurred. Without exception every inquiry was into the effectiveness of a particular tool, but none into the appropriateness of the tool.

EXAMPLE:

Like examining a shovel to determine if it was the most effective shovel, when you should be looking for a chainsaw because the job that needs doing is cutting down a tree. Despite the thoroughness of the inquiry and recommendations, either by misapplication of the recommendations, or total denial of their applications, the Australian public has not enjoyed the benefits that such inquiries have attempted to provide.

In hindsight we can clearly see that the too narrowly scripted inquiries time after time have taken the Customs administration stumbling and stumbling down a certain course of action to the present day without a realistic perspective on what the result of that course of action was.

With regard to the drug trade, illegal immigrants, the rise in illicit steroid trade, and other demands placed on the 'control and law enforcement work functions' and given the concerns in recent times, it is clear to see that for more than two decades the focus of Customs and directions it

has taken have been contrary to the public good. There can be no doubt that combined efforts in demand reduction and supply reduction are necessary, but in that time, the approach taken by Customs towards clerical and administrative 'facilitation' has lead us further away from success in these areas. Where there remains little deterrent for criminals, people smugglers or the illegal immigrants themselves then supply side issues are exacerbated and the demand will follow.

The unfortunate irony is that in many instances the government and Customs administration has actually implemented recommendations, although chosen selectively and implemented with greater discrimination, from some of the mentioned inquiries to get us to the point we are at today. Admittedly most of the recommendations were not implemented until too late, if at all. However, those that were implemented were often recommended from a flawed perspective after asking the wrong questions framed from a too restrictive script. At times the answers (submissions) were constructed in such a manner as to lead the inquiry down a certain path knowing that the restrictive terms of reference and scope would not allow any diversion from that path. Examples of this are the now commonly accepted myths that 'not all goods that enter Australia can be searched', 'the coastline is too big to protect' and 'we can't stop all drugs, steroids, weapons and other contraband'.

Despite being wrong, because of the framing of subsequent submissions, publicity and other mechanisms in the propaganda, the majority of Australians now reluctantly would accept these myths as truths despite the reality being that they are misleading and erroneous fabrications. Whether such myths have come about from deliberate deceptions, or simply too narrowly focussed bureaucrats lacking in their abilities and expertise to address the real problems is not even considered at this point.

This submission does not deal with substances of domestic origin, only regarding those considered as prohibited imports to be dealt with by the Customs according to the relevant legislation which requires them to protect the nation's borders and control prohibited imports at, and inside, those borders and the issue dealing with the arrival of 'illegal immigrants'.

Despite the obvious and natural link between Customs and Coastwatch there are currently many other clients of Coastwatch. These all have a valid role and require effectiveness from Coastwatch in addressing their individual roles. It can however be shown that both these individual requirements and the collective and overall border control systems would be better served in seeing to it that Customs worked properly and included many if not all roles within its embrace.

Once an effective systemic solution to such a fundamental systems problem is put in place, the symptoms, which were exacerbated by a lack of a systemic solution, will be addressed.

E. THE ROLE AND EXPECTATIONS (BOTH PUBLIC AND GOVERNMENT) OF COASTWATCH

They are at least consistent in maintaining the façade and smoke screen despite never actually taking the actions they committed to paper which were required to realise those goals.

The responsibility and therefore role of 'watching' and 'protecting' the Coast does not fall to Coastwatch as it is only a tool or common resource for 'clients' including Customs to access for a specific task.

1. The roles.

The specific role of Coastwatch must be considered in the larger role of Customs, indeed the function, should be handed back to Customs, and carried out within an independent law enforcement and control branch. The responsibility and therefore role of 'watching' and 'protecting' the Coast does not fall to Coastwatch as it is only a tool or common resource for 'clients' including Customs to access for a specific task.

Although the public likes to believe that 'someone' is out there protecting us the reality is far from our expectations. Coastwatch, and indeed Customs, has not erected an impenetrable barrier around the nation's borders.

The very fact that the present CEO of Customs L.B. Woodward, in his forward in 'Prof. David Day's' official history of Customs '*Contraband and Controversy: The customs history from 1901.*' cannot bring himself to even pen the words national borders is revealing. His preference for the use of 'the Customs barrier' clearly indicates a vast cavern between the focus of the administration on its responsibilities at the artificial line and the public's expectation of protection. Even in 1990, in '*Risky Business*', the use of 'the barrier' had become useful to Customs management as a policy provision of a point / line at which Customs discharges its responsibility. This discharging of Customs' responsibility will later be shown to be contrary to its legislative requirements and adverse to the public's good.

**The roles of customs are twofold,
these two roles are separate and distinctly different. Both are
essential to the smooth running of the Australlian continent.**

In the late 60's and early 70's the separate roles were developing . . . separately, into effective functions, and working in distinctly separate work functions they were able to achieve the dual roles of Customs. The public expectation for these two roles to be accomplished effectively remains, but the ability of the present Customs has long gone.

The Customs administration continues to focus on its mission statement driven management plan, but the Mission Statement and subsequent derived plans and actions, do not reflect the relevant legislative arrangements. The Mission Statement rallies the service around clerical and administration methods for accomplishing all its goals, including piece meal and ad hoc afterthoughts about drug interceptions which Customs 'failed' to include in its mission statements in recent times. However, notwithstanding the inevitable failure to achieve such goals, and the failure to exercise the appropriate resolve, structures, policies and practices to do so, Customs is resilient in its regurgitation of identical goals throughout its management plans.

In hindsight, it is easy to look to the reality on the street to test the truthfulness of a number of statements made by Customs over this time regarding action they allegedly took to address these goals. They are at least consistent in maintaining the façade and smoke screen despite never actually taking the actions they committed to paper which were required to realise those goals.

In the June 1990 Submission to the House of Representatives Standing Committee on Finance and Public Administration, in its Inquiry into particular aspects of Customs included the 1990 ACS Mission Statement which shows a number of points which are all clearly for one sole method of achieving that purpose - administration.

Moving on to 'Corporate Goals', built on such a shaky foundation as the ingrained one eyed mission statements of more than a decade, one wonders how the stated goal of 'improved interception of prohibited goods, including narcotics' was expected to be achieved relying on clerical and administrative work functions.

These afterthought goals of interception, and similar remnants of law enforcement, are put in place despite the structure of 1990. The piece meal and ad hoc management plan's attempt to fit these in and have more to do with maintaining a public image of law enforcement than they are to do with actual work functions within the Customs service. Yet the administration continues almost with dogged tenacity in the face of all opposition to continue down this path.

In the 1998 / 1999 Customs Annual report there are three points under the heading of "Customs purpose". All three are clerical / administrative regarding facilitation. Despite the remnants of law enforcement language remaining in the CEO's review, and classical rhetoric troweled on in the appropriate places, even the words in the Purpose of the Border Division ring hollow. Knowing that their reliance to accomplish such a purpose will be on clerical and administrative work functions focussing on facilitation 'while' balancing the afterthought of law enforcement and control on the thin edge of the paper trail.

Repeatedly Customs documents revolve around management policies that include discharging their responsibilities at the artificial line known as the Customs barrier, and not around the legislative responsibilities required of Customs by the parliament (the people of Australia). These legislative responsibilities include controlling prohibited imports, law enforcement as well as the appropriate clerical and administrative duties such as tariff, trade and other facilitation activities.

The public outcry is significant and reflected in the media when drugs, weapons, steroids, illegal migrants and other prohibited goods / people are ignored by the administration by abrogating their responsibilities inside the nation's borders. Their management policy of 'discharging their responsibilities at the Customs barrier' is the root cause and has been stated by Customs as an appropriate position (despite the powers granted to Customs by the parliament to the contrary.)

Those differences between the legislation and the management policy have arisen in the melding together of the dual roles of Customs, the progressive refocusing of Customs and taking it in a direction that resulted in the domination of facilitation. The irreconcilable nature of the conflict between clerical / administrative and control / law enforcement have resulted in the administration prioritising clerical / administrative work functions and relegating the control and law enforcement within Customs to a lessor position. Effectively law enforcement now is that of a fleeting after thought in practice and in policy.

In the scheme of things, the role of Coastwatch is to have resources available and wait until given a specific task by one of its specified clients. This role is far from what the perceived role and activity is. Coastwatch has a role as a shared resource in patrolling. Although called surveillance for its public relations value of the word, what it does is patrolling.

The underlying role, which Coastwatch is responding to, is that of their clients. In assessing risks, managing those risks and tasking the Coastwatch resource or tool

within the risk management decisions that are made by clients such as Customs, Immigration, The Department of Fisheries and so on.

Therefore it bears stating that the name 'Coastwatch' is quite inappropriate and clearly misleading. Perhaps Coastal branch or Coastal repose group might be used, but as will be shown later even such misnomers are inaccurate as what we now call Coastwatch goes elsewhere in response to tasks, and that issue also will be dealt with in Section H.

2. The expectations.

It is fair to say that the public expectation is that someone is 'out there' protecting us. Wollastone, '*CUSTOMS LAW OF AUSTRALIA*' by Wollastone, Published by William Brooks and Company, 1904, Sydney, in detailing the construction of the Customs Act 1901 relates this . The public expects Customs to address the matters specifically of the protection of the community's economic, social and physical welfare arising out of the prohibition and restriction of certain imports and exports.

Generally speaking the public like to believe that Customs (including Coastwatch) are in fact watching and protecting our 'coast'. This is why there has been such a public outcry in recent years when it was revealed that at best Coastwatch, watches the coast, less than 5% of the time. When the public's fears were high and confidence low, illegal migrants / boat people 'crash landed' on QLD AND NSW 's eastern beaches. More than once this occurred and 'boat people' (illegal immigrants) simply wandered into towns where it was the locals including the local police officer who noticed them and not any effective Coastwatch or Customs service. This understandably was seen to be a failure of Coastwatch. In fact it was a failure of the entire Customs service.

3. A brief history just on one aspect, that of "Northern exposure" particularly with relationship to 'black flights' and 'boat people'.

In Customs' submission 9th June 2000 Page 9-10, paragraphs 17 – 18 discusses the brief history of the Concept of Operations. In doing so, the comment is made that the increase of new threats from 1988, to 1993 was as a 'result of surveillance requirements having become more difficult to address' the entire Australian coastline as opposed to the previous predominantly northern outlook. If such a requirement had occurred suddenly, one might be a little more forgiving, however, as can be seen repeatedly, the problem did not arise because of a new threat or increased risk, but because of a failure, repeatedly, to address or manage that risk. In doing so the 'excuses' become judgements against their own inaction over time. (Also refer to note regarding Lightstations, Section H of this document.)

In the 1990 submission by Customs to the Inquiry of the time, the clear indication was that the responsibility rested squarely with Customs to assess and manage the risks, including undertaking the risk assessment and risk management, and assigning the tasks to Coastwatch.

While retaining much of the rhetoric and confusion about what was and was not law enforcement, and muddying the waters of that deliniation, the inquiry of 1990 / 1991 did report that Coastwatch's role was ONLY surveillance, not protection. (see p32 para 3.7 – 3.10).

Identifying areas of concern, and reporting the findings of 'Hudson' that such areas were no longer solely the northern coastline, 'The Martin report in 1990', acknowledges (para. 3.13) that the principle focus of the 89/90 program remained the northern areas. The report determined that the extent and complexity of the threats were possible to determine but no avenue by which a threat could arrive at the barrier could be ruled out (page 56-57, para. 5.39 – 5.41).

What is made exceedingly clear, is that

"the 1988 decision to transfer responsibility for civil coastal surveillance to the Australian Customs Service has been vindicated."

(see page 43 para 3.65)

If the planning, assessment and reviews that are recommended in the 'Martin report' in 1990, were ever acted on, then it is not unreasonable to expect that some of these issues should have been raised and dealt with prior to the ACS

Review in May 1993 or The Conroy Committee of Inquiry into Customs in 1993 (released in February 1994). Most certainly something should have been done after more than a decade has passed after initial concerns were raised, and recommendations made.

The Conroy Report in 1994, was accepted uncritically, according to *'Day' p 377, as 'a damning indictment of Customs'*. At the behest of certain pressure groups including sections of the media, the government was cautioned against wide scale reorganisation or restructuring and Lionel Woodward, the new CEO, faced the challenge of how to balance Customs controls and facilitate trade. It is easy to see where the disratctions arise from time to time. For more than a decade the entire department was distracted by political interference and management whims to ignore substantially the powers given it in legislation, and the expectation of providing preventive and enforcement protection to the public as it was 'too busy' attending to the 'squeaky *trade and facilitation* wheel'.

The ACS Review, May 1993, according to *'Day'*, conducted an audit of Customs and found glaring defficiencies, inadequate controls, smuggling, evasion of duties, fraudulent clearance certificates being issued. The accuracy and completeness of certain data was euphamistically described as 'incomplete'. This highlighted a number of concerns particulaly relating to the increased risks regarding illegal drug imports and duty dodging.

Ten years later, things are no better. Dealing with just one aspect, the following extracts highlight long running deficiencies;

ANAO Audit Report 38, 1999/2000, page 60 – 61, points 2.72 to 2.76 address Suspect illegal (black) flights into Australian airspace.

With particular regard to paragraph 2.73

2.73 "It is not possible to report on the extent of the black flight problem in Australia because there have been no studies completed by Coastwatch or its key client agencies. Defence is conducting some research in this area, which is yet to be completed. There are a number of problems associated with the detection of black flights....."

2.74 "Previous reports (as referred to in Appendix 2 of the report and INCLUDES the 1990 Martin report quoted from above.) on Australia's civil surveillance and reponse service have not addressed which government agency should manage the issues related to black flights. The ANAO considers that this matter needs clarification"

and the issue continues, with Recommendation 6, paragraph 2.75, on p.61; with Customs agreeing with the recommendation that Coastwatch and its key client

agencies should determine this matter. Coastwatch, it was recommended and agreed by ACS, should also recommend to the government on the matter. (That is in the ANAO Audit report 99/00).

One must ask, how does such an important function as border control (which impacts on the Australian community in such dramatic ways as drug crime, quarantine issues, illegal boat people etc), get away with more than 12 years of buck passing by misleading the parliament?

In 1990 in the information about this risk assessment and management program reported to the parliamentary inquiry (briefly discussed above) were of concern in the Customs risk management plan in 1988. One has to ask why nothing TO DATE has been done to address and manage this risk?

Perhaps the reasons include those touched on by The Crosstech report 1988, ACS 1993 review, Conroy Inquiry 1994, and almost every single report since, that although, Customs uses risk assessment and risk management as the very foundation of its decision making processes, Customs officers ARE NOT TRAINED appropriately to do that!!!

According to ANAO Audit Report 38 99/2000. The problem of training or the lack thereof persists, as do the issues such as risk assessment and resulting problems regarding risk management due to lack of training amongst others. Yet another recommendation went to uncertainties and confusion regarding who should manage such intrusions to be considered by Coastwatch and advise the government of options to deal with such intrusions. The ACS agreed with the recommendation. This should be also examined in this historical manner.

With the potential costs to Australia and Australian industries in 98/99 put at more than A\$30,000,000 per annum and the actual expenditure on Customs and Coastwatch in that year at almost \$500,000 (source: ANAO Audit Report 38, p35) the importance of 'getting it right' cannot be overstated. On top of this significant figure, revenue such as tariffs and excise, the impacts of smuggling and 'white collar crimes' must also be taken into account as must also a figure of \$50,000 repatriation cost for each illegal immigrant. The Daily Telegraph 14-8-2000 page 20, reports that there were 4,000 'boat people' who arrived in Australia in the last financial year. Adding on the unknown number of 'overstays' and tourists working illegally, the number could be reasonably be expected to be quite higher.

Of course, it is prudent to ask, if Customs is exceedingly concerned about the back door, but has avoided the task of protecting the nation by closing the back door or even securing the back gate, what, if any, differences are apparent at 'the front door'.

Australia's airports, ports, eastern beaches are all considered our 'front door'. Tourists, trade, cargo, and the majority of goods and people enter and exit this country this way.

Suffice it to say at this point, that the situation is no better, perhaps worse at the front door.

Closed Circuit Television does not work properly at the ports and docks, certainly not when Customs officers knock off for the day or the weekend and leave the ports unattended. Do we seriously expect that criminals will wait until office hours to unload their goods and lodge the paperwork? The actual example has been given of in the reviewing of a tape on Monday morning of what occurred over the weekend, a person seen on the tape to walk down the gangway of a ship, and carrying a large blue suitcase simply walked off, got into a vehicle which could not be identified and entered the country without any inconvenience. The person left the area unidentified, demonstrating the value of the cameras and videos in knowing what has occurred for statistical purposes.

Perhaps at the time, the comment might have been made, *"If we'd been here at the time and known that he had his picnic lunch in his suitcase we could have stopped that outbreak of Newcastle's disease."*

One hopes however that despite what is reasonable to expect, that there is some slim chance that the Newcastle's disease outbreak at Mangrove mountain in Sydney might have been contained and eradicated. So much for the concern and prevention to 'stop' the loss of \$30 billion dollars per annum and act to protect Australian industries and communities.

The propaganda is hyping up the concern over the 'back door', but what about the very real risks to the front door?

At the National Drug Summit 2000 held in Sydney's NSW Parliament House earlier this year, shore side engineer employees at the port of Port Kembla were absolutely 'in stitches' over the CCTV surveillance by Customs. And that operational Customs officers in the ports have remarked that if they had such cameras and faxes 20 years ago they could have retired knowing that the faxes and cameras could do a reasonable job without them there at all. (Hardly reassuring !!!)

Their concerns highlight some of the problems. Maybe there is a bigger picture, in levelling the playing field so that we are on a levelled playing field with the rest of the world's diseases, cheap labour workforce and are being forced by the government to accept the same conditions as overseas countries. These diseases and problems are perhaps a way to level Australia, or perhaps its simply more smoke and mirrors to divert us away from the real issues of the underlying problems.

The cost of NOT getting THAT right is therefore at least \$200 million in the last financial year, just in respect of the 4,000 immigrants at \$50,000 each, how many more walked off gangplanks in the evenings? Adding on the costs related to illegal drugs, steroids, weapons and other such prohibited goods and increased expense to the nation such as;

- the costs of local law enforcement,
- \$10 million in NSW alone just for the needles that the government hands out,
- then there is the ambulance and medical costs of overdoses,
- other medical expenses for injuries from crimes and health problems, including those from drug and steroid use
- costs to the community in higher insurances,
- security and protection of themselves and their property,
- court times, jail costs etc etc for the results of drug crime, Surveys reveal that between 50% and possibly as high as 75% of persons in jail are there on drug related crimes. At around \$45,000 each per year, that too is a significant cost to the community.
- lost tariffs and duties from 'white collar crime' which Customs has either entirely forgotten about, or treats as trivial afterthoughts not worthy of attention despite it 'costing' millions in lost revenue,
- the resulting reduction of spending on education, roads, medical funding, research, greater tax cuts would be possible, and other lost opportunities because these monies are being spent dealing with a problem that could have been nipped in the bud at the borders before afflicting our nation.
- Add in other expenses to treat symptoms of the 'Customs ineffectiveness problem' and you get a real figure.
- In light of the magnitude of that real figure of direct and indirect costs to the federal and state governments and general public, that makes the \$30 billion dollar figure that could potentially be lost to industry actually look quite small in relationship to the real costs.
- What is ALREADY being spent by the community that does not go through the federal budget is money lost to this affliction every year, not a potential 'what if' amount.
- What should be of great concern is that not a great deal of financial increase is required to 'fix the problem', but even if it were and the matter was only an economic one, the dollar benefit by far exceeds the dollar cost of doing so.

Overall the real costs of Customs not being effective are already an annual figure that is well in excess of one billion dollars EVERY year, perhaps the real costs could be far greater.

While the headlines grabbed these specific incidences, it is fair to expect that these and similar illegal goods and people smuggling incidences have gone on for some time around Australia's coast without interception by Customs or Immigration despite the public's expectation that something was being done. It bears repeating that much of the responses to the public's expectations have been hollow rhetoric and publicity campaigns not backed up by genuine or substantive control or law enforcement action. The public could be excused for such expectations. From the publicity and the misleading information disseminated by both Customs and Immigration we were somehow misled into thinking that we were being protected. This is clearly not the case as recent history has demonstrated. Despite the legendary status of Customs' photo opportunity of seizures and 'on track' performance indicators, the litmus test on the street clearly indicates far more is getting through than is being intercepted.

**It is fair to say that the public has the same expectation today
as it had in 1901;
protect us, our families, our community and our nation.**

The Federal Customs Act of 1901 was enacted to ensure and enable Customs to protect the national border, enforce the relevant laws to protect the Australian Community and control prohibited imports at AND INSIDE the nation's borders.

For much of that time although, Customs had to deal with many changes and significant challenges and it carried out its duty to the Australian people until the late 1970's when its attention was diverted away from the entirety of its responsibilities.

“Minding the gate.”

File 2 of a Submission to

The Joint Parliamentary Public Accounts and Audit Committee
Inquiry into Coastwatch / Customs

Compiled and Authored
by
Michael D. Robinson 17th August 2000 AD

The outcomes or results.

This committee's concern with illegal immigrants (people smuggling) as well as drug trafficking, illicit steroid trafficking and other prohibited goods and activities in hindsight can be seen as having been brought about by the events and courses of actions taken since the late 1970's.

The exacerbation of the problems of drugs, crime, drugged Olympics, overdose deaths, illegal migrations, fear in the streets of crime by major gangs and petty addicts, began with the discarding of generally accepted structures and adopted a new and 'complete' structure. Despite the evidence today, this affliction on the Australian people is still described in a macabre manner by the historian 'Day' as if it was the age of enlightenment for the Customs officers of Australia. The official history of Customs gives more time to the breaking down of discrimination against females at this time, than it does to the breaking down of the effective law enforcement and control structures. Which were eliminated along with the effectiveness of the Australian Customs service's ability to protect the nation. Although one cannot of course lay the blame on women or equal opportunity to the problems in Customs today, the moves towards equal opportunity were used at the time as an effective smokescreen and diversion away from the restructuring issue. As an official history of customs, 'Day's' text could not possibly drop the axe on the restructuring of Customs from that point on, but every review into Customs when considered in totality and with hindsight, has done that for him.

In the the late 70's and even in the early 80's, it might have been expected that the changes in Customs may in some way have been for the better despite the serious warnings. Even as late as the early 1990's, that view was still being supported by the administration , but clearly not by the public, parliament nor Customs officers themselves.

In hindsight the results were disastrous for the Australian people and the persistence with a failed concept cannot be viewed as anything less than incompetence at best and at worst the actions of a corrupt administration completely undermining the border protections systems on behalf of criminal elements. In the year 2000, not only is the administration defending the present situation and the decisions that have lead to it, but in their submission to this committee they have demonstrated their continued willingness to present something as correct which clearly is not.

As previously stated the goals of Customs are regurgitated again after more than a decade, and still without action.

Facilitation grew to be the pinnacle to be reached, at all costs. Those costs were the lives of many Australians and also in many cases because of the secret dealings of Customs ruining the trade tariffs, over this time it has also resulted in the loss of many Australian's livelihoods. In chapter 17 (and others) 'Day' raises the tariff issue titled 'a blueprint for fraud'. Self regulation, port shopping, and other practices not only reduced that nation's revenue Spanswick warned (see p. 410) but was 'a blueprint for fraud,' 'white collar crime' and later became the undoing of a number of VIP's including one Minister.

The 'Midford case' becomes a common theme, and demonstrates the folly of pursuing the free trade avenue by undermining local producers. The case became a landmark embarrassment to Customs in highlighting serious problems with the compliance and Trade Classification Orders ('TCO') systems in place at the time.

The concern that the government is powerless to protect us, does not care and refuses to act to uphold important constitutional concerns and legislative requirements on it continues to grow as the rhetoric wears thin. As Australians see drug crime on the increase, drug 'industries' take over neighbourhoods and our jails fill indiscriminately with addicts from all backgrounds the questions are slowly being asked how did this happen? Australians are beginning to ask questions about who they have left minding the nation's gate. As Customs promotes its token seizures in response to unprecedented drug crime, drug use and overdoses the evidence before our eyes contradicts the verbiage served up in place of effectiveness.

The path that has been taken and the results of that policy and decision must be seen to have exacerbated the problems in inflicting even greater harm on our nation than harm prevention might have if Customs was otherwise applied properly to its functions and responsibilities.

Primarily both efficiency and effectiveness must be seen as important, not only to the public view, but also with regard to the constitutional and legislative duties and requirements of the Customs. Without an effective service, the obligations of both Customs and of Coastwatch cannot be fulfilled no matter how efficient they might be.

4. Too risky.

Early risk assessments in 1986 were supposed to have been made by all state collectors to make assessments of risks to the Customs barrier in different parts of their region according to 'Day' in 'Contraband and Controversy' p 435. The reliance however, on local aborigine communities to liaise with Coastwatch was heralded as a success. What this really was, was the backup to an ineffective system. The risk assesment and risk management at the time were

either non-existent, or grossly outmatched by the threats, and in effect the Customs relied on local communities to report border incursions.

Despite sophisticated equipment and expensive flights by Coastwatch, in January 1992 a Chinese vessel ran aground on the Kimberly coast. This was to be just another in the succession of covert border incursions which the then Senator Jocelyn Newman described as 'the land of the long summer holiday is wide open and inviting to anyone with a beach ball or a mortar in their pack.. (p 436)

'Day' p.435, talks of the problems where he describes some success, at Coffs Harbour it was realised that in patrolling one area were leaving a gap open in another. "Customs central office agreed in March 1987 to fund any large surveillance operations deemed necessary along that coast"

Bearing in mind that previously I have raised the 12 year old issue of who is responsible for Black flights, it is becoming more apparent that the action and the publicity clearly do not match.

Nothing clearly has changed, the PMTF 1999, and this committee's concern with those who are still storming the beaches even as far down as Port Macquarie in NSW is evidence of that.

Coastwatch only forms a very small aspect of the entire Customs service and must be viewed in light of where and how it fits into that structure and the overall performance measures of the entire service. Coastwatch's effectiveness in responding to these specific tasks of course is a matter to be reviewed, but the results of the Customs service should be taken into consideration when examining how those tasks are determined in the use of this resource within that system.

The questions that should be asked of Customs are;

Show us your risk assessments.

Point out where they are linking together around, the nation's borders, at places where aircraft can land and where vessel incursions into Australian waters can occur. How did you deal with them?

i.e. What are the risks identified?

What operational steps were taken to manage the identified risks?

When were the risks identified?

Have the risks been reviewed? and

What version of the risk assessments and management are we up to?

Are there any similar risk assessments or risk management plans and actions taken for risks inside the national borders? e.g. Illicit stills, 'chop chop' tobacco, steroids 'for export', etc.

The fact that the 1990 parliamentary review 'vindicated' Coastwatch can now be seen to be a heavily qualified endorsement, given the limited scope, restrictive terms of reference and the measured nature of the submissions. As such the inquiry which did NOT consider the overall effectiveness of Australia's border arrangements.

Not only how an individual tool does in isolation, but where they fit into the systems and structures must also be addressed in any proper consideration of effectiveness and of possible alternatives. The core issues to be dealt with by this submission go to the foundations of Customs, not merely that of the Coastwatch. The role, responsibilities, constitutional obligations and public expectations of both Coastwatch and of the Customs are to protect the national borders, to prohibit / control prohibited imports and enforce the law including that of the Customs Act.

Such an expectation has clearly not been met.

The initiative and direction / focus of Customs administration has been demonstrated to be lacking. The regurgitation of corporate goals, without divulging to the parliament that these are in fact regurgitated goals and that the service has failed to deal with decade old problems must be examined for what it is, a failure by the administration.

Also the training procedures and courses for relevant Customs and other client staff must be scrutinised, if it can be found at all. 'If you can't properly identify the risks, then the relevant staff can't be trained', nor can they 'apply an effective management programs to manage those risks' (. . . *which have not been identified. . .*).

ANAO Audit Report 38, 1999/2000 pp. 90 – 95 raises the issue of risk management, lack of training and lack of consistent or standard methodologies and decision making in the regard of risk assessment and risk management. This was apparently a 'new' concern, or was it?

Of particular concern is 4.15 on page 91 with questions whether the risk assessments that were undertaken and reviewed between 1991 to 1999 had any real application to the provision of Coastwatch services. Considering that Coastwatch is responding to tasking allegedly based on these risk assessments and risk management by its clients 4.16 raises even greater concern. Whether the Coastwatch resources are being used properly for the public good, or just sent out somewhere to do a lot of flying around to make it look like they are making an effort, must be more thoroughly examined.

So called 'intuitive' tasking rather than 'systematic, risk analysis processes' leaves the system open to interference and failings where solid and reliable protection is required.

In October 1990 the Parliament's report 'Risky business' commented on staff training on p. xv. Expressing concern with the manner training was being handled,

Paragraph 2.81 in the October 1990, First report by the Martin Inquiry raises the issue of concerns about poor and lack of training, this was to be simply another recommendation that must eventually be heard, but apparently it was not to be in the following almost 12 years.

Perhaps these comments were directly aimed at whoever in Customs made the statement in their June 1990 submission, p S.67, "The ACS continues to place a good deal of emphasis on training and staff development . . . the course is aimed at achieving a uniform approach to operational planning, command, control procedures through the training of operation commanders . . ."

(regarding another course) " . . . the training course has been of considerable assistance to barrier officers and has resulted in the interception of a number of passengers in possession of sizeable quantities of drugs. . .". Apparently the courses being run by Customs had some use, but the entire Customs structure and activities revolved now, around administrative mechanisms such as risk assessment and management, hadn't they yet realised the importance of training Customs officers in these?

There was, it seems, no risk assessment training, or risk management training. Despite the strong reliance on administrative methods of risk management. One wonders how Customs officers dealt with risk assessment and risk management without training? To date no training is known to have occurred, but law enforcement officers were all moved into facilitation.

Perhaps the answer to that question lies in a report from 1988. TWO years, and TWELVE years *prior* to the two reports mentioned above;

Crosstech in 1988 said, C:11

- (b) "It is also recommended that mandatory training / education in risk management be given to all relevant staff, particularly those whose focus has moved from enforcement to facilitation.

This matter is of fundamental importance . . . It is clear that many Customs officers neither accept nor understand the concepts of risk management . . .

. . . All technical training courses . . . should contain a well-designed and well-presented segment on facilitation and risk management. . ."

Similar statements were made in 1988, again in 1990, in 1993, 1994 again in 1999, and one suspects regularly at every point in between. It is clear that training has been lacking, what is not lacking is mounting evidence against the instituted structure and the abilities of the Customs administration to carry out the roles and expectations required of them in their supervising of the Customs service to meet their legislative requirements. Unfortunately for the Australian public, and especially Customs officers attempting to carry out their duties to the Australian public, similar magnitudes of problems endemic to a Customs suffering systemic structural defects existed in every aspect and function of Customs and still does today. The smoke and mirrors have been used to hide the cracks, and have done so extensively.

For example:

In The Risky Business Parliamentary report in 1990, under the section The performance of the Contraband Enforcement Team (CET) extract starts page 62.

5.65 "It was noted further by Customs that: to some extent you become a victim of your own success, in that if you are particularly successful in one area the opposition is going to move around and try to exploit another area of your weakness. We have got to keep up with it, so you can never really be sure . . ."

AND ON THE OPPOSITE PAGE . . .Page 63, under the heading;

Port Security – CET Teams and Port security

5.71 At the time that the CET process was being developed Customs withdrew a 24 hour patrol function from a number of smaller ports. Considerable concern was expressed . . .

5.72 . . . The task force report upheld the validity of the Customs decision."

No matter what the 'justifications were at the time' the historical perspective on this exposes the administration's rhetoric, but even more clearly is the proximity of paragraph 5.65 which can stand alone in condemning much of the recent reliance on structures which are not reliable.

Day records the embarrassing incidences, the dramatic let down's caused by reliance on risk management (without training), and so called 'occasional failures' occasioning 'outraged headlines'. Which no doubt were of great frustration to the administration. However the point is worth making again, the successes don't count if they aren't real and are simply prefabricated statistics, and secondly, the real successes aren't too impressive when they are outnumbered in large measure by failures.

In short Clerical and administrative "Customs officers" were originally to carry out work functions dealing with matters "inside the net" which were described as including trade / facilitation.

Control / law enforcement "Customs officers" were to carry out work functions dealing with matters "outside the net" including prohibited imports.

...and Coastwatch is applicable as a specifically tasked resource to the latter areas.

With the restructuring, Coastwatch is now being directed by clerical officers using clerical and administrative work functions to address the control and law enforcement goals included in the corporate plan as after thoughts. To justify their existence they are 'using' clerical methods to justify their existence and reliance on the present structure.

5. A history of failings.

"As is so often the case, the legislation provided a confident glow that was not sustained by the administrative support."

The only difference between the structural arrangements of 1990 and the new NSC recommended by the PMTF 1999, is the name. The outcomes have not changed.

In 1988 the Customs service commissioned a report into Customs, 5 years after the new direction of "complete customs officer / multiskilling" was introduced.

The study conducted by Crosstech Pty Ltd is dated June 1988, revealed scathing criticisms and was critical of the structure, systems, policies, practices, management, and recruiting and staffing issues (*which remain a problem today*), in Customs. Subsequent reviews by Hinds in 1998 and 2000 conferred.

Results of reports by Hinds Workforce Research Company in **1998**
and again in 2000,

were consistent with Crosstech **1988!!!**

Highlighting (*still*) confused direction and lack of leadership (as seen from the staff perspective) and in effective ... service **NOT** attuned to community expectations or community PROTECTION.

The problems which remain in the year 2000 AD, (*referred to in my submission 19th July 2000 AD and the supplement 1st August 2000 to the House of Representatives Family and Community Affairs Committee current Inquiry into Substance Abuse*), are discussed at great length in the Crosstech report in June 1988. Today, more than 12 years later the very structure, management and administration that was at the core of those problems remain more so enshrined in the Customs of today, and are defended by the administration in spite of the evidence against them.

While management models and theories might be able to manipulate the statistics in some manner to construct excuses for the parliament, the litmus test is on the Australian streets and is causing suffering to the Australian public which it has a duty to protect.

Crosstech 1988 I:6 Program Management/ Budgeting – Structure and Practice. 3: Staff; (similar comment also at H:5)

"Many staff maintain that the reliance on statistics and performance indicators, many of which are unrealistic, has led to most effort being spent on 'justifying your existence' rather than getting the job done. There were admissions of 'bogus' statistics, and a major concern that the mechanisms being applied do not take account of regional difference in operating environment."

These are just more reasons for a far reaching ROYAL COMMISSION into the effectiveness of Customs and into how things have got this bad.

Some of those reasons were reported in June 1988 in the Crosstech report.

Reasons such as;

G:1 Organisation Change Issues – focus taken off prevention and detection and

"broadened" (???) to encompass facilitation and enhanced methods of revenue collection.

H:2 *"The recruitment material, targets and selection criteria are perceived to be inappropriate for the nature of the duties to now be undertaken" (ie. No longer control / law enforcement but clerical and administrative) "the 'hyped crime buster image is not realistic as we are really only clerks in uniform".*

See also H:6:5 Recruitment and Selection;

The recruitment material was described by one group as "rambo hype" when the jobs are really clerks dressed up in uniform.

"plastic badges for a plastic job" H:7 and comments about management's preferences for the "cheapest person rather than one that can do the job were common."

"Fair, fast ad friendly" means you don't rock the boat that is not consistent with what Customs officers are trained for and should be doing." H:22

"We are now clerks in blue, a blue uniform" I:1

"Facilitation is pursued at "the expense of 'real' Customs work H:26, the pressures that are being experienced at the Airport in meeting ... conflicting demands. ... and are cited for uncertainty, insecurity about the future and a lack of cohesion and commitment."

H:27 "The ... conflict between enforcement and facilitation is deep seated. . . . the diversity of work they must now undertake not only is additional workload without appropriate recognition, but demands inconsistent roles of facilitation and detection.

Staff have a strong conviction that management and the government are not treating Customs work seriously – eg. Stating that narcotics detection is the major priority but not providing the resources; issuing the public statements about the enforcement role and legislative base which are NOT followed through."

H:4 describes the management style as "management by crisis", "management by meetings with little content or results", management by hysterical reactions to the Minister", and "management by the seat of the pants".

are common throughout the report.

As is criticism of the \$20 million "Drug Offensive" which failed to sufficiently resource Customs, a comment was made that they did not even have enough petrol and fuel to undertake detection and enforcement.

The management, practices, policies, lack of communication and indeed lack of corporate direction were savagely criticised by the Customs officers frustrated and clearly angry that they were no longer protecting the Australian public.

These concerns may be summed up by the point:

"Many (officers) do not perceive management or the government having 'commitment beyond the rhetoric'; and as selling short the public who expect protection' H:3

It is little wonder this report was literally buried by the then administration and its recommendations never acted on. The fact that subsequent reports referred to previously have also conferred the entrenchment of these problems and the failures of Customs to address them and the symptoms of them, must not continue without the parliament taking remedial action.

It is noteworthy that although the report's terms of reference required that the consultants examine, report on, and recommend any changes as well as identifying areas or aspects which warrant priority attention *IN REGARD TO THE EFFECTIVENESS OF CURRENT STRUCTURES AND PRACTICES*, the report *DOES NOT* do so. The comments throughout the report are highly critical of the new structure and practices, but the report fails to examine and report on this aspect of the effectiveness of Customs.

What it does however recommend is a review of the rotation policy, and extensive training for law enforcement officers. These officers were now no longer to be used in control and law enforcement functions as these no longer existed, and it was recommended that they be trained in risk management (administrative methods and statistical procedures) and facilitation to assist them in "coming over to" their clerical duties.

A Quote from the Industrial ruling regarding the work function of the officers.

The Australian Conciliation and Arbitration Commission full bench ruling on the matter includes the following;

"We are satisfied on the evidence and submissions in the proceedings before us that the Assistant Customs Officers and banded Customs Officers within the Australian Customs Service are employed upon administrative and clerical duties and we agree with the conclusions expressed by Mr. Deputy Industrial Registrar McPherson and Mr. Justice Ludeke."

A. See Attachment

Such a redirection of their expertise, attitude and aptitudes was clearly resented, and staff turnover was high and morale low. H:30 and I:10-11

This issue of effectiveness was NOT reported in the Crosstech 1988 report. Perhaps the consultants themselves became so overwhelmed of the low morale, serious organisational problems and growing gripes within the service that they felt their report was already so scathing that it was not necessary to separately identify the issue of effectiveness. This issue however was included in their terms of reference and one can only conclude that the true

state of Customs was so depressingly ineffective, and the report already so critical, to report on the effectiveness of Customs would be impossible. The entire Customs required priority attention before it could be considered that the service would ever begin the road towards effectiveness.

It does not however excuse the fact that despite the oppressive number of reports and inquiries into Customs not one has been into the effectiveness of the Customs and also that because of the ineffectiveness of Customs, the suffering of the Australian public has worsened.

P376 of Day's 'Contraband and Controversy'; (in 1994)

"Gauke suggested that . . . Customs still 'functions as well as any other Public Service Department', but argued that

'that standard is not adequate. When Customs fail, people die; diseases and weapons flood in and national morality, finance, jobs and health are all harmed. The Customs Service should operate at a level of excellence that is higher than the average Public Service.'

Later the Conroy Inquiry's review (released February 1994) was announced which was accepted uncritically by the media as a damning indictment of Customs. In it the Minister comments that the 'assorted hotchpotch' should be ended and the old distinction between clerks and law enforcement officers be re-instituted. With all the problems they faced, the Customs administration persisted over years to actively drive Customs down a certain course. As each problem arose, frequently becoming a scandal, Customs would be reviewed or face an inquiry and would make a small number of changes, driving Customs down the path of (only) facilitation.

This problem of 'review fatigue' is discussed in Day's History of Customs 'Contraband and Controversy' 1994, plagued Customs for a simple reasons. What they were doing didn't work properly.

6. "Mission Impossible"

With constant references to poor, inappropriate or non-existent training, and high staff turnover and low morale which in many cases could be attributed to the recruitment, selection and training for law enforcement and control which clearly was not their work function.

These administrative techniques can today be seen in the Customs' reliance on statistical figures of a few big seizures. Statistical reporting of risk management indicators which report calculated statistical levels of risk and calculated statistical levels of assurance rather than actual security and protection of the borders and enforced levels of control to be put in place. This feeble (and demonstrably questionable) defence of their clerical and administrative management methods rather than actual enforcement of control and legislative requirements can no longer be accepted.

The criticism of management policy in Crosstech June 1988 was also scathing, with comments by airport Customs officers like *"we used to investigate them if we had doubts, now we just let them go"*. H:28

The repetition of comments referring to the issue of Customs no longer doing *"real"* Customs work and we are now clerks not protectors is almost oppressive, and to read this Crosstech report from beginning to end one wonders if any of the current management ever worked again.

Unfortunately I understand that some are now the 'heads in charge' of Customs administration and management today. Having demonstrated their bureaucratic adeptness to bury the most scathing criticisms, gag and shackle officers into illegal obedient silence and misdirect the government's efforts towards *"Tough on drugs"* and *"A drug free Olympics"* into more publicity campaigns than genuine action.

In The Australian Customs Service's June 1990 submission to The House of Representatives Standing Committee of Finance and Public Administration Inquiry into Particular Aspects of Customs under the headings of *'Role, structure, functions'* and also *'Mission Statement'* the ACS clearly demonstrates their one eyed view which is indicated by their sole references to and reliance upon ADMINISTRATION.

In the four points in the mission statement, all are clerical and administrative, and necessary for clerical and administrative work functions to be performed properly within the corporate role. Notable by their absence; control or law enforcement statements in the mission statement. Are we to expect detection, interception, prevention and protection functions to be performed by clerical and administrative work functions? Clearly the Customs administration do, and still does today!!!

This once again from the ACS 1990 submission, is only confirming yet again, that found by the Full Bench of The Court of Arbitration (See Attachment A.) that the work carried out by Customs officers is clerical and administrative (and NOT control or law enforcement).

A FUNDAMENTAL reason why corporate goals and the public and government expectations aren't and indeed can't be met by this clerical and administrative structure (ie, the "Litmus test") is the prima facie evidence of reliance on constructed performance indicators, and statistics. This has already been shown in Crosstech June 1988 as non-reliable.

Crosstech 1988 I:6 Program Management/ Budgeting – Structure and Practice. 3: Staff; (similar comment also at H:5)

"Many staff maintain that the reliance on statistics and performance indicators, many of which are unrealistic, has led to most effort being spent on 'justifying your existence' rather than getting the job done. There were admissions of 'bogus' statistics, and a major concern that the mechanisms being applied do not take account of regional difference in operating environment."

One wonders if the standard response to the public's criticism of Customs includes well orchestrated and appropriately times 'massive seizures' or if these are merely incredible coincidences? These events continuing for more than two decades have in general incomprehensibly occurred in close succession to harsh criticisms of Customs, scathing reviews or scathing public outcry, and are generally conceded to be as the results of an anonymous tip-off, not as a result of effective systems or structures. Crisis management rather than effective management seems to be standard practice in recent decades of Customs administrations.

The focal point of this criticism can be seen in the comment H:35 "Staff perceive a "battle" between enforcement traditionalists and facilitation new comers".

I think it is a fair comment to say that the administration seems to be winning that war but the Australian public have to date been the losers.

Comment:

The nature of Customs has been restructured by the administration to be clerical and administrative. As such the entire structure of Customs is floundering without focus, direction or resolve for the dual duties of both law enforcement / control and swift commercial administrative / clerical facilitation. The absence of their separation exacerbates the poor; structures, legislation, staffing and policies

which undermine not only that required of coastal surveillance but of the entire Customs.

Although considering the terms of reference, one could be tempted to deal only with the symptoms and superficial observations of the Coastwatch / Customs. The underlying core problems are however the only way with properly treating the core problems in order to get the results expected by both the public and the parliament. To do so one must look to the core problem which lies in the structure and systems of Customs. These problems are not easily observable by any inquiry which has not examined context. For this reason amongst others previous inquiries have not exposed the problems in what the Customs service dishes up in its repeated bleating about the same problems it failed to address over a decade ago.

What spin does the official record put on this ????????

'Day' while reporting the controversy, is patronised by the smoke and mirrors into giving an official history which rings hollow with reassuring rhetoric which will no doubt be accepted by the ignorant and the naive. The 'measured' view must be seen from the 'official' viewpoint, and one could argue that the administrators of Customs were only doing what they thought best. Given their attitude, aptitude, experience, and commitment to their management plans over their legislative arrangements, one could argue that the official view is an accurate reflection of the succession of scathing reports and public outrage rather unsatisfactory administration merely points out the difficulties faced. Naturally the official record cannot embarrass or show the present management and administration as severely lacking as it actually is, one must look at the "spin" that is put on the most gravest of incidences to recognise this for the publicity propaganda which is used liberally.

This author recommends that in examining Coastwatch, the foundations of Customs are examined as therein lie the core problems of the national border control systems in this regard. As such any problems within the Coastguard are merely superficial symptoms which need to be addressed by fixing Customs and having Customs work properly.

Balancing both clerical 'while' balancing law enforcement has proved impossible. This concept of 'while' has masqueraded as the 'complete Customs officer concept' but has actually been the total downfall of effective control and law enforcement and has adversely affected the overall Customs service affecting morale and staff turnover. This has obviously had an effect on costs, and also on effectiveness.

Facilitation and law enforcement cannot be mixed as they have been, to do so is to expect the service to be both inefficient (not use minimal resources) and ineffective (not get their job done properly). This has in recent times been amply demonstrated by the Australia Customs service's ineffectiveness and the suffering of the Australian public. Rather than remedy the mess that was created, and documented in numerous reviews and committee's inquiries, the administration has bumbled along gagging, shackling, coercing and intimidating its officers into silence and further entrenching the structures which are the fundamental flaws to effectiveness.

Ideally both facilitation and control / law enforcement should be optimized in relationship to staffing, technologies, structure, policies, and penalties, but this requires separate and clearly delineated work functions to be carried out by the appropriate officers within separate and independent branches of Customs.

Both facilitation and control / law enforcement are necessary to the smooth running of the continental establishment of our nation. However they cannot be carried out properly at the same time by the same Customs officer. The conflicting work functions create intolerable conflict which has been documented in great detail (including '*Crosstech*' 1988, '*Day*' 1994 and '*Hinds*' 1998 and 2000) and lead to one or both work functions suffering.

Due to the structure, policies and practices, the facilitation work function takes priority and then when clerical and administrative work functions fail to meet the public's expectations, the Customs administration's public relations face saving team goes into 'damage control mode' to settle the disquiet, and dissuade any concerns.

This crisis management is usually undertaken with ample quantities of rhetoric, questionable statistics and bravado, that intimidates anyone who dares question the effectiveness and credibility of Customs. The concurrent coercion, intimidation, malicious and personal attacks on any officer brave enough to speak up, even on public business is illegal and unconstitutional. The history of gagging and shackling officers, even into unlawful obedience by the threatening use (actual and implied) of the Customs Administration Act and The Public Services Act, are standard tools in the crisis management bag to stop Customs officers speaking publicly about public business. Perhaps there are more incideous reasons, but without being able to hear from Customs officers themselves that is difficult for anything but a royal commission to determine.

Thankfully, generally, the Customs officers have a greater sense of duty to their role, loyalty to public service and enthusiasm and dedication to get a diverse and difficult task done, otherwise they might have gone along more willingly in letting the effectiveness of the Customs be leached away more quickly than it has been. Their natural attitudes and aptitudes which have suited them for the job, have also suited them to protecting the Australian public from those who would not

want that job carried out at all. (Risky business report 1990 paragraph 1. Introduction 1.5.)

See attachments;

Federal President of The Customs Officer's association's submissions, and papers to summit

&

Bulletin article – The Drug Runner Games

And other press clippings and correspondence

The underlying issues of addressing the present problems and looking for the solutions can be highlighted by the suffering of the public. The matter of low morale and high staff turnover has been significantly linked to the public's perception being greatly different to the actual work functions of Customs officers.

Some members of the public, having a perception of Customs, its roles, work functions and industrial environment take a course of action which results in them becoming Customs officers. Why do many competent, Customs officers suited by their attitude, aptitude and natural abilities and tendencies leave Customs after a brief service? Why do these officers feel that they have no future in Customs?

Why do they join the service filled with ambition to be on the front line of law enforcement and control and leave disheartened after becoming a "complete facilitation" Customs officer? Perhaps the key lies in the disillusionment they experience when faced with the contrast between their recruitment and training for law enforcement, but being required to carry out clerical and administrative work functions as was determined by the Arbitration court and the Crosstech report 1988. Not only does the conflict create problems, but the structure, inoperable standards of proof, mismanagement and failure of the department to communicate any possibility of improvement leads to their inevitable loss from the service.

'Day' records in 'Controversy and Contraband', p. 363, in the first paragraph, Leon Toohey comments that the scales had tipped the balance too far towards

facilitation and assisting industry and away from enforcement, in 1976. The restructuring in following years did nothing to correct the balance. As clerical and administrative supervisors directed enthusiastic officers away from enforcement towards clerical and administrative work functions, later, by restructuring the entire service ensured facilitation became the only real option and both 'white' and 'blue' collar crimes increasingly were not controlled.

**The white collar investigations “customs officers” were pushed to facilitation and then the blue collar “customs officers” were pushed over too
...no one was left enforcing or controlling**

Crosstech 1988;

1:1 “Conflicting duality of roles which confuse”

An impossible balancing act – eg.

eg; 98/99 Customs annual report “....” While “....”

The very fact that the balancing act of clerical and administrative '*while*' carrying out control and law enforcement has been shown over the years of attempting the impossible balancing act being unable to make it work. No matter how good in theory, in reality its time to look at the effectiveness of The Australian Customs service.

Very real problems with this conflict continue twelve years later.

The war between facilitation and law enforcement, well in the year 2000 the administration won and the Australian people are the losers. (Crosstech 1988)

In fact the Crosstech 1988 report even questioned the future of Customs. Perhaps in hindsight, it might have been better to start over again and re-examine the original and present purposes of Customs and put in place a mechanism to address these, rather than toy with management models in a social experiment to

see what happens when the barrier protection systems are sufficiently disrupted for two decades that they no longer function properly.

7. Invasion 1999 – “Have you got change for the phone?”

Around the turn of the Millennium, the Australian public's concern regarding the lack of any real system to routinely detect and intercept covert border incursions such as those made by 'the illegal boat people' who arrived on the northern beaches of NSW undetected, the headlines and public outcry was justified and despite the assurances of the Customs Minister, similar episodes were repeated in the ensuing months all around Australia. In a number of high profile incidences, the illegal arrivals were detected by local residents or the local police officer. One could not help but to wonder how often more covert and better planned activities have treated our border control systems like an honesty box. As Day relates in 'Contraband and Controversy' p 450, "As is so often the case, the legislation provided a confident glow that was not sustained by the administrative support."

The Prime Minister's Task Force 1999 (PMTF) recommend that a National Surveillance Centre (NSC) be established in Coastwatch, within Customs, to address these problems. The center was to have enhanced communications links and all the good stuff etc. The NSC, it is said, was to be established in Canberra and the details are in the Customs submission 9th June 2000 page 21 to this inquiry.

The National Surveillance Centre however was not a new thing the facts clearly show, only a renamed thing. It could be said that the car maker's practice of badge engineering to convince the public that a newly designed vehicle has been launched had been applied to this matter. In comparing the PMTF's recommendation for a NSC to the goal of Customs 10 yrs ago it is difficult to see any difference except the name.

The Coastwatch NSC is supported by a suite of electronic systems supplied from a range of government agencies including defence. Analysts use the new electronic systems to assist client agencies with risk assessment. Before this, as detailed in the Customs Submission to another Committee in June 1990 we had Coastwatch operation HQ.

The HQ had electronic mail, telexes, telephones, facsimile and radio links to regional centres and major client agencies including the defence forces. (1990 Customs submission Page S. 53.)

The Customs corporate plan for Coastwatch in 1990 identified its objectives as a service agency meeting the needs of its clients. Coastwatch liaises with each of its

clients to develop threat assessments, to identify high risk areas, and to allow for more effective surveillance flying.

It is clear that the NSC as recommended by the PMTF described at p.21 of the June 9th 2000 ACS Submission to this inquiry is the same structure that has been in place since 1990. One wonders about what information was given to the PMTF which resulted a recommendation about something to be created which was already in existence. We are trying to demonstrate the 'smoke and mirrors' activities used by Customs to create an illusionary circumstance which must lead a PMTF into a particular recommendation notwithstanding the fact that unknown to them their recommendation for structural arrangements had, it seems, already been in place since 1990.

The prima facie evidence is that the surveillance centre has been operating for ten years based on the documents referred to. The PMTF 1999, in reality said that we need a Coastwatch operational headquarters doing what has been done for ten years based on what we have been told was the operational activities of Headquarters (Coastwatch).

The only difference between the structural arrangements of 1990 and the new NSC recommended by the PMTF 1999, is the name. The outcomes have not changed.

It would be quite wrong to hang one's hat on an alleged new initiative when it is clear that the initiative had its inception ten years ago, and clearly failed, if the concerns which brought about the PMTF are any measure.

We are looking at the habitual regurgitation of existing structures and goals against which no action plan was even acted upon, veiled as previously non-existent to each new inquiry to meet the needs of a crisis management situation. It is noteworthy that over the past 20 years the only attribute that Customs administration can claim as being effective in is crisis management and illusions. Unfortunately the management of the crisis has not meant even the belated effective fulfilling of their legislative arrangements, but rather the finding of excuses for failing to effectively carry them out and doing so with a good publicity spin and deception of the government and public with illusionary means.

In the Crosstech report in 1988, the scathing criticisms are as equally applicable today, perhaps they are more answerable since it is now 12 years after this report and the issues including effectiveness have worsened not improved. The findings of Crosstech 1988 have been conferred by numerous reports and inquiries, and yet we are again in 2000, looking at EFFECTIVENESS which was to be examined by the Crosstech consultants according to the terms of reference but was not ever included in the report.

Staff turnover has been identified as a major problem, cost and industrial indicator. In Cross tech and the 1990/1991 report 'A tour of duties', rotation p.15 – (the conflicting and confusing roles) is discussed.

Then goes on to deal with rotation / p.17 and chapter 4 dealing with efficiency of administration – the wasteful treatment of specialities of attitude and aptitude.

I have little doubt about these problems continuing still.

Low morale, high staff turnover were found by Crosstech to be because officers find that law enforcement duties or work function has no future in the present structure of Customs. Why does the Customs Officer's Association (COA), which represents Control / Law Enforcement Officers have no industrial coverage ie, it does not, in fact cannot, represent Customs officers?

The answer is, as was determined by a full bench of the Arbitration Commission (see attachments)

A Quote from the Industrial ruling regarding the work function of the officers.

The Australian Conciliation and Arbitration Commission full bench ruling on the matter includes the following;

"We are satisfied on the evidence and submissions in the proceedings before us that the Assistant Customs Officers and banded Customs Officers within the Australian Customs Service are employed upon administrative and clerical duties and we agree with the conclusions expressed by Mr. Deputy Industrial Registrar McPherson and Mr. Justice Ludeke."

..... that Customs officers, being clerical and administrative employees and having regard to the new Customs service's structure, could no longer be members of the C.O.A. because the C.O.A. were not entitled to , and historically had not represented clerical and administrative employees in the Customs service.

The public expectations are also those of new recruits, they feel that they have been recruited for their desire to work in a law enforcement and control work function and because they have the attitude and aptitude to do so in the service of their country as Customs officers. After a few short but painful years they clearly see that they are becoming institutionalized into the problem not the solution and many leave disheartened.

This is an enormous cost to the taxpayer not only in staff turnover and recruitment / retraining costs, but also in the loss of experienced and appropriate officers from the protection of the nation in that service.

8. Head's down and look out . .

Perhaps a simple summary of the present situation is to say that Customs is headed in the wrong direction and focussed on the wrong thing.

In hindsight we can clearly see that the too narrowly scripted inquiries ,time after time, have taken the Customs administration bumbling and stumbling down a certain course of action to the present day without a realistic perspective on what the result of that course of action was.

This narrow focus can be likened to a lost man staring only at the ground following the wheel ruts of a wagon along the road hoping it would lead him home. The wagon had gone by days previous and so rather than looking around, he looked very closely at the ground to follow the ruts of the wagon's wheels. Unfortunately for the man, the horse pulling the wagon that made the wheel ruts he was following, has been spooked before it got to its destination and without looking where he was going, the man followed the wheel ruts over a cliff edge to his demise.

Despite this . . . *'Day'* writes that (p. 376 - 378) "Not only did Woodward (the present C.E.O. of Customs) have to live up to the government's expectations for change, but he also needed to resuscitate an organisation which was punch drunk from more than a decade of debilitating inquiries. . . . Customs was suffering 'review paralysis' which had transformed a 'can - do' organisation into a 'didn't - do' organisation."

"On 15 June 1994, Woodward presented a major addresses . . . in which he set out his agenda for reform . . ."

The words that he spoke, summarised in the text by *'Day'*, are admirable, he spoke positively of achieving both facilitation and law enforcement. Although the words were there, the path he took in balancing law enforcement 'while' pursuing facilitation, took Customs further down the path it was already heading, and further away from separate and distinct work functions. Even *'Day'* writes 'Pity the poor Customs officer.'" Pity them indeed.

It was an impossible ask, and his next chapter, Chapter 16 is titled 'a drug free society not an option'. With Customs officers recruited, selected and trained for what they seemed to think was law enforcement and control, and then employed in a clerical and administrative work function in order to 'facilitate' trade and travel. They were told by their 'chief' to do so without eroding the necessary control, but only given a clerical and administrative structure and its policies, practices and management. This flawed system and structure, along with the management of, which was also directed and focused on clerical and administrative work functions, is little wonder that from the late 1970's to today,

the impression has been given to support the myths. Weak excuses used to explain their ineffectiveness and divert criticisms, "that we can't stop drugs and other prohibited imports", through sheer weight and persistence began to be accepted by the public.

On the same page, *'Day'* explains Woodward's reliance on facilitation was to give new life and direction to the service, keep his job and do something new. It also indicates that Woodward's success would be 'to avoid a future inquiry focusing on failures in its community protection and revenue – raising roles'.

Numerous inquiries since then, have repeatedly found that such a balance between facilitation and law enforcement is unattainable in the present structure. Perhaps if this area had been clarified it might not even rate a mention, however in ACS Submission 9th June 2000, the total reliance on this concept of balancing control *'while'* facilitating trade, clearly purports to be able to do something which neither Customs nor Coastwatch can do.

If the words spoken by Woodward in his 1994 address, were reflected in the actions taken over the following years that might not have been the case. Unfortunately for both Customs and the Australian people the subsequent actions did not match the verbiage of that time. For numerous reasons the administration persisted with a structure that could not hold up under the internal conflict of carrying out the dual and conflicting roles at the same time while trying to maintain their delicate balance. Given that the structure, policy and management was weighted towards facilitation, that has inevitably been at the forefront to the failing of control and law enforcement and the resulting symptoms raised previously.

In Woodward's announcement, it is reported that he said he wanted facilitation to be seen as 'more than a by-product of our enforcement activities' and be accepted 'as a legitimate activity in its own right'.

Had this actually occurred without sacrificing enforcement to administration, today's Australia might be very different indeed, as effective facilitation and effective enforcement are both desirable, in fact necessary.

What is also recorded in *'Day's'* account, is that the new attitude to change and criticism promoted by Woodward was intended to be one which promoted both facilitation and enforcement. Looking to criticisms from the import industry he said, "Lets see how we can allow that to happen without eroding our necessary controls."

Unfortunately, if *'Day's'* comments on equal opportunity at and around pp. 354 – 357 are any indication, it would seem that generally two decades are allowed to pass before concern is raised by the government if Customs is

not moving in the intended direction.

Having regard to L.B. Woodward's position in 1993/4 regarding the structure, direction and focus of the Customs service under his hand as described by 'Day' in '*Contraband and Controversy*', and particularly his comments in the 1994 address, it is significant to note what happens to Customs officers who make public utterances that were critical of Customs policies and actions.

See The Bulletin Article – The drug runner games – See Attachments

Clearly officers had real and substantiated fears of reprisals.

Two examples;

Fleming -

Bennett -

(See attachments)

Threatening (actual and implied) inappropriate use of the Customs Administration Act and The Public Administration Act, the Customs administration managed to curtail most of the criticisms. This gagging, coercion and intimidations of officers to prevent them from speaking about public business, is unconstitutional. It is also not in the public interest and hinders the processes of government particularly when reviewing and evaluating issues such as those before this inquiry. Despite the service's public silencing of Customs officers, the criticisms were not gone, only gagged.

High Court action taken by Bennett against Woodward and others later lapsed as all charges against Bennett were withdrawn. (See attachment) But, charges were withdrawn only after the maximum malicousness of the action had been exerted. As no apology was ever received, the general comment, and that of Bennett himself, was that the action was personal and

malicious and despite being without cause and not winable, the legal action was clearly intended as a threat to Bennet and other officers.

The comment by Day p.378, on the last two decades is worth repeating;
"*Customs was suffering*" . . . *it had become exposed as a "can-do' organisation which 'didn't - do'."*

It is noteworthy that the Customs service's recent history of reproducing (regurgitating) its corporate goals has not been exposed and it has been able to address problems year after year without actually solving those problems. This done, it fails to take the necessary action to achieve those goals leaving them untouched. Often the goals become more urgent and ever more apparent as they are left unaccomplished to be 're-written' after a year or sometimes many years. In failing to take the necessary action to achieve them, they and their associated plans are 'regurgitated' to each annual corporate plan, report and, where specifically asked for and necessary, an inquiry. In various derivatives and variations as is necessary so as to appear to be something different, often as a new initiative, when in fact the same goal could be nursed unaccomplished for more than a decade.

This can be seen in the examination of documents for more than two decades, and the propaganda is mythical in its effect in changing that nature of government and public opinion from harm prevention to harm continuance so called "minimisation" styled policies. The NSC example is one of many misleading messages, which often simply in their micro focus, have not identified over long periods of time the macro issues which condemn them.

Sadly and tragically for the Australian people the effectiveness of Customs has clearly not improved for reasons; including those of; focusing on the wrong structures, policies, staffing, practices, management practices, having the wrong focus, and direction.

It is then interesting and perhaps somewhat disturbing that in light of the constantly changing nuances or 'political winds' in federal governments, to consider 'Day's' comments regarding the 'necessary' attributes of Customs chiefs. Considering all that which has already been said, including the decimation of law enforcement over the previous almost two decades. The results of constant changes and lack of focus and direction on the Customs service demands that Customs chiefs, ('Day'says) will need to have the 'necessary' attributes of being finely attuned to the changes in the political winds. (p 459 of '*Contraband and Controversies*').

Unfortunately the "chiefs" of Customs have allowed them selves to sway in the political breezes rather than get on with the job of carrying out their duties as required of them by the legislative arrangements, and not the political day to day little nuances of party politics of the day.

. . . no where does 'Day' mention that they need to be able to carry out the legislative requirements of Customs. Nor does 'Day' record the concerns of Customs officers about the weapons subsequently used in the 'Hoddle street', 'Queen Street', 'Strathfield plaza', and 'Port Arthur', massacres. Officers were not allowed to do their duty concerning those prohibited imports, i.e. seize them, officers said, had they done their duty the tragedies may not have occurred, at least not in the magnitude that they did.

Commentating on the History of Customs, 'Day', writes in closing "*While there is pressure at present for the Customs service to shift focus from community protection to the facilitation of trade, the importance of the Customs' protective function cannot be swept aside so easily . . .*"

Sadly and tragically for the Australian people the effectiveness of Customs has clearly not improved for the same reasons; including those of; focusing on the wrong structures, policies, staffing, practices, and management practices among other reasons. The business trade, corrupt police and customs officers, and those of a clerical and administrative single mindedness have all pressed forward to drive an unwitting government towards a cliff off which Customs effectiveness was set to tumble.

Bennett wrote in his submission to the legislative and constitutional committee dealing with Customs Act amendments, was that 'they' (the Customs administration) wrote 'law enforcement' out of the Customs dictionary, but his comments were not heeded. (See attachments regarding Bennett.) Despite the progressive move away from any law enforcement, towards single minded facilitation by Customs over the preceding decades, some people seemed to still not be satisfied. Despite such efforts remaining, being only the rhetoric and publicity that was clearly a farce and a charade, such people would not rest until control or law enforcement functions were no longer remaining in Customs. (References include 'Day', 370-371, 383, 390)

As stated previously not one full and independent review has been undertaken with the scope and ability to address the magnitude of a proper inquiry into Customs. In 1986, it was recommended by Reg Benson who during that time became the senior inspector in charge of prosecutions for the NSW (Customs) collectoriate and subsequently headed up prosecutions as an officer of The Crown Solicitors officer p 370. (Contraband and Controversy by Day, p.370) in expressing concerns about Customs, particularly in respect to 'white collar fraud' that nothing less than a full judicial inquiry be held as

anything less would be just a waste of time, and as seen above after countless small, specific and narrowly scripted inquiries the problems remain. Mr Benson's comments are equally applicable and relevant today. Despite the rhetoric, half hearted responses, ad hoc meddling and hotch potch, perhaps if anything the problems have worsened and the need for a judicial inquiry has increased significantly enough to warrant a royal commission into the effectiveness of the Australian Customs.

F. THE RELATIONSHIP OF COASTWATCH AS A SERVICE PROVIDER AND ITS CLIENT AGENCIES AS SERVICE PURCHASERS.

Customs is a specifically tasked resource, shared by a number of 'clients' for the often common purposes, to carry out often, but not necessarily, common tasks

Under the legislative arrangements, Ministerial directives, Memorandums Of Understandings and management policies, the priorities and carrying out the tasks is done by Coastwatch to provide a patrolling resource known as surveillance for its clients. This is carried out for the clients to be able to properly undertake risk management.

Confusing about what threat areas are etc

There also appears to be some confusion as to whether clients assess risk, (see ACS Submission 9th June 2000, paragraph 27 - 28, page 11)

(Italics added)

27. Coastwatch is a service provider, reacting to and responsive to client needs and requirements.

28. Coastwatch does not determine threat areas, nor does it determine client's surveillance interest, Each client agency is responsible for the development of its own threat assessments (*ie risk assessments*) and for assessing its surveillance (*patrolling*) requirements. It is the role of Coastwatch . . . timely surveillance outcomes.

And contrast that with Recommendation 3 (p.30 of same submission as above paragraphs) for COASTWATCH to develop a common risk assessment process . . .

if Coastwatch is consolidating its internal risk processes, developing and coordinating it, what happened to the role and responsibility of Customs???

Risk management – the matter of considering what Coastwatch does, and how powers are given to it, to be where it is and do what it does, is considered later. In considering what it does, where and how it does it, the committee must consider how those actions come about or are directed. This is an integral part of the risk management by the clients using Coastwatch.

Through risk assessments (allegedly) Customs and other clients of Coastwatch assess high risk areas. Then using the resource, or tool of Coastwatch as a risk management tool in this instance, Customs directs Coastwatch to undertake a

patrol (called surveillance in the Customs submission). In the making of these risk assessments and decisions the inquiry should ask what criteria does Customs use? Where is the training, in fact where are the risk assessments and management actions for addressing those risks on which the tasking of Coastwatch resource is undertaken? (See E.3. of this document.)

Three times this year, a man has walked onto a flight deck on a Sydney airport international plane - unauthorised. Although Customs may not see the link, and wants the airport security to take the blame, the responsibility must fall back to Customs no matter who they try to address the risk to, it lies in the risk management or rather the lack of risk management.

Does Customs have risk management assessments that surround the Australian Coastline on which it makes its Coastwatch tasking decisions? (See E.3. of this document.)

How does Customs identify risks and indeed manage those risks in an appropriate manner? i.e. Demonstrable action to manage the risks not just PR rhetoric and goals, but actual action in place to achieve those goals that were stated every year since around the mid 1980's.

The effectiveness of achieving these, and the overall responsibility of the Federal government to ensure the protection of the national borders is carried out and that control and law enforcement functions are carried out properly and effectively overall is not an issue that should be left without a remedy for so long.

G. THE EFFECTIVENESS OF COASTWATCH'S ALLOCATION OF RESOURCES TO ITS TASKS.

What do we the public and the government want?

Protect the national borders! Control prohibited imports at and inside those borders!

and as a 'principle gate keeper' to control migration / people at the borders would be a good start, in addition collect revenues, tariffs and the like and facilitate trade and travel to complete the picture. Unless all that is accomplished, then we are moving away rather than towards that goal, so there is still some way to go before the effectiveness of Customs is realised.

Although some estimation of the governments expectations of Coastwatch and Customs can be evaluated by the resources provided to them to carry out their work functions, this cannot be seen as an unreserved endorsement of satisfaction with their effectiveness. The almost continual process of numerous inquiries and reviews into Customs continually raises many questions not least of all are those relating to the effectiveness of Customs in general and in some instances Coastwatch specifically.

How do we know if Customs is effective? This has been addressed in many previous reports and inquiries. I would only add here, that it is only really obvious when Customs (including Coastwatch) IS NOT effective and that can be seen on the streets of Australia.

Why do we want an effective Coastwatch? I think has already been answered, if nothing else we have good reasons to be patriotically protective of our great land and its people.

Systems, staffing, human resources management, structures policies etc, are all relevant but hang on the success of the overall Customs structure.

H. NEW TECHNOLOGIES WHICH MIGHT IMPROVE THE PERFORMANCE OF COASTWATCH.

Technology in terms of non-physical inventories can often be more important or at least equal to the technology in physical inventories but is often forgotten. The synergy from having the technology, people and integration 'up to date' is a prime goal which in a primary prevention organisation such as Customs (including Coastwatch) must implement as an absolute standard.

Computers, radar's, scanners etc are merely tools, without structures, and people they merely emulate matter taking up space much like the CCTV cameras on the ports every night and weekend.

Technology, applied in the appropriate and effective manner can perform far more competently than if they were in the hands of the unskilled, untrained, misdirected or theoretical. The attitude to the task and the willingness to innovate, seek out and solve problems takes a special kind of person. ("*Day*", '*Contraband and Controversy.*')

Given the improvements in radar, communications, computer and even satellite technologies the suggestion has been made that technology be used rather than attempting in some expensive way to throw a barrier of boats and aircraft around the 37,000 kilometers of the Australian coastline. To secure a physical impenetrable barrier at the national border would be fraught with problems and opposition. Technology has given us valuable tools to carry this out more efficiently, but also far more effectively.

Given that there are 'not enough resources for Customs / Coastwatch to patrol all the coast all the time by physical patrols', and Customs cannot realistically expect to throw a net of an impenetrable physical barrier up around the nation's border, innovative and effective solutions must be found. To provide a total level of assurity of the security of the nation's borders any system which did so would inherently provide a more valuable tool for that purpose.

Although only surveillance, and not interception, would be possible from a central monitoring location, at least those far more expensive resources such as aircraft and marine groups etc, could be directed to locations where patrol interests are more specifically directed based on real time activities.

Lighthouses

Dotted around Australia, initially provided valuable intelligence information to Customs as a secondary role. (see attachments)

'The Inquiry into Lightstations' 1981, by its Department of Transport submission to House of Representatives Inquiry on Expenditure. In their submission, D. of Transport advised the committee that the then Customs service whilst not being able to realistically (expenditure cost) press for continuance of manned presence at any of the light stations, they acknowledged that some stations had provided useful information relating to possible Customs violations.'

At that time no consideration was given to the replacement of manned presence by radar or cameras even though the light stations provided information and intelligence through their 'duty statements'.

Radar

The present radar systems are the wrong type in the wrong place, which is one reason why the issue of 'black-flights' issue (Audit Report 38, 99/00) has not been addressed for more than ten years of being 'on Customs books to be dealt with'. Low flying aircraft and surface vessels have been undetectable. In the risk management of the entire coastline, there can in fact not be any great level of surety given to the parliament or the people of Australia that Coastwatch / Customs has provided an acceptable level of protection to the border until an impenetrable barrier at surface level and above is established.

Despite the enthusiastic embrace of the Jindalee radar in 'Day's account of *'Contraband and Controversy'*, there are some problems with that system. The concept is good, to use a type of radar, but the details have not been worked out in such a way that it is yet useful.

Given that lighthouse stations are already in existence, all weather radar installations are technically achievable (according to Marine electronics advice by Ted McNally – see enclosed letter in attachments.). The principle units, installation, central monitoring and communications configurations would not be expected to be anywhere in the magnitude of the \$1.5Bn figure that has been bandied about by some. Although a detailed cost estimate has not been finalised, preliminary calculations indicate a far more cost effective figure could be arrived at.

ANAO Audit Report 38, at page 56 point 2.60 raises the matter of 'black flights' and the inability of Coastwatch to ever have adequate resources to respond to all potential agency requests.

What radar monitoring of the air and sea would provide is an impenetrable surveillance barrier possible to a maximum range of 64 nautical miles, with a normal expected range more in the distance of 40 nautical miles.

As an alternative to the ad hoc methods, at best questionable risk management, such a barrier would provide Customs with a tool to ensure no incursions of the national borders occurred undetected. Both strategic and tactical operational tasks could be maximised for their effectiveness in more cost effectively also, and with a greater ability to form an impenetrable surveillance barrier and to protect the nation.

With that information, and forewarning, officers could take action as required with regard to control, law enforcement, revenue protection and all other aspects that the public expects of Customs in order to protect the nation and do so effectively within a reasonable expectation of fiscal responsibility. (See letter in attachments)

Bio sniffers

Drug detection (sniffer) dogs are an invaluable tool for the purposes of Customs, but they have their limitations. The Federal government must make resources available to further develop fast, efficient and effective methods which modern technology is providing to search / scan ALL items, containers, parcels and in fact all goods and people who enter our nation's borders.

Speaking to this point would be an appropriate way of making a recommendation in that regard. The recommendation goes to the use of bacterium as the detection agent rather than the dog's nose.

Such technologies address the myth that Customs can't patrol everywhere and can't search everything. Applying innovative and up to date technologies such excuses not to carry out their legislative responsibilities no longer exist. Bacterium based systems could be used as 'bio-sniffers' to search every item that enters the country. Irrespective of whether it is a mail item, piece of luggage, shipping container, or person.

Satellites

An enormously far more expensive option to achieve virtually the same result as the radar option above is the availability of satellite surveillance and the wealth of detail provided by them.

Although satellites have many disadvantages, not the least of all is their costs, one advantage is their ability to act as eyes in the sky. Spy satellites and the cameras in them are able to be used to provide detailed images. This application of 'spy cameras' is more likely to be useful mounted within the lighthouse / radar

option to zoom in using the camera to look at things of patrolling interest in detail.

Other

Computer intelligence information gathering / integration of the law enforcement branch must be integrated and examined firstly to ensure that appropriate technology and equipment is being applied to the task, but also that the necessary training in the systems technology, and its use / implementation is also appropriate and up to date.

As criminals improve their technology, and strategies, law enforcement agencies including Customs / Coastwatch must be kept ahead of the criminal element as much as possible. Also improved technology for criminals with high speed boats and planes and 'sat nav' systems etc. Also information such as that which Craig Fleming tried to provide in managing the risks of prohibited steroids. The tip offs, research and intelligence systems must all 'fit into' the structure. At present any intelligence that is presented to Customs tends to be rejected outright. If it has an internal source, the source and the messenger tend to get treated rather inappropriately.

Structures, management practices, policies, powers, standards of proof etc all create an environment of innovation and integration which in itself can be seen to be either up to date in practice and effectiveness or sorely lacking and not up to the task.

'Day's' history about the environment of Customs not being up to date and not providing results in terms of anti-discrimination or of actual protection for the community pales in comparison to the atrocities which have gone on.

People

Improving the recruitment selection and training and people management within a restructured organisation, as has already been suggested, would have a revolutionary improvement.

Employing appropriate persons particularly where their attitude and aptitude was considered as relevant with respect to placement in an independent / delineated clerical and administrated separate branch or independent placement in a law enforcement / control function.

Improved HRM – Human Resources Management it would appear that they could make a good start.

I. THE ADEQUACY OF EXISTING OR PROPOSED LEGISLATION WHICH UNDERPINS COASTWATCH'S FUNCTIONS.

"Time and time again the question must be asked whether such arrangements are being made for our protection, or for the protection of those dark elements who wish to exploit Australia and Australians?"

Due to the feeble and prescriptive construction of the arrangements, even if they are 'caught' they could still reasonably expect some compensation for their efforts, for damages after they are 'let off on a technicality'

1. Constitutional obligations.

History of customs, and the traditional role of Customs particularly the Customs Act 1901, was to ensure the smooth running of the continental establishment, in the collection of revenue, to assist in facilitation i.e. travel and trade, and also by control and law enforcement at, and inside the nation's borders, to protect the community.

2. Legislative arrangements.

Whilst the 'new' legislative arrangements referred to as the Border Protection Legislation Amendment Act 1999 (BPLA Act 1999) may have some additional advantages, in the main the Act appears to be no more than a rehash of previous legislation and still contains previous legislative problems whilst creating additional ones.

These new arrangements are verbose, complex, highly prescriptive in a restrictive rather than any useful manner, where the prescriptive nature of the amendments is almost to the point of being pedantic. The complexities and prescriptive nature of which appear to be excessively so, to a result of having the likelihood of tripping up the spirit of these laws.

The view has been expressed, particularly at this point, by a number of those who have been acknowledged for their contributions to this submission regarding the problematic nature of these new amendments. The views were that summarised, stating that *"if I didn't know better I would say that the BPLA Act 1999 was written by the defence counsels of those who are 'people*

smuggling', (although that's not an offence), 'drug traffickers', smugglers and any other properly identified person who breaches the requirements of the; Customs, and the Migration, acts.

That is how complex this legislation is, contrary to its prima facie purpose . . . whatever that is.

It is already a fact (and strong public perception) that legal arguments prior to the introduction of this BPLA Act (and another, The Migration Amendments Act) have been long and drawn out. This new legislation, notwithstanding the officer's excellence and operational technical competence, has the real capacity to exacerbate those lengthy court proceedings and / or at least cause them to be lost having the potential to result in attached compensation / damages. The Midford case in *'Day'* is a good example of ambiguous and complicated legislation costing the people of Australia in court time, damages to the company and a lost industry to boot. Customs literally took the shirts of our backs at that time.

TRAINING

Notwithstanding the excellence of officers operational technical competence, generally when officers exercise these powers they will have to be extremely well versed and trained to a level of unforgiving proficiency with the law. Although the powers granted by the overly grandiose verbiage of the legislation appearing to be powerful, they are in fact extremely limited in the operational exercise at hand. (See also comments E.3 & E.4 this document.)

However the power to arrest under the BPLA Act 1999, is 'very powerful' and therefore 'very dangerous', as previously mentioned. The training of officers is paramount before they try to work within the framework of these new legislative arrangements. This of course raises even more questions about the training or inadequacies of such, than were raised earlier in this submission in discussion of training officers simply in risk assessment and management.

One wonders whether or not we need the new legislative arrangements in the magnitude that they are being added. (Eg. Despite additions to the legislation, powers 200 or 300 kilometers out to sea are not clear.)

An observation, as a result of this BPLA Act 1999, is that one might ask what we were doing before, with what authority, and then whether just a few appropriate and small changes to the previous legislative arrangements would have been far more effective.

Eg. Authority to patrol section amendments. (See the following explanation.)

POWERS

Regarding the BPRA Act 1999 and the Customs Act, there is no legislative power for officers to be in the place when they can exercise powers to request to board a ship. The activities of those on board the Commonwealth ship or aircraft are clearly by Customs' definition; patrolling functions.

"Patrol simply means, 'Going the rounds to see all is right' . . ." . . .

" . . . To obtain and pass on information to the relevant section" (clients) . . .
.. ."To apply all delegated powers under various Acts." . . . " . . . a tight surveillance patrol to prevent and detect . . . illegal immigrants and smuggling operations. These patrols are introduced where the particular area of operations is regarded as a potential high risk."

The powers for officers to patrol does not extend to the areas referred to in the amendment Act, refer to S. 193. Of the Federal Customs Act.

Recommendation:

Either that a definition of 'coast' be inserted in S. 4(1) to include the definition of coastal area, or that S. 193 of The Customs Act be amended to include coastal areas, contiguous zone, Exclusive Economic Zone and high seas.

Regarding the boarding of vessels, The BPLA Act 1999 restricts the boarding of the vessel to which the request is made, to one officer . . ONLY. Unlike S. 187 which allows 'an officer', and another and another and another . . . to board ships either singularly or together.

Recommendation:

- 1. Amend the BPLA Act 1999, by deleting all after the words 'of a ship to permit' in S. 184A(1) and insert the words 'officers to board the mater's ship.'*
- 2. That a definition of 'the commander' be inserted in S. 4(1).*

The power to arrest under the BPLA Act 1999, is 'very powerful' and therefore 'very dangerous', as previously mentioned. The training of officers is paramount before they try to work within the framework of these new legislative arrangements.

The BPLA Act 1999 is restrictive to the exercise of the powers of; The Customs Act and the Migration Act; separately, but has no 'working' arrangement for whatever powers can be exercised concerning legislation covering; AFMA, AQIS, DEH, GBRMPA, ANCA, AMSA, and Environment Australia (EA).

The question is, if these clients of Coastwatch have some interest in some areas intended to be identified in the BPLA Act 1999, then those areas and any powers relating thereto are not contained within the legislation, or if they are, they are well hidden within its complexity.

Without going into the numerous operational circumstances that have an extensive nullifying prima facie intention of the BPLA Act 1999 the following should be noted.

Arriving ships and aircraft are only required to comply with the Customs Act if they intend to arrive at a port or airport.

Refer to DEFINITION of a port or airport and to S. 15.

LEGISLATION REGARDING ENSIGNS AND INSIGNIAS

It could be argued that the ensigns or prescribed insignia limit the power to the relevant piece of legislation encompassing the relevant authority of the displayed insignia's, and in doing so excludes all others.

Example; A customs ensign or insignia limits the powers of those officers of Customs to powers only for the purposes of the Customs Act.

AIRCRAFT

Despite the comments of the Customs Minister this year, telling Mr Mike Jefferys on radio 2GB that the parliament would 'never' give powers to civil masters of aircraft to forcefully bring down suspicious aircraft, in a conversation on Coastwatch. The fact of the matter is that until December 1999 very strong powers including those existed. The Minister's comments indicated that the parliament would 'never' give those powers to civilians, yet they were in place and were withdrawn in December's amendments.

The justification for some of these amendments make one pause to consider who should be making our legislation when the excuses are given that we must undermine our domestic powers and protections for the sake of international agreements or conventions. In this instance it seemed that the Minister was not aware, and had not been made aware that the parliament would be taking away powers that had been in place, not granting new ones with this amendment. Years ago, as already shown, the move away from law enforcement was at least in part to 'assist' those wanting facilitation faster for trade, travel and business. It is time that we stood up and required Customs (through our own domestic legislation) to enforce the law, for the protection of ourselves and our country.

Time and time again the question must be asked whether such arrangements are being made for our protection, or for the protection of those dark elements who wish to exploit Australia and Australians? We have legislative arrangements and that is what the Customs Act must reflect by the actions of Customs.

Concerning the powers of S. 184D of the BPLA Act 1999 it should be noted that these powers **HAVE BEEN RESTRICTED** to aircraft that are only. . . 'over Australia' as against the previous legislation "(S.59(4) (b) any aircraft flying over;

- (i) Australia;
- (ii) The waters within 12 nautical miles of the base line of the territorial sea of Australia;
- (iia) the waters within 12 nautical miles of the coast of an island forming part of Australia; or
- (iii) The waters within 500 meters if an Australian resources installation or an Australian sea installation; . . .

. . .") etc.

In the absence of a definition of 'Australia' in the new legislation, and having regard to the previous legislative arrangements mentioned directly above, I hate to think what an officer, even one of excellence and operational technical competence, is going to do about a plane (foreign or otherwise) that is not over Australian land. In particular there is a concern as to what might be done in respect of a sea plane that he has some patrolling concern about.

Further, as previously mentioned, the power to use any force necessary to detain or stop the aircraft also no longer exists.

Despite the public relations promotions of increases in a number of 'penalties', it is not unreasonable to expect that the risks for the criminal element do not outweigh the rewards. Due to the feeble and prescriptive construction of the arrangements, even if they are 'caught' they could still reasonably expect some compensation for their efforts, for damages after the are 'let off on a technicality'.

The Customs service, in its submission to this committee (9th June 2000) at pages 71 and 72, points 11.5 and 11.6 details matters concerning Unidentified Aircraft Movements, (U.A.M.'s). It is now significant to note that they acknowledge that Coastwatch personnel allegedly carrying out their duties with the authority of the Customs Act, or Migration Act, are NOT authorised (*any longer*) to conduct air to air pursuit operations. Amongst other matters, they have stated that this activity is now limited to the responsibility of the Customs Border Divisions when the plane lands. It should be recognised now that without a secure border perimeter, the Customs Border Division not only have to wait for a plane to land, but that it is almost, if not categorically impossible for the Border Division to even be aware of any such aircraft at any time.

It should also be noted that Customs, in their annual report of 98/99, state that 'undetected arrivals' of SIEVE'S were up 400% in the last 12 months. This figure appears to be based only on those which were *IDENTIFIED* . . . and were so *AFTER THE FACT*. Those not identified after the act have not been included in official statistics and we'll never know about.

Recommendation:

The parliament is urged to give serious consideration to utilising the 282 lighthouses around Australia. Linked or partially linked with radar and camera facilities with a view to providing the Border Division with a tool to give it at least half a chance of addressing U.A.M's and ships. (The opportunity to speak to this issue would be particularly advantageous.)

See attached letter. Appendixes

AMBIGUOUS REFERENCES

Wherever the term "subsection 4(1)" appears in the BPLA Act 1999, it is ambiguous.

Eg. "S. 185 Definition of officer;

5. In this section, "officer" means an officer within the meaning of subsection 4 (1) and includes . . ."

When you then look for S. 185. subsection 4 (1) it is not there. There is a subsection 4, but no (1). If there were, there might have been unintended consequences, but at best it is ambiguous and is indicative of the feeble construction of the new legislative arrangements and the problems arising from them. Any such legislative arrangements that are, or can be read in such an ambiguous manner must be re-drafted to give a clear and accurate intention of the parliament.

It is fair to say that something that is ambiguously written in law, has no effect in law and should be redrafted. Eg. See above example regarding 'subsection 4 (1) which has no standing in Section 185.

Coastwatch / Customs is then about the interception of the illegal movements of goods and people, if its powers are unclear then either difficulties arise, or more costs.

Recommend enforcement of constitution and legislation regarding shooting gallery breaches that have already occurred.

Including; recommending that we pay more attention to our domestic rights and responsibilities, than solely to international obligations ie Lima, effects on Tarrif Classification Orders etc, and stop heroin shooting galleries on the grounds of the Customs Act and constitution not because it is opposed by the UN's International Narcotics Control Board or Human Rights Commission. We must act in our own interests primarily.

See note on Customs barrier policy (J:3) and Cross tech report 1988 – quote on technical training regarding training officers on risk management on rotation as the law enforcement officers were moved into facilitation.

J. WHETHER AN AUSTRALIAN COASTGUARD SHOULD BE CREATED TO TAKE OVER COASTWATCH'S FUNCTIONS.

... focusing on the wrong structures, policies, staffing, practices, management practices among other reasons. . .

... the solution is to get Customs working properly.

1. The question has been asked do we need something else?

Do we need a Coastguard is the question put to this committee, but to answer that, one needs to ask a number of other questions relating to the Customs functions. What do we as a nation want? What have we got now? Is there a gap? How do we fill the gap? No doubt the Committee will receive some submissions, recommendations and advice intended to ensure that Australia gets a Coastguard. Examining the facts, a Coastguard will not be able to achieve what the general public expects of it, any more than Coastwatch can now, or Customs under the restrictions it operates within.

Over time those who have given direction and focus to Customs have ensured that law enforcement and control work functions have no future in the service in any sense except that of token platitudes and rhetoric to a long forgotten concept in their minds. Subsequent parliamentary committees have been served misleading submissions by the Customs administration which have to some extent directed the focus from themselves to other areas. It will be a grateful public that will thank this committee for its resolve in dealing with this matter now.

The actions, (or should one say inaction?) of the Customs administration in its corporate plan can be seen over time to have merely regurgitated goals without initiative, action or proactive measures to achieve those goals. Over the past two decades, goals and performance indicators and other management justifications have been established without actually controlling any prohibited imports or actually protecting the national borders, public interests, welfare, economics or health. In its report on the war between the facilitation functions and law enforcement functions within the complete Customs officer, The Cross tech report asked the question in 1988 who was winning the war? In

the year 2000 we can conclusively answer that the facilitation work function has won and the Australian people have undoubtedly been the losers.

While some merits may exist in having a Coastwatch / Coastguard function for the reasons already endorsed by this and previous committees and possibly some additional reasons of search and rescue, national service or other secondary roles, the terms of references clearly go to the effectiveness of the CUSTOMS function, and what (if any) might be more effective and efficient alternatives.

2. Whoever is to take over the Coastwatch function is to achieve what purpose?

Many proponents of a 'Coastguard' seem to have done so in a reactionary and often political point scoring manner without reason or consideration of providing the nation with a genuine solution to a systemic problem.

The effectiveness of Coastwatch and information flows, even if the most effective information flows freely between coastwatch and its clients, would the function not be better served with a more integrated and empowered approach which boosts, the Customs marine function, coastal area range lighthouse based radar, even satellites if necessary...

Would this purpose not be served better by the marine group of Customs under a dual branch structure? Funnily enough the Customs act is already in place and has the construction to provide all that is necessary in what is a 'coastguard function' or at least the public perception of a 'coastguard function'.

However as previously mentioned the Customs service needs to be properly structured into two separate and independent groups of Customs officers, one being clerical / administrative officers properly carrying out the facilitation of trade and travel, and collecting revenue, statistics and making clerical reports and carrying out administrative duties. The other, a separate and independent group of control / law enforcement Customs officers with appropriate attitude, aptitude, training, policies, powers, resources and political resolve and backing to realise community protection expectations.

Such groups would have the attitudes and aptitudes, staffing, policies, training, expertise, direction and focus to accomplish that which has not been accomplished for more than two decades. The integrated ('complete Customs officer') concept of carrying out these opposing dual work functions has not accomplished a complete achievement of Customs' goals, in fact considering the public and government concern it can be said that Customs has moved further away from the target in these times.

1977 pay claims and deliberations for preventive officers would give additional narration and background on this aspect if the Committee desires to examine those areas.

Staffing turnover concerns – evidence of what they actually do

- evidence of the myths Customs advertise
- increased costs and decreased effectiveness

- wastage of public funds
- evidence of problems in lack of control

Some of these concerns you have everyday, some of these concerns you just have with some people all the time. Staff turnover, identified earlier, must be considered in light of what recruits to the service expect they will be doing and so they leave, with training, which in itself is a potential risk having a large number of disgruntled employees running around either bitter about their experience or with the resolve to set the matter right.

The matters dealing with a coastguard fail to address that by providing the committee with details and estimates for consideration regarding that matter in correct restructuring of Customs and the costs, goals, and results that would achieve which would be a greater improvement on either the present situation or the Coastguard proposal discussed.

While there may well be problems relating to the effectiveness of Coastwatch, specific issues relating to powers to bring down planes, powers relating to illicit goods / people, the methods of funding, tasking, level of resources, it being an inappropriate tool for the surveillance of the entire coastline and eez, such problems only underline the significance of concerns regarding the structure, policies, staffing and administration of Customs.

Considering the controversy of the past, referred to previously in this submission, to the surreptitious removal of law enforcement and elevate facilitation, this is perhaps not too surprising that 'Day' also in the closing paragraph of this book published in 1996, say that "*While there is pressure at present for the Customs service to shift focus from community protection to the facilitation of trade, the importance of the Customs' protective function cannot be swept aside so easily . . .*" Even 'Day' recognises this after reading all the records and propaganda that he would have been fed with while writing the official record.

And the enduring problems despite repeated inquiries and reports into specific aspects, complaints, pressure from both customs officers and the public, Customs continues to deny its ineffectiveness or these problems and therefore has repeatedly failed to address them eg. –

- coastal surveillance / radar
- duality / separate work functions
- steroids and peds, PR but no taskforce
- increases in street supplies and harm to nation regarding drugs, steroids, porn, weapons etc without Customs even flinching.

3. "THE CUSTOMS BARRIER"

As previously mentioned, Customs' management policy, mission statements, goals etc all refer to the 'Customs barrier' and not 'the nation's borders'. The 'barrier' is much an artificial line, as it is about controlling officers and limiting their powers.

This is a common thread, which weaves its way insidiously through Customs' decisions and management policies and practices slowly leaching protection, control and law enforcement of the nation out of Customs' responsibilities.

Progressively, (without repeating all the examples from this submission here again) over time Customs has referred to the Customs barrier, then to discharging its responsibility at the Customs barrier (see '*Risky Business Report October 1990*' page 4.)

To understand the impact of this, which stops officers from protecting the nation, it must be understood that Customs has legislative responsibilities at, and inside the nation's borders. Customs has restricted officer's work functions to being solely particular work of clerical and administrative functions, but their powers of control and law enforcement have also been eroded away very quietly.

What does '*discharging responsibility at the barrier*' mean? Does it mean more crime, particularly white collar crime, knowing that in likelihood management will not allow Customs officers to pursue drug criminals.

The barrier is;

- An artificial line at which Customs policy declares that they discharge their obligations and responsibility despite their legislative responsibilities.**
- Although the need for clear policy is acknowledged, such policy must prove itself worthy of implementation and ongoing support, this has not proved positive.**
- Officers become jack of all trades, mastering none through rotational policy and "multi-skilling" work functions without consideration for their appropriate expertise, but particularly without regard whatsoever for their aptitude and attitude. They (Customs officers) are stopped, shackled and gagged from enforcing the law and controlling prohibited goods etc, as well as prevented from enforcing other aspects of the law such as in relationship to steroid matters interferred with whilst under the control of Customs. Falsifying export documents etc.**
- Look at past representations by Customs to committees, what was presented, the reasons and the evidence of their fears have come true.**

4. The organisation; mechanisms and tools etc.

Performance indicators have earlier been shown to be open to manipulation by tip offs and conveniently times large seizures. In addition, questionable accounting procedures could be employed to juice up the statistics.

One view might be that a more accurate performance indicator is that which Customs does not seize which may be seen in the 600 or so deaths from heroin each year, the 6,000 overdoses last year in NSW alone which were attended and treated by NSW ambulance, and the addicts using our parks and public areas for their drug abuse. Is the solution shooting galleries, NO!!! the solution is to get Customs working properly.

The aspects of the organisation

- facilitation
- dealing with matters "inside the net" – trade /
 - dealing with matters "outside the net" – prohibited imports.
 - As a specifically tasked resource
 - Performance indicators

What goal or measurements can we evaluate Customs by?

Do we consider statistical indicators as appropriate when they have clearly demonstrated their frailties and failings.

Perhaps, despite all the arguments put against them by the "heads" of Customs over the years, consideration should be given to models of actual protection of the physical national border.

In assessing the effectiveness of Customs, it should be recognised that Customs has a dual role in the community and therefore separate considerations should be made regarding facilitation (ie collection of tariffs, fast fair and friendly processing of business and travellers) and separate consideration of control / law enforcement.

Measures of law enforcement must be considered in a number of ways. It has already been shown that statistical reporting of seizures is open to manipulation, errors and misinterpretation. (A few big tip offs can make Customs look like they are doing well when an honesty box and one officer could have achieved the same result).

Another consideration of the effectiveness of law enforcement / control can be measured in not the level of risk, but the level of security at the **NATIONAL BORDER**. IF Customs has an impenetrable barrier at the border that would be 100%, but since we must allow trade, travel etc, we must implement measures to see that the entire Coastline is "secure" and all traffic, freight, goods and people entering and exiting the national borders do so on our terms.

How much money and other resources would it take to achieve 100% security of the nation's borders in terms of complete control and effective law enforcement? Perhaps some myths need to be dispelled, but the enormity of such a resource allocation might not be prohibitively large if appropriate structures, staffing, policies and practices are used. This of course must and can be done independently of other functions of Customs including effective facilitation using the proper and appropriate structures, staffing, policies, management practices etc all to carry out the parliament's wishes using the legislative powers granted to them by the parliament.

The alternative argument is that the entire Customs and Coastwatch service be disbanded, and a key to the national honesty box system be given to one person in the employ of the Commonwealth to speed facilitation 'while' reducing the costs of Customs.

Local police could take phone calls from concerned citizens / members of the public who report suspicious activities and the police then make the seizures.

Although perhaps such a suggestion might be a little tongue in cheek, the more one examines the costs of the Customs and Coastwatch (almost \$500,000,000) and relates that back to the actual effectiveness, one begins to more seriously consider that one guardian of the honesty box would be far more efficient than the 4,000 (or so) we presently employ to administrate it as they do now.

**K. ANY OTHER ISSUES RAISED BY AUDIT 38 – 99/00 –
COASTWATCH – AUSTRALIAN CUSTOMS SERVICE.**

Rather than actual control and law enforcement, with risk management, Customs was more focussed on myth management and public relations excersices.
The myth that the current practices are sufficient to protect Australia is clearly only a myth.

1. Repeated recommendations without results.

Decades of a one eyed view that has failed to address the dual needs of the nation ie facilitation and law enforcement/control.

2. Risk Management . . . Myth management.

Recommendation 3, in the ANAO Audit Report 38 (see pages 47 – 61) and the following pages, discuss the risk assessment, and risk management including the matters of the tasking of Coastwatch. These matters have been addressed previously in this submission.

However, it must be pointed out that Figure 6. In the ANAO Audit Report 38, A pictorial representation of 12 months of Coastwatch activity 1 January 1998 to 1 January 1999 is misleading in that in purports to show a 'thin blue line' which protects Australia. This clearly is NOT the case. If Coastwatch or Customs were able to erect such a thin blue line, or impenetrable barrier at or outside the national borders, the border incursions seen (and those unseen) recently all around Australia would simply not have occurred.

The myth that the current practices are sufficient to protect Australia is clearly only a myth.

Refer to PM's taskforce and ANAO 38 –risk management and 'black' flights comments . . .compare to pp21-23 of Customs' Submission in 1990 as previously discussed.

- Blackflights – risk identified but not managed for over a decade

- the coast – the myth is we can't patrol it – but what was done to manage it?

- too many parcels, too many people, too many containers – reality is not enough technology applied by a proper structure.

Rather than actual control and law enforcement, with risk management, Customs was more focussed on myth management and public relations excersices.

Example:

A classical example of this is The myths surrounding the 'Tough on Drugs' stratgey, and also 'The Drug Free Olympics'. When the then Customs officer (Head of the Customs team to intercept steroids and performance enchancing drugs / steroids) began to get tough on the problem his task force was disbanded, and he was treated more than poorly. Hinderances, direct interferences and withdrawing co-operations with any other government agencies ensured that the administration did not stop steroids and p.i.e.d.s..

See Daily Telegraph article on Steroids in Australian gyms...in attachments

See attachments

L. RECOMMENDATIONS / SUMMARY

1. That primary harm prevention measures be addressed effectively.

2. That as a part of addressing inadequate primary prevention measures, a Royal Commission, review and restructuring of Customs, Customs law and Customs policies and practices be undertaken with the view of establishing an effective Customs.

The recommended Terms of Reference of such a royal commission would be:

The Royal Commission will examine and report to parliament and make recommendations on the effectiveness of the Australian Customs Service with particular regard to;

- A. The structure and organisation of the service including recruitment, selection, training and utilisation of staff.
- B. The adequacy of legislation concerned with the service including those related laws which are subject to Customs administration.
- C. The enforcement of legislation concerning the service and other laws subject to Customs administration with special attention to the system of applying those laws at the workplace.
- D. The resources available to establish or maintain proper standards of:
 - (i) Protection of the community against introduced dangers.
 - (ii) Protection of Australian industries.
 - (iii) Revenue collection and the clearing of cargo and travellers.
 - (iv) Prosecution of offenders under relevant legislation.
- E. The functions and responsibilities of the service that are administered directly or jointly with other organisations including any relevant administrative arrangements.
- F. The Commission is empowered to second relevant personnel to assist in their inquiries.
- G. The Commission will not address those matters of Customs administration relating to the setting of tariffs, bounties, rebates or quotas, if any.

Reasons for a Royal Commission into the effectiveness and matters for review relating to the Customs are many and have been raised throughout this submission..

With the quantity of self adulation / public relations that Customs heaps on itself, and the advice it has given to Ministers and a number of parliamentary inquiries over time, serious questions should be asked regarding the administration of Customs.

Although many aspects of Customs are travelling satisfactorily, the committee could well conclude that the stark reality of illicit drugs, weapons, steroids, pornography and illegal migrants contradicts at every point the information given to the committee by the Customs. Whether such obvious misdirection of the parliamentary concern is deliberate, or merely a too narrowly focused answer to the terms of reference this submission leaves to the inquiry to decide.

It is worth bearing in mind, in making such a decision, that over more than two decades, the administration has persisted with actions, policies and practices which by their threatening use have shackled and gagged officers from *public debate* of the Customs. Their menacing actions were condemned in a recent high court action, and if for no other reason, they refuse to face up to the harsh reality that the drugs on the streets of Australia and the harms caused by them are directly as a result of their failures and ineffectiveness of Customs to properly carry out their role.

Any doubt or wavering from the resolve to hold a wide reaching royal commission into Customs is quickly dispelled by the overwhelming concern to review how things have been directed in this way to become this bad and how to "fix" them.

Management by post headline crisis management, shackling officers, coercing them and gagging them into unconstitutional silence cannot be continued. Customs has convinced previous committees that they would take certain actions to resolve specific difficulties and achieve certain specified goals and have not done so. Mischievous and threatening actions of Customs administrations in order to continue the charade must be reigned in.

These issues addressed in numerous committee inquiries, and also the Crosstech report 1988. Subsequent internal reports, and parliamentary inquiries as mentioned previously, papers and discussions from the National Drug Summit 2000, including "Peter Bennett paper", recommendations and high court hearings all point to the consistent inability of the administration to accomplish that which both the public and the parliament have clearly indicated are desirous to be accomplished.

3. That further inquiries be made into more effective supply reduction measures for all prohibited imports and considerations be made regarding the powers of control of people in relationship to the national borders.

4. See also, insert recommendations throughtout this document

M.ATTACHMENTS

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