

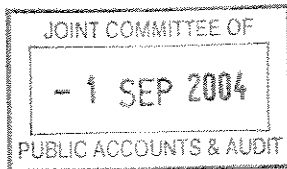


**AUSTRALIAN
CUSTOMS SERVICE**

Submission No:422

Chief Executive Officer

Customs House
Canberra City ACT 2601



The Hon Bob Baldwin MP
Committee Chair
Joint Committee of Public Accounts and Audit
Parliament House ACT 2600

Dear Mr Baldwin

I refer to your letter of 17 August 2005 seeking a response to the assertion by the Customs Officers Association of Australia Fourth Division (COAAFD) that an all staff notice on disclosure and comments of 4 July 2004 is "clearly intended to dissuade officers from providing information [and] is saturated with implied threats".

Customs is aware that the Parliament considers it to be a serious contempt for any person to deter or hinder a person from giving evidence to a parliamentary committee. Customs is also aware that parliamentary privilege may apply to information provided to the Committee.

Mr Bennett invited information to be provided to the COAAFD so that a submission could be made to the Committee by that organisation. Customs decided that a cautionary notice to staff was necessary. The notice was reviewed and cleared by a partner of a law firm on our legal panel. Advice was also provided by staff of the Australian Public Service Commission.

The intention of the notice was to provide information to staff on providing Customs information externally. The purpose of the notice was not to deter the provision of information by Customs staff to the JCPAA but to alert staff who may wish to provide information to an unauthorised organisation such as the COAAFD of the requirements to comply with laws governing the unauthorised disclosure of information. Officers could provide information directly to the Committee if they wished. Information provided to the COAAFD in response to the invitation issued by Mr Bennett is not provided for or authorised under the *Customs Administration Act 1985*.

The disallowance of the revised Public Service regulation on disclosure of information may also have led officers to believe that they were not restricted in providing information externally. The regulation had been revised to take account of the *Bennett v The President of the Human Rights and Equal Opportunity Commission (2003) 204 ALR 119*. In

keeping with the Public Service Commission notice, Customs wished to draw officers' attention to their continuing statutory and common law obligations.

For your information, the COAAFD is a registered organisation under the Workplace Relations Act. The COAAFD, however, does not have the right to represent Customs employees in agreement making or other industrial issues concerning Customs. The Australian Industrial Relations Commission (AIRC) confirmed the status of the COAAFD on 3 September 1996 (earlier decisions and documentation date back to 1983/84).

Membership of the COAAFD is confined to employees who:

- worked in the 4th Division of Customs prior to 1 July 1984;
- contributed financially to prior to 1 July 1984 and after that time in line with the Constitution of the COAAFD; and
- continue to be employed by Customs.

Only a very small proportion of Customs officers are eligible to be members. The COAAFD was incorporated under NSW state legislation in October 1992 as a result of the decisions of the AIRC. I attach a copy of the relevant decisions for your information.


The policies and procedures surrounding the use of Customs information technologies are covered in Customs E-mail policy and IT security policy. The policies indicate that all information and user accounts are owned by Customs and must be used for the Customs related activities for which they have been provided and for approved purposes. Customs has restrictions on direct access to websites and other internet based facilities for security and control purposes.

As a result of recent risk assessments on security of Customs computer systems, which the Committee has previously reported upon, regular reviews and audits of IT facilities are undertaken. As the COAAFD does not have industrial coverage in Customs it is not considered appropriate to provide direct access from Customs facilities. Any COAAFD members or supporters would be able to access the organisation's email or website through private means.

I trust that this explains the intent of the notice and the background on the availability of internet based access for officers.

I attach a copy of an all staff notice issued on 1 September to clarify any misinterpretations that may have arisen after Mr Bennett's statements.

Yours sincerely


(L B WOODWARD)
1-9-2005

Clarification of Disclosure and Comment All Staff Message

This message is being sent in response to some concerns that the All Staff Message of 4 July 2005 on Disclosure and Comment may have been misinterpreted by some officers as restricting Customs staff from co-operating with parliamentary committees. This possible perception has been exacerbated by a number of media articles.

Customs Officers may choose to submit information to, or appear as a witness before, a parliamentary committee of inquiry in a private capacity. Agencies cannot restrict employees from doing this. Customs is aware that the Parliament considers it to be a serious contempt for any person to deter or hinder a person from giving evidence to a parliamentary committee.

There was no intention to place any restriction on officers appearing before any parliamentary committee in their personal capacity. There is, however, a distinction between a Customs Officer appearing before a parliamentary committee in an official capacity as a representative of Customs and a Customs Officer appearing before a committee as a private person with particular knowledge of or views on Customs issues.

The Department of the Prime Minister and Cabinet's *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters* (November 1989) may assist Customs Officers wishing to provide information to such committees. These guidelines highlight the requirement for officials to provide full and accurate information to a committee, for example, the factual and technical background to policies and their administration. The disclosure of information to a committee by an officer within these guidelines would be in accordance with their duty as officers.

A Customs Officer who is providing information in a non-representative capacity needs to make it clear that she or he is not speaking on behalf of the government or any agency. The officer may also not communicate information in a way that implies the officer's private views are those of the agency, such as through the use of official letterhead. [See the APS Values and Code of conduct in Practice: A Guide to Official Conduct for APS Employees and Agency Heads, page 31].

Further material on this issue is available from

- www.pmc.gov.au Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters
- www.apsc.gov.au APS Values and Code of Conduct in Practice