

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
AUSTRALIAN CUSTOMS SERVICE

Question No. 181

Senator Ludwig asked the following question at the hearing on 31 October 2005:

- a) Does Customs have formalised guidelines or procedures relating to plea bargaining in criminal matters, or use formalised guidelines or procedures provided by another government department or agency?
 - (i) If not, why not?
 - (ii) If so, could you provide it?
- b) What is the procedure in Customs for authorising plea bargains?
- c) Does Customs have a view as to whether the laws relating to defrauding of Customs should be changed to provide for more severe punishment?
- d) In how many instances has Customs negotiated a plea agreement with an accused?
- e) For each of these cases, please indicate:
 - (i) What charges was the person facing?
 - (ii) If the charge involved defrauding Customs, the dollar amount that the fraud represented.
 - (iii) The name of the person with whom the plea agreement was signed.
 - (iv) The penalty imposed in the plea agreement, including the sum of any fines that were agreed to in the agreement.

The answer to the honourable senator's question is as follows:

- a) No.
 - i) The Commonwealth Director of Public Prosecutions (CDPP) conducts those prosecutions. The conduct of charge bargaining negotiations in criminal cases is a matter for the CDPP.
 - ii) N/A.
- b) In criminal matters the procedure is as described in a) above. For civil Customs prosecutions, all settlement agreements are scrutinised by the Australian Government Solicitor who provides advice on the proposed agreement.
- c) The determination of appropriate penalties for proven offences committed against the Customs Act or related Acts, is a matter of Government policy.
- d) During 2005 there have been a total of 11 plea agreements with four of those agreements relating to two separate frauds.

e)

	Charge[s] – all are civil Customs prosecutions	Fraud \$ Amount	Name	Penalty
1	- Make False/Misleading Statement - Smuggle any Goods - Evade Payment of Duty	\$255,805.34	Lorene Khamis	\$255,805.34
2	- Evade Payment of Duty - Make False/Misleading Statement	\$86,814.10	Samsara Furniture & Homewares P/L	\$268,378.20
3	- Evade Payment of Duty - Make False/Misleading Statement	\$288,208.72	Lorna Jane Exercise Wear P/L	\$725,817.44
4	- Smuggle any Goods - Evade Payment of Duty - Make False/Misleading Statement	\$50,887.44	Florin Telecican	\$120,446.76
5	- Persons Not to Move Goods Subject to the Control of Customs	N/a	MPG Logistics	\$60,000.00
6 & 7	- Smuggle any Goods - Evade Payment of Duty - Make False/Misleading Statement - Fail to Keep Documents	\$16,832.72	Headgirl SA P/L + Ann Davis	\$25,221.28 + \$19,281.28 <hr/> \$44,502.56
8 & 9	- Smuggle any Goods - Evade Payment of Duty - Make False/Misleading Statement	\$44,799.18	Total Distributors P/L + Michael Demonakis	\$21,192.48 + \$29,879.98 <hr/> \$51,072.46
10	- Smuggle any Goods - Evading Payment of Duty - Make False/Misleading Statement	\$20,078.63	Corniche Motors P/L & Jeffrey Carger	\$39,921.37
11	- Evade Payment of Duty	\$518,463.00 *	Patrick Ricci	\$125,000.00

* A number of charges were not able to be pursued due to the 5 year limitation, so the actual amount upon which the penalty was imposed was \$59,068.19.