

CHAPTER NINE

INFILTRATION OF THE ATO BY ORGANISED CRIME

9.1 The *Sunday* program raised a number of serious allegations about possible infiltration of the ATO by persons with criminal connections. The program named two former ATO staff, Mr Ross Zigari and Mr Dennis Ngui. The details of these particular cases are unimportant in themselves. However, the clear inferences of the program were that;

- the ATO's procedures for detecting criminal activity by staff are inadequate;
- there is scope for criminals within the ATO to systematically abuse the self-assessment system;
- access to ATO databases about investigations of individuals is relatively uncontrolled, permitting the criminal activity alleged in the Ngui case; and
- the ATO failed to prosecute staff found to have engaged in criminal activity.

9.2 It is reasonable to expect that, if these inferences had any substance, the Committee's inquiry would have been informed of other examples of criminal activity and infiltration of the ATO. The Committee received no credible evidence to suggest infiltration by organised crime of the ATO.

9.3 The ATO provided the Committee with a detailed response about the Office's procedures for preventing fraud. These procedures may be divided into those designed to ensure staff integrity and those designed to protect information. Staff integrity measures include:

- all staff undergo pre-recruitment checks to establish their identity and to ensure that they are 'fit and proper' to hold a position in the ATO — this is similar to other Commonwealth agencies and includes checks of police records;
- staff promoted or transferred from other agencies are checked again against police records;
- staff with access to particularly sensitive information undergo robust assessments of their trustworthiness and suitability by the Australian Security Vetting Service; and
- any serving officer acquiring a criminal conviction is liable to be dealt with under the disciplinary provisions of the Public Service Act (although, like other Commonwealth agencies, the ATO has no automatic means of identifying criminal convictions obtained against any of its staff).¹

9.4 Information protection measures include:

1 Submission No. 83, pp. 31-32.

- the ATO restricts access to client and other sensitive information on a need-to-know basis, with an audit trail logging staff access to computer records;
- a comprehensive Fraud Control Plan, not only endorsed by the Commonwealth Law Enforcement Board but also used by the board as a model for other agencies;
- the implementation of a major interactive Fraud Awareness Program across the ATO involving all staff; and
- a Fraud Prevention and Control Section of 22 full-time staff - comprising trained investigators and specialists in fraud control - investigates possible criminal acts by staff and helps prevent individual or systemic fraud or corruption.²

9.5 The Committee notes that the ATO's strategies to control and prevent fraud and other criminal activity have been subject to comprehensive risk assessment and review by independent external agencies, the last major review having been conducted in 1997. The Committee was provided with a copy of the review. This document was received on an *in camera* basis because of the obvious risk associated with disclosing details of the assessment.

9.6 The ATO also provided detailed information showing that it has a strong record of investigating suspected criminal behaviour by staff, taking appropriate action where required. Approximately 40 staff have left the office through dismissal or pre-emptive resignations. A wide range of penalties may also be applied to staff found to have engaged in lesser transgressions.

9.7 In an organisation the size of the ATO, with 14 000 employees, it is inevitable that there will be individuals who will, given the opportunity, engage in fraudulent or other criminal activity. The Commissioner for Taxation, Mr Carmody, acknowledged that this is the case:

I said at the start that the tax office is made up of human beings. We represent a cross-section of the community. It would be unreal, indeed naive, to think that some of us may not have been approached to engage in fraud or even have set out to do it ourselves.³

9.8 As the Commissioner went on to acknowledge, what is important is the integrity and strength of the procedures put in place to minimise the probability that a problem will arise and to detect and deal with the situation if prevention fails. This is important in any organisation but particularly in the case of the ATO, given the sensitivity and potential for misuse of the information it handles.

9.9 The Committee is of the view that no organisation can be fully protected from individuals with criminal intent, and it would be unrealistic to suggest that future examples of criminal activity within the office will not arise. However, the Committee notes that the ATO has developed and implemented a comprehensive range of fraud prevention and control procedures and has subjected these procedures to external review.

2 Submission No. 83, pp. 31-32.

3 Evidence, p. 16.