

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING : 25 May 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(BE15/031) - Customs Depot licence - Programme 1.1: Border Enforcement

Senator Carr, Kim (L&CA 71) asked:

Senator KIM CARR: However, if a Customs depot licence holder was collecting money on behalf of the Commonwealth, which I understand is one of its functions, and that money was not passed on, would there not be a prima facie case of fraud?

Mr Quaedvlieg: I am not a lawyer. I think it would depend on the intent that was engaged in by the company or the individuals within it. There may be some civil liability or some criminal one. I am not a lawyer and I do not know the arrangements.

Senator KIM CARR: Has the department considered that question?

Mr Quaedvlieg: I do not know.

Senator KIM CARR: Can you take that on notice?

Mr Quaedvlieg: I can.

Answer:

If a licensed depot, or any other person, accepts money from an importer client for payment of Customs duty and other applicable taxes and charges, they need to forward these payments on to the Commonwealth. If they fail to do so, whether this constitutes a fraud or other offence, and whether it can be proved, depends on all the circumstances. Such circumstances will not only include consideration of how the money was handled, but also whether there is evidence of any requisite fault element, such as dishonesty.

Potential offences include the following under the Commonwealth Criminal Code:

- s134.1(1) - Obtaining property by deception;
- s134.2(1) - Obtaining a financial advantage by deception;
- s135.1 - General Dishonesty; and
- s135.2 - Obtaining financial advantage.