

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
BUDGET ESTIMATES 2017

Commonwealth Director of Public Prosecutions

Question No. BE17-219

Senator Kakoschke-Moore asked the following question on 18 August 2017:

Senator KAKOSCHKE-MOORE: You may need to take my other questions on notice, because they are detailed. I have some questions about prosecutions for the importation of molasses tobacco, which is known as shisha. At the last estimates, I was informed by Australian Border Force that approximately 40 tonnes of molasses tobacco was seized in the 2016-17 financial year. I want to know whether there CDPP has prosecuted matters in relation to the importation of molasses tobacco.

Ms McNaughton: We would definitely have to take that on notice.

Senator KAKOSCHKE-MOORE: As with my previous questions, could I get a breakdown over, say, the last three years.

Ms McNaughton: Certainly.

Senator KAKOSCHKE-MOORE: And these ones in relation to the growing of illicit tobacco may too have to go on notice. I understand that contraventions of the Excise Act, which captures the growing of illicit tobacco, can be prosecuted by the CDPP. I want to know how many prosecutions there have been for the growing of illicit tobacco in Australia, how many of those have resulted in a successful conviction and what the average penalty was for any successful prosecutions.

Ms McNaughton: Certainly. We will take those on notice.

The response to the honourable Senator's question is as follows:

Yes. The CDPP has prosecuted matters involving the importation of molasses tobacco.

Molasses tobacco prosecutions are generally brought under section 233BABAD (1) or (2) of the Customs Act 1901. Section 233BABAD (1) makes it an offence if a person imports goods that are tobacco products with the intention to defraud the revenue. Section 233BABAD (2) makes it an offence if a person conveys or possesses goods that are tobacco products knowing the goods were imported with the intention of defrauding the revenue.

In the last three financial years there have been 4 prosecutions relating to the importation of molasses tobacco:

2014/15	2
2015/16	-
2016/17	2
Total:	4

The CDPP is currently prosecuting 3 matters listed for trial.

There are a number of offence provisions in the *Excise Act 1901* relating to illicit tobacco.

Under section 25 it is an offence to manufacture excisable goods without a licence and under section 28 it is an offence to produce tobacco seed, tobacco plant or tobacco leaf without a producer licence.

Under section 44(4) it is an offence to contravene a condition of a permit to move tobacco seed, tobacco plant and tobacco leaf.

The main offence provision under which we prosecute offences relating to illicit tobacco are found in Part X of the *Excise Act 1901*. These provisions relate to

- 1) Unlawful possession of excisable goods (s117)
- 2) Unlawfully moving excisable goods (s117A)
- 3) Unlawfully selling excisable goods (s117B)
- 4) Unlawful possession of tobacco seed, plant or leaf (s117C)
- 5) Unlawfully moving tobacco leaf (s117D)
- 6) Unlawfully buying tobacco seed or plant (s117E)
- 7) Unlawfully buying tobacco leaf (s117F)

In the period 14 September 2012 to 14 September 2017 there have been five successful prosecutions relating to illicit tobacco under section 117, section 117B or section 117C of the *Excise Act 1901*. The penalties imposed ranged from a fine of \$750 upon plea of guilty to (an effective sentence of) 18 months imprisonment to be released after serving 6 months following a guilty verdict.

In the same period, there has been one matter involving offences of manufacturing excisable goods without a licence under section 25 *Excise Act 1901* and producing tobacco seed, tobacco plant or tobacco leaf without a producer licence under section 28 *Excise Act 1901*. In that matter the offender was sentenced to a global penalty of 12 months imprisonment to serve 6 months.