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Australian Government
Department of Agriculture

Prosecution Summary

Case ref. Jade 2049

Records Manager: CI2007/00038

Prosecution date: 29 August 2019

Defendant/Accused name: Oceania Sea Products Pty Ltd

Incident date: 20 February 2017

Date charged: 18 September 2018

Court of prosecution: Downing Centre Local Court

Guilty plea: No

Legislation breached: *Biosecurity Act 2015 (the Act)*

Section(s): 429 (5)

Summary/indictable offence: Summary

Conviction recorded: Yes

Conviction discharged?:¹ No

Penalty: Fine \$20,000

¹ Under section 19B, *Crimes Act 1914*

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Details of matter:***Background***

- On the 6 January 2017 the Director of Biosecurity suspended the importation of uncooked prawns in response to an outbreak of White Spot Syndrome virus (**WSSV**) in Australia.
- On the 9 January 2017 the *Biosecurity (Suspended goods – uncooked prawns) Determination 2017* came into effect for a period of six months.
- On the 15 February 2017 the Director of Biosecurity issued a direction to Oceania Sea Products Pty Ltd (**OSP**) under section 429 (1) of the Act to secure all uncooked prawns (**goods**) imported on or before the 9 January 2017 that were held at their Approved Arrangement (**AA**), place the goods in the Biosecurity Area at the AA and report back to the department that the goods had been secured, the quantity of the goods, the import entry that the goods were imported under and the owner of the goods. This was to be completed by the 20 February 2017.
- On the 20 February 2017, Yossef Stern the Director of OSP emailed the department in response to the direction stating he had 80kgs and 1900 cartons of goods secured in the Biosecurity Area at the AA.
- Between the 20 and 24 February 2017, Gobblers Cold Storage (**Gobblers**), who do not hold an AA with the department, received 5675 cartons of goods from OSP, the terms of storage negotiated by Stern. The goods were owned by OSP, **s 47G** and **s 47G**
- Between the 20 February 2017 and 1 March 2017 OSP removed a number of those goods from Gobblers.

Investigation findings

- On the 2 and 3 March 2017 Investigators attended Gobblers and identified the goods stored on behalf of OSP. Biosecurity Officer's (**BO**) issued Biosecurity Control Orders (**BCO**) for the goods and the goods owned by OSP and **s 47G** were moved back to OSP for sampling and testing.
- On the 3 March 2017 investigators attended OSP and spoke with Stern who made admissions to moving the goods to Gobblers stating the freezer at his AA was broken and he moved the goods as a result. The Biosecurity Area at the AA was inspected and none of the goods reported by Stern to the department on the 20 February 2017 were located.
- A search warrant conducted on the refrigeration repair company Stern nominated found no record of a freezer repair at the AA.

Investigation outcome

- On the 18 September 2017 a court attendance notice was issued to OSP for one charge under section 429 (5) of the Act.
- The goods that were secured at OSP were sampled and tested with goods testing negative for WSSV released from Biosecurity Control, goods that tested positive were exported under the supervision of a BO.

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- The goods belonging to s 47G remain at Gobblers under Biosecurity Control and were not tested. A Biosecurity direction for destruction of the goods has been issued to s 47G and negotiations with the department are underway.
- OSP entered a plea of not guilty to one offence under section 429 (5) of the Act.
- On the 29 August 2019 the matter was listed for hearing at the Downing Centre Local Court. Stern was not present however OSP were legally represented.
- The defence submitted to the court that the direction issued was not issued by an appointed Biosecurity Officer under section 545 of the Act. The defence produced instruments of appointment that were subpoenaed from the department. A number of officers who were previously appointed as Quarantine Officers under the *Quarantine Act 1908 (Quarantine Act)* had their status revoked and were appointed Biosecurity Officers in September 2017 including the delegate who issued the direction in question. The defence argued that this was the appointment date of the issuing officer and the direction was therefore invalid.
- Section 63 of the *Biosecurity (Consequential Amendments and transitional provisions) Act 2015* states that a person who was appointed to be a quarantine officer is taken, at the beginning of the commencement day to be duly authorised as a Biosecurity Officer. The instrument of appointment under the Quarantine Act was not provided by the prosecution and was not requested in the subpoena issued to the department by the defence. The Magistrate was satisfied that the instrument revoking the appointment in September 2017 was evidence that the appointment existed at the time the direction was issued.
- The Magistrate found OSP guilty of one offence under section 429 (5) of the Act finding that the direction was lawfully issued by a Biosecurity Officer.
- OSP were fined \$20,000 and a conviction was recorded.

What message(s) does this prosecution support and promote?

That the Act is designed to protect Australia from pest and disease and these matters are taken seriously by the department and the courts. The penalty imposed should act as a deterrent to industry participants and the general public alike.

Photos?

Yes

Sensitivities?

Yes

Other agency(ies) involved?

No

Any other information:
(e.g. sentencing remarks)

On the 27 September 2019 OSP were sentenced at the Downing Centre Local Court. The defence made no submissions as to why the defendant engaged in the conduct only submitting information about financial hardship. Magistrate Kennedy in her reasoning stated that the matter was a serious example of offending, the

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direction given by the department was clear and the defendant had interaction with the department and elected to disregard it. Magistrate Kennedy took into consideration that Stern was a person of good character and the size and capacity of the company to pay any penalty in her decision but regarded the offending to be in the mid to high range.



Australian Government
**Department of Agriculture
 and Water Resources**

STATEMENT OF FACTS

NAME: Oceania Sea Products Pty Limited
OFFENCES: Contravene direction given to biosecurity industry participant to manage biosecurity risk
ACT & SECTION: s 429 (5), *Biosecurity Act 2015*
INFORMANT: Principal Investigator 

It is alleged that between the 20 February 2017 and 24 February 2017, Oceania Sea Products Pty Limited (**OSP**) engaged in conduct that was in contravention of a direction given to a biosecurity industry participant by a biosecurity officer under section 429 (1) of the *Biosecurity Act 2015* to manage biosecurity risk.

The Department

The Department of Agriculture and Water Resources administers the *Biosecurity Act 2015 (Act)* and the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016 (determination)*.

The Enforcement Section of the Department is responsible for investigating incidents that may involve breaches of portfolio legislation such as the *Biosecurity Act 2015*, *Export Control Act 1982* and the *Imported Food Control Act 1992*.

Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016

Under section 174(1) of the *Biosecurity Act*, the *Determination* provides that specified classes of goods must not be brought or imported into Australian territory unless specified conditions are complied with.

Section 10 (1) of the Determination states that the division applies to the importation of animals.

An import permit is required to import uncooked prawns into Australia.

All consignment of uncooked prawns imported into Australia are randomly sampled and tested for WSSV in accordance with import permit conditions. If imported batches of prawns return a negative test for WSSV then goods may be released from biosecurity control meaning the importer may deal with the goods, such as sell the goods in the domestic market. If batches return a positive test for WSSV then to manage the biosecurity risk the goods will be directed for destruction or export at the importers expense.

Under section 182 (1) of the Act, the director of biosecurity may suspend bringing or importing goods into an Australian territory for a period of up to six months. Goods specified in such a determination are *suspended goods*.

Until November 2016, White Spot Syndrome Virus (**WSSV**) was not present in Australia. WSSV causes mass mortality of prawns and therefore substantial production losses. WSSV is a viral pathogens that is endemic to countries including China, Malaysia, Vietnam, Thailand and India. The pathogens are able to be carried on raw whole and raw peeled prawn meat and the risk presented to Australian with regards to WSSV has the potential for the affected imported prawn product to be used as bait, berley or in aquaculture.

On the 6 January 2017, the director of biosecurity suspended the importation of uncooked prawns in response to an outbreak of White Spot Syndrome Virus (**WSSV**) in Australia.

On the 9 January 2017 the *Biosecurity (suspended goods- uncooked prawns) Determination 2017 (suspended goods determination)* came into effect for a period of six months¹.

¹ s22 statement

Biosecurity Industry Participants (BIP) and Approved Arrangements (AA)²

Oceania Sea Products were a biosecurity industry participant under an approved arrangement (**AA**), number N2038, approved under section 406 of the Act. Prior to the commencement of the Act on 16 June 2016, Oceania Sea Products held approval as a quarantine approved premises (**QAP**) under section 46A of the *Quarantine Act 1908*. The activities approved under the QAP approval are identical to those performed under the AA. A person who is the holder of an AA is a Biosecurity Industry Participant (**BIP**).

An AA allows a BIP to carry out activities associated with the management of biosecurity risk associated with specific goods, sites or other things.

The nominated senior manager for the AA held by Oceania Sea Products is Yossef Stern. Stern completed a quarantine awareness component of the required initial training on 3 November 2008 and has completed QAP re-accreditation training in 2010, 2012 and 2015. Under the existing requirements Stern has valid training accreditation.

The management of outbreak of WSSV through BIP's

As a result, on the 15 February 2017, the director of biosecurity issued a direction to any AA that had managed consignments of imported uncooked prawns during the 12 months prior to manage biosecurity risk associated with those goods.

Direction issued to OSP and correspondence with the department³

On the 15 February 2017 a direction was issued to OSP under section 429 (1) of the Act to carry out the following actions by 3pm on the 20 February 2017;

- Secure all imported uncooked prawns (**relevant goods**), imported on or before the 9 January 2017 that are held or stored at 200 Euston Road Alexandria NSW. Secure the relevant goods by ensuring that they:
 - Are placed in the biosecurity area;
 - Are not moved from the biosecurity area;

² s22 statement

³ s22 statement

- Are not sold to a third party.
- Once the relevant goods have been secured, write to the department providing:
 - Confirmation that all relevant goods have been secured;
 - The quantity of the relevant goods secured at the premises;
 - The entry numbers associated with the relevant goods secured at the premises; and
 - The identity of the current owner of the relevant goods.
- If there are no relevant goods held or stored at 200 Euston Road Alexandria NSW confirm this in writing to the department.

At 3:18pm on the 20 February 2017, the department received an email from Stern in response to the direction issued on the 15 February 2017. Stern stated that he had 80kgs of relevant goods at OSP's AA and a further 1900 cartons of relevant goods that were still under biosecurity control as they had failed WSSV testing and were awaiting export.

On the 22 February 2017 the department emailed Stern requesting further information about the relevant goods that were secured at the AA.

On the 23 February 2017 Stern replied with a breakdown of the brand, size, owner of the goods and the quantity of the relevant goods secured at the AA. The quantity of goods remained the same as previously reported.

Gobblers Cold Storage (Gobblers)

Gobblers does not hold an AA with the department and are not a BIP.

On the 20 February 2017 Stern contacted Gobblers Cold Storage, 3/6 Wood Street Tempe NSW and asked if they would store 50 pallets of goods at their premises to which they agreed.

Later the same date employees of OSP arrived at the premises with a number of pallets of relevant goods and continued on an ad-hoc basis over the next four days to

bring pallets of relevant goods to the premises for storage. In total 5675 cartons were delivered to Gobblers for storage.⁴

On the 2 and 3 March 2017, Investigators attended Gobblers. Located at the premises were 2886 cartons of relevant goods being stored on behalf of OSP, **s 47G**

Records obtained from Gobblers show that between the 20 February and 24 February 2017 Gobblers received 4861 cartons and two loose bins of uncooked prawns and uncooked marinated prawns to store on OSP's behalf and 814 cartons of uncooked prawn and uncooked marinated prawns on behalf of **s 47G** and **s 47G** (5675 cartons in total)

Gobblers records also show that between the 20 February and 1 March 2017, on a number of occasions OSP removed relevant goods from Gobblers for distribution.

Response from Stern and OSP

Investigators spoke with Stern in relation to the movement of goods from OSP's AA in contravention of the direction issued by the department on the 15 February 2017. Stern stated that the freezer at his AA had broken and the relevant goods were moved from the AA as a result. No receipt or proof of repair was provided by Stern and it was noted that there are a number of other freezers at the AA that were in working order at the time. Stern stated that those freezers had capacity to store the relevant goods at the time they were moved from the AA.

Stern stated that he was storing relevant goods at his AA on behalf of third parties, **s 47G** Stern stated he contacted both parties and allowed them to remove their relevant goods from his AA after he had received the direction to secure the goods from the department.⁵

Administrative action by the department

On the 8 September 2017 the department revoked the AA held by OSP as a result of this matter and others.

⁴ **s22** statement
⁵ **s22** statement

On the 3 October 2017 OSP through their legal representative requested an internal review of the decision to revoke the AA. The submissions made to the review contained admissions that OSP had moved the relevant goods from the AA to Gobblers after the direction had been received because the freezer at the AA had broken and needed to be repaired. No evidence was provided to support this claim.

On the 21 December 2017 the department upheld the decision to revoke the AA of OSP.

Summary

The evidence collected to date supports the allegation that OSP deliberately engaged in conduct that contravened a direction given by a biosecurity officer to a biosecurity industry participant to manage a biosecurity risk.

Stern declined to be formally interviewed in relation to the matter.