

AUSTRALIA / JUDGMENT

R v HAMMAD

[2026] NSWDC 110**COURT**

District Court

DECIDED

26 March 2026

BEFORE

D Barrow SC DCJ

CASE / FILE NUMBER

2024/00403144

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District Court**New South Wales****Medium Neutral Citation:** R v HAMMAD [2026] NSWDC 110**Hearing dates:** 27 February 2026**Date of orders:** 26 March 2026**Decision date:** 26 March 2026**Jurisdiction:** Criminal**Before:** D Barrow SC DCJ**Decision:** At [149]:

1. The offender is convicted of both offences.
2. The offender is sentenced to an aggregate term of imprisonment of 2 years and 4 months, to be served by way of an Intensive Correction Order, subject to the following conditions:
 - a. The offender must not commit any further offence.
 - b. The offender must submit to supervision by a Community Corrections Officer and comply with all reasonable directions.
 - c. The offender must complete 250 hours of community service.
 - d. The offender must continue to engage with STARTTS for the length of time their practitioners deem appropriate and attend any appointments deemed necessary by the service.
 - e. The offender must report to Bowral Community Corrections within 7 days.

Catchwords: SENTENCING — Federal offenders — Sentence by State court for offence against Commonwealth law
SENTENCING — Penalties — Intensive correction orders — availability of intensive correction orders for Commonwealth offences
CRIME — Federal offences — vaping and tobacco related offending

Legislation Cited:	Therapeutic Goods Act 1989 (Cth) ss 41QC(7), 41QC(1) Taxation Administration Act 1953 (Cth) cl 308-310(1), 308-15 Crimes Act 1914 (Cth) ss 16BA, 16A, 17A, 20AB Criminal Code (Cth) ss 400.9(1A), 400.9(1) Public Health (Tobacco and Other Products) Act 2023 (Cth) Ch 3 Crimes (Sentencing Procedure) Act 1999 (NSW) s 71 Therapeutic Goods Regulations 1990 (Cth) r 10N Customs Act 1901 (Cth) s 233BABAD(2) Excise Act 1901 (Cth) Drug Misuse and Trafficking Act 1985 (NSW) s 25 Crimes Act 1900 (NSW) s 546C Crimes (Sentencing Procedure) Act 1999 (NSW) s 66(1)
Cases Cited:	Xiao v R [2018] 96 NSWLR 1 Bugmy v The Quen (2013) 249 CLR 571 Totaan v The Queen (2022) 108 NSWLR 17 YZ v R [2025] NSWCCA 65 Vemadevan v The King [2024] NSWCCA 223 R v Al Majedi [2024] QCA 27 R v Nguyen [2023] VCC 421 R v Kopa; ex parte DPP (Cth); R v Istogu; ex parte DPP (Cth) [2004] QCA 100 Wong v The Queen (2001) 207 CLR 584 Hili v The Queen (2010) 242 CLR 520 Parente v The Queen (2017) 96 NSWLR 633 R v Nguyen (District Court of NSW, Hanley DCJ, 23 September 2020). R v Moghadam (District Court of NSW, Buscombe DCJ, 9 August 2023) R v McGregor [2026] HCA 3
Category:	Sentence
Parties:	The Crown The offender (Mr Hammad)
Representation:	
Counsel:	Mr Maybury (the Crown) Mr Breeze (the offender)
Solicitors:	Office of the Commonwealth Director of Public Prosecutions (the Crown) Allied Lawyers (the offender)
File Number(s):	2024/00403144

JUDGMENT

Mr Hammad appears for sentence in relation to two Commonwealth offences committed on or about 30 October 2024:

Sequence 6, an offence of possessing 1000 times the commercial quantity or more of vaping goods, namely vaping devices, contrary to s 41QC(7) of the Therapeutic Goods Act 1989 (Cth) ('TGA'). This offence carries a maximum penalty of imprisonment for seven years, or 5,000 penalty units, or both.

Sequence 9, an offence of possess tobacco it being reasonable to suspect that none of the following circumstances exist: Excise duty has been paid or is not payable because of an exemption under a law of the Commonwealth, customs duty has been paid or is not payable because of an exemption under the law of the Commonwealth, and the weight of tobacco was 100kg or above, namely 600kg, contrary to sch 1, cl 308-310(1) of the Taxation Administration Act 1953 (Cth) ('TAA'). This offence carries a maximum penalty of imprisonment for five years, and the greater of either 1000 penalty units or the amount listed in sch 1, cl 308-310(2) multiplied by 5, this being five times the amount of excise duty that would have been payable.

Mr Hammad also asked the Court to take into account two further offences, pursuant to s 16BA of the Crimes Act 1914, committed on the same date, when he is sentenced on sequence 6:

Sequence 7, an offence of possess a quantity of a kind of vaping goods, namely vaping accessories, and the quantity was at least the commercial quantity but less than 100 times the commercial quantity, contrary to s 41QC(1) of the TGA. This offence carries a maximum penalty of imprisonment for two years, or 1000 penalty units, or both.

Sequence 10, an offence of deal with money or other property, it being reasonable to suspect that such money or other property was proceeds of indictable crime and at the time of the dealing the value of the money or property was less than \$100,000, contrary to s 400.9(1A) of the Criminal Code. This offence carries a maximum penalty of imprisonment for two years, or 120 penalty units, or both.

The statutory maximums nominated regarding these offences are an indication of the seriousness with which Parliament regards these forms of offending. The maximum penalties serve as a guidepost, to be used in combination with other factors, when arriving at an appropriate sentence. The maximum penalty also allows the Court to consider the case before it against a hypothetical worst case.

As observed on Mr Hammad's behalf by his counsel, the statutory maximums for these offences are significantly less than offences involving prohibited drugs.

Regarding the s 16BA matters, I do not impose a discrete sentence for those matters. In an appropriate case, such matters on a certificate allow for an increase to the otherwise appropriate sentence for the primary offence to take into account the need for personal deterrence and any greater need for denunciation.

Mr Hammad pleaded guilty to the two offences for sentence on 1 October 2025 in the Local Court at Campbelltown. The NSW scheme of mandatory discount for early guilty pleas does not apply to Commonwealth offences. However, consistent with *Xiao v R* [2018] 96 NSWLR 1 at [278], the utilitarian value of his pleas of guilty warrant a 25% discount on sentence for each offence.

The sentencing hearing occurred on 27 February 2026. As Exhibit A, the Crown tendered a bundle which included: an agreed statement of facts, Mr Hammad's custodial history, and a Sentencing Assessment Report ('SAR') prepared for these proceedings.

On Mr Hammad's behalf, a bundle was tendered, which became Exhibit 1. That bundle included: a psychological report from Ms Santa de Brigida dated 16 February 2026, a letter of apology from the offender dated 25 February 2026, an Affidavit of Mr Nabil Hammad, the offender's brother, sworn 11 December 2024, and a psychological report prepared by Mr Albassit dated 10 December 2024.

The Crown and counsel for Mr Hammad filed written submissions, and both made oral submissions at the sentencing hearing.

Facts

There are agreed facts. What follows is a short summary.

Mr Hammad operated two tobacco shops, one in Punchbowl and one in Lakemba. The Lakemba premises were not connected to the offences for sentence.

On 30 October 2024, investigators from the Therapeutic Goods Administration executed search warrants on both shops, and at the same time, NSW Police executed a search warrant on Mr Hammad's home in Wilton, New South Wales.

Sequences 6 and 7

Sequences 6 and 7 relate to the search of his home.

Police located and seized 45 boxes containing vaping goods. On examination by Therapeutic Goods Administration staff, a total of 9,640 vaping devices were counted. The vaping devices were from various brands, with various flavours. Photographs of the items appear at [7] of the agreed facts.

At the store in Punchbowl, the investigators located and seized seven boxes of vaping goods. There were a further 937 vaping devices seized. The combination of these various devices totals 10,577 devices. That is the conduct forming sequence 6. It is noted that the commercial quantity threshold for vaping devices is nine such devices.

At the Wilton address, police or investigators located 1,170 vaping accessories, being disposable cartridges with 'IGET' branding in various flavours. This conduct forms sequence 7, one of the matters to be taken into account on the s 16BA schedule.

During oral submissions, the Court was informed that the offence provision regarding the sale and distribution of vapes and vaping products, came into effect in July 2024, just a few months before the commission of these offences. The Court was also advised that vapes remain available to the public through pharmacies without a prescription.

Sequence 9

During the search conducted at the Wilton address, the following tobacco products were located and seized:

seven boxes of shisha tobacco;

39 boxes of cigarettes;

Three bags of cigarettes; and

14 boxes of loose tobacco.

Photographs of seized cartons of cigarettes appear at [15] of the agreed facts. A large number of the cigarettes were from the brands ‘Manchester’ and ‘Esse’. The tobacco did not contain any of the health warnings required pursuant to Ch 3 of the Public Health (Tobacco and Other Products) Act 2023 (Cth).

On 18 November 2024, analysis of the tobacco revealed an estimated weight of 633.782kg. Based on the excise rate of \$2,101.89 per kilogram, the total excise value in the agreed facts was \$1,332,140.05. The offender’s plea of guilty represents an acceptance that it was reasonable to suspect that this excise and customs duty was not paid on this tobacco, and there was no exemption granted under a law of the Commonwealth from the payment.

Sequence 10

Sequence 10 relates to the location of cash at the Wilton address. The money was located in a safe. There was \$16,800 in two bundles, together with a note that read “vape money”. A photograph of this note appears at [23] of the agreed facts.

Recorded Interview

On 30 October 2024, following the execution of search warrants at both the Punchbowl store and the Wilton address, the offender participated in an interview with police. At [25], the agreed facts set out the following admissions and other statements made by the offender during the interview:

“a. The Defendant agreed that police found vapes and tobacco products at his property.

- b. The Defendant was asked where the money from the safe was from, he replied, “it’s the shop money”. He was asked if it was from the sale of vapes. The Defendant replied, “No, it’s the whole shop. Chocolates, drinks, um ... , cigarettes, um, everything, yeah”.

- c. The Defendant was asked if he distinguished between what he sold or maintained separate money made from the sale of vapes. He replied, “yes”. He was asked if any of the money seized from the safe was from the sale of vapes. He replied, “No, no. It wasn’t there. No”.
- d. The Defendant was asked if he agreed that he sold the vapes for \$12-\$18 per vape. He answered, “yes”.
- e. The Defendant agreed he sold tobacco and Manchester branded cigarettes.
- f. The Defendant did not respond when asked who he bought the Manchester branded cigarettes from.
- g. The Defendant agreed that the tobacco products from his residence went to the tobacco shops.
- h. The Defendant stated, “I know, I’ve done something wrong. I’m selling cigarettes, vapes, you know. I swear I was going to stop”.
- i. The Defendant stated that the suppliers from whom he purchased the tobacco and vapes only accept cash.”

Objective seriousness of the offences

In their written submissions from [15], the Crown sets out the statutory purpose of both the TGA and the TAA.

The TGA was amended in 2024, introducing new offences to prohibit the importation, domestic manufacture, supply, commercial possession, and advertisement of non-therapeutic vaping goods. The Replacement Explanatory Memorandum to the amending bill states:

“The intention of the new offences and civil penalty provisions is to deter unlawful conduct, arrest the alarming increase in the use of vapes in Australia, particularly among youth and young adults, and prevent a new generation of persons being exposed to dangerous chemicals, and developing nicotine dependence.”

As noted in the Crown’s written submissions at [17], regarding the TGA offences concerning the possession of vaping goods, the offences are tiered according to the fault element prescribed and the quantity of vaping goods involved.

Sequence 6, contrary to s 41QC(7), is a fault-based offence relating to the largest commercial quantity of vaping goods identified. In the offence-based regime, the offence sits at the top end of the hierarchy of seriousness of vaping offences under the legislation.

Regarding the tobacco offences, the relevant legislation was amended in 2018, introducing new offences tiered according to fault element and the quantity of tobacco involved. It is noted that the fault element for sequence 9 is “reasonable suspicion.” The quantity of tobacco falls in the largest quantity identified in the offence regime. The explanatory memorandum to the amending bill states, “[t]he current level of penalties for offences...does not provide a sufficient deterrent to dealing in illicit tobacco.”

When determining a sentence, I must take into account the matters in s 16A of the Crimes Act 1914 (Cth) insofar as they are relevant and known. The list is non-exhaustive.

Section 16A(2)(a) – The nature and circumstances of the offence

The Crown notes the need to consider Mr Hammad’s role, the sophistication of the offending, the period of time over which the offences were committed, the quantity of illicit goods possessed, the amount of duty defrauded, and the extent that he gained financially.

At [26] of the Crown’s written submissions, it was submitted that the objective seriousness of the offence is high. At [28] of the submissions, and reinforced orally, the Crown submitted the offences involved sophistication and a degree of planning because the offender was intending to conceal the transactions, kept earnings from illegal products separate, and stocking must have occurred from the address at Wilton between the stores requiring transportation.

I do not entirely accept all these submissions. The offender stored the vapes and tobacco at his residential address. This points to a relatively limited operation with little sophistication. Whilst transport would have been required between the offender’s residential home and the stores, I do not accept this translates to a notable degree of planning or displays sophistication.

I accept that the offender’s admissions do allow for the conclusion that he knew his conduct was unlawful.

I also take into account the vapes were of various flavours, which increases their appeal and their uptake in young people. I also take into account that the tobacco products did not display the appropriate warnings as was required.

There is no evidence as to the length of the offending or that other individuals were involved. The Crown, at [31] of their written submissions, suggests an inference can be drawn from the quantity of vape and tobacco goods discovered that the offending was intended to continue for a long period of time. I accept this submission.

The commercial quantities of vaping devices and accessories is set at nine vaping devices and 60 vaping accessories pursuant to r 10N of the Therapeutic Goods Regulations 1990 (Cth).

For the conduct relating to sequence 6, the offender possessed approximately 1,175 times the commercial quantity of vaping devices. The offence in s 41QC(7) of the TGA is that the quantity possessed is 1000 times the commercial quantity or more. This is a threshold with no defined upper limit.

The 1,170 vaping accessories is nineteen and a half times the commercial quantity.

The Crown, at [33] of their written submissions and in oral argument suggests the significant quantities of both tobacco and vape products “illustrate the scale of the offender’s operation.” I accept that the quantities are relatively large. The operation, it would seem, was limited to distribution from that one store.

I accept that the offender received some financial gain, evidenced by the cash located in the bedroom safe labelled “vape money”. Consistent with his acceptance of guilty of sequence 10, I do not accept this money represented income from legitimate sources.

Section 16A(2)(e) – Injury, loss or damage resulting from the offence

For the conduct relating to sequence 9, the tobacco collectively weighed 633kg. As I have said, the excise value was \$1,332,140.05. It is a significant quantity of lost revenue. The Crown accepts that there is no evidence as to any financial benefit to the offender regarding the tobacco, but submitted the Court would conclude that any subsequent financial reward would have been substantial, and I accept that submission.

Due to the quantity of vape goods and tobacco possessed, and the significant quantity of lost tobacco revenue, the offences are objectively relatively serious examples of offences of their kind. This was conceded on Mr Hammad’s part (see the offender’s written submissions at [6]). A large portion of the vape goods and tobacco was stored in the offender’s home. There was little sophistication. There is no evidence that he was a part of any organised network of distributors or sellers, although, he was clearly able to source these illegal products, and his statements and his letter to the Court suggest he was co-opted to operate the stores by others. Whilst the defrauded revenue value was high, the financial gain evidenced by the cash in the bedroom safe was relatively modest. I accept that both offences for sentence are relatively serious examples of such offending.

Subjective circumstances (s 16A(2)(m) - the character, antecedents, age, means and physical or mental condition of the person)

The offender has an extensive criminal history, commencing in 2005. He has been previously convicted and sentenced for driving offences, assault, robbery, possession of prohibited drugs, and a serious break and enter offence. In 2015, he was sentenced to a term of imprisonment for an offence of specially aggravated break, enter and commit a serious indictable offence. His criminal record disentitles him to leniency.

At the time of the offences, he was 37.

Sentencing Assessment Report

A Sentencing Assessment Report ('SAR') was prepared for these proceedings. The report author had access to the offender, his brother/employer, a psychological report, likely to be the report of Mr Sam Albassit dated 10 December 2024 and before the court as item 5 of Exhibit 1 in these proceedings, the offender's criminal record, the agreed facts and Corrective Services NSW records.

Mr Hammad informed the author that he resides in a home owned by his brother. He resides with his wife and three children. He is currently employed on a full-time basis as a delivery driver within his brother's business.

He was recorded as expressing regret about his criminal history, blaming it on youth, stupidity, and association with bad peers, or people of bad influence on him.

Mr Hammad reports he was aware that selling vapes and tobacco products was illegal, and that the individual from whom he purchased the shop manipulated him into storing and selling the products.

The report author indicated the offending was financially motivated. Mr Hammad was seeking additional income.

He displayed some insight. He was willing and able to undertake intervention and carry out community service work. The report indicated his previous response to supervision by Community Corrections was satisfactory, and he was assessed as being a medium to low risk of reoffending.

Psychological report of Ms Santa De Brigida

On his behalf, a psychological report from Ms Santa De Brigida was tendered. She assessed him in person for a period of about three hours. She had access to the agreed facts, a case conference certificate, the criminal history, the affidavit of Nabil Hammad, that is also before this Court, and the 2024 psychological report of Mr Albassit, which is also before the Court.

Mr Hammad provided a history to Ms Santa De Brigida. Although this account was not given on oath or tested, and I should regard it with some caution, it is unchallenged, and largely consistent with that in the affidavit of his brother, which was tendered without any need for cross-examination. I accept the history that he has provided.

He was born in Gaza, Palestine, and moved to Australia at the age of 15 to 16 with his family. His father was employed as an aluminium window installer, and his mother was a homemaker. His parents separated when Mr Hammad was aged 18. He lived with his mother until the age of 28, and saw his father regularly.

Mr Hammad is one of 13 children. He described a traumatic upbringing in Gaza due to ongoing conflict, including witnessing bombings and shootings and other acts of violence. There was also a shortage of food, water, and electricity during his childhood.

He received no formal education, and after arriving in Australia, he went to the Chester Hill High School for English as a Second Language ('ESL') classes in year 10, but he has had no other formal education here.

He told Ms Santa De Brigida he is illiterate in English and Arabic. After finishing the year 10 ESL classes, he has worked in various jobs, such as gardening, painting, tree lopping. In 2022/2023, he purchased a truck and began working as a removalist, although he did not have the appropriate license, and when this was discovered by the police, he had to stop this work. After that, he experienced financial difficulties and had trouble affording rent and food. At around that time, someone he did not name approached him in relation to running a tobacco shop, and he accepted the offer.

In 2015, he had returned to Gaza, intending to get married, and return to Australia after organising a spousal visa. When he returned to Australia in 2017, he was incarcerated for the specially aggravated break and enter offence that I have referred to. The record indicates he was an accessory before the fact. I do not have any other details about it. Subsequently, he returned to Gaza in 2020/2021, but could not come back to Australia when he wanted to because of the pandemic. During this time in Gaza on that occasion, the house he was living in was hit by an airstrike. He subsequently returned to Australia with his wife, with the help of the Department of Immigration and Citizenship.

He and his wife have three children aged nine, four, and two and a half. His wife does not work or drive and she is heavily-dependent upon his support.

Because of Ms Santa De Brigida's conclusions at [4.11] that he presented with poor adaptive functioning, she administered cognitive and adaptive testing (as set out from p 6 of her report).

The results of the Kaufman Brief Intelligence Test 2 ('KBIT2') allows for verbal and non-verbal scores, plus a composite IQ and is free of cultural and gender bias (p 6 of Ms Santa De Brigida's report). Results put the offender in the lower extreme regarding each of his verbal, non-verbal, and IQ composite scores.

He then completed the Adaptive Behaviour Assessment System – Third Edition ('ABAD-3'). His results still largely put him at a very lower percentile rating, although not to the same extent with regard to his practical domain standard score. That was at the 21st percentile. These results were not to the same extent as those in his practical domain standard score. Ms Santa De Brigida concluded at [4.14]:

"In order to state that an individual falls in the extremely low range, the cognitive test results and adaptive functioning results both need to be under 70. In Mr Hammad's case they are not, the adaptive is higher than the cognitive. However, it is the opinion of this author that the cognitive results would be indicative of an individual who would struggle with understanding the concepts of business."

At pp 8-9, Ms Santa De Brigida expresses the opinion that the offender would struggle and have certain limitations in his daily living. At p 8, she identified areas in which he could be expected to struggle. These included difficulty to reason and apply good judgement. Ms Santa De Brigida considered the offender's limitations form a nexus with the offending behaviours, as he would be more susceptible and easily influenced by others and would have more difficulty in discerning the implications of his behaviour.

Ms Santa De Brigida's opinion in this regard is challenged by the Crown in their written submissions at [53]. On my assessment, the offender's very little intellectual capacity, together with his childhood disadvantage and absence of education (that encompasses illiteracy in Arabic and English) reduces his moral culpability for the offending to a discernible degree. I accept the submission made on his behalf at [22] of the written submissions that the principles in *Bugmy v The Queen* (2013) 249 CLR 571 are enlivened.

Mr Hammad reported he had no history of substance abuse, aside from an adolescent use of cannabis.

Upon psychological assessment, Ms Santa De Brigida indicated Mr Hammad "fell within the severe range for symptoms of PTSD" (at [6.4]). She stated Mr Hammad meets the diagnostic criteria for PTSD occurring against a background of complex trauma (at [6.6]). This complex trauma arises through multiple exposures to traumatic events (at [6.7]).

Ms Santa De Brigida assessed whether a correlation exists between the offending and Mr Hammad's psychological disorders. She indicates Mr Hammad's "behaviour could be more impulsive, without giving a lot of thought a deliberation prior to making decisions." (at [6.11]).

I accept the substance of the Crown's written submissions at [53] in the sense that I do not see that this mental condition is directly causally linked to the offending, because these are not impulsive-type offences.

Ms Santa De Brigida wrote that she had advised Mr Hammad to contact STARTTS, a service designed for trauma survivors, and at the time of writing her report, Mr Hammad had had his first appointment in late in 2025. Her testing revealed he was suffering from severe depressive symptoms and severe levels of anxiety.

In conclusion, Ms Santa De Brigida said at [8.1]-[8.2]:

"[8.1] It has been noted that Mr Hammad never attended school in Palestine and he attended ESL for one year in Australia and then left school. It has been noted that he struggled with employment and it was considered that potentially he may have poor adaptive functioning. He was administered a cognitive assessment and an adaptive assessment. As noted, for Mr Hammad to fall in the extremely low range, both the cognitive and the adaptive assessments must fall below 70. This did not occur, with the adaptive [score] falling at 78 overall. Despite this, it is considered that Mr Hammad would have struggled with considering the consequences of his actions."

[8.2] It has been note[d] that Mr Hammad has been exposed to significant deprivation and trauma in his country of origin and he is still adversely affected by the presence of PTSD against a background of complex trauma.”

Letter from the offender

A letter from Mr Hammad was tendered in the sentence hearing. It was written by his lawyer. I accept that the grammar and the particular language used, for example words such as “humiliated” and “insidious”, are his lawyer’s effort to communicate his client’s verbally-explained statements. I note the limitations of this form of evidence, particularly that unlike sworn evidence, it cannot be tested or challenged.

Mr Hammad wrote that he married his wife in 2015. They share three children and they live at the Wilton address that he rents from his brother.

He expressed remorse and feelings of shame and humiliation stemming from the police search of his home and the business.

It is noteworthy that he describes effectively being an employee being paid by salary after agreeing to open the stores and operate them. This suggests, along with his salary, that others were behind the operation. This is hardly surprising and in keeping with his limitations.

He also explained that during his time in custody he struggled being away from his children, and felt that he had failed his wife, who speaks no English and is totally dependent on him. I note in that regard that he spent 44 days in custody before being successful in being granted bail.

In his letter, he contended and explained his working history and how he came to operate the tobacco stores. He wrote:

“I was working as a removalist from 2022 until 2023. I stopped this work because of an issue with my licence category. I then stupidly agreed to open the two shops in my name and operated them as convenience stores. I do not deny knowing at the time that the business would be involved in the sale of illicit tobacco and vaping products. I needed an income to support my family and received an income which started off at \$1500 when the Punchbowl store opened. The Lakemba store was opened only about two months before the police raided my home.”

He wrote that the businesses are now closed. He has been working with his brother’s aluminium business, something he hoped to continue doing.

He wrote that he had commenced the counselling with STARTTS. This was recommended by Ms Santa De Brigida, and at the time of writing his letter, he had attended two sessions and hoped to continue to do so. He concluded: “I am truly disgusted that I allowed myself to be a part of an insidious trade and all the health impacts its use has on members of the community.”

Affidavit of Nabil Hammad

Mr Hammad's brother, Nabil, provided an affidavit sworn 11 December 2024 and accompanying annexures 'A' and 'B'. It appears to have been prepared for a bail hearing. Mr Hammad's brother was not required for cross-examination in these proceedings.

Nabil Hammad wrote in the affidavit he owns the business at which Mr Hammad is currently working. He also owns the Wilton address where the offender is living. He was willing to provide security from his brother, provide ongoing employment, promised to drive him to and from employment each day, and financially support the offender's wife and children should the offender be allowed to work whilst on bail.

He provided a similar history of his brother's childhood in Gaza as was set out in Ms Santa De Brigida's report. He wrote that their childhood was marred by experiences of war, and that the offender's experience of struggling to return to Australia from Gaza with his wife and young son in 2021 was traumatic. Nabil wrote that he had "observed my brother to have matured significantly ever since the birth of his first-born child in 2017." He wrote that his brother continues to struggle with his mental health, with feelings of despair and sadness and flashbacks of bombings in Gaza. This is also consistent with the opinion of Ms Santa De Brigida as to his post-traumatic stress disorder.

Nabil wrote that the Wilton property is isolated, and Mr Hammad's wife and children are dependent upon him, with Mr Hammad being exclusively responsible for driving his then seven-year-old child to school and back and transporting his wife for errands and medical appointments.

The affidavit contains two annexures. Firstly, a news article detailing Mr Hammad and his wife's return to Australia in 2021 with the assistance of the Australian Government. Secondly, some details of a 'Help Palestine' fundraiser that he had organised.

Psychological report of Mr Albassit

The final document in the defence bundle is a psychological report dated 10 December 2024 from Mr Sam Albassit. The report was not prepared for these proceedings, but for an earlier application for bail.

Mr Albassit had assessed Mr Hammad on AVL for about an hour. The history that was provided or recorded by Mr Albassit differed slightly from that provided to Ms Santa De Brigida. For example, he reported that Mr Hammad was one of eight children and that his parents remained together. I do not think much turns on those differences.

Similar schooling and childhood histories were provided as are set out in Ms Santa De Brigida's report, including the lack of formal education and a childhood marred by the effects of war. Mr Albassit wrote that, "[After returning from Gaza with his wife and son] [Mr Hammad] said that he has he struggled to sleep, and has experienced flashbacks and lucid dreams." Mr Albassit also writes that Mr Hammad's wife and children rely on him heavily. Like Ms Santa De Brigida, Mr

Albassit's opinion was that Mr Hammad met the diagnostic criteria for post-traumatic stress disorder and a generalised anxiety disorder.

Other factors on sentence

Section 16A(2)(g) – Guilty plea

Mr Hammad entered pleas of guilty in the Local Court. Aside from their utilitarian value, the pleas were early and demonstrated some remorse and acceptance of responsibility, particularly given the admissions made at the time of his arrest.

I accept that the pleas were entered in the face of a strong Crown case. The Crown submitted that he only ceased his offending because of the intervention of the authorities. I accept that submission. The Crown also submits that the admissions made by him were not fully frank, such as not disclosing the supplier of the tobacco products and denying the money in the safe came solely from the sale vapes. I accept that submission, but I note there are good reasons to explain why an offender will be reticent to nominate other participants, especially persons who are likely to be more culpable, and such reticence says very little about an offender's own remorse and own acceptance of responsibility.

While I accept the Crown case was strong, he did make significant admissions and I am satisfied he is remorseful, and has accepted responsibility for his conduct.

Section 16A(2)(m) – Mental condition

As noted, Ms Santa De Brigida's report indicates that he has post-traumatic stress disorder. At [13] of her report, Ms Santa De Brigida referred to the prospect of full-time custody as being more onerous for someone with this condition than it would be for someone who does not have it. I take that into account.

Section 16A(2)(p) – The probable effect of the sentence on family or dependants

I note that Mr Hammad's wife and children are heavily-reliant on him, as is set out in the material that I have referred to. If he were to serve a term of full-time imprisonment, that also would be something that would have a significant effect on his family. That is a relevant factor on sentence (*Totaan v The Queen* (2022) 108 NSWLR 17).

Sections 16A(2)(n) – Prospects of rehabilitation and 16A(2)(k) – Need to adequately punish

Mr Hammad has ceased operating the tobacconist stores. He is employed with his brother. He has complied with bail. He has not reoffended. My view is his prospects of rehabilitation are good so long as he continues on this path. I note that despite his subjective case, any sentence imposed must adequately punish him for the offences.

Section 16A(2)(b) – Other offences to be taken into account

With regard to the matters on the s 16BA schedule, I have referred to the approach to be taken to such matters, and it is set out in some detail in the Crown written submissions at [58].

As noted, the Crown argued that the offences “further contextualise the scale and commercial nature of the offender’s illicit operation.” On Mr Hammad’s behalf, counsel, at [34] of written submissions, and orally, argued that those matters are of little moment, as the vape accessories, sequence 7, are essentially part of the vaping device, and cannot be used without a device, and the cash, sequence 10, is at the lower end of the threshold for that particular offence.

Overall, counsel for Mr Hammad submitted the offences s 16BA schedule form part of the same offending conduct as count 6 and do little to increase the appropriate penalty. In my view, the nature and seriousness of the offences on the s 16BA schedule do not have the capacity to significantly increase the appropriate sentence. I accept they form part of the same offending conduct, with the accessories being paired with the vaping products, and the amount of cash in sequence 10 is relatively low.

Comparative cases

The Crown annexed various comparative cases and provided a table. Helpfully, the comparative cases included cases from Queensland and Victoria, given the need for consistency in Commonwealth offending across the country.

YZ v R [2025] NSWCCA 65

The first and most useful of those cases is YZ v R [2025] NSWCCA 65. That case concerned offences contrary to sch 1, cl 308-310(1) of the TAA, a different section of the Customs Act, s 233BABAD(2), and s 400.9(1) of the Criminal Code.

In essence, the police located tobacco products in a truck associated with YZ and co-offenders and also in his storage unit. There was also cash found in his residence. The amount of tobacco for the first offence, the equivalent offence to the current matter, was 666kg. A very similar amount to sequence 9. There were 632,300 cigarettes, 178kg of hookah tobacco, and 10,329 vapes.

Sequence 5 was on a s 16BA schedule. It was a separate offence committed on 29 August 2023 and involved possession of \$200,000 reasonably suspected to be proceeds of crime.

Sequence 8 involved him being in possession of \$740,810, in circumstances where it was reasonable to suspect such money was the proceeds of crime.

Sequence 7 arose after a search of his storage unit and truck on another date, 8 September 2023, where 5,683kg of tobacco was found, with excise duty payable greater than \$10 million, and circumstances where YZ possessed the tobacco knowing it had been imported with an intention to defraud the revenue.

Just reciting those offences makes it clear they are substantially more serious than this matter.

YZ had a strong subjective case. He had grown up in Iran. He had come to Australia as a refugee. The Court found he had a trusted role within an organised criminal organisation. The offending involved significant planning. He was seen to be genuinely remorseful. His family would suffer hardship if he was to serve a term of imprisonment.

At the first instance, he had been sentenced to an aggregate term of three years' imprisonment, to be released after 12 months, upon entering a recognizance.

On appeal, the issue was whether the sentencing judge had erred in failing to consider alternatives to full-time imprisonment. The Court of Criminal Appeal allowed the appeal on this ground. There was then discussion about the procedure in *Vemadevan v The King* [2024] NSWCCA 223 as to the appropriateness of an Intensive Correction Order ('ICO'), and how it would be determined.

The Court found that there was error on that basis. In resentencing, the conclusion reached was that an ICO would have been the most appropriate sentence because of his remorse, his background of disadvantage that had reduced his moral culpability, issues about his mental health, and the impact on his family. Those matters are largely all relevant to the proceedings before this Court.

In that decision, ultimately, due to practical considerations regarding s 71 of the Crimes (Sentencing Procedure) Act 1999 (NSW) and the time YZ had already spent in custody, the eventual sentence that was imposed was a term of imprisonment of three years, to be released after nine months. Effectively, he had served that term. But for that fact, an ICO was considered to be appropriate.

YZ is helpful in determining an appropriate sentence in this matter. The criminality was significantly greater. The subjective case has shared similarities, although in this matter, on my assessment, Mr Hammad's very limited intellectual capacity and very significant childhood and educational disadvantage were more substantial.

R v Al Majedi [2024] QCA 27

This was a case where tobacco was located in a unit. The offender in that matter was the daughter of the person who owned the tobacco. It had been stored at his direction. There was really only a discussion in that case as to whether it was appropriate for there to be a conviction recorded, and the Queensland Court of Appeal concluded that a conviction was not appropriate in all of the circumstances. It is not a helpful comparative case, given the much less serious offending.

R v Nguyen [2023] VCC 421

R v Nguyen [2023] VCC 421 concerned the same offence contrary to sch 1, cl 308-310(1) of the TAA.

The offending involved over two and a half million cigarettes, 867kg of loose-leaf tobacco, 25kg of molasses tobacco, and foregone revenue in excess of \$3.5 million. There was no other offence for sentence.

The sentencing judge observed at [64] this was the first prosecution, that his Honour was aware of, under this particular offence provision.

Mr Nguyen and his wife had operated a business called 'Dubai Gifts'. They sold imported tobacco there. They employed people at a warehouse where they would roll and package tobacco cigarettes for sale. Mr Nguyen was involved in transporting the tobacco between the warehouse and the shop. The tobacco and cigarettes were also in several storage facilities, at his home, and in his car. The offending occurred over about a four and a half month period in 2019.

The Court considered his role was less than that of his wife, although it was still a significant one. He was involved in directing workers in the house and transporting the tobacco; whereas his wife was in charge overall.

The Court held that he was more than a mere mule, and his moral culpability was high. In mitigation, he pleaded guilty, and there would be negative impacts on his youngest son should he be incarcerated, given that that outcome had already befallen his wife when his son had only been six.

He had no criminal history. He had not reoffended on bail. He had a longstanding depressive disorder that meant prison would weigh more heavily on him. He had sought counselling, and his prospects were good. Mr Nguyen was convicted and sentenced to a term of imprisonment of 20 months, to be released forthwith upon giving of security in the amount of \$2,000 and that he be of good behaviour for a period of two years.

R v Kopa; ex parte DPP (Cth); R v Istogu; ex parte DPP (Cth) [2004] QCA 100

The next case that I was referred to was R v Kopa; ex parte DPP (Cth); R v Istogu; ex parte DPP (Cth) [2004] QCA 100.

This case was an unsuccessful Crown appeal following the imposition of a 12-month term of imprisonment with immediate release upon entering a recognizance to be of good behaviour. The appeals concerned offences contrary to the Excise Act 1901 (Cth). The maximum penalty available was two years' imprisonment.

The offender's role was limited to being a driver. He had a gambling problem. He had a very strong subjective case.

Although the Court, through Williams J set out some prescriptive principles regarding appropriate penalties for the particular type of offence before the Court akin to a guideline judgment, given that it was handed down 22 years ago and related to a different offence provision, and it is not apparently adopted in other jurisdictions, I found this to be of limited assistance.

His Honour's approach in prescribing particular outcomes, seems, at first glance at least, to be contrary to decisions such as *Wong v The Queen* (2001) 207 CLR 584 and *Hili v The Queen* (2010) 242 CLR 520. It is also at odds with the approach taken in New South Wales regarding prescriptive outcomes, such as with regard to s 25 of the Drug Misuse and Trafficking Act 1985 (NSW) (see *Parente v The Queen* (2017) 96 NSWLR 633). Overall, I did not find this decision helpful in determining an appropriate outcome.

Unreported cases

There were some unreported cases. I will only refer to two of them.

The first was *R v Nguyen* (District Court of NSW, Hanley DCJ, 23 September 2020). The remarks of his Honour were available to me in the Crown bundle.

In that case, Mr Nguyen owned a tobacco store. He leased a storage unit. 669.5kg of tobacco was located in the storage unit. Some 4.28kg was also found in the store. Combined, this amounted to an offence contrary to sch 1, cl 308-310(1) of the TAA. The maximum penalty was five years' imprisonment.

He was also sentenced for a further offence, contrary to cl 308-15 of the same Act. That involved possession of a lesser quantity of tobacco, 133kg, in another premises. The maximum penalty was two years' imprisonment for that matter.

Two further offences involving much lower quantities of tobacco and where there was no penalty of imprisonment available were taken into account on a s 16BA certificate.

Mr Nguyen had been in custody for 11 days. Count 2 and the s 16BA matters were committed while on bail for count 1. His Honour regarded the various offences as being part of a course of conduct and not isolated, with the offender's motivation to be financial gain. They occurred over a period of ten months.

His Honour noted the early guilty plea and accepted that it was an early plea that demonstrated contrition and acceptance of responsibility.

The offender's course of conduct required greater emphasis on deterrence. She had no criminal history and no intellectual limitations or mental health issues, unlike in this case, although she was stressed, depressed and anxious about the outcome. His Honour made positive findings about her future prospects. There was no third-party hardship issue.

Mr Nguyen was sentenced to an aggregate term of three years and three months, with a non-parole period of two years. The indicative sentence for the offence contrary to sch 1, cl 308-310(1) of the TAA was two and a half years. His Honour indicated that an offender's culpability is greater where there is evidence that they were aware of the amount of the defrauded revenue.

The last of the cases is one where there was no judgment available, simply a summary. It was the case of *R v Moghadam* (District Court of NSW, Buscombe DCJ, 9 August 2023). In that matter, the offender was sentenced for an offence contrary to sch 1, cl 308-310(1) of the TAA and an offence of hindering the police, contrary to s 546C of the Crimes Act 1900 (NSW).

Mr Moghadam was the lease holder of a tobacconist shop. 575kg of tobacco was located there. His role was that of a coordinator and a director of the business of selling the illicit tobacco. His activities included supervision of co-accused to store and prepare the tobacco for sale. He engaged someone else to prepare the tobacco for sale as well. He recruited someone to help store and prepare the tobacco for sale and he kept records.

His Honour determined the appropriate sentence to be a term of imprisonment of one year and nine months to be served by ICO. That was a sentence reduced by 25% for an early guilty plea. A Community Corrections Order was imposed for the hinder police offence.

Disposition

Section 16A of the Crimes Act 1914 (Cth) requires me to impose a sentence “of a severity appropriate to all the circumstances of the offence” and take into account the matters in s 16A(2). I must undertake a process of intuitive synthesis of the relevant sentencing considerations and arrive at an appropriate penalty.

It is not disputed that the threshold in s 17A is crossed. No sentence other than a sentence of imprisonment is appropriate. There is a need for specific deterrence, consistent with the Crown’s submissions at [50]. However, this is reduced to an extent because Mr Hammad has not reoffended, he has complied with his bail conditions, he is no longer operating the tobacconist shops or a similar business, and he is engaged in new, quite different and lawful ongoing employment with his brother. He also has the mental health condition and the cognitive issues that I have referred to.

Plainly in these types of matters, general deterrence is a significant sentencing consideration. As the Crown submits from [46]-[49] of their submissions, these are not victimless crimes. The loss of revenue to the Commonwealth, together with the undermining of important public health initiatives, are serious matters. I note, consistent with the submissions on Mr Hammad’s behalf at [30], that he is not a wholly appropriate vehicle for general deterrence because of his diagnosis of post-traumatic stress disorder, his cognitive limitations, and his reduced moral culpability arising from his childhood disadvantage.

In my view, his prospects for rehabilitation are good so long as he continues to engage in trauma counselling and continues to be employed. I note the sentence I impose needs to impose adequate punishment. The comparable cases I have referred to, provided by the Crown, confirm that tobacco-related offences are regarded as serious ones because of the loss of revenue and the damaging health impacts that arise from the distribution and sale of illicit tobacco, and this is recognised in the offender’s submissions at [5].

In my view, an aggregate sentence for both offences is appropriate (see *R v McGregor* [2026] HCA 3).

The indicative the terms I would nominate are:

Sequence 6, with the matters on the s 16BA schedule taken into account, a term of imprisonment of two years and four months, reduced by 25% to 21 months.

Sequence 9, a term of imprisonment of 24 months, reduced by 25% to 18 months.

I accept the submissions made by the offender that, by reason of the offending being closely related and committed at the same time, there should be a significant degree of concurrency. I note Mr Hammad has spent 44 days in custody. I take those matters into account, and I have reduced the aggregate sentence by two months as a consequence.

The aggregate sentence I nominate is two years and four months' imprisonment.

Consistent with YZ, and because of the availability of an alternative to full-time imprisonment being the subject of substantial argument during the sentencing hearing, I must consider the alternative (see the applicant's written submissions [35]-[39]).

I note that s 66(1) of the Crimes (Sentencing Procedure) Act 1999 (NSW) does not apply to Commonwealth offences. As such, s 16A of the Crimes Act 1914 (Cth) is the governing provision (see *Vamadevan v The King* [2024] NSWCCA 223 at [20]).

Section 20AB of the Crimes Act 1914 (Cth) allows sentencing alternatives available pursuant to State laws to be given for Commonwealth offences. The availability of an ICO is specified at s 20AB(1AA)(a)(ix), and the aggregate sentence that I consider appropriate falls within the jurisdictional limit.

As noted by the offender at [36] of his written submissions, an ICO has the capacity to operate as a substantial punishment, but it can also reflect a significant degree of leniency because it does not involve immediate incarceration.

The nature and circumstances of the offences involve a substantial quantity of tobacco and vaping goods, as well as a large loss of revenue to the Commonwealth. On my assessment, the offender's conduct lacked sophistication and was limited to one store and the storage in his home.

Subsequent to his arrest, Mr Hammad has commenced work towards his rehabilitation. His family are heavily reliant on him. He has demonstrated remorse. He has some insight into his offending. Further incarceration would be particularly difficult for him, due to his intellectual limitations and his mental health condition, and it is unlikely, in my view, that he would receive adequate treatment for his mental health condition in custody. His ongoing rehabilitation would be likely setback significantly if he was sentenced to a term of full-time imprisonment. It is those factors that, in my view, support the conclusion that the sentence should be served in the community.

The orders I make are as follows:

The offender is convicted of both offences.

The offender is sentenced to an aggregate term of imprisonment of 2 years and 4 months, to be served by way of an Intensive Correction Order, subject to the following conditions:

The offender must not commit any further offence.

The offender must submit to supervision by a Community Corrections Officer and comply with all reasonable directions.

The offender must complete 250 hours of community service.

The offender must continue to engage with STARTTS for the length of time their practitioners deem appropriate and attend any appointments deemed necessary by the service.

The offender must report to Bowral Community Corrections within 7 days.

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