

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

TREASURY

Australian Taxation Office

(Budget Estimates 30 May 2006)

Question **BET 138**
Topic: **ROBERT GERARD**
Hansard page **Written Question**

Senator **Sherry** asked:

We want to know if the DPP has considered prosecuting tax cheat Robert Gerard, who is Chief Executive of Gerard Industries. Information from Additional Estimates in February 2006, reveals that the ATO referred 9 cases to the DPP in 2003-2004.

- I. According to information provide by the ATO, they have referred a total of 25 briefs to the DPP over the last five years, with a quantum over \$1 million. Of these 25 briefs, how many were prosecuted?

Answer:

Each matter that is referred to the Commonwealth Director of Public Prosecutions (CDPP) is considered by lawyers employed by the CDPP having regard to the *Prosecution Policy of the Commonwealth*. The *Prosecution Policy of the Commonwealth* requires a determination as to whether there is a prime facie case, whether there are reasonable prospects of conviction and whether the prosecution is in the public interest. Further details about how these factors are assessed can be found in the relevant sections of the *Prosecution Policy*.

Of the 25 briefs referred to the CDPP, 24 have been or are being prosecuted. One brief was assessed to contain insufficient evidence to warrant prosecution under the *Prosecution Policy of the Commonwealth*.

- II. How many were successfully prosecuted?

Answer: Fourteen have been convicted. Nine prosecutions are ongoing and in one case a warrant for arrest of the defendant has been issued before the court.

- III Are the identities and penalties of those successfully prosecuted a matter of public record?

Answer: Yes. However, in some cases, the courts order suppression of names.

- IV If so, please supply to this committee?

Answer: The CDPP has advised the 14 finalised prosecution matters on public record are:

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Defendant	Penalty
WALTERS, William John	6 years jail, 1 year 8 months non-parole period
CAPPADONA, Dorothy	1 year jail, released forthwith, 1 year good behaviour bond
CAPPADONA, Tom	18 months jail
COOKLIN, Howard George	2 years 8 months jail, 6 months non-parole period, security \$2,000, 2 years good behaviour bond
ZORBAS, George	1 year home detention, 9 months non-parole period
WALSH, Kerry Michael	3 years 6 months jail, 2 years non-parole period
ELSAMAD, Omar	11 months jail
BAKER, Heather Patricia	6 years jail, 18 months non-parole period
THOMPSON, George Andrew	Total term 6 years 6 months jail, 3 years 3 months non-parole period
ABOUCHAM, Mouhamad	200 hours community service, reparation order \$54,194.31
RAMANAH, Jean-Teddy Sylvain	9 years jail, 4 years 6 months non-parole period
MALICI, Akif	15 months jail, 5 months non-parole, security \$1,000, 10 months good behaviour bond, pecuniary penalty order \$40,000
PERDULOVSKI, Chris John	4 years 6 months jail, 2 years 9 months non-parole period, reparation order \$1,646,918.04
CHEN, Jung-Chi	1 year jail, released forthwith, 30 months good behaviour bond, security \$1,000

In addition to the above matters directly referred by the Tax Office, a number of other tax related matters are investigated by the Australian Federal Police (AFP) or the Australian Crime Commission (ACC) and referred to the CDPP for prosecution. The Tax Office has varying degrees of involvement in investigations led by these other agencies. Attachment A lists examples of some of the major tax related prosecutions referred to the CDPP by the AFP and ACC.

V Do any of these briefs relate to Robert Gerard Industries?

Answer: It has long been the practice of the Commissioner not to discuss the tax affairs of individual taxpayers.

VI The DPP doesn't need a brief from the ATO to prosecute a case of tax fraud, so why hasn't the DPP prosecuted Robert Gerard Industries off its own back?

Answer: As this is a matter for the CDPP, the question should be directed to him.

VII Have you considered prosecuting Robert Gerard Industries and if so, why hasn't it proceeded?

Answer: It has long been the practice of the Commissioner not to discuss the tax affairs of individual taxpayers.

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Attachment A

Prosecution Outcomes achieved in a sample of significant tax matters referred from the AFP/ACC:

Year	Person	Prosecution Outcome	Referring Agency
2000-2001	Anthony Brownlee	3 years jail with 1 year 6 months non-parole	AFP
2000-2001	Nachum Goldberg	7 years jail with 4 years 6 months non-parole Reparation Order (jointly with other defendants) of \$15,000,000.00	AFP
2000-2001	Edward Pearce	5 years 4 months jail with 3 years non-parole	AFP
2001-2002	William O'Driscoll	7 years 6 months jail with 5 years non-parole	ACC
2001-2002	Patrick O'Connor	3 years jail with 18 months non-parole	ACC
2001-2002	James Curtin	3 years 4 months jail with 2 years and 3 months non-parole	ACC
2001-2002	John Morris	18 months periodic detention	ACC
2003-2004	Walter Tieleman	5 years jail with 18 months non-parole	ACC (then NCA)
2003-2004	Sean Pearce	5 years jail with 18 months non-parole	ACC (then NCA)
2003-2004	Stephen Wharton	5 years jail with 18 months non-parole	ACC (then NCA)
2003-2004	Lawrence Aistrop	3 years jail with 6 months non-parole	ACC (then NCA)
2003-2004	Tarek Wahby	3 years jail with 10 months non-parole	ACC (then NCA)
2003-2004	Paul Wagstaff	4 years jail with 2 years 6 months non-parole Pecuniary penalty \$430,000.00	ACC
2003-2004	Timothy Michael	5 years jail with 3 years non-parole	ACC
2004-2005	Steven Hart	7 years jail with 2 years 9 months non-parole	AFP
2004-2005/ 2005-2006	Nitzan Ronen	8 years 6 months jail with 5 years 6 months non-parole	ACC
2004-2005/ 2005-2006	Izhar Ronen	8 years 6 months jail with 5 years 6 months non-parole	ACC
2004-2005/ 2005-2006	Ida Ronen	8 years 6 months jail with 4 years 6 months non-parole	ACC