

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

Question No. 131

Senator Ludwig asked the following question at the hearing on 25 May 2006:

- a) In respect of the taxation affairs of Mr Robert Gerard previously investigated by the ATO, and as has been dealt with in hearings of this committee, why did the DPP make no request of a brief from the Australian Taxation Office?
- b) Was any consideration at all given to requesting a brief from the ATO in respect of the Gerard matter?
- c) Or was any advice sought on whether it would be appropriate to request such a brief?
- (i) If not, why not?
 - (ii) If yes, what was the decision?
- d) Has any informal inquiry been directed to the ATO about the Gerard matter?
- (i) If so, can the DPP provide details of this inquiry?
 - (ii) If not, why not?
- e) Why would the DPP not ask the ATO to justify why they have chosen to settle the Gerard matter rather than institute their own litigation or refer the matter to the DPP for consideration to ensure that the Commonwealth Prosecution Policy was being adhered to?
- f) Does it concern the DPP that this matter was not referred to the DPP?
- (i) If not, why not?
- g) Has any consideration been given to examining the Gerard matter or referring it to the AFP or ACC for consideration or a brief to be prepared on the allegations of tax evasion and avoidance?
- h) Given the nature of the Gerard matter as a high profile individual, and or matters similar to this, does the DPP agree that these are matters that should be monitored and or briefs requested by the DPP to ensure that the commonwealth prosecutions policy is being adhered to by agencies and departments?
- (i) If not, why not?
- i) Is the DPP aware of any other agency that would assume the role of ensuring that Commonwealth prosecutions policy is being adhered to by agencies and departments in the commonwealth other than the DPP?
- (i) If not, does the DPP see it as a role that it should undertake, if not why not?
- j) Did the ATO request advice from the DPP in respect of the Gerard matter?
- (i) If so, what was the nature of the request and what was the response provided?

(ii) Could the DPP provide the full details of any request for advice? If not, why not?

The answer to the honourable senator's question is as follows:

- a) See answer to Question on Notice 238 in relation to a question asked at the hearing on 14 February 2006.
- b) See a).
- c) See a).
- d) See a).
- e) See a).
- f) See a).
- g) See a).
- h) See a).
- i) No. (i) The DPP Act ensures that there is a separation of the investigative and prosecutorial functions in the criminal justice system. The decision to conduct a criminal investigation is a matter for the relevant agency. The decision to prosecute and to do so in accordance with the Prosecution Policy of the Commonwealth is the responsibility of the DPP.
- j) See a).