

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S DEPARTMENT

**Program 1.3**

**Question No. 159**

**Senator Hanson-Young asked the following question at the hearing on 16 October 2012:**

Commonwealth Directive to States Restricting Remittance of People Smuggling Prisoners' Gratuities

- a) Is there a Directive from the Commonwealth government that asks or requires states to restrict the transfer of gratuities earned by prisoners charged or convicted for people smuggling offences?
- b) Could we please have a copy of the Directive/policy?
- c) Which department(s) was it issued by, and when?
- d) Who does it apply to? Does it apply to individuals charged with people smuggling offences or only people convicted?
- e) Which states or prisons are currently complying with the Directive?
- f) Have any states declined to comply? Why? What has the Commonwealth's response been to those states?
- g) How many individuals have had their gratuities restricted pursuant to the Directive since it was issued? Please provide a breakdown by state.
- h) Are gratuities being returned to people smuggling defendants before they return home? Has the Department issued any instructions or requests to the states to ensure that this happens?

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

- a) On 8 April 2011, the Attorney-General's Department (AGD) advised State and Territory correction authorities of the intention to garnishee gratuity earnings, or other monies belonging to convicted people smuggling crew, in order to enact liabilities under the *Migration Act*. AGD advised State and Territory correction authorities that it would be appreciated if they explore their ability to prevent convicted people smuggling crew from remitting money overseas to assist in giving effect to this intention to garnishee gratuities.
- b) The request was made in person during the Senior Officials Committee teleconference of 8 April 2011.
- c) AGD issued the request on 8 April 2011.
- d) The request applies to those convicted of people smuggling offences
- e) Western Australia and New South Wales.
- f) Other than Western Australia and New South Wales, jurisdictions have advised that they do not have a legislative basis to restrict gratuities in the absence of a notice from DIAC under the *Migration Act*.

- g) 92 offenders have had gratuities restricted. 72 in Western Australia and 20 New South Wales.
- h) Unless persons convicted of people smuggling are subject to a garnishee notice issued by DIAC they are released with their gratuities. These arrangements do not prevent people convicted of illegal foreign fishing and people smuggling from using their gratuity earnings to purchase low value 'quality of life' items as well as consumables whilst incarcerated.