

PEOPLE SMUGGLER INCARCERATIONS — STATE JUSTICE SYSTEM

**275. Mr J.M. FRANCIS to the Attorney General:**

My question is directed to Western Australia's greatest-ever Attorney General.

Several members interjected.

**The SPEAKER:** Thank you, members!

**Mr J.M. FRANCIS:** I am concerned by the federal government's growing imposition on Western Australia's criminal justice and prison systems for the housing of people charged with people smuggling offences. Can the Attorney General provide some information on this problem and what the government has requested of the federal government in this matter?

**Mr C.C. PORTER replied:**

I thank the member for his question. It is a matter upon which I today sent a letter to the federal Minister for Home Affairs, Mr O'Connor. I know that it is a matter in which the member for Girrawheen has also had an interest, as she has asked a series of question on it. I will explain to the house what I have put in that letter because it is a matter of some seriousness. I will also foreshadow what I will speak about at the end of this answer. Amongst the things for which I have asked is a complete moratorium on the federal government sending to Western Australia any further people who have been charged with people smuggling. That is perhaps unprecedented and a matter of some importance, and I want to explain why I have done that and the background to this matter. The reason it is probably without precedence is that there has been a longstanding arrangement pursuant to section 120 of the commonwealth Constitution, which reads —

Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, —

Also relevant to this matter is section 70A(1) of the Judiciary Act, which states —

The trial on indictment of an offence against a law of the Commonwealth not committed within any State ... may be held in any State or Territory.

There has long been an acceptance that Western Australia will receive commonwealth prisoners and pay directly for their housing. In terms of the percentage of all commonwealth prisoners that Western Australia takes, we have shouldered a very large burden. New South Wales presently has 454 commonwealth prisoners, which is about 47 per cent of all commonwealth offenders. Western Australia is next in terms of the number, with 210. We presently house about 21 per cent of all commonwealth prisoners. The reason Western Australia has accepted this situation for so long is that the overwhelming majority of commonwealth offences occur within the boundary of a state, and we have been willing to take those offenders who have offended against commonwealth property or personnel inside the boundary of Western Australia. Those states that have had a preponderance of commonwealth personnel or property have had a disproportionate number of federal prisoners. We have gone to some effort to look at the category of people smugglers per se as a subcategory of all federal prisoners. Particular arguments attach to them that warrant what I have done by letter today. The figures I have received are not perfectly accurate because I have not been able to get data from Queensland, but these are figures of where people who have been charged with people smuggling offences are being held either as a matter of detention because they have been sentenced or because they are on remand. There are 119 presently in Western Australia, none in New South Wales, none in Victoria, none in South Australia, none in Tasmania, six in the Northern Territory and none in the Australian Capital Territory. Western Australia has over 95 per cent of all the persons charged with people smuggling.

I think it notable that that category of offender is the single biggest growth category of federal prisoners. On 31 January 2007 and 2008—there were the same number—there were five people smugglers imprisoned in Western Australia. As I have just noted, there are now 119. Whether or not members have a view that the Howard government policies or the Rudd government policies represent the best response, or whether they represent the appropriate mix between deterrence and the appropriate treatment of people smugglers, to the extent that there was a change in policy at the last election, that change was mandated by the Australian people as a whole, yet the Western Australian community is bearing 95 per cent of the responsibility for that change. That situation simply has to stop. It is my view that the federal government has determined to charge these people in the Western Australian system not merely because they are captured in commonwealth waters that are arguably more proximate to WA than other states, but because we have one of the most efficient systems for time to trial, and we are a very convenient place for the commonwealth government to charge its prisoners. This situation simply cannot go on; to have that kind of financial burden on Western Australia is simply unfair.

I have asked for three things: firstly, an urgent moratorium, which is to say that we will not accept any further persons caught in commonwealth waters and charged with people smuggling offences. I have asked for Minister for Home Affairs Brendan O'Connor's agreement to that moratorium. Secondly, we have asked for a plan to be devised by the commonwealth government that will see the transfer of all prisoners sentenced in Western Australia for people smuggling between all the states and territories so that there is an even share of people-smuggling prisoners in each of the states and territories. I note that the Australian Capital Territory, which has none of these prisoners, has built a new prison, which is substantially under capacity, yet there is no arrangement in place to distribute these prisoners. Thirdly, I have asked for a new plan for financial compensation. It has been the case, member for Girrawheen, that there has been some—albeit partial and indirect—compensation by virtue of the goods and services tax grant system, which takes into account the number of federal prisoners Western Australia has. We have now been informed that that will stop as at 1 July. After that point in time there will be no compensation for any state for the housing of federal prisoners, let alone a state such as our own, which bears an inordinate share. I have taken the step, which I think is something of an extraordinary step, of asking for those three things, and I hope to hear back very shortly. Ultimately, Western Australia's position will be that we will not take any further prisoners charged with people smuggling offences who are apprehended in commonwealth waters.