

COMMONWEALTH OF AUSTRALIA

# **SENATE**

## **Hansard**

**WEDNESDAY, 4 DECEMBER 2013**  
**(last two pages from 5 & 10 December)**

BY AUTHORITY OF THE SENATE

**PROOF**

## MOTIONS

### Suspension of Standing Orders

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (09:53): I move:

That so much of the standing orders be suspended as would prevent the Leader of the Australian Greens from moving the following motion:

That the Senate calls on the Attorney-General to provide to the parliament before question time today an explanation of his reasons for authorising ASIO raids on Timor-Leste legal counsel and a key witness for pending Permanent Court of Arbitration hearings in The Hague.

Mr Deputy President, as you would be aware, this is not something that the Greens do lightly. In fact, this is one of the very rare occasions in my entire Senate career when we have decided that it is important enough to actually have this matter dealt with and call on the Attorney-General to make a full explanation and statement. The reason it so important is that Minister Brandis is the highest law officer in the land and he has authorised intelligence agencies to raid the offices of legal counsel who are currently in proceedings in The Hague on a matter that is critically important to East Timor.

What is at stake here, as is being said in the media, is that never before has East Timor taken someone to this arbitration panel in The Hague. Never before has Australia been called to answer questions about spying in a

forum such as that. But it is not just about a treaty; it is about the maritime boundary between Australia and East Timor, it is about billions of dollars in resources and it is about the resource-sharing deal that former Minister Downer and the government of the time struck and whether it is valid. It is a shocking thing that, as this negotiation is going on in The Hague, the Attorney-General in Australia authorises the raid on those legal offices.

I have seen the minister's statement trying to suggest that the two matters are unrelated, but it beggars belief that they are unrelated—that, 24 hours after the lawyer has virtually left the country to go and work with Timor-Leste in The Hague, we have the chief law officer in the land authorising a raid on that office to take documents from the office and, at the same time, we have a key witness in those proceedings having his passport taken away so that he cannot travel to provide evidence. What does that say in a nation like Australia? Who is next? Who else's passport is going to be suddenly taken from them in a raid so that they cannot go and do whatever they intended to do overseas?

There is no suggestion here that the whistleblower who was going to attend to give evidence in The Hague was in any way a threat to national security. This is about big companies, the power of those big companies over government, and the question of the extent to which the Australian government is acting in the commercial negotiations of a company in a situation such as occurred in East Timor. So that is why I think it is important that Minister Brandis be required to make a statement before question time as to why he authorised those raids and how they can be justified—if they can be, because this is about the commercial proceedings. At no stage was there any suggestion that the original bugging of the cabinet room in East Timor was anything other than to assist in the commercial deals that were being done at the time. It was not about national security, and it is still not about national security.

It is beyond belief that the timing of these raids has nothing to do with the negotiations going on in The Hague. If it can happen on this occasion, what else is Minister Brandis going to authorise for the agencies to go and raid legal chambers or individual homes and take someone's passport? This is important, and that is why I think it is critical that Minister Brandis be required to make that statement to the parliament today. I am sure it is of grave concern to most Australians when they wake up and hear that that has been authorised by Minister Brandis, and I think it is important that we get on the record from Minister Brandis, before question time today, exactly why he authorised the raid on those legal offices and took that passport away.

**Senator FIFIELD** (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (09:58): The government will not be supporting the motion to suspend standing orders. It is incredibly important that matters of Australia's national security are dealt with very carefully. The government does not believe that it is appropriate to canvass those matters in the manner which Senator Milne is proposing at this point in time in the proceedings of the Senate. Obviously Senator Brandis, who as Attorney-General has portfolio responsibility for these matters, will look carefully at the contributions of colleagues in this procedural debate. But I just want to reiterate that this chamber does need to be mindful of the longstanding conventions and protocols in relation to the commentary on national security matters.

I know that they were protocols and conventions that the previous government took seriously. They are protocols and conventions that this government takes seriously. National security matters have historically been placed beyond partisanship and so, as I have indicated, the government will not be supporting this motion to suspend standing orders. But as I said, the Attorney-General does pay close attention to the contributions of colleagues in this place.

**Senator WONG** (South Australia—Leader of the Opposition in the Senate) (10:00): The opposition will not be supporting the suspension motion moved by the Leader of the Australian Greens. I do note, however, the statement from the minister that the Attorney-General will pay close attention to what is said in this chamber in relation to this matter and I would make a number of points.

The first is this: this is obviously a matter which has garnered considerable attention in the Australian community. The Attorney-General did issue a short statement last night in which he confirmed he was responsible for the issuing of warrants which the Australian Security and Intelligence Organisation later executed on addresses in Canberra. In that statement the Attorney-General asserted that the actions he took would not affect or impede the current arbitration between Australia and Timor-Leste at The Hague.

These are important matters. They do go to the integrity of the rule of law, and for that reason the opposition does believe that the Senate—the parliament, and through them the Australian people—would benefit from a statement from the Attorney-General on this matter. However, we are not prepared on this occasion to support an interruption to the orderly proceedings of the Senate in the manner proposed by the Australian Greens. We will always take a responsible and considered approach in matters of national security. But again I reiterate that I encourage the Attorney-General to consider the merits of making an appropriate statement to the parliament.

**Senator LUDLAM** (Western Australia) (10:01): I rise to make a brief contribution here on the motion to suspend standing orders. As Senator Milne has said, the Greens do not make these sorts of suspensions lightly. It is not conduct that we engage in unless the matter is of the utmost importance.

I acknowledge Senator Fifield's comments. I think it would be appropriate for Senator Brandis to join us for this debate, but, nonetheless, I acknowledge Senator Fifield's comments this morning. But I take him up on one issue, and that is the issue, crucially, that goes to the reason why we brought the suspension motion forward—that is, that it is not at all apparent to the Greens or, I would suspect, to the general public that this matter has anything whatsoever to do with national security.

I understand and respect the reasons why ministers of coalition or Labor Party orientations would not comment on matters that would prejudice ongoing national security investigations. If ASIS had been exposed bugging al-Qaeda headquarters or wire-tapping international organised crime or money-laundering syndicates, this motion would not be necessary. But what is at stake here is an accusation—and apparently a well-founded accusation that will be tested at a court of arbitration in The Hague this week—that ASIS bugged the cabinet rooms of the government of Timor-Leste during sensitive commercial negotiations that have consequences in the billions of dollars for commercial players like Woodside and then, by extension, the Commonwealth of Australia and the government of Timor-Leste through tax revenues and royalties.

That, I would submit, has nothing whatsoever to do with national security. For that reason the Attorney-General should front us today and explain why he has used the most extreme executive powers that are available to him—calling in intelligence agencies with extraordinary coercive powers, serving warrants on people that they are not even permitted to read, and detaining legal counsel and key witnesses for a matter of hours without any explanation at all. You are not then simply able to wave your hand and call 'national security' as the reason a shroud needs to drop. This parliament, the Australian public and the people involved in these arbitration matters overseas deserve an explanation better than they got last night from the Attorney-General as to why our covert agencies have been called in to exercise some of the most severe powers that are available to Australian agencies.

Minister Downer was the foreign minister at the time that these allegations prevailed that ASIS bugged the government of Timor-Leste to, apparently, advance the commercial interests of Woodside, an oil and gas corporation. Minister Downer then goes and sets up his own lobbying company and, lo and behold, ends up on the payroll of that very same corporation. That is the reason that this ASIS operative has decided to take the extraordinary action of appearing as a witness in these arbitration hearings.

As it has been said, this is not some junior operative. For all the mud that has been flung at the US whistleblower Edward Snowden—noting the deliberate use of the term 'traitor' by our Attorney-General earlier this week—this is not a junior subcontractor who has come into possession of documents. This is a key operative who ran technical operations for ASIS at the time that these allegations are said to have occurred. This is somebody not merely with high-level technical knowledge and competence of the operations that were underway; it is somebody with a conscience.

Our people who display a conscience like that and are willing to go on the public record in defence of one of the poorest nations in the region in their negotiations with one of the richest nations on earth should be protected. They should not be subject to arbitrary intimidation and detention by ASIO at the behest of Australia's Attorney-General. Senator Brandis owes it to this parliament, owes it to the Australian people and owes it to the people of Timor-Leste to front this chamber and explain what on earth he is doing. He is already being compared to former FBI boss J Edgar Hoover, and that story did not end well. This appears to be a chilling abuse of executive power. If it is not that then the Attorney-General owes it to us to front this chamber and explain what on earth he is up to.

**Senator FAULKNER** (New South Wales) (10:07): I think every senator in this chamber would acknowledge that it is important for the Australian public and, of course, the parliament to be kept informed of important matters to the extent possible. That is a principle that all ministers accept. But any minister, particularly those who have national security responsibilities, has to consider also what is appropriate to place on the public record. All ministers who have national security responsibilities have accepted the principle that is outlined in *Odgers' Australian Senate Practice*. I rarely quote Odgers', but let me do so this morning. It is a very accurate representation of the position. It says:

It has been the policy of successive governments that questions seeking information concerning the activities of the ASIO or the Australian Secret Intelligence Service (ASIS) will not be answered.

It goes on to talk about certain precedents and the fact now, of course, that ASIO officers or the director-general do appear before Senate estimates committees and answer questions. So there is a longstanding precedent which every member of parliament understands: ministers have been and should be constrained on what they say publicly about intelligence and security matters.

That does not mean that a minister with national security responsibilities cannot, if he or she believes it is appropriate, seek the leave of the chamber to make a statement. I certainly did that at times when I served as Minister for Defence. I also, in consultation with other parties in the chamber, used the forum of question time to address important matters that were very significant at the time in public debate in this country.

I have never known of a situation where a minister who seeks to make a statement would not be given leave of the Senate. I believe, certainly in this instance, if Senator Brandis chose to do so then that would be the case—and it should be the case. But the issue here is: should the Senate make such a demand of Senator Brandis? I have read Senator Brandis's public statement, headed 'Execution by ASIO of search warrants in Canberra', and he makes the point:

The warrants were issued by me on the grounds that the documents contained intelligence related to security matters.

I do not know what, if anything, Senator Brandis would be able to add to the public statement he has made. What I am concerned about at this stage, in advance of question time, in advance of the forums of the chamber that are available to us, is putting demands on a minister such as those that are suggested in this motion for the suspension of standing orders. That would be a new precedent, which I think would be inappropriate for this Senate to agree to. There is a longstanding mechanism for us dealing with these matters. It is tried and true; it has stood the test of time; it should continue to stand the test of time. (*Time expired*)

**Senator XENOPHON** (South Australia) (10:12): I take note of what Senator Faulkner has said, particularly about the responsibilities he has had previously as the Minister for Defence. I note also *Odgers' Australian Senate Practice* and the constraints placed on those who have the heavy responsibility of dealing with intelligence matters.

I think that this motion to suspend standing orders being moved by the Greens is timely in the context of revelations over the last few months, and in recent days, about the potential metadata surveillance of Australian citizens, and also the extent to which surveillance powers should be more transparent and accountable. I do want to take issue with what Senator Ludlam said about Senator Brandis, suggesting that there are some parallels between Senator Brandis and J Edgar Hoover. I am not sure if he was being serious, but I cannot take that as a serious comment. I think that it is unhelpful to the debate. I accept that Senator Brandis, the Attorney-General, takes his responsibilities in relation to matters such as this very, very seriously.

I agree with the comments made by Professor Clinton Fernandes, Associate Professor at the UNSW Canberra, in an opinion piece published this morning where he describes the raids that are the subject of this suspension of standing orders motion:

The raids were designed to seize and confiscate documents believed to contain intelligence on security matters.

I agree with Professor Fernandes that Senator Brandis, as Attorney-General:

... was probably correct to deny that he had authorised the raids in order to impede the arbitration; it is more likely—

says Professor Fernandes—

that the intention was to see whether the names of Australian spies who had conducted the espionage would be revealed. Protective measures could be taken in advance.

I agree with that. We must protect the identity of those who work for our intelligence services overseas because that puts them and their families at risk.

But there are still a number of important matters that are raised in the context of this motion. It simply seeks to suspend standing orders for an explanation. I think the difference with Senator Faulkner's approach is that we should not force the Attorney-General to make a statement at this time. I think simply requesting that the matter be addressed—and it could be that the Attorney will say, 'I will make a further statement down the track'—would itself be useful. But I think that this motion highlights the importance of this debate in the general community about the issues at stake here.

I also want to make it clear that the Attorney-General is perfectly entitled to take whatever protective measures there ought to be to protect the identity of those security or intelligence officers working overseas. That is axiomatic and that is something that I support. But I agree with Senator Ludlam that there ought to be a suspension of standing orders. It would be healthy and transparent to debate these issues. I reject any comparisons between the Attorney-General and J Edgar Hoover, the former Director of the FBI. I think that diminishes the arguments in favour of the suspension of standing orders. I think it is important that these matters be aired and ventilated, but that does not necessarily imply a criticism on my part of what the Attorney-General has done. But I think an explanation is warranted and justified at this time. That is why, with those caveats, I support this suspension of standing orders.

Question negatived.

### **DISTINGUISHED VISITORS**

**The PRESIDENT** (14:00): Before I call Senator Brandis I acknowledge in the President's Gallery the presence of former senator Sandy Macdonald. Welcome to question time.

**Honourable senators:** Hear, hear!

### **MINISTERIAL STATEMENTS**

#### **National Security**

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:00): by leave—Yesterday, search warrants were executed at premises in Canberra by officers of the Australian Security Intelligence Organisation (ASIO) and, in the course of the execution of those warrants, documents and electronic data were taken into possession. The premises were those of Mr Bernard Collaery and a former ASIS officer. The names of ASIS officers—whether serving or past—may not be disclosed. The warrants were issued by me, at the request of ASIO, on the grounds that the documents and electronic data in question contained intelligence relating to security matters.

By section 39 of the Intelligence Services Act 2001, it is a criminal offence for a current or former officer of ASIS to communicate 'any information or matter that was prepared by or on behalf of ASIS in connection with its functions or relates to the performance by ASIS of its functions', where the information has come into his possession by reason of his being or having been an officer of ASIS.

As honourable senators are aware, it has been the practice of successive Australian governments not to comment on security matters. I intend to observe that convention. However, in view of the publicity which has surrounded the matter since yesterday, I consider that it would be appropriate for me to make a short statement about the matter which does not trespass beyond the convention, and which will also provide an opportunity to correct some misleading statements that have been made in the chamber this morning, and by others.

I listened to the debate in the Senate earlier in the day on Senator Milne's procedural motion. I listened, in particular, with great respect to Senator Faulkner's contribution. I agree with what Senator Faulkner had to say and—if I may say so—consider it to be an accurate and judicious statement of the applicable principles. While a national security minister should never be compelled by the parliament to make a statement concerning

intelligence matters, it may, as Senator Faulkner rightly said, be appropriate on particular occasions for him to prevail upon the courtesy of the chamber to do so.

Warrants of the kind executed yesterday are issued under section 25 of the Australian Security Intelligence Organisation Act 1979 (the Act). They are only issued by the Attorney-General at the request of the Director-General of ASIO, and only if the Attorney-General is satisfied as to certain matters. It is important to make that point, since it was asserted by Senator Ludlam, in apparent ignorance of the act, that I had 'set ASIO onto' these individuals. The Attorney-General never initiates a search warrant; the request must come from ASIO itself.

When the director-general makes such a request, a search warrant may only be issued by the Attorney-General if the conditions set out in section 25(2) are fulfilled. That provision requires that the Attorney be satisfied that there are reasonable grounds for believing that access by ASIO to records or other things on the subject premises will substantially assist the collection of intelligence in accordance with the act in respect to a matter that is important in relation to security. Security is defined by section 4 to mean the protection of the Commonwealth and its people from espionage, sabotage, politically motivated violence, attacks on Australia's defence system, or acts of foreign interference; and the protection of Australia's territorial and border integrity from serious threats.

On the basis of the intelligence put before me by ASIO, I was satisfied that the documents and electronic media identified did satisfy the statutory tests, and therefore I issued the warrants. Of course, honourable senators would not expect me to disclose the specific nature of the security matter concerned.

I am, of course, aware that Australia is currently in dispute with Timor-Leste over matters relating to the Timor Sea. That dispute is the subject of arbitration proceedings in The Hague, which are due to commence tomorrow. The case is being heard by an arbitral tribunal established under Article 23 of the Timor Sea Treaty. In those proceedings, Timor-Leste makes certain allegations against Australia. The Australian government is defending the proceedings and contesting the jurisdiction of the tribunal. I am aware that Mr Collaery is one of Timor-Leste's counsel in the proceedings.

Australia, of course, respects the proceedings and respects the arbitral tribunal. We will be represented by the Solicitor-General, Mr Gleeson SC, and by Professor James Crawford AC SC, who is the Whewell Professor of Public International Law at the University of Cambridge.

Last night, rather wild and injudicious claims were made by Mr Collaery and, disappointingly, by Father Frank Brennan, that the purpose for which the search warrants were issued was to somehow impede or subvert the arbitration. Those claims are wrong. The search warrants were issued, on the advice and at the request of ASIO, to protect Australia's national security.

I do not know what particular material was identified from the documents and electronic media taken into possession in the execution of the warrants. That will be a matter for ASIO to analyse in coming days. However, given Mr Collaery's role in the arbitration, and in order to protect Australia from groundless allegations of the kind to which I have referred, I have given an instruction to ASIO that the material taken into possession in execution of the warrants is not under any circumstances to be communicated to those conducting the proceedings on behalf of Australia.

Might I finally make the observation that, merely because Mr Collaery is a lawyer, that fact alone does not excuse him from the ordinary law of the land. In particular, no lawyer can invoke the principles of lawyer-client privilege to excuse participation, whether as principal or accessory, in offences against the Commonwealth.

I understand that the opposition was briefed by ASIO on this matter earlier today.

## **MATTERS OF PUBLIC IMPORTANCE**

### **Data Collection**

**The DEPUTY PRESIDENT** (17:34): I inform the Senate that at 8.30 am this morning Senator Bernardi and Senator Siewert each submitted a letter in accordance with standing order 75 proposing a matter of public importance. The question of which proposal would be submitted to the Senate was determined by lot. As a result, I inform the Senate that the following letter has been received from Senator Siewert:

Dear Mr President, Pursuant to standing order 75, I propose that the following matter of public importance be submitted to the Senate for discussion:

The urgent need to establish whether law-abiding Australian citizens have been subject to indiscriminate data collection.  
Is the proposal supported?



*More than the number of senators required by the standing orders having risen in their places—*

**The DEPUTY PRESIDENT:** I understand that informal arrangements have been made to allocate specific times to each of the speakers in today's debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

**Senator LUDLAM** (Western Australia) (17:35): I thank the Senate for the opportunity to bring these matters forward. We in the Australian Greens believe that this is a debate of urgency and that it is a matter of great public importance. This morning, we felt that it was urgent for the Attorney-General to make a statement of explanation about activities undertaken by our intelligence agencies in raiding a lawyer's office and interrogating witnesses hours before legal hearings got underway overseas. Three weeks ago, it was urgent to ask why the Indonesian President and his wife were under surveillance by some of these same agencies. Today, we are focusing on the urgency of what we find most alarming and which we have been raising consistently in this chamber and in the community since the first daggy power point slides from the US National Security Agency became available, introducing the concept of PRISM to wide public understanding.

The subject of this debate today is the need to establish the degree to which law-abiding Australian citizens and people all around the world are the subject of wide-scale, indiscriminate, passive, real-time or retrospective surveillance. The revelations by the brave whistleblower Edward Snowden would appear to show that the government of the United States and its allies, including Australia, have been systematically spying on the whole world. And I strongly contest the statement that our Attorney-General, the highest law officer in the land, made the other day in this chamber in which he described Edward Snowden as an American traitor. Senator Brandis, if you want to know why your standing in the general community is so low and why you are held in such casual disregard by everybody who has come across your work, look no further than a statement like that. Such surveillance, not only domestic but also extra-territorial, by various states' parties, violates the human right to privacy. Such surveillance reverses a fundamental tenet of democracy—which is that we are innocent until proven guilty—because it is a form of retroactive policing: 'We will collect all of your communications, in case you turn out to be a criminal one day.' Surveillance carried out through intelligence organisations—such as the NSA in the US, GCHQ in the UK and ASD, formerly DSD, in Australia—is all pervasive.

It quite clearly is an attempt by these agencies to capture, in real time, all digital communications by all people, whether you are a suspect in a criminal investigation or not. There are voice calls, emails, secure networks and servers. Some of the most common and ubiquitous software services and hardware services in the world appear to have been backdoored. This covers all countries, including close allies of the United States: France, Mexico and the Chancellor of Germany among many others. This data is then stored for future use, just in case anybody, including people in this chamber, ends up becoming a suspect in some sort of national security or criminal investigation.

On 20 November, the UN General Assembly passed a resolution on the right to privacy in the digital age. This resolution notes that the large-scale use of new information and communications technology has also enhanced the capacity of governments, companies and individuals to undertake surveillance, interception and data collection. It has made it possible but it is time to recognise that we need to draw limits somewhere. Just because you can do these things does not mean that you should. We use the phrase deliberately, that these agencies are out of control. Having loosened themselves from the rule of law, operating effectively at the margins of national, state and international law, they need to be reined in.

The European parliament is extremely concerned about this. It immediately established an inquiry on electronic mass surveillance, once the revelations had been made public by *The Guardian* and *The Washington Post*. The French, Canadian and German parliaments, and Westminster itself—all considered like-minded democracies—initiated inquiries immediately. This was followed by Brazil, Ecuador and many others. In the United States, the head of the NSA was called before congressional committees and told to explain himself. As it happened, he lied to one of those committees, further undermining the credibility of the agency.

On 7 October, 10 entities that run the architecture of the internet, including ICANN, the Internet Corporation for Assigned Names and Numbers, signed the Montevideo statement, which said:

They expressed strong concern over the undermining of the trust and confidence of Internet users globally due to recent revelations of pervasive monitoring and surveillance.

ICANN is not some civil-liberties non-government organisation; it is a fairly dry organisation that was created by the US government. It operates and carries out its responsibilities under an MOU with the US Department of Commerce, and all these nations and entities are breaking away.

What do we have in Australia? We have the ALP and the coalition hiding—cringing, in fact—behind the statement 'We do not comment on intelligence matters' or they claim that everything happening here and in the US

is entirely within the law. Why then refuse even the mildest terms of reference for a thorough inquiry into these matters? Until fairly recently the government's tactics were nothing more than denial, obfuscation, 'pretend it's not happening', the political equivalent of curling up into a tiny little ball under your desk and just pretending and hoping that this will all go away. But in this last fortnight we have noted a new and dangerous change in tactics and that is to attack the messenger. George Brandis called Edward Snowden an 'American traitor'. Tony Abbott and Malcolm Turnbull attacked the ABC, Australia's national broadcaster.

They were quite clearly provoked by some of the more unhinged elements of their backbench, and some of the parties such as those in Victoria that simply want to privatise the entity altogether. The voices that shrieked the loudest in February and March of this year when media-reform proposals, actually rather feeble and mild, in the opinion of the Australian Greens, were brought before this parliament, and when those media reforms were made public about the importance of press freedom underlying a democracy—arguments which were completely baseless in terms of the legislation that was brought before this parliament in those few chaotic weeks—are now the ones lining up to kick the ABC and the media organisations that have put this material in the public domain the hardest.

I was a little amused a short while ago to discover on Twitter that the National Security Agency Central Security Service releases Christmas talking points to its employees. The document says: 'NSA CSS employees are authorised to share the following points with family and close friends.' It is dated 22 November 2013. It is just amusing. I do not know whether Senator Brandis got a copy of the NSA's Christmas talking points for his speech this morning or whether he saw them on Twitter as well, but maybe he should have read all the way to the bottom. The second and third dot points, at point 5, say: 'The President and senior administration officials are reviewing NSA's programs and we stand ready to execute their policy guidance with our full support.' These programs are being reviewed, I should say, because of the revelations that were put into the public domain by *The Guardian* and its media allies, including *The Washington Post*, *The New York Times* and Australia's ABC. The NSA in its Christmas talking points goes on to say: 'We encourage the American public to work with us to define the way ahead in balancing transparency and national security. We embrace public dialogue.' If public dialogue is good enough for the US NSA, why is it not good enough for the Liberal Party and the Labor Party, who refuse to support mild terms of reference for an inquiry into the activities of these agencies and their affiliates here in Australia? Instead, they attack the messenger. Mr Abbott says the ABC is guilty of very poor judgement. Malcolm Turnbull dog-whistles. Some of the stranger inhabitants of the Liberal Party backbench, in saying that the Liberal Party has made an error of judgement—

**The ACTING DEPUTY PRESIDENT (Senator Stephens) (17:44):** Order! Senator Ludlam, your time has expired.

**Senator Ludlam:** That is such a great shame.

**Senator FAWCETT (South Australia) (17:44):** Sometimes expiry of time on some speakers is a very good thing. I appreciate the fact that Senator Ludlam feels very strongly about these issues but I do take exception to a number of the remarks he has made and the inferences he has made about the Australian government—in fact, not only the Australian government but also the Australian opposition, in this case, on how we view matters of national security.

Senator Ludlam talked about the human right for privacy. The human right for privacy? What about the human right to be safe? What about the human right to be able to live your life, whether it be in your family circumstances or in your workplace, secure in knowing that you are not about to be attacked by somebody who fundamentally disagrees with the basis of our community? What about the human right to live your life free of the fear that on holiday somewhere, whether it be in Australia or, as we have seen in the Bali bombings, your life or your wellbeing is going to be cut short by the actions of others? There is a balance and another side to every concept and, when it comes to human rights, I have to say the right to privacy, whilst important, must be held in balance, must be held in tension with the other rights that Australians expect and should deserve to have protected by their government. Security, safety and freedom from injury and fear are pretty powerful motivators to make sure that that balance is right.

In terms of the comments made about the Attorney-General and his labelling of Mr Snowden as a traitor, it may come as a surprise to Senator Ludlam that there are in fact many people in the Australian community—not the fringes, as he would identify, but in the mainstream Australian community—who do not view the actions of Mr Snowden or, indeed, the actions of the ABC, as positive things. Yes, we believe in the freedom of speech. Yes, we believe in the freedom of the media. But they also need to recognise their responsibilities when it comes to Australia's security and national interests. There is a balance there, like most things in life, and the actions in this case were not wise actions. I had over two decades in Australia's Defence Force, and one of the things we were

shown on almost day 1 when we signed up was the Australian Crimes Act section 79, which talked about anything that was classified, restricted, secret or top secret and the limitations on what we could do with that information.

For the ABC, at the end of the day a taxpayer funded organisation, to receive documentation marked with classification levels that indicated that it should not be freely circulated, it is instructive to go look at the Crimes Act and see the kinds of penalties that are awarded to people who mishandle classified information: up to seven years imprisonment for a person who receives a sketch, a plan, a photograph, a model, a cipher, a note or a document is guilty of an indictable offence if they mishandle that or give that away inappropriately. It goes right through to people who have not had proper regard or care for a sketch: imprisonment for six months. To willingly and knowingly put into the public space something that is classified and would be detrimental to Australia's interests and national security is in fact an unwise act. For Mr Snowden to have been an instigator of that and seeing the damage that will cause to his nation, I think the term that Senator Brandis, the Attorney-General, placed upon him as being a traitor is by no means unwise or inappropriate.

Is the human right, desire and obligation of the government to provide safety and security for its people a real concern here in Australia? Clearly, yes. We have seen in Bali the fact that there are people who intend to do us harm. We have seen just recently in the appeal by the three men from Melbourne who had been convicted of terror charges about the planned bombing at the Holsworthy Barracks that the DPP has now come back and appealed the sentences that they were given. Whilst the men lost their appeal, the DPP is now coming back and saying that the 18 years that they were given are actually inadequate for the crime that they committed. These three men were part of an Islamist terror cell that planned to enter the Army barracks armed with military weapons and shoot as many people as possible before they were killed or ran out of ammunition. When you have a real and present threat like that in a community, there is a reason for Australia to have an intelligence service and capabilities to make sure the Australian community is safe.

The wording of this MPI talks about 'indiscriminate data collection'. I say that there is nothing further from the truth in terms of whether this information was in fact indiscriminate. Senators would be aware that this matter of data and who collects things was closely considered in a report of the Parliamentary Joint Committee on Intelligence and Security which was tabled just this year. There are a number of measures that make sure that the intelligence that is collected is not indiscriminate. In fact, there are good protections in place that require the approval of the Attorney-General if specific information is to be required.

The committee considered many submissions. In fact there were more than 5,300 submissions made to that inquiry. But one of the interesting parts—I see Senator Ludlam nodding his head—is that many of them were form letters. That is an indication of the fact that you do get lobby groups within a community who will try to get people to raise a concern on the basis of the story that has been pitched to them. Those are still valid contributions, but what they do not do is accurately reflect the level of concern in the Australian community of people who have the balanced understanding. That is why it was instructive to see that the committee in its report did not come out and say it was black and white. The committee recognised that there were issues pro and con. They recognised that privacy was a concern, but they also recognised that on balance it was important for the Commonwealth to have security agencies and the ability to collect information. So I think it is important that, despite the diversity of views within the committee, they recognised that access to data is a critical tool that allows Australia's law enforcement and security agencies to investigate serious crimes and threats to national security.

The wording in this MPI is really quite inappropriate. The message that would trigger so many of those form letters are words like 'indiscriminate data collection', because it implies that we have rogue agencies out of control and doing whatever they like, whereas in fact, as this Senate inquiry showed—having reported in June this year—there is actually considerable oversight, considerable control and considerable constraint on what they are allowed to do. That the Greens may not like the fact that it exists does not undermine or take away the very valid justification for the existence of our intelligence agencies and the processes that they so diligently undertake.

**Senator STEPHENS** (New South Wales) (17:53): I thank Senator Fawcett for addressing the issue of the parliamentary inquiry that was undertaken by the Joint Standing Committee on Intelligence and Security last year, because that is exactly the perspective that I want to come from today, having served on that committee during the period of that investigation. I recognise that many Australians have a deep and ongoing interest in the issue of covert surveillance and telecommunications interception. I know that it is something that Senator Ludlam has been prosecuting in all the time that he has been here in the Senate. What we need to be really mindful of is that issues like these need to be dealt with through appropriate parliamentary processes. In the Australian parliamentary system the process for dealing with them is through that Joint Standing Committee on Intelligence and Security. I expect that the committee will certainly be receiving a briefing on the issues that have been revealed in the last few weeks.

In terms of the issue before us today, I certainly believe that indiscriminate data collection should be of concern to all Australians. It was absolutely borne out by the number of submissions made to the parliamentary inquiry. It is a double-edged sword, though, for our intelligence agencies. They are under fire if they do their work and we hear about it through a leak, and, if they do not do their work and something happens, the public demands to know why they were not able to prevent it. In reference to the information that was leaked by Edward Snowden in relation to Indonesia, Andrew Porter, a former adviser to former Minister Smith, wrote recently—and he really captured it:

Our intelligence agencies, like our Defence Force, deal with long-lead issues like emerging threats and changing government and economic situations in countries over years and decades. Indonesia is our most important neighbour, and we have an increasingly dynamic relationship with it; it hasn't always been so ...

However highly we regard Indonesia's government and its people, for those wondering why we might have such a strong intelligence focus in our near north, it's worth remembering that the overwhelming majority of our compatriots who have fallen victim to the scourge of terror have done so in Indonesia.

So, for all the suggestions about a lack of accountability, in fact, as Senator Fawcett so rightly pointed out, our intelligence agencies are well governed under the Intelligence Services Act. They are subject to the oversight of the independent Inspector-General of Intelligence and Security and they report to the parliament's joint standing committee on intelligence as well as to the individual agencies' respective ministers.

It might irk people to be told that privacy is not an absolute right and that a balance must be struck between privacy and other rights, including exactly the issue of the public interest in protecting the safety and security of all Australians. As we know, that is the expectation that the public have of us. That is the double-edged sword. That balancing act is a central tenet to the privacy legislation that exists both here and around the world. Where the state seeks to encroach on the privacy and other civil liberties through the exercise of intrusive powers, every legislation in every state jurisdiction suggests those powers should be exercised for legitimate purposes and not for improper reasons, should only be used when necessarily and not arbitrarily or without reasonable cause, be carried out in a way that is proportionate to their needs and not in a way that is excessively intrusive or to an extent that is overly broad, and should be shown to be effective in achieving their legitimate aims. There is a requirement to demonstrate that the intrusion has actually delivered on its purposes.

Preserving freedom under law is part of what it means to guard the national security of a democracy. To diminish freedoms unnecessarily or to disproportionately do that makes the nation insecure. I totally agree that secret policing, covert searches, surveillance, information that cannot be tested for accuracy, closed decision making and the absence of independent security of government agencies are all hallmarks of a system of government that democratic nations tend to want to secure themselves against, that is what Australia does very effectively.

There is no doubt that national security is in the public interest. However, it is very important that people understand that most security operations, such as searches and interceptions or warrants, are by their very nature invasive. That is why any proposal to consider an extension of those invasions requires such careful scrutiny and deliberation. The evidence to the public inquiry demonstrated how widely applicable data intervention is, preventing, as Senator Fawcett reminded us, several terrorist incidents, breaking up multimillion-dollar serious and organised drug, corporate crime and people-trafficking rackets—the very things that we as Australians want our intelligence agencies to do. That is why the intelligence committee took a cautious approach in its final recommendations, always seeking to balance the issues of national security and privacy. It was a unanimous report that sought to provide common-sense advice for any future government about changes to telecommunications interception, because intrusive powers must always be balanced by appropriate safeguards for the privacy of individuals and the community, recognising that Australia is a democratic nation which values personal freedom and places limits on the power of the state.

In relation to the issue of data retention and metadata, which has had so much interest and coverage, the committee determined:

If the Government is persuaded that a mandatory data retention regime should proceed, the Committee recommends that the Government publish an exposure draft of any legislation and refer it to the Parliamentary Joint Committee on Intelligence and Security for examination.

And do so in a very open and transparent way. It identified:

Any draft legislation should include the following features:

- any mandatory data retention regime should apply only to metadata and exclude content;
- the controls on access to communications data remain the same as under the current regime;
- internet browsing data should be explicitly excluded;

- where information includes content that cannot be separated from data, the information should be treated as content and therefore a warrant would be required for lawful access;

That is currently the case. It went on:

- the data should be stored securely by making encryption mandatory;
- save for existing provisions enabling agencies to retain data for a longer period of time, data retained under a new regime should be for no more than two years;
- the costs incurred by providers should be reimbursed by the Government;
- a robust, mandatory data breach notification scheme;
- an independent audit function be established within an appropriate agency ... ; and
- oversight of agencies' access to telecommunications data by the ombudsmen and the Inspector-General of Intelligence and Security.

So we need to think more wisely about the issues that have been talked through today, particularly in the light of the discussion of what has gone on in the last few weeks. We need to know, and we need to reassure Australians, that we do have a very robust data surveillance scheme. It is not one that intrudes into the lives of people in the way that Senator Ludlam would like to suggest and it is one that is working for Australia.

**Senator DI NATALE** (Victoria) (18:02): I think it was Senator Fawcett who suggested that this is a question of getting the balance right. We agree with Senator Fawcett. This is a question of getting the balance right. We need to assess the need for privacy against the need to ensure that we keep our citizens safe. The reason that we are having this debate today is that we have got the balance wrong. We are not talking now about the activities of our intelligence agencies protecting Australian citizens; we are talking about our intelligence agencies being involved in activities with some of our poorest neighbours and trying to ensure that we get maximum financial advantage in negotiations with a nation that is—let us be clear about this—one of the poorest nations on earth, East Timor.

I was fortunate enough to be in East Timor only recently. Young children there cannot afford to get nets to prevent malaria. There is a huge incidence of malaria. They have an epidemic of HIV and an epidemic of TB in that nation. And here we are using the full force of our intelligence agencies to try and deprive them of an income to which they are absolutely entitled. In the bitter dispute that we had with them about the ownership of the gas reserves between our two nations, we employed our security agencies to try and get maximum financial advantage for the people of Australia. That is not what our intelligence agencies were set up to do. We have the balance very, very wrong.

In other parts of the world we have a situation where the issue of not just national intelligence agencies but a range of corporations being involved in surveillance of citizens has sparked outrage. In the US the National Security Agency was using the PRISM program to spy on customers using Microsoft, Yahoo, Google, Facebook et cetera, and it caused outrage, not just from the usual suspects, not just from people who are concerned about civil liberties, but from parliamentarians and leaders of nations, who called in US ambassadors to explain what was happening.

Here in Australia the response has been stony silence. We have seen almost a conspiracy of silence between the Labor Party and the Liberal Party on this issue. I wonder how much of this stems from the relationship that we have with the US. I think the sign of a mature relationship is when you can stand up on your own two feet and voice your own view of these important international issues. We do not want decisions that were once made for us in London to be made for us in Washington. We have a situation where the response to the debate has been: 'We don't comment on international security matters.' That is despite the fact that the NSA itself admits that there have been 15,000 violations of US law.

We know what happened about three weeks ago with the *Guardian* and the ABC, who broke the story about our government hacking the Indonesian President's phone and the phones of his wife and ministers. There were a number of commentators—and many members of this place—who challenged the legitimacy of those media outlets to raise what were very serious issues, not just serious moral issues but illegal activities under article 41 of the Vienna Convention on Diplomatic Relations, which says very clearly:

Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

And yet here in this place people are challenging the legitimacy of the organisations who have reported this.

Thankfully, we have newspapers like the *Guardian* which are now doing the job that our parliamentarians should be doing. We have got, for example, the director of Big Brother Watch, Nick Pickles, who says that

newspapers around the world, from the *Guardian* to the *Washington Post* and *Der Spiegel*, have done what our own parliamentary oversight committee and other oversight bodies failed to do. They have exposed unprecedented surveillance being undertaken without the knowledge or approval of our elected representatives. It is also important to note here that our own parliamentary oversight committee has not yet been established for this parliament. So while that is being offered here as a justification for how these matters should be dealt with, we do not yet have a parliamentary oversight committee.

A lot of the focus here has been on the role of the media. I note that in one exchange Mr Rusbridger, the editor of the *Guardian*, was questioned by an MP, Mark Reckless. Mr Rusbridger was asked if he loved his country. I think a true patriot is one who defends the principles on which our nations are founded, the principles that mean that we live in a democratic country where individuals are free to communicate with each other without the fear of the overreach of the state. I think it is the definition of patriotism to stand up to state power, to stand up for the rights of the individual to express a view without fear of retribution from the powerful. In fact, it is absolutely an act of true patriotism to have done what those media outlets have been doing.

But this is not just about the impact it is having on the leadership of those nations; it is also about what it does to the relationships between governments and their citizens. The Greens have got some very constructive ways of dealing with this issue. The first thing I would like to draw the attention of this place to is the fact that, while briefings have been offered to the Leader of the Opposition as well as obviously the Prime Minister, the Greens have been denied a briefing from ASIO. Senator Scott Ludlam, who has been one of the most important voices in this national debate, has been denied a briefing from ASIO. At the very least, if both sides of politics want voices like the Greens to be satisfied that what is being done is being done in the national interest then surely the Greens should be entitled to a briefing from our foremost intelligence agency.

There are many other things that we can do. We can bring security agencies within the ambit of our Freedom of Information Act. Even the CIA and FBI do not enjoy the blanket protections that our intelligence agencies here enjoy. We should ensure security agencies are in the reporting requirements of the TIA Act. We think that the Greens 'get a warrant' bill should apply in the telecommunications space. I heard Senator Ludlam ask a question about the need to access data from some of our telecommunications companies. He was asked, 'Isn't it inconvenient that we should require a warrant to access telecommunication data?' Senator Ludlam said, in the way that only he can, 'That is the only thing that separates us from a police state.' That small inconvenience is what separates us from being a police state.

We can also make sure that we promptly make data breach notifications mandatory and make sure we can also require Australian companies and IT providers to advise customers if they have agreements with foreign or domestic governments. There are many other things. But what we need to do is to ensure that this issue is now seen not just through the prism of national security but the huge infringement on the liberties of individuals in this country.

**Senator SESELJA** (Australian Capital Territory) (18:11): Before I get to the substantive part of my speech, I would like to respond to some of what has been put on the record by the Greens. Firstly, I reject the implicit premise of this matter of public importance, which is that effectively we are seeing indiscriminate data collection right now, that somehow we have security agencies out of control. That is the impression that the Greens are trying to create. It is an impression that I reject and I think most right-thinking Australians would reject it. I agree with Senator Stephens and with Senator Fawcett that we have robust systems in place in order to protect Australian citizens and to ensure that, in balancing Australians' right to privacy and to go about their daily business without undue interference from the state, the importance of our intelligence agencies doing their jobs is also recognised. That is the apparatus that has been set up by successive governments and has been refined over time by this parliament.

If the Greens' argument is that somehow that is a broken system, I have not heard them make their case in any substantive way. In fact, what we have heard is just a bunch of conspiracy theories from Senator Di Natale and others. He says we are not getting the balance right and makes all sorts of allegations without evidence. He talks about a conspiracy of silence between the major parties. No, what we have had is cooperation. What we have had over a long period of time, to Australia's credit, is that both sides of politics in the main have worked to ensure that we get the balance right, to ensure that our intelligence agencies can do their jobs. Let us not underestimate how important this work is. This can be the difference between a terrorist attack occurring or not occurring. Good intelligence is critical to the security of our nation and I think the Greens' view of the world seems to be to undermine that at every turn. It is the Greens' view of the world that treats the Edward Snowdens of the world as heroes rather than traitors to their country. I will go to some of the issues in the Joint Committee on Intelligence and Security report and I will expand on some of what Senator Fawcett had to say on that, and Senator Stephens touched on some of that as well.

We should also put on record that there are a number of laws protecting the privacy of Australians. We have not just the Privacy Act but also the Telecommunications (Interception and Access) Act and the Telecommunications Act. These relate to the collection of data and access to that data. As other senators have noted, we also have oversight. We have the Inspector-General of Intelligence and Security and we have the joint standing committee. These are the processes that we have put in place: robust legal requirements to ensure that our intelligence agencies can do their jobs.

The report of the Joint Committee on Intelligence and Security, which has been mentioned, made 43 recommendations—obviously, there was a range of views—and I want to touch on some of the conclusions of that committee. The committee was asked to apply:

- tailored data retention periods for up to 2 years for parts of a data set, with specific timeframes taking into account agency priorities, and privacy and cost impacts.

The committee devoted an entire chapter of the report to its analysis on data retention. There was a diversity of views within the committee as to whether there should be a mandatory data retention regime. This is ultimately a decision for government. The committee recommended that the government publish an exposure draft of any legislation and refer it to the committee for examination. The committee recognised that access to telecommunications data is a critical tool that allows Australia's law enforcement and security agencies to investigate serious crime and threats to national security. The committee's report states:

There is no doubt that the enactment of a mandatory data retention regime would be of significant utility to the national security agencies in the performance of their intelligence, counter-terrorism and law enforcement functions.

The report also states:

... the utility of such a regime is not the only consideration. A mandatory data retention regime raises fundamental privacy issues.

This has been acknowledged. The committee correctly noted that reconciling the fundamental public values of public safety and privacy is a decision for government.

The committee provided guidance on how a data retention regime could be implemented by including, among others, the following features:

- any mandatory data retention regime should apply only to meta-data and exclude content;
- ...
- internet browsing data should be explicitly excluded;
- ...
- the data should be stored securely by making encryption mandatory;
- ...
- data retained under a new regime should be for no more than two years;
- the costs incurred by providers should be reimbursed by the Government;
- a robust, mandatory data breach notification scheme;
- oversight of agencies' access to telecom indications data by the ombudsman and the Inspector-General of Intelligence and Security.

The committee further recommended that:

If ... a mandatory data retention regime should proceed:

- there should be a mechanism for oversight of the scheme by the Parliamentary Joint Committee on Intelligence and Security;
- there should be an annual report on the operation of this scheme presented to Parliament; and
- the effectiveness of the regime be reviewed by the Parliamentary Joint Committee on Intelligence and Security three years after its commencement.

The committee made detailed recommendations about the type of safeguards, oversight and accountability mechanisms that should be put in place if the government were to decide to implement a data retention scheme. The committee recommended against any regime which included content data or internet browsing data. It offered specific guidance on the oversight, review and reporting arrangements.

It is fundamentally important to our national security that our intelligence agencies be allowed to do their jobs. There are numerous restrictions and numerous aspects of oversight when they are doing those jobs.

**Senator Ludlam:** How about East Timor?

**Senator SESELJA:** We hear heckling from the Greens. They have made all sorts of wild claims. They are claiming a broken system when the system is not broken. I think that this extreme view of the world, as espoused by the Greens and as we are hearing here across the chamber, is something that the vast bulk of Australians reject. They do not accept the conspiracy theories. They do not believe you on the conspiracy theories. This claimed conspiracy of silence that we heard from Senator Di Natale just does not exist. What exists is a robust mechanism and a robust regime for ensuring that we do get that balance. The Greens seem intent on disrupting that. They seem intent on calling that into question. They seem intent on doing so without the evidence and with all sorts of half-truths and spurious claims. It is the Greens' view of the world that the Edward Snowdens of the world are in fact heroes; they are not and they should not be upheld as heroes in this place.

The coalition believes fundamentally in this robust scheme. It needs to be continually improved, but it is not improved by the hysterical claims that we hear from the Greens consistently in the media or by some of the hysterical claims we have heard from the Greens in this place today.

**Senator XENOPHON** (South Australia) (18:20): This is an important issue, but I want to give a different perspective in relation to the matters raised. I do not question the need for surveillance to prevent terrorist acts and criminal activity and to assist in those responsible for those acts and activities being caught. There is no question about that. I hear very clearly what Senator Fawcett said earlier in his contribution and I do not disagree with him. But it is appropriate to question the level of surveillance and whether there are appropriate safeguards and checks and balances, and I do not believe that there are.

In relation to metadata surveillance, there is something like 300,000 metadata searches each year in this nation. The bodies that have authority for such metadata surveillance include city councils—for instance, the Bankstown City Council—the RSPCA and even the Victorian Taxi Directorate, because they can obtain your phone and email records in the context of their statutory powers under the legislative framework. I think we need to look very closely at the safeguards in the Telecommunications (Interception and Access) Act 1979. It needs to be reviewed.

The other issue that I have great concern about is the ability of journalists and members of parliament to do their job in the context of dealing with whistleblowers, members of the public and public servants that may have information of malfeasance, of maladministration, of corruption in government or of, simply and importantly, taxpayers' money being wasted. These are issues that need to be dealt with. What we have now is a situation where there are inadequate safeguards. I have been pursuing this for a number of months, and on 18 November Australian Federal Police Commissioner Tony Negus conceded, after a series of questions I put to him in Senate estimates, that there are a number of members of parliament—less than five; presumably four—who have had their records intercepted in the context of investigations under sections 70 and 79 of the Crimes Act. Those are the sections that relate to whistleblowers coming forward to members of parliament. We need to have safeguards in place so members of parliament and journalists can do their work without fear of their sources—whistleblowers—being uncovered through metadata surveillance.

Let us look at what the US Department of Justice has done. I will be moving a series of measures next week based not on what a totalitarian government is doing, but on what the Department of Justice of the United States government is doing. I urge senators and members in the other place to read the guidelines issued on 12 July 2013 by the US Department of Justice, the *Report on review of news media policies*. This is what they are doing. There are presumptions to ensure that notice is given to media outlets, in all but the most exceptional circumstances, of metadata surveillance. There is advance notice given to members of news media of the opportunity to engage with the department regarding the possible use of this. There are enhanced approvals and heightened standards. These are very important matters. That is what we should be doing here, and the level of judicial overview they have in the United States is much greater.

I want to turn finally and, I believe, very importantly to the matters raised by the Attorney-General today about the raid carried out by ASIO on the offices of solicitor Bernard Collaery, who is currently in the Hague on an arbitration between Timor-Leste, which he represents, and the Australian government. I pay tribute to the Attorney-General and welcome his ministerial statement today. It is a very useful statement and I accept the Attorney-General acted appropriately on the advice of ASIO in approving the raid. I also accept without equivocation that he has conducted his role with integrity; he is a person of integrity. However, I query whether the collateral consequence—the cancellation of the passport of the star witness in the arbitration for Timor-Leste—has, in fact, prejudiced Timor-Leste in relation to the arbitration. That is a legitimate issue. This is not a criticism of Mr Irvine, who I believe has served his country very well over many years. He is now the director-general of ASIO. He initiated the warrants which deal with matters he allegedly dealt with as director-general of ASIS back in 2004. I am not suggesting he has done anything wrong, but I think there is a perception of safeguards, checks and balances that ought to be considered in any review.



We need to review this. We need to have issues of security first and foremost but we also need to have, parallel to that, members of parliament and journalists able to do their jobs in the public interest. Right now, our level of surveillance, our laws, and our checks and balances fall way behind those of the United States of America. That is something we really need to consider. We could do a lot worse than use the guidelines of the US Department of Justice, which have given great comfort to news organisations. We need to do something similar in order to do our work as members of parliament.

**Senator SINGH** (Tasmania) (18:26): In speaking to this MPI today I would like to first acknowledge and recognise Senator Ludlam and the work he has done in prosecuting this issue for some time now, and also recognise the work of Senator Stephens, who was on that parliamentary Joint Committee on Intelligence and Security and the particular inquiry in question into the potential reform of national security legislation. Senator Stephens alluded to that particular inquiry earlier today and went into some detail as to the work that was carried out over an extensive period. It was broad-ranging in its look at the issues which pertain particularly to this MPI—that is, in relation to indiscriminate data collection.

Indiscriminate data collection is of concern to all Australians and rightly so, because at the end of the day we have to get the balance right when we are talking about privacy and security. That is what is really at the heart of this. That is what the Australian people want to know. They want to know that their civil liberties are maintained while at the same time they are protected by those security agencies that uphold our national interest in this country.

That is where it comes back to the importance of the integrity of the rule of law. If the rule of law is upheld no-one really has anything to worry about, but that is what it really comes down to. We are a democratic nation. We operate under the rule of law in this country. We as parliamentarians legislate to protect the Australian people, but in doing so we have to ensure that the rule of law is upheld while striking the right balance between the privacy and the safety of the Australian public. Therein lies the challenge.

Labor has a long history of establishing privacy legislation, introducing the Privacy Act in 1988, and we stand very much by our commitment to protect the privacy of Australians. We stand by our commitment to do that, which started to be further broadened when the then Attorney-General Nicola Roxon made a commitment to send some of this work to that parliamentary inquiry—the parliamentary Joint Committee on Intelligence and Security—to look at that inquiry into potential forms of national security legislation.

It did look at a wide range of areas in relation to changes to the Telecommunications (Interception and Access) Act, including the interception of metadata. I have been looking at some of the recommendations. There are some 43 recommendations that came out of that joint committee but some of them particularly—and Senator Stephens alluded to some of them earlier—talked about the proportionality of the investigative need and the privacy intrusion. That is where it comes back to—that balance of ensuring privacy and security—and finding an equal path in our rule of law.

Of course, as a democracy, Australia participates in data collection. We all know that. We have all known that for a long time. It happens through our network of intelligence agencies. In relation to that kind of national security framework of networks—which of course encompass all the security agencies as well as federal, state and territory governments—it has very well defined responsibilities and authority within the rule of law in Australia. What is critical is for the agencies to work within their authority to ensure that civil rights are not encroached upon and, with our proud history in Australia of freedoms, the importance of maintaining those boundaries can never be underestimated.

But if there is to be investigation or deliberation about an inquiry into that national framework, then we need to ensure that it would balance privacy and national security. That is a discussion that Labor would be happy to have, as my colleague the shadow Attorney-General Mark Dreyfus has said, and I do not think that debate really has occurred yet. It is a debate that is worth having. And that is what is really at the heart of all of this—striking that right balance. It is what is important to the Australian public. People want to be reassured that the work carried out by our intelligence agencies is done according to the rule of law and is done in accordance with the national interest. That is what governments need now to provide to the Australian people.

Among other things there is, as I said, a report with 43 recommendations on the table for Senator Brandis to take up now as Attorney-General, now in government, and to do something with. A lot of the work in this area has already been done so it really is up to the new government to work out what it is going to do and to provide that reassurance to the Senate and to the Australian people. The sooner that happens the better. In the meantime, let us have the debate, let us have that discussion about our national security framework and about some of the areas that this particular MPI has discussed—one of those being metadata access.

We know that metadata access is there. We have our privacy of communications protected by the Telecommunications (Interception and Access) Act, which prohibits the listening to, copying or recording of a communication as it passes over an Australian telecommunications system. As Senator Xenophon says, that act needs to be looked at. Yes, that act does need to be looked at and that is exactly what that joint committee did. It looked at it to ensure that the adequate safeguards are in place. Again, that is where I draw back to the work that was done by that committee.

Of course, we know that metadata is collected. That has been out there well and truly for a while now, maybe even before what has been highlighted in the media in recent days. But in doing that, national security agencies as well as police will know that to go further they must obtain an independently issued warrant for the investigation of really serious offences. Why is that the case? Because it is an invasive activity. It is invasive of privacy. But, if it is a serious offence, a warrant is issued and the outcome can be for the national interest.

An obvious example is what happened in relation to the metadata that was collected by such agencies to track down the murderer of Jill Meagher. It was a good example—a horrible example—of where metadata has been used in the public interest and to ensure such serious offences are dealt with. There are probably many other examples of metadata in Australia but we need to get back to what this is really all about, and that is striking that right balance—the right to privacy and the right of public interest to be protected. It is about striking a balance between those two key things and for the government to act on the outcomes of the inquiry.

**The DEPUTY PRESIDENT:** The time for the debate has now expired.

### Timor-Leste

**Senator MADIGAN** (Victoria) (14:48): My question is to the Minister representing the Minister for Foreign Affairs, Senator Brandis. On 20 May 2002 Timor-Leste officially became an independent nation. On the same date they signed the Timor Sea treaty with Australia. Some argued Timor-Leste may not have realised the true implications of signing the treaty during their final hours of duress and, as such, this has culminated in the current situation we are in with the CMATS dispute before arbitration at The Hague. Can the minister outline specific attempts over the past 12 months that Australia has made to engage Timor-Leste to resolve these disputes locally, and explain why we were prepared to negotiate a median line with New Zealand in 2004 but have not been able to do the same with Timor-Leste?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:49): I thank Senator Madigan for his question and I thank him for the courtesy of giving me advance notice of his question. I begin by pointing out to Senator Madigan that the treaty that is the subject of proceedings commencing today in The Hague is not the Timor Sea treaty. The Timor Sea treaty is strongly supported by the governments of both Australia and Timor-Leste. The treaty that is the subject of proceedings in The Hague is a subsequent treaty—the Treaty on Certain Maritime Arrangements in the Timor Sea—and it is that separate treaty which the government of Timor-Leste criticises.

The notice of arbitration and the reference to the arbitral tribunal in The Hague was filed by the government of Timor-Leste on 23 April this year but, prior to that, on 18 February this year officials of the Australian government met with officials of the government of Timor-Leste in Bangkok in order to discuss this dispute. In fact, the Timor Sea treaty, which does provide a dispute resolution mechanism which has been adopted by the CMATS treaty, actually provides for prior consultation as a condition precedent to invoking the arbitration procedure. One of the grounds on which Australia disputes the jurisdiction of the arbitral tribunal in The Hague is that we contend that the government of Timor-Leste has not sufficiently engaged in or exhausted the prior consultation machinery before referring the matter to arbitration.

**Senator MADIGAN** (Victoria) (14:51): Mr President, I have a supplementary question. Earlier this year, I said in the chamber that if Australia were smart we would give in to Timor-Leste's request for a pipeline to Timor-Leste. If we are ethical and would negotiate the boundary and make a fresh start, can the minister outline whether it is the government's opinion that, if Australia were to modify as much of the CMATS treaty as to allow for a pipeline to be built to Timor-Leste, we consider Timor-Leste would pursue arbitration through The Hague?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:52): First of all, might I point out that the issue of a pipeline—as I am advised—has not been raised by the government of Timor-Leste in the arbitration. So far as the case being propounded by the government of Timor-Leste is revealed by documents thus far filed in the arbitration, no issue of a pipeline has arisen. The Australian government stands by the CMATS treaty. We consider that it was a treaty negotiated fairly and in good faith and we will defend these proceedings. But the particular issue that you raised of a pipeline has, at least so far as is disclosed by the documents filed by the government of Timor-Leste, not arisen.

**Senator MADIGAN** (Victoria) (14:53): Mr President, I ask a further supplementary question. Can the minister outline the expected additional cost to the taxpayer to represent Australia at The Hague in the current dispute?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:53): No doubt, there will be some cost. What the actual figure is I have not been able to obtain in the time since I have had notice of your question but I will get back to you on that. Australia is represented by the Solicitor-General, Mr Gleeson. It is also represented by Professor James Crawford, who is, as I said yesterday, the Whewell Professor of Public International Law at the University of Cambridge. So there will no doubt be some costs in Australia defending these proceedings in the arbitral tribunal. However, those costs I am sure are negligible by comparison to the benefit to Australia of its rights under the CMATS treaty, which we appear before this arbitration to defend.

### East Timor

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (14:13): My question is to the Minister representing the Minister for Foreign Affairs, Senator Brandis. Is the minister aware that East Timor's natural resources minister, Mr Alfredo Perez, has said that the alleged espionage by spies undercover as aid workers has ruptured trust. If so, what implications does this ruptured trust have for the safety of Australian aid workers working around the world, given that now they may be suspected as spies?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:14): Thank you, Senator Milne, for the question. I have seen those statements. The statements were made in the context of an arbitration that is currently on foot between Australia and Timor-Leste, which commenced with a directions hearing at The Hague last week. The honourable senator would not expect me to comment on proceedings before an arbitration, nor, I would have thought, would the honourable senator expect me to comment on allegations in relation to intelligence matters.

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (14:15): The question was about the safety of our aid workers around the world, and I ask again: what are the safety implications for them as a result of these allegations? What are the implications for the effectiveness of Australian aid programs now that those programs are dependent on cooperation with government agencies and NGOs in other countries? How can we be sure that that cooperation will continue to be extended?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:15): The claims that have been made against Australia in the arbitration of Timor-Leste are disputed by Australia. Beyond making that perhaps obvious point, I have nothing to add to my earlier answer.

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (14:15): Will the government be establishing an inquiry into these allegations of aid workers being used as a cover for spying and, if not, what action is the minister going to take to make sure that Australian aid programs are not used as cover for espionage, in order to rebuild trust with our partner countries?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:16): Australia does not accept the allegations. Australia disputes the allegations. Beyond that, as the honourable senator ought to know, it is not the practice of any Australian government to comment on intelligence matters.