

Transcript from Australian Parliament Hansard, 26 May 2014
Senator Xenophon questions Inspector-General of Intelligence and Security

Finance and Public Administration Legislation Committee - Estimates - PRIME MINISTER AND CABINET PORTFOLIO - Office of National Assessments

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CHAIR: I now welcome to the table officers from the Inspector-General of Intelligence and Security. Would you like to make an opening statement?

Dr Thom : No, I do not wish to make an opening statement.

Senator XENOPHON: Dr Thom, you issued a statement on 6 December last year stating that no current or former ASIS officer has raised concerns with the office about any alleged Australian government activity with respect to ASIS activities in East Timor. Are you familiar with that statement?

Dr Thom : Yes I am. I have it in front of me.

Senator XENOPHON: In respect of that statement you state in the fifth paragraph:

I have spoken to my predecessor and he has confirmed that to the best of his recollection no current or former ASIS officer raised concerns with his office about any alleged Australian government activity with respect to East Timor, during his term as IGIS, and that he had no discussion with any former or current ASIS officer about any such concerns.

Dr Thom : That is correct.

Senator XENOPHON: Bernard Collaery's statement in the 156th Report of the Senate Privileges Committees, which was released this month, asserts that in 2008 a former ASIS officer approached the then Director-General of Intelligence and Security, Mr Ian Carnell. Have you had a chance to see what Mr Collaery has said in respect of that?

Dr Thom : I have seen his statement in the Senate.

Senator XENOPHON: As a result of seeing his statement to the Senate Privileges Committee are you undertaking any lines of inquiry in respect of that?

Dr Thom : No.

Senator XENOPHON: Are you now in a position, though, to alter your statement of 6 December 2013?

Dr Thom : I stand by my statement.

Senator XENOPHON: In what respect? You say that you spoke to your predecessor. So you accept that your predecessor has no recollection of any complaints made in respect of any alleged Australian government activity with respect to East Timor?

Dr Thom : All I can do is repeat the words of my statement saying I have spoken to my predecessor—

Senator XENOPHON: No, let's not waste time on that. Your statement is on the public record. As a result of Mr Collaery's statement to the Privileges Committee, and his public statement, you do not concede that there may have been an approach made to your predecessor in respect of these matters. I am not criticising your predecessor, per se. I am saying that he may not have remembered it. But you are saying that you have no cause to in any way modify your statement of 6 December.

Dr Thom : I conducted a comprehensive search of our records and I spoke to my predecessor and I have no reason to change my statement.

Senator XENOPHON: So there was no correspondence in respect of the allegations made by Mr Collaery?

Dr Thom : I cannot comment on Mr Collaery's statement at all.

Senator XENOPHON: It relates to Witness K. You are familiar with the Privileges Committee?

Dr Thom : I am familiar with his statement. I have read his statement.

Senator XENOPHON: It refers to a Witness K, and obviously the witness has to be protected, for obvious reasons, as a former ASIS officer. Have you contacted Witness K, for instance?

Dr Thom : I cannot comment on any particular potential complainant, alleged complainants, or complaint to my office. I cannot give any details of any specific matters at all.

Senator XENOPHON: So you cannot even tell this committee that as a result of the statement of Mr Collaery to the Senate Privileges Committee, which makes reference to allegations of Witness K writing to your predecessor back on 25 March 2008, and an allegation that on 2 April 2008 Mr Carnell wrote to Witness K—have you looked for the correspondence referred to in the allegations made in the Privileges Committee document?

Dr Thom : I cannot comment on any records I have in my office regarding any complaint, and that is not to say that any complaint was made. I cannot really comment on any of the functions of my office.

Senator XENOPHON: I find your answers extraordinary. But going back a step, you have said that you stand by your statement of 6 December 2013. You are able to say that?

Dr Thom : Yes.

Senator XENOPHON: And can you say that as a consequence that you have read the document referred to by Mr Collaery to the Senate Privileges Committee? Can you say that?

Dr Thom : I have read the report the Senate Privileges Committee—

Senator XENOPHON: Which is effectively a statement. It is a right of reply, if you like. You have read that?

Dr Thom : Yes, I have read that.

Senator XENOPHON: Can you tell this committee whether you have made any inquiries whatsoever as a result of the statement of Mr Collaery to the Senate Privileges Committee?

Dr Thom : I made a full and comprehensive search of our records to prepare this statement—

Senator XENOPHON: This statement is dated 6 December. This report of the Senate Privileges Committee is dated May 2014. When did you see the statement of Mr Collaery?

Dr Thom : It would be in the last couple of days.

Senator XENOPHON: Right. So at the time you made the statement of 6 December 2013, had you seen the statement of Mr Collaery?

Dr Thom : No, I could not have.

Senator XENOPHON: That makes sense to me, just in terms of the time line. As a result of the allegations contained in Mr Collaery's statement, and given your statutory powers and your statutory functions as set out in particular in section 8 subsection (2), and in particular section 8(2)(a)(iii), have you made any further inquiries in respect of that?

Dr Thom : I am aware of the searches that were conducted at the time, and I had no reason to believe that the search that was conducted in December would not have turned up any relevant information.

Senator XENOPHON: Although, in the statement, Mr Collaery makes specific reference to dates of 25 March 2008, about Witness K writing to your predecessor, and about your predecessor writing back to Witness K on 22 April 2008.

Dr Thom : My search covered all documents in the office post-2004. It would have uncovered all relevant documents.

Senator XENOPHON: And those searches were after you read Mr Collaery's statement?

Dr Thom : No. The search was conducted to prepare the statement in December.

Senator XENOPHON: Sure, but you did not see at the time you prepared the statement—6 December 2013—Mr Collaery's statement that was referred to in the Senate privileges committee's 156th report?

Dr Thom : No I had not seen that statement. That is correct.

Senator XENOPHON: As a result of now having seen that statement subsequent to the preparation of your report on 6 December 2013, what steps will you be taking—including speaking to Witness K?

Dr Thom : At the moment, I do not intend to take any further steps.

Senator XENOPHON: Are you suggesting that Witness K is mistaken?

Dr Thom : I am not suggesting anything.

Senator XENOPHON: Are you suggesting that Mr Collaery is mistaken?

Dr Thom : I am not suggesting anything.

Senator XENOPHON: Are you suggesting that Mr Carnell is mistaken?

Dr Thom : I am not commenting at all on that.

Senator XENOPHON: But what you can tell this committee, given your very clear statutory powers in section 8 of the act that establishes your functions and powers, is that you prepared a report on 6 December. Subsequent to the preparation of that report, further information and allegations were made by Mr Collaery making specific reference to Witness K, and you have not taken any further steps since that?

Dr Thom : That is correct.

Senator XENOPHON: And you are not planning to do so?

Dr Thom : At the moment, I am not planning to take any further steps.

Senator XENOPHON: Will you be reconsidering it as a result of this recently published report of the Senate privileges committee?

Dr Thom : At the moment, I am not planning to take any further steps.

Senator XENOPHON: Even though you have certain statutory powers in relation to the propriety of the particular activities of an agency?

Dr Thom : I do have statutory powers, yes.

Senator XENOPHON: So there are no alarm bells, red flags or yellow flags that you should be looking at this further?

Dr Thom : As a result of this particular statement, no.

Senator XENOPHON: Can you confirm that Witness K has not been approached by you?

Dr Thom : I cannot confirm anything in terms of the activities of my office.

Senator XENOPHON: Let us go again to the issue of Timor-Leste in relation to an undertaking given to the International Court of Justice by the Australian government that the Australian government will not be examining any of the Mr Collaery's documents in relation to the case. Are you familiar with the undertaking?

Dr Thom : I understand that there is an undertaking . I am not familiar with the exact terms of the undertaking, but I understand there is an undertaking.

Senator XENOPHON: Do you see it within the purview of your functions and powers to examine the terms of that undertaking?

Dr Thom : I do not oversee actions of the minister, so, in terms of the terms of the undertaking, no. However, if the Attorney-General had given an instruction to an agency, I would consider it to be within my powers to ensure that the agency agreed with the instruction given.

Senator XENOPHON: Who checks the undertaking, in your view? Given that it relates to intelligence and given that it related to allegations in respect of ASIS?

Dr Thom : Could you repeat that question?

Senator XENOPHON: Who checks the undertaking there?

Dr Thom : I do not understand what you mean by 'who checks the undertaking'.

Senator XENOPHON: There is an undertaking given. It relates allegedly to activities by ASIS in respect of East Timor a number of years ago. That is a subject of the International Court of Justice proceedings. Undertakings have been given. Do you consider that your office has a role to, firstly, examine the undertaking and, secondly, to ensure that the undertaking is being complied with, given the subject matter of the proceedings in the International Court of Justice?

Dr Thom : If the Attorney-General was the decision maker in respect of an undertaking, my office does not have a role in looking at the terms of the undertaking. If the Attorney-General gives an agency instructions as to how the undertaking should be implemented, it would be my role to ensure that the agency followed those instructions.

Senator XENOPHON: So that means you have a role to ensure that the documents that have been sealed under the terms of the undertaking remain sealed?

Dr Thom : Yes.

Senator XENOPHON: Have you had any role to ensure that that is the case?

Dr Thom : I have been briefed by ASIO and they have given me assurances as to how they are protecting the documents.

Senator XENOPHON: And you have accepted the assurances on face value?

Dr Thom : Yes.

Senator XENOPHON: You may remember 23 April, when Senator Marshall, who is not here, pulled me up for being outside the terms of reference of that inquiry into telecommunications powers in relation to the issue of economic benefit—in other words, how do you distinguish between spying for the economic wellbeing of Australia versus the wellbeing of a particular company or companies? That relates to the powers contained in section 11(1) of the Intelligence Services Act. Do you recollect that interchange?

Dr Thom : I do.

Senator XENOPHON: I think you were going to take some of those matters on notice, so it is no surprise to you that I am raising those matters with you now. What is the test for determining whether the activities of ASIS relate to the economic wellbeing of Australia versus the wellbeing of a particular company or companies?

Dr Thom : I said at the time, and I will repeat now, that there is no simple test that can be applied in such matters.

Senator XENOPHON: I can do complex. Can you tell me what the complex test is?

Dr Thom : It is important to note that the functions of all the foreign intelligence agencies are to obtain intelligence in accordance with government's requirements. That is information or intelligence

about the capabilities, intentions or activities of people or organisations outside Australia and to communicate in accordance with the government's requirements of such intelligence. So let us first remember that it has to reach the threshold of being in accordance with the government's requirements. The government's requirements for intelligence are set by the National Security Committee of cabinet. They set the priorities which guide collection by ASIS and other intelligence agencies. Australia's national security, foreign relations or national economic wellbeing are overlapping categories. You cannot always clearly differentiate between the three.

Senator XENOPHON: Can we pause there. I am grateful for your answer. If an espionage objective—or spying target, to put it colloquially—is considered to be to the economic wellbeing of an Australian owned or majority Australian owned firm, is that a factor, and I will not put it any higher than that, that can be considered to be a sufficient criterion to also deem it to be to the economic wellbeing of Australia in the context of section 11(1) of the Intelligence Services Act?

Dr Thom : I am not part of the decision making to decide what the government requirements for intelligence are.

Senator XENOPHON: But do you have a role to ensure the limits on the agencies' functions as set out in section 11(1) of the Intelligence Services Act? That section provides:

The functions of the agencies are to be performed only in the interests of Australia's national security, Australia's foreign relations or Australia's national economic well-being and only to the extent that those matters are affected by the capabilities, intentions or activities of people or organisations outside Australia.

You do not see that your office has a role to determine whether the limits on the agencies' functions are appropriately applied?

Dr Thom : Yes, I do have a role to ensure that the agencies act within the limits of their functions.

Senator XENOPHON: And, in order to determine whether they are acting within the limits of their functions, don't you need to apply some form of criteria or tests in order to perform your role?

Dr Thom : Yes, I do and I was explaining that those tests are complex. The first test would be to ensure that it was in accordance with government requirements. Then it would be looked at to see whether it related to, as you said, foreign relations, economic wellbeing or national security. I explained that those tests are not discrete tests; things can overlap. For example, cooperation with allies in relation to the prevention of terrorism could be for the purpose of both national security and foreign relations.

There are not many public documents that describe the subjects of intelligence reports, particularly for ASIS. The director-general of ASIS gave a public speech a couple of years ago and he described the type of thing that was covered by ASIS reporting. As he described it, it covered everything from political developments to economic growth to defence modernisation to social cohesion. He also described that ASIS intelligence reporting:

... can also improve the quality of strategic decision-making, assisting government in the prosecution of Australia's defence, foreign and trade interests, helping to enhance regional stability and avoiding strategic miscalculation.

For example, intelligence about economic growth in a particular country could be for foreign relations and also national economic wellbeing. So national economic wellbeing is a broad umbrella, if you like, and there are many areas of intelligence collection that could fall under it. The prosecution of Australia's trade interests could also be a purpose related to national economic wellbeing.

Senator XENOPHON: Dr Thom, thank you for reading that into the record. But what role do you have? It is not simply what the Director-General of ASIS says. Don't you have a role to objectively assess that?

Dr Thom : If I had questions about whether an activity of ASIS fitted within their mandate, I would firstly look to see whether it was collecting intelligence in accordance with government's priorities

and then to see whether it was in accordance with the legislation and those three broad areas given in the legislation.

Senator XENOPHON: But you are aware of the allegations made by witness K, aren't you?

Dr Thom : I cannot comment on allegations made by witness K or any particular operations of an agency.

Senator XENOPHON: You cannot say whether you have spoken to witness K, can you?

Dr Thom : I cannot say whether I have spoken to witness K.

Senator XENOPHON: Finally, you are aware of the matters raised and on the public record, for instance, on Radio National's *Background Briefing*, about whether someone who worked for government either for a department or within government then works for another agency—and I am not putting it any higher than that. Are they matters that you would consider in the course of exercising your functions?

Dr Thom : I am sorry, I am not aware of the briefing you are talking about.

Senator XENOPHON: The radio program *Background Briefing*. Perhaps I will put it on notice and attach a transcript of that program.

Dr Thom : Yes.

Senator XENOPHON: Thank you very much.

Transcript from Australian Parliament Hansard, 29 May 2014

Senator Xenophon questions Australian Security Intelligence Organisation

Legal and Constitutional Affairs Legislation Committee - Estimates - ATTORNEY-GENERAL'S PORTFOLIO - Australian Security Intelligence Organisation

[15:01]

CHAIR: Mr Irvine and Ms Hartland, thank you very much for coming along. We appreciate your help, as always. Do you want to make any sort of opening statement?

Mr Irvine : No, I do not, thank you.

Senator XENOPHON: Can you comment on reports that ASIO officers have been 'strongly discouraging', or in those terms, lawyers from attending security assessment interviews of onshore protection visa applicants? Further, in ASIO's view, do lawyers have the right to attend such interviews with their clients?

Mr Irvine : This was the subject of an inquiry and report by the Inspector General of Intelligence and Security. There was a case possibly of mistaken identity where an ASIO officer did not agree to a lawyer or a person who the ASIO officer thought was a migration agent and who subsequently claimed to be a lawyer to be present at a particular interview. We do have procedures in place. We conduct hundreds of security assessment interviews. I think the inquiry actually was concerned with the non-attendance of lawyers at four of those interviews.

What we do is we assess each interview on a case-by-case basis. For example, with most refugee claims where we are conducting security interviews in relation to refugee claims there is no problem with a lawyer being present. There could be a very real problem with a lawyer being present where you are conducting an interview in relation to a counterespionage or sabotage case or something of that nature.

Senator XENOPHON: I understand. I was not asking about that.

Mr Irvine : I appreciate that. But what that does mean is that we have to have a policy which is capable of being applied flexibly. Where a genuine security concern arises out of the participation of a third party then the ASIO officer may determine that the interview should not proceed.

Senator XENOPHON: I appreciate what you have said to date, but as a general principle, in ASIO's view, lawyers do have the right to attend such interviews in respect of onshore protection for visa applicants?

Mr Irvine : Generally speaking, we would permit it. There is no legal obligation for ASIO to allow lawyers to attend visa security assessment interviews, but we have, including as a result of the Inspector General's report, updated our policies and practices to reinforce that the presence of lawyers at security assessment interviews, particularly for refugee cases, is not problematic.

Senator XENOPHON: So, the procedures have changed as a result of the Inspector General's work in respect of this?

Mr Irvine : I think you would say 'reinforced'. There were, as I say, four cases that attracted attention.

Senator XENOPHON: I understand. I am not trying to cut you off, Mr Irvine. I am just worried about the Chair cutting me off. When you say generally speaking legal representation is permitted, in what circumstances would it not be permitted? What are the exceptional circumstances?

Mr Irvine : It could be the nature of the questioning, it could be concerns about what the lawyer may or may not do with the information. In those circumstances, our decision would probably be not to proceed with the interview.

Senator XENOPHON: Lawyers are meant to comply with ethical guidelines as well.

Mr Irvine : Yes.

Senator XENOPHON: Is it fair to say that ASIO's internal policy guidelines allow for independent legal representation in such matters?

Mr Irvine : Yes.

Senator XENOPHON: What guidance does ASIO provide to officers conducting security assessment interviews as to the circumstances in which a written or verbal confidentiality undertaking should be requested from an interviewee or their lawyer? Are there circumstances in which you do request confidentiality?

Mr Irvine : Yes, there are. There are certainly circumstances where we would request confidentiality on the part of the person being interviewed or their lawyer.

Senator XENOPHON: Are there guidelines in respect of that or guidance in respect of those sorts of cases?

Mr Irvine : I would need to go back. We do have policies. I would need to go back and check what the guidelines are.

Senator XENOPHON: But there are guidelines?

Mr Irvine : Yes.

Senator XENOPHON: I would be grateful if you could outline that.

Mr Irvine : I believe that is the case.

Senator XENOPHON: I just want to go to the raids of lawyer Bernard Collaery. Do you have a view as to whether those actions infringed or potentially infringed on principles of lawyer-client privilege?

Senator Brandis: Senator Xenophon, that was an operational matter in which ASIO executed a warrant authorised by me under the ASIO Act on the basis that a national security issue was involved. I think we need to be very careful in pursuing that. Can I just make the point to you that the fact that a person is a lawyer does not mean that they are above the law.

Senator XENOPHON: Of course not.

Senator Brandis: You know that, but it has been rather missed by some in the Senate. As I said in the statement I made to the Senate the day after that operation took place, the fact that Mr Collaery is a lawyer does not excuse him from liability either as a principal party or accessory to an offence that may have been committed under the criminal law. The strict answer to your question is, as I think you probably know, this was a principle that has long been established. Most famously, although not originally, acknowledged by the United States Supreme Court in the United States against Nixon, the principles of lawyer-client privileges—

Senator XENOPHON: We're going back to the Watergate era.

Senator Brandis: We are. The principles of lawyer-client privilege can never protect against or allow the concealment of a criminal act. The answer to your question is, no, actually.

Senator XENOPHON: I am grateful for your answer. I will move on to a separate topic all together. How many adverse security assessments in relation to unauthorised maritime arrivals have been issued by ASIO in the 2012-13 year and from 1 July 2013 to date? I am not sure if you would have that information with you or you would wish to take it on notice.

Mr Irvine : I do have some figures. My figures may not exactly coincide with the dates you specified, but in 2012 ASIO issued 29 adverse security assessments.

Senator XENOPHON: Calendar year or financial year?

Mr Irvine : Sorry, I will give you the three years to date. In 2011-12 ASIO issued a total of 29 adverse security assessments in relation to visa security assessments. In 2012-13 it issued 13 adverse security assessments but not to 13 people, only to 11 people; so two people got two. In the year to date, from 1 July to 30 April, ASIO has issued nine adverse security assessments in relation to visa issues.

Senator XENOPHON: So, it is fairly steady in the sense that there is no great spike—actually, there has been a drop since 2011-12.

Mr Irvine : There was a big spike in 2010-11, which coincided with the very substantial arrivals in that year.

Senator XENOPHON: And axiomatically, if there are fewer unauthorised arrivals there is likely to be fewer assessments.

Mr Irvine : Yes. The issue is clouded somewhat by the fact that there are still 30,000 people who have been released into community detention who have not undergone an extensive security checking process.

Senator XENOPHON: I will move on, because I am conscious of time. You may wish to take this on notice; it is a slightly different question. How many adverse security assessments in relation to persons who are not Australian citizens, permanent visa holders or unauthorised maritime arrivals have been issued by ASIO for those periods? I am happy to take that on notice, given time constraints.

Mr Irvine : I cannot break that down into Australians and non-Australians, but in 2012-13 we issued 11 adverse security assessments to people who were not irregular maritime arrivals, refugee claimants. This year it has been eight. But I cannot break that down into Australians and non-Australians.

Senator XENOPHON: How regularly does ASIO conduct reviews of adverse security assessments?

Mr Irvine : Increasingly regularly, but there are two processes going on at the moment. One is that as it has the resources ASIO has been reviewing the adverse assessments that it has given over the past three or four years in relation to refugees. At the same time, there is a parallel process going on with the independent reviewer, former Judge Margaret Stone, who has conducted in each case a very fulsome review. She reads and reviews all of the material. She mostly interviews the people concerned and she then provides advice to me on whether she believes our original assessment was warranted or not. So far, of about 45 or 50 left, she has completed 22 such reviews.

Senator XENOPHON: How many has she changed?

Mr Irvine : Of that 22 she has agreed that ASIO's assessment was justified in 18 cases. In three cases she felt that our assessment was not appropriate and she asked me and my organisation to reassess those people.

Senator XENOPHON: Yes.

Mr Irvine : In two cases she thought the assessment was wrong and we looked at it and agreed that we would issue a non-prejudicial assessment.

Senator XENOPHON: In two cases?

Mr Irvine : In two cases, yes. In one case she argued that we should have issued a qualified assessment, and we agreed with that. On the basis of new information which she drew to our attention we actually changed an assessment to a qualified assessment of the fourth person. So, that is four out of 22.

Senator XENOPHON: So, there is a check and balance in the system through former Judge Stone.

Mr Irvine : There is.

Senator XENOPHON: As to the regularity of those reviews, are they on a six-monthly basis or an annual basis?

Mr Irvine : The arrangement is that the independent reviewer will just work through the cases and it will probably have to be ASIO itself which will review those cases after a year. Where she has made a recommendation, a year later, if it is an adverse recommendation, ASIO will look at the case again. We will look at the case in terms of the changing security context, whether the person has undergone change of heart or whatever.

Senator XENOPHON: I just want to run through three or four more questions. Has the number of unauthorised maritime arrivals placed pressure on Australia's security assessment system and, by implication, if there is a reduction in unauthorised arrivals does that free up some of your resources if there are not as many assessments to make?

Mr Irvine : In the future you would hope it would, but as I said, over the last six months there has been a significant reduction in arrivals, obviously. There is still an enormous backlog, up to 30,000 people, not all of whom will need to undergo a full security assessment, but it will have to be—

Senator XENOPHON: That raises a question, and I say this genuinely in the context of ASIO's resources. Does that mean that ASIO may need to request additional resources to ensure that the processing of security assessments can be done more expeditiously, given that the backlog in the system—and again, it is not a criticism of ASIO, it is just a number of cases you need to process.

Mr Irvine : About a year and a half ago we were given more resources as a result of the Houston review, and they have a four-year cycle.

Senator XENOPHON: So, there is still money in the kitty to—

Mr Irvine : For that purpose, yes.

Senator XENOPHON: Finally, I just wanted to ask in terms of the amendments that ASIO would want to be made to the Telecommunications (Interception and Access) Act, if you could discuss those and how you consider those changes could strengthen national security and would such changes exacerbate the administrative burden already faced by ASIO in terms of dealing with these matters?

Mr Irvine : The sorts of changes that we have advocated, both last year with the joint parliamentary commission on intelligence and security and now with this committee's inquiry into the aspects of the TIA Act, they fall into a number of categories. One category is as a result of the march of technology, which is exploding all over the place.

Senator XENOPHON: It is more like a stampede.

Mr Irvine : Yes. Frankly, the act was written in 1979 when communications were a copper wire and a couple of—

Senator XENOPHON: And Al Gore had not invented the internet by then.

Mr Irvine : Exactly. Today it is very different and therefore there is a whole series of adjustments that we feel need to be made to the act to enable us to do effectively in this new environment what we could do in the past. At the same time the new technology has allowed for new sources of information which are legitimate information in terms of national security and investigations or indeed law enforcement investigations.

What we have tried to do in our submissions to both committees is ask for a series of measures that increase the effectiveness of what we do, which increase the ability of the organisation to carry out our work more efficiently with all of the new equipment. What they do not do—and this is something that I think needs to be constantly brought to people's attention, because there is a lot of concern and fear out there in the public about interception powers generally. What our proposals do not do is suggest that there should be any unnecessary infringement on civil liberties, right to privacy and so on and, therefore, where such a right to privacy is being infringed by legitimate or legal intrusive activities that there be certain benchmarks and so on, and we have all of that. Secondly, what we are not suggesting is that there is any reduction in accountability. There are already in place very extensive—and I personally believe, because I am on the other end of it—very effective processes for accountability existing already.

Senator XENOPHON: Just to wrap this up from my point of view, you have made recommendations to government in respect of this. Was that the former government or this government?

Mr Irvine : To the former government. The former government realised that there was a huge number of some small and some quite major issues related to telecommunications interception that needed to

be addressed, along with other issues within the intelligence community not related to telecommunications.

The former government referred all of these issues to the joint parliamentary committee on intelligence and security. It did so without putting a bill before them and said, 'Look, give us your ideas on these.' The parliamentary committee has reported, and has been broadly in favour of almost all of the recommendations that the intelligence community made, although it did not reach a unanimous and final view on what seems to be at the moment probably the most controversial element, which is the retention of telecommunications call data.

Senator XENOPHON: So, if I could ask the Attorney: this relates to the issues of Mr Irvine's recommendations on amendments of the Telecommunications (Interception and Access) Act. The joint committee on intelligence matters was looking at this, made recommendations—

Senator Brandis: I was a member of the committee.

Senator XENOPHON: That is right.

CHAIR: Just before you answer, Senator Brandis. Senator Xenophon—

Senator XENOPHON: It is my final question.

CHAIR: Is it? Because we were due to go to a break eight minutes ago. I let you go thinking you were almost finished. If you are almost finished—

Senator XENOPHON: I always feel that I am always finishing in estimates. I will definitely finish now.

CHAIR: I am not pushing you.

Senator XENOPHON: Thank you. Given what Mr Irvine has said, are you able to indicate whether the government is proposing to make any changes to the Telecommunications (Interception and Access) Act?

Senator Brandis: I do not want to set any hares running. I think it is best for me to say that the report of the committee has been very carefully considered by the government. It made recommendations across a range of topics, not merely telecommunication interception. All of the recommendations of the report are being carefully considered by the government at the moment.

Senator XENOPHON: Without setting hares, rabbits or goats running, I just want to get an idea: is it something that may be further considered by the end of this year?

Senator Brandis: I do not want to go beyond what I have said.

Senator XENOPHON: Thank you.
