

**Senate Finance and Public Administration Legislation Committee**

ANSWERS TO QUESTIONS ON NOTICE

Budget Estimates Hearing October 2014

Prime Minister and Cabinet Portfolio

**Department/Agency:** Office of the Inspector-General of Intelligence and Security  
**Outcome/Program:** Outcome 1  
**Topic:** Timor-Leste

**Senator:** Xenophon  
**Question reference number:** 62  
**Type of question:** Written  
**Date set by the committee for the return of answer:** 5 December 2014  
**Number of pages:** 3

**Question:**

I refer to the International Court of Justice order earlier this year, that "Australia shall not interfere in any way in communications between Timor-Leste and its legal advisers in connection with the pending Arbitration under the Timor Sea Treaty of 20 May 2002 between Timor-Leste and Australia, with any future bilateral negotiations concerning maritime delimitation, or with any other related procedure between the two States, including the present case before the Court." (page 15, <http://www.icj-cij.org/docket/files/156/18078.pdf>)

1. Does IGIS agree that this order means we are not allowed to intercept East Timor's phones, emails letters and other communications with its lawyers in this dispute?
2. Have IGIS monitored Australia's intelligence agencies to ensure compliance with this order? If not, why not?
3. How is Witness K? Has IGIS met him? He must be under considerable stress. Is IGIS offering him any support of any kind? Is IGIS aware of anyone else offering him support of any kind?
4. How is Mr. Bernard Collaery? Has IGIS met him? He must be under considerable stress. Is IGIS offering him any support of any kind? Is IGIS aware of anyone else offering him any support of any kind?
5. Has IGIS found the correspondence between Witness K and her predecessor referred to in the Budget Estimates session of this year?
6. IGIS is hiring new staff. Do the staff have to be vetted or approved by the intelligence agencies that they're supposed to be overseeing? How many staff is IGIS recruiting? Do they include former intelligence officers? Are any of the staff or proposed new staff on secondment from existing law enforcement and intelligence agencies? If so, how many and which agencies?
7. What happens if the intelligence agencies deny a security clearance to someone who's applying for a job with IGIS? What can IGIS do when faced with what is effectively a veto?
8. How did IGIS get her security clearance? Did the intelligence agencies have to vet her?

9. Interception capability plans: IGIS and PJCIS had never asked to see them, and may not be able to see them without the telecommunications company's approval. Are you satisfied with this state of affairs?

10. Have you since asked to see the interception capability plans? How many? How often? When?

**Answer:**

1. Questions about the interpretation of International Court of Justice orders should be referred to the Attorney-General's Department.
2. The IGIS monitors the activities of Australian intelligence agencies to provide assurance about compliance with Australian law by, and the propriety of, activities of Australian intelligence agencies and compliance with Ministerial Directions. The IGIS cannot comment on any specific compliance monitoring activity as to do so could disclose operational activities of intelligence agencies.
3. It is not appropriate to disclose the identity of any person who has made contact with the IGIS office. For this reason it is not appropriate to say whether Witness K has been in contact with the IGIS office.
4. It is not appropriate to disclose the identity of any person who has made contact with the IGIS office. For this reason it is not appropriate to say whether Mr Collaery has been in contact with the IGIS office.
5. The Inspector-General has nothing to add to evidence given in the Estimates hearing. It is not appropriate to comment on whether any particular individual has or has not made a complaint to the IGIS.
6. The IGIS office has recently advertised for up to 5 new staff. The recruitment process is ongoing. Applications have been received from a wide range of individuals, including some former and current intelligence officers.  
As at 14 November three IGIS staff are on secondment from intelligence agencies. As the identity of former or current ASIO or ASIS officers cannot be disclosed, it is not possible to say which agencies these officers are from as it could identify individuals in such a small group.
7. The security clearance process for IGIS staff is conducted by the Australian Government Security Vetting Authority (AGSVA). AGSVA is not an intelligence agency and is not one of the agencies that is part of the normal oversight jurisdiction of the IGIS.
8. The Inspector-General is a statutory appointee. As a matter of policy the Inspector-General underwent a security clearance. That security clearance was conducted by the Australian Government Security Vetting Authority (AGSVA). AGSVA is not an intelligence agency and is not one of the agencies that is part of the normal oversight jurisdiction.
9. If the Inspector-General had reason to believe that an interception capability plan was relevant to a matter being inquired into by the Inspector-General under the IGIS Act then s18 of that Act provides power for the IGIS to require that a copy of the plan be produced. Section 18 of the IGIS Act provides sufficient authority to ensure that the Inspector-General could access an interception capability plan if the plan was relevant to a matter being inquired into by the IGIS
10. No. Interception capability plans set out information about how carriers comply with their legal obligations in relation to interception (see s 195 of the *Telecommunications (Interception and Access) Act 1979*). IGIS inspections and inquiries are generally focused on the activities of the

Australian intelligence agencies. IGIS inspections look at ASIO activity under telecommunications interception warrants. Further information about IGIS inspections of ASIO activity is available at pp18-22 of the IGIS Annual Report 2013-14.