

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

Group 3

Program 1.6

Question No. 29

Senator Xenophon asked the following question at the hearing on 24 February 2014:

Senator XENOPHON: I want to ask about the department's interception capability plans which outline how nominated carriers and carriage service providers can help law enforcement agencies with lawful interception of telecommunication services. Do these plans vary significantly from company to company?

Ms Smith: There are approximately 170 carriers of carrier licences at the moment in Australia. As such, the plans do vary greatly, depending on the level of infrastructure they hold. Obviously, some have a massive amount of the network and some have a very small part of the network.

Senator XENOPHON: Because I am really constrained for time, I want to get to other issues. Are these plans available for viewing by the public?

Ms Smith: No, they are not. The Telecommunications (Interception and Access) Act protects—

Senator XENOPHON: Does the Parliamentary Joint Committee on Intelligence and Security have access to these plans?

Ms Smith: I have certainly never provided them, no, because they are protected for the purposes of what they have given.

Senator XENOPHON: So not even the parliamentary joint committee, which meets in camera, has access to these plans?

Ms Smith: If that question is asked, then we will have to deal with that. But it has never been asked of the department.

Senator XENOPHON: From your point of view, that is that protected material that even—

Ms Smith: I would have to have a look at that.

Senator XENOPHON: Please take that on notice. Does IGIS, the Inspector-General—

Mr Wilkins: I do not think we need to take it on notice. If they ask for it then we could probably give it to them.

Ms Smith: Yes, but we have never been asked.

Senator XENOPHON: So you can give it. You are not precluded from giving it?

Mr Wilkins: We will take that on notice.

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

Section 202 of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act) provides that the Communications Access Co-ordinator, the Australian Communications and Media Authority and interception agencies must treat an interception capability plan as confidential and

must not disclose the contents of an interception capability plan to any other person or body without the written approval of the carrier or nominated carriage service provider.

The confidentiality required by section 202 of the TIA Act reflects the sensitivity of the information contained in an interception capability plan, from a commercial, law enforcement and national security perspective.

As the Parliamentary Joint Committee on Intelligence and Security (PJCIS) and the Inspector-General of Intelligence and Security (IGIS) are not bodies that are expressly identified within section 202 of the TIA Act, an interception capability plan could not be disclosed to either body without the written approval of the carrier or nominated carriage service provider.

Should the Department receive a request from the PJCIS or the IGIS for an interception capability plan, the Department would seek permission from carriers to provide copies of their interception capability plan to the committee.