

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

Group: 3

Program Other Agency

Question No. SBE14/055

Senator Xenophon asked the following question at the hearing on 20 November 2014:

Senator XENOPHON: I am concerned about time constraints, so let us just cut to the chase. You received advice that the reason why this matter is not proceeding in respect of the Balibo Five is primarily jurisdictional issues—that whatever you did you would not be able to show jurisdiction in terms of triggering war crimes—

Mr Phelan: An Australian offence.

Senator XENOPHON: An Australian offence pursuant to war crimes?

Mr Phelan: Yes.

Senator XENOPHON: And that in turn relates to definitional issues under the Geneva convention?

Mr Phelan: That is right.

Senator XENOPHON: And you received advice from the Attorney-General's Department?

Mr Phelan: There are a number of places where we got advice.

Senator XENOPHON: And, just briefly, that included the Attorney-General's Department and some independent counsel?

Mr Phelan: That is right.

Senator XENOPHON: How many advices were there? Were there one, two, three or more?

Mr Phelan: I think there were a few.

Senator XENOPHON: Right.

Mr Phelan: I think maybe at least three. At least three sets.

Senator XENOPHON: Could you take on notice when that advice was obtained? I am not asking for the content of that advice at this stage—

Mr Phelan: No, of course.

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

The AFP received legal advice concerning the investigation into the deaths of the journalists collectively known as the Balibo 5 in June 2008 (AGD), January 2011 (independent SC) and January 2011 (AGD).

The AFP also consulted the Commonwealth Department of Public Prosecutions during the investigation.