

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

Group 3

Program 1.6

Question No. 37

Senator Xenophon asked the following question at the hearing on 29 May 2013:

Senator XENOPHON: Hold on, Mr Wilkins: if Mr Kessing makes a submission to the board outlining his specific knowledge, given the reports he prepared, he would be charged under section 70 of the Crimes Act. That is his dilemma, isn't it? Unless you guarantee that he will not be prosecuted for disclosing what he knows, won't he then be prosecuted?

Mr Wilkins: I do not think he will be prosecuted. I think it is all theoretical.

Senator XENOPHON: He has been prosecuted once before. You can understand there is a potential dilemma for him.

Mr Wilkins: I understand what you are saying. I do not understand that it is a real dilemma, but let me have a look at that.

Senator XENOPHON: He has already lost just about everything through being dragged through the courts.

Mr Wilkins: So, that is the reason he is not making a submission, is it?

Senator XENOPHON: Well, I am just putting to you that Mr Kessing, if he discloses what he knows, could be in breach of section 70 of the Crimes Act.

Mr Wilkins: I think it is highly theoretical. It has not even arisen in my mind.

Senator XENOPHON: He has been dragged through the courts once.

Mr Wilkins: Well, I do not think the board is interested in prosecuting.

Senator XENOPHON: Can we get a guarantee that if he discloses all that he knows he will not be subject to any prosecution?

Mr Wilkins: It depends, I suppose, what he discloses.

Senator XENOPHON: Oh, so he might be prosecuted now?

Mr Wilkins: Hold on; if he discloses, and presumably he will not, that he has been involved in some serious organised crime, then clearly the board is not going to guarantee that no action will be taken.

Senator XENOPHON: If he discloses the knowledge that he obtained when he prepared those two reports that were sat on and that were ignored within Customs, will he be prosecuted?

Mr Wilkins: He has already been prosecuted for that anyway, hasn't he?

Senator XENOPHON: But it will be a fresh offence. Double jeopardy would not apply.

Mr Wilkins: I think the answer is no. Let me take that on notice. If he requires some sort of undertaking or guarantee, we will have a look at that. I think we can deal with this in a common-sense way.

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

On 31 May 2013 the Chief Executive Officer of the Australian Customs and Border Protection Service (ACBPS) wrote to Mr Kessing, via Senator Xenophon, advising that for the purposes of section 16 of the *Customs Administration Act 1985* and sections 70 and 79 of the *Crimes Act 1914*, Mr Kessing has lawful authority to make submissions to the Customs Reform Board on matters raised in the two reports Mr Kessing authored or contributed to during his employment with the ACBPS, and to disclose any other information relevant to matters the Board may wish to discuss with him.