

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

Group: 3

Program: 1.6

Question No. SBE14/056

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

Senator XENOPHON: Is it reasonable for me to ask whether the issue of jurisdiction, upon which a decision has been made to not take this matter any further, should have been an issue that was raised very early on?

Senator XENOPHON: This is not a criticism of the advice that you obtained, but are you aware that there are contrary views from Professor Ben Saul and Mark Tedeschi QC, who provided advice to the coronial inquest by the New South Wales coroner in respect of this that took, as I understand it, a different view on the issue of jurisdiction?

Mr Phelan: Without going into the content of the advice, because I have no intention of waiving privilege, there is a cross-pollination of advice as well.

Senator XENOPHON: Right. If legal representatives of the family members wrote to the AFP with an undertaking to not disclose that advice beyond the family members, would that be something that you would entertain providing? Perhaps that is a question for the Attorney as well.

Senator Brandis: I would have to think about that, and I would not be minded to vary from the practice that has been observed by the Australian Federal Police. It is not unknown, you know, Senator Xenophon, for different lawyers to arrive at different conclusions.

Senator XENOPHON: But in order for some sense of closure for the family members who have lost their loved ones—

Senator Brandis: I will take that on notice and discuss it with Commissioner Colvin. I have not read Mr Tedeschi's opinion. He is a very respected barrister.

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

It is the position of the Australian Federal Police not to waive privilege on the legal advice obtained during the course of the investigation.