

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

**Group 1**

**Corporate/cross-portfolio/general**

**Question No. 37**

**Senator Xenophon asked the following question at the hearing on 12 February 2013:**

**Senator XENOPHON:** My questions relate to a matter before the Victorian Court of Appeal involving an attempt to force two journalists from the Age newspaper, Nick McKenzie and Richard Baker, to reveal their sources in a matter involving the prosecution of a number of former executives from two Reserve Bank of Australia subsidiaries in relation to Securrency and Note Printing Australia. That sets the scene. My understanding is that the lawyers for Mr McKenzie and Mr Baker have given notice to the Commonwealth and the states to intervene in that case. My understanding is that the argument made by Mr McKenzie and Mr Baker is that the Victorian magistrate in that case has no power under Commonwealth law to dismiss the charges against the accused on the basis that the Commonwealth prosecution authorities have acted improperly by allegedly leaking to the media. My question is: given the public interest issues in relation to this matter—and Senator Ludwig, the minister, took over the carriage of that particular shield law bill when it went through the Senate—is the Commonwealth going to intervene in that appeal before the Victorian Court of Appeal.

**Ms Kelly:** I suspect that that is a matter that has been the subject of a 78(b) notice. The department receives a very large number of those notices. That one is not one that I am familiar with. I can attempt to determine from the officers present whether or not it is, but I suspect that it would be more efficient to take that on notice.

**Senator XENOPHON:** It is before the court. The appeal is likely to be heard on 8 March, as I understand it, so it is coming up fairly soon.

**Mr Wilkins:** We will have to take it on notice. There is no-one here who can answer that.

...

**Mr Wilkins:** Can we take it on notice, Senator? I have not got the details in front of me. I am vaguely aware of this matter, but I have not got any of the details in front of me. It is a very complicated matter. We are going to be here for the rest of the night sorting this out, but it will take me some time to get the details.

**Senator XENOPHON:** Can you indicate to me when a response might be likely, given that the matter is due in the Victorian Court of Appeal on 8 March.

**Mr Wilkins:** No, I cannot even do that. My advice is that we will have to take that on notice. There are multiple parties involved on the part of the Commonwealth. It is a very complicated matter. I cannot answer your questions now, Senator. I am sorry. I am unable to answer your questions.

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

The *Judiciary Act 1903* confers on Commonwealth, State and Territory Attorneys-General the right to intervene in any proceeding in any court that raises an issue involving the Australian Constitution. Section 78B of the Act requires that Commonwealth, State and Territory Attorneys-General be given notice of any such proceeding.

On 12 February 2013 notice under section 78B was served on the Commonwealth in relation to the matter of *McKenzie v Magistrates' Court of Victoria*, a proceeding in the Victorian Court of Appeal.

The Attorney-General decided not to intervene in this appeal from the Victorian Supreme Court and the solicitors for the applicants (who had issued the section 78B notices) were notified accordingly. The appeal was heard by the Victorian Court of Appeal on 8 March 2013.