

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER

Question No. SBE15/006

Senator Rhiannon asked the following question at the hearing on 20 October 2015:

Senator Brandis: It is in the hands of the Senate. I accept that. But your broader point, if I understand you correctly, that there is some variance between the principle as expressed by Mr Dowd and the way that these arrangements have been made by the Commonwealth I do not accept at all. What Mr Dowd says is not a description of the arrangements that the government has put in place for this body in the period between the current budget and its expected statutory repeal.

Senator RHIANNON: It would be good to go on to pin down the details here. Remaining in that paragraph at the top of page 2, in the letter from Mr O'Sullivan, it talks about FOI regulation. What is that referring to, please?

Senator Brandis: What the paragraph says, so that we may understand it in full, is this: As the Bill is still before the Parliament, the OAIC remains responsible for privacy and FOI regulation and the Government is ensuring that arrangements are in place for the continued exercise of the Information Commissioner functions.

By the way, that is a complete refutation of the assertion made by Mr Dowd:

In July 2015 Mr Timothy Pilgrim PSM was appointed as the acting Information Commissioner for a three-month period—and that has now been renewed, as you have heard—while the Government considers options for the future of the Information Commissioner position. Mr Pilgrim is performing the functions and exercising the Commissioner powers under the Privacy Act 1988, Freedom of Information Act 1982, and the Australian Information Commissioner Act 2010.

That is the position. What is your question?

Senator RHIANNON: My question is: what is FOI regulation referring to at that point?

Senator Brandis: It is referring to the FOI functions provided for by the act.

Senator RHIANNON: So, it refers to all aspects of the act. Thank you. Then it says in the last sentence in that same paragraph:

Mr Pilgrim is performing the functions ...

What are the Information Commissioner functions referred to in that passage? I am interested in whether they differ in any way—and, if they do, in what way—from the OAIC responsibilities for FOI regulation. Could you clarify, please?

Senator Brandis: I think the paragraph speaks for itself but, given that you suspect there may be something that is not apparent from the face of what I have quoted to you, I will consult Mr O'Sullivan, who is the author of the letter, to inquire of him whether or not what you are putting to me is correct. So I will take that question on notice.

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

FOI regulation refers to the FOI functions conferred on the Information Commissioner under the *Freedom of Information Act 1982*.