

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

Program: 1.1

Question No. SBE15/081

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

1. Following on from my questions regarding matters referred to in a letter from the Office of the Attorney-General Chief of Staff (signed Mr O'Sullivan) dated 9 September 2015 replying to an earlier letter from the ICJ of 17 August 2015, with regard to the last two paragraphs in Mr Sullivan's letter (my emphasis):
 - a. The second last paragraph states: "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**"
 - i. With regard to the reference "FOI regulation":
 - a. Please provide details to what is that referring?
 - ii. With regard to the reference "functions":
 - a. What are the Information Commissioner functions referred to in that passage?
 - b. Do they differ in any way from the OAIC responsibilities for FOI regulation, and if so, how?
 - iii. With regard to the reference "arrangements":
 - a. What are the "arrangements" it is ensuring to have in place, at the moment and for the future
 - b. Please provide details of the funding to be provided and other costs and when they were, and/or will be, put in place.
 - b. The final paragraph states: "**additional resources** will be provided to the OAIC for the continued exercise of its FOI functions in 2015 – 16". Please detail:
 - i. The resources that were supplied in the 2015 budget allocations
 - ii. The additional resources to be supplied as referred to in the above paragraph
 - iii. The nature and extent, value and/or cost thereof
 - iv. When will the additional resources have been, and/or will, be put in place
 - c. The final paragraph also refers to the OAIC continuing "**to perform those FOI functions** necessary to ensure the **ongoing operation of the FOI system**".
 - i. Please detail the FOI functions that it is intended the OAIC should continue to perform.
 - ii. What are the ongoing operations of the FOI system referred to?
 - iii. Please detail, if any, the OAIC statutory functions are left out, and why?
2. The Attorney-General raised a new defence of the Government's conduct in taking funds away from the OAIC – that "during a period when the statutory repeal of a body **is imminent** it is quite sensible to configure the budget in such a way that reflects the fact that its statutory repeal is imminent."
 - a. Please define "imminent" for that context and purpose?
 - b. What are the facts, matters, circumstances and things relied upon in the above statement as demonstrating at any time since May of 2014 that the statutory repeal of the OAIC was "imminent"?

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*. Mr Timothy Pilgrim has been appointed as the acting Information Commissioner.

Resources were appropriated to the OAIC for 2015-16 in the 2015 Budget, including \$5.7million privacy funding transferred from the Australian Human Rights Commission, transitional funding of \$1.7million for FOI regulation and new funding of \$1.1 million for the telecommunications data retention scheme. Following these adjustments, the OAIC's total estimated budget funded expenses for 2015-16 was \$12.622 million, its average staffing level for 2015-16 is estimated at 72: see *Attorney-General's Portfolio Budget Statements 2015-16*, table 2.1, page 458.

The Freedom of Information Amendment (New Arrangements) Bill 2014 remains before the Parliament.