

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

Program: 1.9

Question No. AE16/044

Senator Collins asked the following question at the hearing on 9 February 2016:

Senator Brandis: A view was arrived at that the matter should be handled so far as concerned the opposition by offering the opportunity to Mr Dreyfus to inspect the confidential volumes in the terms set out in the letter. The view that the government took was, having offered the opportunity to inspect the confidential volumes to crossbench members of the Senate, it would be appropriate to offer the opportunity to a senior person on behalf of the opposition, and it was decided to offer the opportunity to Mr Dreyfus because he was the shadow Attorney-General. For that reason, a judgement was made that he was the most appropriate person to make the offer.

Senator JACINTA COLLINS: I go back to my earlier comment that it is officers of the Department of the Prime Minister and Cabinet who proposed supervised access to this report. But in this case you have chosen the shadow Attorney to be relevant person from the opposition, not officers of the Attorney-General's Department. That does not seem odd to you?

Senator Brandis: No.

Senator JACINTA COLLINS: Just going back to the issue of the consequences of breaching confidentiality restrictions, given that there is no nondisclosure order in relation to the final report, there are no consequences for breaching the restrictions, are there?

Senator Brandis: Are you referring to Senator Cash's letter?

Senator JACINTA COLLINS: Yes.

Senator Brandis: As I said to you before, Senator, you really have to ask Senator Cash why she put those words in the letter that she wrote to Senator Lambie.

Senator JACINTA COLLINS: I suppose I am seeking confirmation that the provisions in section 6D of the Royal Commissions Act do not apply to the final report.

Senator Brandis: I would have to have a look at that. So I will take that on notice.

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

Section 6D of the *Royal Commissions Act* 1902 (Cth) empowers a Royal Commission to make Non-Publication Orders in relation to:

- any evidence or documents provided to it – either at a hearing or in response to a Notice to Produce; and
- any information that might enable a person who has given evidence before the Commission to be identified.

Therefore, even without a Non-Publication Order covering the confidential volume of the Final Report, any evidence or documents that are themselves covered by a Non-Publication Order still attract the protections and penalties in section 6D if that information is disclosed. The same applies where Non-Publication Orders were issued in relation to the identity of particular persons.