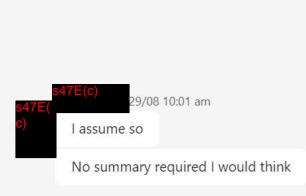
SCOLYER, Jackie

To: WOO,Caroline Subject: Attachments: Statement

Mr Hardiman opening statement 29 August 2023.pdf



Tuesday, 29 August FOIREQ23/00238

Do you need a summary of issues for Leo - I assume everyone is listening.

29/08 10:01 am

OAIC - FOI

From: OAIC - Media

Sent: Wednesday, 30 August 2023 10:00 AM

To: OAIC - Media; OAIC Executive; OAIC Leadership; OAIC - Strategic Communications;

EDWARDS, Kate; FORD, Dean; ARCHBOLD, Lisa; LAI, Bernie; QUAN, Trish;

FOOT,Michael; CARPENTER,Catherine; CHEANG,Sam; MARTIN,Bianca; VAYZER,Iris; DAVEY,Adam; GONZALEZ,Adriana; HODGES,Amanda; BUTLER,Andrew; LAI,Bernie; MARTIN,Bianca; LOCKYER,Brett; WOLNIZER,Carla; CALANDRA-ZAMECNIK,Carmela;

WOO, Caroline; CARPENTER, Catherine; BATSHON, Chad (EAN); PETRIE, Claire;

LOH, Elaine; MCPHEE, Emily; DRUC, Galina; COSTIGAN, Georgia (Inactive); VAYZER, Iris; SCOLYER, Jackie; HORGAN, James; TAN, Jasmine; CORBETT, Jason; ESLICK, Jessica; PATERSON, Jessica; PHILLIPS, Jessica; SUMMERHILL, Jessica (TEMP); JANG, Ji;

GRENFELL, Joseph; TULLOCH, Karen; THORPE, Kate; KWONG, Katie;

SNODGRASS, Kristy; HILLIKER, Lauren; JOVEVSKI, Lisa; SAUNDERS, Maggie; SUI, Margaret; BLOWES, Matthew; KURISHINGAL, Melissa; HERNANDEZ, Michelle; MAKATEMA, Nana; LAMPE, Naomi; VULETA, Natalie (Inactive); HEDGES, Nathan; PULS, Nicola; BILAC, Nicole; DOMENICI, Romina; MARIA, Sara; GOVIL, Shantanu; WATSON, Shona; COLLINS, Sophia; ALEXANDROU, Soulla; OTOREPEC, Stephanie;

SPILIOTOPOULOS, Steven; MACKIE, Tom; QUAN, Trish; TIAN, Wendy

Subject: Articles of note – Wednesday 30 August 2023

Attachments: Articles of Note - 30 August.docx

Good morning

Please see the articles/items of note below. There are no action items today.

FOI

<u>The Mandarin</u>: Article about evidence at the FOI inquiry yesterday (Senate Legal and Constitutional Affairs Committee); The Guardian's <u>rolling daily news coverage</u> (17:56 AEST) also reported on Commissioner Falk's evidence, among other content. The Canberra Times (attached) also included evidence from both Commissioner Falk and former commissioner Hardiman.

X (Twitter): Senator Andrew Bragg tweets about his podcast interviewing Rex Patrick about his role as a 'transparency warrior'.



<u>The Guardian</u>: A refused FOI request by the Australian is mentioned in a story about Stan Grant's response to being targeted, he believes, by the Australian.

The Australian (attached): reports the appointment of former governor-general Sir Peter Cosgrove as administrator of the commonwealth during King Charles III's coronation followed advice from the Solicitor-General but that opinion has been withheld from the public, and refers to FOI.

<u>Michael West media</u> (AAP): Mentions FOI in an article reporting claims the ABC targeted a former army officer. A lawyer claims FOI requests were worded to ensure they would be rejected.

Data breaches

<u>Australian Cyber Security</u>: IBM has released key Australian data points from its recent global survey, which was covered under the Cost Of Data Breach Report 2023 launched last month. Reports the average cost of a data breach in Australia has grown 32%.

<u>NT News</u>: Reports Deakin University has advised its alumni their details were provided to Pareto phone, which has been caught up in a cyber breach, but Pareto has advised no personal information provided by Deakin has been affected.

Consumer data right

The Australian (attached): Quotes ANZ boss Shayne Elliott and says he has warned that banking could become the preserve of the wealthy as tighter lending regulations and a compliance crackdown. He pointed to costs in introducing open banking regulations as one area of concern. It says Australia's open banking regime aims to drive innovation and competition, as well as give customers more control over their data and easier access to products and services. "The industry had been told that compliance with the open banking regulation should cost the industry somewhere between \$80m and \$100m. To date that figure is \$1bn and it is still going," Mr Elliott said.

<u>Independent Financial Adviser</u>: Consumer Data Right expansion back on the agenda – discusses developments in this space.

Health & My Health Record

<u>Guardian (UK):</u> Reports a memorandum of understanding published in 2016 required the NHS to hand over confidential patient records of people who were migrants to the Home Office. Also <u>discussed here</u>

<u>Computer Weekly:</u> Discusses the NHS federated data platform that allows sharing of information such as for patient discharges. Privacy is mentioned, and the National Data Guardian (UK).

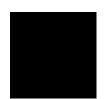
Data and technology

<u>Lawyers Weekly</u>: Despite a number of challenges around adopting legal tech and AI, more than 60 per cent of inhouse counsel are implementing generative AI in their legal departments, new research has found.

<u>The Mandarin</u>: The Open Government Partnership plan will outline the government's commitments to transparency within a two-to-four-year timeline. OAIC mentioned.

International

<u>Daily Mail</u>: California's Attorney General is suing a school district in Southern California regarding a new policy that requires teachers to notify parents if their child changes their identity or pronouns.



Eva O'Driscoll (she/her)
Assistant Director, Strategic Communications
Office of the Australian Information Commissioner
Adelaide | P +61 2 9246 0601 E Eva.ODriscoll@oaic.gov.au

The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

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Mandarin: Hardiman accuses information commissioner of FoI 'spin' and culture issues

Former Freedom of Information commissioner Leo Hardiman has given explosive evidence at a senate committee accusing information commissioner Angelene Falk of nobbling the FoI review function.

Appearing at a parliamentary committee examining commonwealth FoI laws, Hardiman said Falk wanted to maintain control of the Office of the Australian Information Commissioner (OAIC) rather than commit to a three-commissioner model.

He pointed to the use of spin by the OAIC to present the performance of the office's FoI functions in a positive manner without dealing with the issues hampering progress on the review of applications.

The former FoI commissioner identified a long laundry list of deficiencies including serious staff and resourcing issues, lack of focus on performance, absence of engagement with staff on technical issues related to FoI even when staff sought such engagement, and unproductive relationships with regulated entities.

He said staff were given tasks unrelated to the FoI function, distracting them from their main task.

There was "a diversion of staff away from core FoI work for the purpose of making constant process changes which did not in any significant sense deal with the real

problems in the performance of FoI functions, and an associated feeling of complete overwhelm amongst the more senior staff members of the OAIC's FoI branch," Hardiman wrote in his 18-page statement to the committee.

Hardiman resigned from his role as the head of the OAIC's FoI function earlier this year after saying it was clear he would not be given sufficient resources to do his job properly.

He said that he attempted to deal with some problems, and some issues were addressed.

"More particularly, I was able to create a much more focused and stable working environment for staff of the FoI branch," Hardiman's statement reads.

"I engaged closely with staff, particularly in their technical development and in necessary change management. I put significant effort into improving the quality of IC review decision-making and the development of technical FOI guidance through IC review decisions.

"I streamlined day-to-day work processes and, with the FOI branch leadership team, developed significant proposed changes to the procedure for IC reviews. I worked to create more functional relationships with regulated agencies."

Hardiman told the senate he reviewed the conduct of information commissioner reviews and sought to use the limited resources of the FoI branch in a way that meant more review applications got attention.

Falk, according to Hardiman, did not want him focused on this process issue.

"This necessary change was of apparent concern to the IC who, after I first proposed it, told me that I should not be involving myself in such matters – that is, as FOI commissioner I should not be involving myself in the approach to management of the IC review workload and backlog," Hardiman says.

"I pushed on and significant structural changes, with a much greater focus on the active management of IC reviews, were implemented on 1 February 2023. As at the cessation of my appointment three or so months later, that restructure had begun resulting in increased progression of substantive IC review matters."

These changes were not enough and Hardiman's statement says that greater resources were needed to ensure a backlog could be met.

"Relevantly in that regard, I was ultimately unable to change the distracting 'narratives' developed and promulgated by the OAIC, particularly around the issue of resourcing. I was also ultimately unable to change significant cultural issues affecting the performance of the FoI functions," the statement reads.

Other cultural problems highlighted in Hardiman's statement included a heightened sense of tension in time when external scrutiny was going to occur such as "external scrutiny, especially senate estimates appearances and critical points in the court timetable for the Federal Court unreasonable delay proceedings brought by Mr Rex Patrick".

Hardiman is critical of two particular narratives used by Falk – the first being about the substantial throughput of finalising reviews and a resourcing narrative – that was designed to represent the agency's performance in the best light.

The throughput narrative was designed to make it appear that finalisation outcomes were better than they were, and it failed to deal with the fact that more difficult and substantive matters were a part of the backlog.

"For example, the receipt of approximately 2,000 matters in a 12-month period and the finalisation of 1,200 matters in that period produces a percentage of 60%. But in those circumstances, the narrative referred to a percentage above 80%," Hardiman's statement reads.

"As best I could determine, the percentage quoted in the narrative in fact reflected the percentage of all matters finalised in a relevant period (a number significantly lower than the number of matters received) which were finalised within 12 months."

Hardiman said that the resourcing narrative put forward by the information commission relied on the argument that additional resources for the FoI function could be resolved but only if the government specifically identified funds as being for the purposes of the FoI functions of the OAIC.

The OAIC's former FoI chief said that the narrative ignored that appropriations given to the OAIC were given on a departmental basis – meaning that the OAIC itself could allocate more resources to the FoI function – rather than an administered basis, and that there was scope to allocated more resources for FoI functions.

"The resourcing narrative was vigorously promulgated while, at the same time, resources were being allocated to activities which were not essential to the performance of the OAIC's two core regulatory function areas, of which FOI was one," Hardiman's statement says.

The OAIC was established with a three-commissioner model in mind but Falk was not committed to putting that in place, according to Hardiman's statement.

"In relation to cultural issues, I could not change the fact that the IC was not committed to the three-commissioner model. Rather, the IC was committed to a model under which she would remain, in effect, a 'super' Privacy Commissioner with a subordinate rather than equally independent co-Commissioner for FOI," Hardiman's statement reads.

"The IC had expressly said to me following the 2022 federal election that she was concerned about the possibility of, and did not want, the appointment of a separate Privacy Commissioner. It was also made abundantly clear to me that the IC was only desirous of an appointed FOI Commissioner if the IC could control that Commissioner, particularly in so far as they might say or do anything which called into question prior stewardship of the FOI functions."

Hardiman told the parliament in his statement that the confirmation in February this year of no additional resources for the FoI functions of the OAIC meant his position was untenable.

"Resignation was an incredibly difficult decision to contemplate. But I could not with a necessary sense of integrity play the game of maintaining the status quo.," Hardiman's statement reads. "Change was desperately required and it was not going to occur if I continued on."

The Mandarin: Consultation opens on third Open Government National Plan

Public consultation has begun for a third National Plan to promote open government and transparency, as part of Australia's membership to the Open Government Partnership.

The plan will set out what the government's commitments are around open government, transparency and accountability in a two-to-four-year timeline.

The Open Government Forum is working on the scheme, with phase one of public input open this month.

"The plan will be developed in consultation with civil society and government to promote good governance, clear and transparent decision-making, and policies that improve service delivery and foster trust," the consultation website stated.

"Public consultation is a key tenet of the Open Government Partnership."

There are three themes for the plan. Each has a working group with its own pair of co-chairs:

- Participation and engagement, co-chaired by newDemocracy's Kyle Redman and Information and Privacy Commission New South Wales's Elizabeth Tydd;
- Government and corporate sector integrity, co-chaired by TIA's Clancy Moore and Attorney-General's Department's Simon Newnham; and
- Strengthening democratic processes, co-chaired by Griffith University's professor Charles Sampford and Finance's Scott Dilley.

The consultation process is looking for feedback on each of the three themes, including what specific actions could be taken in the next two years.

The forum uses <u>five guiding principles</u> to prioritise the plan's commitments: relevance, community views, alignment, impact and timeframes.

The draft of the third National Plan is due from September to October this year.

Forum members were announced earlier this year in April, with the following agencies represented through government members: the Office of the Australian Information Commissioner, Department of Infrastructure, Transport, Regional Development, Communications and the Arts, the Information and Privacy Commission NSW, APSC, the Commonwealth Ombud, PM&C, Finance and Treasury.

When announcing the new forum, attorney-general Mark Dreyfus said the third plan would "seek a greater level of ambition for open government, transparency and accountability".

Canberra Times: FOI Inquiry

Former FOI boss slams Info Commissioner over culture

luctine

Landis-Hanley Mirlam Webber, Justi

FORMER Freedom of Information boss Leo Hardiman has blasted poor culture at the Office of the Australian Information Commissioner, and claimed this was "entirely a product" of the leadership of Information Commissioner Angelene Falk.

Mr Hardiman, who was Australia's first FOI boss in seven years, quit the position in March, citing a lack of power to reform the backlogged system he was hired to fix.

On Tuesday, Mr Hardiman gave his detailed account of staffing, resourcing and cultural issues at the agency which houses the federal government's FOI office, appearing before a Senate committee into Commonwealth FOI laws.

Mr Hardiman said he quit because the powers to change deep problems at the agency were with Ms Falk, who he claimed wanted to be "a super Privacy Commissioner".

But Ms Falk, fronting the committee hours later, said she took "issue with a number of the statements and points made" by Mr Hardiman, and was supportive of the agency's three-commissioner model.

In an opening statement to senators, Mr Hardiman painted a grim picture of the FOI branch, including serious staff and resourcing issues, cultural issues such as a lack of sufficient engagement with FOI technical issues, and a diversion of staff away from core FOI work.

He claimed that senior FOI branch staff felt "complete overwhelm", and complained of "culture of the OAIC's FOI functions being of secondary importance to its privacy functions".

Ms Falk alleged Mr Hardiman hadn't spoken to her about resource reallocation, "aside from the passing remark".

But moments later, she

revealed the former FOI boss told her at the end of last year that he would have to consider resigning if the government didn't provide additional resources in the upcoming federal budget.

Committee members appeared taken aback, grilling Ms Falk on why she hadn't shared this when she was asked whether Mr Hardiman had raised resourcing issues during Senate estimates in May, to which she said it hadn't occurred to her at the time.

Mr Hardiman told senators he had sought to engage with the issues closely in his time at the OAIC, and was able to create a more focused and stable working environment. But he claimed Ms Falk had stood in the way of change.

"The broader culture of the OAIC, including cultural bent away from FOI functions was entirely a product of the [Information Commissioner's] leadership," he said.

"Try as I may I simply could not change that culture and it's impact on the performance on the FOI functions."

He claimed Ms Falk was not supportive of the "three commissioner model" the agency had, nor effective resourcing for the FOI branch.

Ms Falk denied this.

"... rather the [Information

Commissioner] was committed to a model under which she would remain, in effect, a super privacy commissioner with a subordinate rather than equally independent co-commissioner for FOI," he said.

"The IC had expressly said to me following the 2022 federal election that she was concerned about the possibility of and did not want the appointment of a separate privacy commissioner.

Ms Falk said that Mr Hardiman must have misunderstood her. "I said thought would have to be given to ensure the three commissioner model followed best practice," he said.

The Australian: CDR

Banking 'for the rich' fear: ANZ

BANK BOSS CALLS FOR DEATH DUTIES, WARNS GREAT AUSTRALIAN DREAM IS IN DANGER

GLEN NORRIS

ANZ boss Shayne Elliott has warned that banking could become the preserve of the wealthy as tighter lending regulations and a compliance crackdown after the royal commission risk freezing an entire generation out of home loans and other forms of credit.

The chief executive of Australia's fourth-biggest bank said in Brisbane on Tuesday that the desire to create "safe banks" where lending controls ensured no one failed risked creating a less equitable society.

"I worry we have created a system where banking or access to credit is just for rich people," Mr Elliott said at the QUT Business Leaders' Forum.

"If you can't get a home loan or can't start your business because the law makes it really hard for banks to lend to you, that means the economy is less dynamic."

He said he understood lending had to be tightened after the GFC and the royal commission into banking, but worried "that we've got the settings wrong".

He said the burden of compliance had to be passed on to customers and shareholders, noting that over the past six years the cost of new regulations had increased more than fourfold.

"When I took over as CEO in 2017, for every dollar of revenue that ANZ made, we had to invest 07c to cover the cost of new regulations. New things would come along – we would have to build some new system or hire some people to do whatever. Last year, that was 47c, so it has just kept going up."

He said that regulatory burden was an increasing drag on the community, "making it harder to get a loan, credit card and start a business". "It's a bit like wanting to eliminate traffic accidents so we are going to impose a 5km per hour speed limit," Mr Elliott said. "Well we would be safe, that's true, but nothing wouldwork." He pointed to costs in introducing open banking regulations as one area of concern. Australia's open banking regime aims to drive innovation and competition, as well as give customers more control over their data and easier access to products and services.

"The industry had been told that compliance with the open banking regulation should cost the industry somewhere between \$80m and \$100m. To date that figure is \$lbn and it is still going," Mr Elliott said.

The ANZ boss said the great Australian dream of home ownership was becoming out of reach for the younger generation, noting that people with mortgages were surviving despite cost of living pressures.

"The people who are doing it tough are the people who are renting," said Mr Elliott. "They haven't had the same sort of pay increases, so cost of living is impacting them far greater than it is anybody else

From: OAIC - Executive Assistant

To: Legal and Constitutional, Committee (SEN)

Cc: BROWN, Rebecca; PIRANI, Toni; Piesse, Mervyn (SEN); FALK, Angelene

Subject: RE: Tabled statement from former FOI Commissioner in relation to Senate inquiry into the operation of

Commonwealth FOI laws

Date: Tuesday, 29 August 2023 9:27:54 AM

Attachments: image002.jpg

image003.jpg image004.jpg image005.gif

Dear Dr Clements

I acknowledge receipt of your email.

Kind regards



Isla Gibson (she/her)
Senior Executive Assistant
Australian Information Commissioner and Privacy Commissioner
Office of the Australian Information Commissioner
Sydney | GPO Box 5288 Sydney NSW 2001
P (02) 9942 4233 E isla.gibson@oaic.gov.au

The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

Subscribe to Information Matters

From: Clements, Ash (SEN) <Ash.Clements@aph.gov.au> On Behalf Of Legal and Constitutional,

Committee (SEN)

Sent: Tuesday, August 29, 2023 9:22 AM

To: FALK, Angelene < Angelene. Falk@oaic.gov.au>

Cc: BROWN,Rebecca <Rebecca.Brown@oaic.gov.au>; PIRANI,Toni <Toni.Pirani@oaic.gov.au>; Legal and Constitutional, Committee (SEN) <LegCon.Sen@aph.gov.au>; Piesse, Mervyn (SEN) <Mervyn.Piesse@aph.gov.au>; OAIC - Executive Assistant <executiveassistant@oaic.gov.au>

Subject: Tabled statement from former FOI Commissioner in relation to Senate inquiry into the

operation of Commonwealth FOI laws

Importance: High

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Commissioner,

In advance of your appearance before the Senate Legal and Constitutional Affairs References Committee this afternoon, the Chair of the committee has requested that you be provided with a statement by the former FOI Commissioner, Mr Leo Hardiman, that was tabled this morning during the public hearing.

Mr Hardiman's statement is available here and also attached.

Sincerely, Ash Clements

Dr Ashley Clements | Principal Research Officer

Committee Office | Department of the Senate Phone 02 6277 3220 www.aph.gov.au/senate



Thursday, 31 August

From: <u>Clements, Ash (SEN)</u> on behalf of <u>Legal and Constitutional, Committee (SEN)</u>

To: FALK, Angelene

Cc: BROWN, Rebecca; PIRANI, Toni; Legal and Constitutional, Committee (SEN); Piesse, Mervyn (SEN); OAIC -

Executive Assistant

Subject: Tabled statement from former FOI Commissioner in relation to Senate inquiry into the operation of

Commonwealth FOI laws

Date: Tuesday, 29 August 2023 9:22:59 AM

Attachments: image001.gif

Mr Hardiman opening statement 29 August 2023.pdf

Importance: High

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Commissioner,

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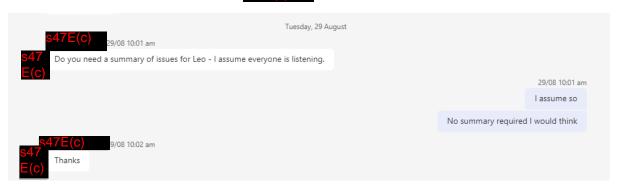
Mr Hardiman's statement is available here and also attached.

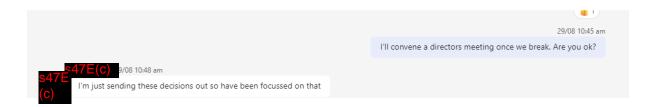
Sincerely, Ash Clements

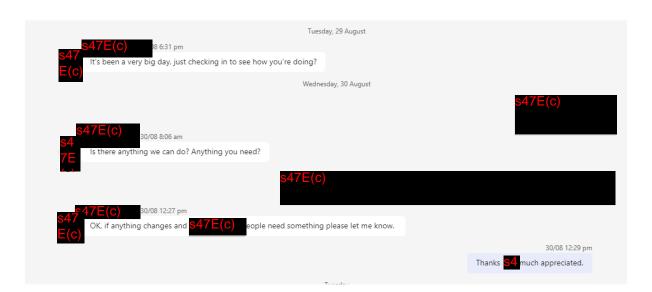
Dr Ashley Clements | Principal Research Officer

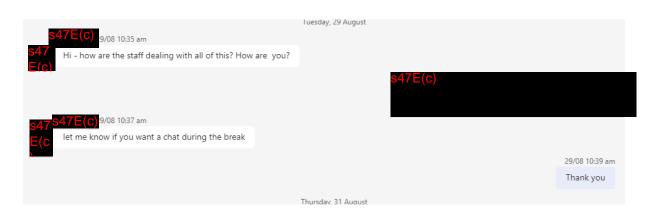
Committee Office | Department of the Senate Phone 02 6277 3220 www.aph.gov.au/senate

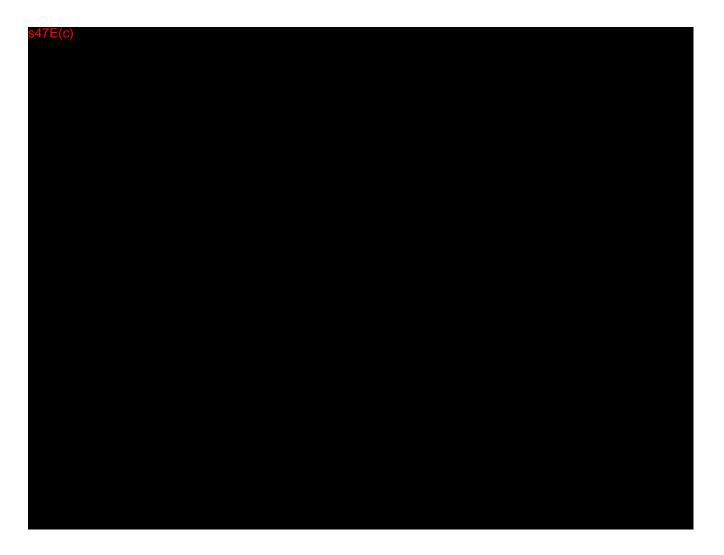
FOIREQ23/00173 Search and retrieval: s47E(c)













From: <u>DRAYTON, Melanie</u>

To: GHALI,Sarah; BROWN,Rebecca; HAMPTON,Elizabeth

Subject: STAY survey and APS Census

Date: Tuesday, 29 August 2023 9:58:00 AM

Results of STAY survey undertaken in April 2023.

I feel part of the OAIC:

DR/MI	- 74% always/often	12% sometimes	15% never
FOI	- 76% always/often	24% sometimes	0% never
Corp/Legal	- 86% always/often	10% sometimes	4% never
R&S	- 89% always/often	11% Sometimes	0% never

None of the FOI Branch reported that they never feel part of the OAIC.

••••

APS Census 2023 - burn out and stress

Branch reporting the most burn out (57%) and stress (57%) is the Corporate Branch.

This is compared to FOI Branch which reported burn out of 34% and stress 38%.

A branch that is reporting the highest burn out and stress in the agency is not a branch that is under-resourced.

^{*} figures relating to burn our reflect the number of staff reporting that they 'strongly agree or agree to feeling burnt out' and find work 'always or often stressful'.

00257

You would have received an invite for an optional branch meeting this afternoon, which is to discuss any concerns or questions arising from the senate enquiry with safety of the senate enquiry with safety of the safety of the



30/08 12:33 pm

and i can raise with s47E(c) In the interim lets remember that, despite the noise around us, what we do is so important to so many people. Please dont hesitate to call me if you need to have a chat.