



Matt O'Sullivan
SENATOR FOR WESTERN AUSTRALIA

Ms Natalie James
Secretary
Department of Employment and Workplace Relations
Via email: Nat.james@dewr.gov.au

Dear Secretary,

I write on behalf of the Opposition Senators ahead of the 2023-2024 Senate Supplementary Budget Estimates hearings which will take place on Wednesday 25 October to Thursday 26 October 2023 to request that certain information is provided to the Committee in advance of these hearings.

Providing Opposition Senators with information ahead of Senate Estimates as requested not only assists Senators in their important role scrutinising Government expenditure but also the Department by ensuring that relevant information is on hand during the Senate Estimates process.

I request that the Department provides the follow specific information to the Education and Employment Legislation Committee by **12pm on Tuesday 24 October 2023**:

- 1) The Number and levels of staff currently employed by DEWR and all independent agencies within the portfolio including organisational structures;
- 2) The number and levels of non-ongoing staff through labour hire, contracts, and non-ongoing arrangements currently employed by DEWR and all independent agencies within the portfolio including organisational structures;
- 3) Detailed breakdown of DEWR's Freedom of Information (FOI) requests and management. Please include how many staff are responsible in progressing FOIs, the average days to process, the median days to process, how many have been received, and their status - whether approved in-full, in-part, refused;
- 4) A current list of all boards, commissions, statutory appointments within the portfolio including date of appointment and cessation. Please include any vacant positions, the reason for the vacancy, when it became vacant and for how long it is expected to be vacant;

- 5) The decision-maker's reasoning on why the *Fair Work Legislation Amendment (Closing loopholes) Bill 2023* does not have a Regulatory impact statement, but rather relies upon Impact Analysis Equivalent documents;
- 6) All correspondence between the Minister and the Department on the decision on the regulatory impact statement of the *Fair Work Legislation Amendment (Closing loopholes) Bill 2023*;
- 7) The email to staff that was sent in relation to the wage underpayment by the Department, as mentioned in the AFR Article, *Employment department underpaid staff*, written by Myriam Robin on 17 August 2023;
- 8) Detailed breakdown of DEWR's use of interns. Please include the number of interns that are engaged by the Department, where they are engaged within the Department, how long they are engaged for usually, how much has been expended on interns since 2021-22 financial year;
- 9) Please provide the count of rideshares claimed by the Department's employees for the 2021–22, 2022-23, and 2023-24 (to date) financial years;
- 10) A list of all ministerial submissions that have been created after 1 May 2023, including the area of the Department that prepared the submission, dates submitted to both Ministers, and all Assistant Ministers, requested signature dates, actual signature dates, and whether the Minister disagreed with any recommendations, as per the table below:

Submission number and title	Which Minister?	Prepared by (Branch & Section)	Date submitted to MO	Date by which signature requested	Date signed	Did the Minister not agree with any recommendations (however phrased)?
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1.	[eg: MSXXX, Proposed amendments to Fair Entitlements Guarantee]	[eg; Minister Burke, Assistant Minister Chisolm]	[eg: Employment Conditions section]	[eg: 1 February 2023]	[eg: 22 February 2023]	[eg: 22 February 2023]	[eg: No.]
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- 11) A list of all meetings between DEWR and the Australian Council of Trade Unions and/or officials of their affiliated unions, including the file notes of any meeting and the purpose of the meeting between 19 May 2023 and 1 October 2023;
- 12) A list of all meetings the Department has undertaken with external stakeholders, which were at the request of the Minister for Employment and Workplace Relations and/or his office, since 1 May 2023;

- 13) How many compliance notices have been issued under the new Workforce Australia employment services system;
- 14) The latest Workforce Australia Services, Workforce Australia online and Transition to Work caseload;
- 15) Number of long term and very long term jobseekers in the caseload broken down by how many years they have been in the system;
- 16) Latest estimates or data on the VET-FEE HELP Scheme Redress payments, broken down by State, age, average amount paid to each applicant, median amount per applicant, lowest amount paid, highest amount paid, average days to progress payment of redress, median days from application for redress to payment;
- 17) Most up to date data on the number of in training apprentices and trainees, broken down by gender, age, state, and electorate;
- 18) Provide answers to any outstanding Questions on Notice.

Please note that this list of topics is not exhaustive, and Opposition Senators will likely have a number of other questions referring to expenditure across the Employment and Workplace Relations portfolio.

Yours sincerely,



Matt O'Sullivan
Senator for Western Australia

18 October 2023

Cc: EEC Committee Secretariat

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Australian Government
**Department of Employment
and Workplace Relations**

Secretary
Natalie James

Senator Matt O’Sullivan
Senator for Western Australia
Parliament House
CANBERRA ACT 2600
senator.matt.o’sullivan@aph.gov.au

Dear Senator O’Sullivan

Thank you for your letter of 18 October 2023 concerning the Department of Employment and Workplace Relations’ appearance at the 2023–24 Supplementary Budget Estimates hearings.

The enclosed information addresses questions where information is readily available within your requested timeframe. The department will be ready to discuss other questions at the Estimates hearing.

Questions related to portfolio agencies would be best directed to those agencies.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'N. James'.

Natalie James
24 October 2023

Cc: Senator Tony Sheldon, Chair of the Education and Employment Legislation Committee;
Education and Employment Legislation Committee Secretariat

Encl.

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Question 1: The number and levels of staff currently employed by DEWR including organisational structures.

Actual classification by headcount as at 31 August 2023:

Classification	Headcount
APS1	2
APS2	16
APS3	90
APS4	344
APS5	468
APS6	885
EL1	1,209
EL2	459
SEB1	95
SEB2	28
SEB3	4
Total	3,600

Data based on actual classification (includes acting arrangements). Excludes Secretary, inactive employees, casuals and public office holders.

The department's organisational structure is available at <https://www.dewr.gov.au/about-department/resources/organisation-chart-dewr>.

Question 2: The number and levels of non-ongoing staff through labour hire, contracts, and non-ongoing arrangements currently employed by DEWR including organisational structures.

Non-ongoing employees – actual classification by headcount as at 31 August 2023:

Classification	Headcount
APS2	7
APS3	29
APS4	58
APS5	40
APS6	28
EL1	28
EL2	5
SEB1	1
SEB2	2
Total	198

Data based on actual classification (includes acting arrangements).

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Question 3: Detailed breakdown of DEWR's Freedom of Information (FOI) requests and management. Please include how many staff are responsible in progressing FOIs, the average days to process, the median days to process, how many have been received, and their status – whether approved in-full, in-part, refused.

The department processes FOI requests in accordance with the requirements of the *Freedom of Information Act 1982* (Cth).

The department has met all its statutory timeframes for processing requests. The time taken to process a request depends on:

- the complexity of the request
- whether the scope needs to be clarified with the applicant
- whether third party consultation is required.

The department does not comment on the existence or progress of specific FOI requests. This protects the privacy of applicants and ensures that the department does not pre-empt decisions.

The department publishes a disclosure log which lists information released in response to FOI requests: www.dewr.gov.au/about-department/corporate-reporting/freedom-information-foi/foi-disclosure-log.

Staff responsible for FOI

As at 31 August 2023, the department's Information Law Team had 6 staff in its FOI work stream:

- there are a mix of legal and non-legal staff
- staff levels range from APS4 to EL2 classification level
- 2 staff members work part-time.

FOI requests received, 1 July 2022 to 31 August 2023

Requests received		
On transfer	15	Total 149
Direct from applicants	134	
Decisions made		
Granted in full	24	Total 104
Granted in part	62	
Access refused	18	
- Documents do not exist: 14		
- Practical refusal: 2		
- Exempt in full: 2		
Alternative outcomes		
Transferred to another agency	12	
Withdrawn	24	
On hand at 31 August 2023	9	

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Processing times (for access decisions made)	
Number of access decisions made	104
Average days to process	42.8
Median days to process	31.0

Reviews	#
Internal reviews	
- transferred from DESE	1
- received	9
- finalised	9
- on hand at 31 August 2023	1
Office of the Australian Information Commissioner reviews	
- transferred from DESE/AGD	16
- received	3
- finalised	3
- on hand at 31 August 2023	16
Appeals to the Administrative Appeals Tribunal	
- on hand	0
- received	0
- finalised	0
- on hand at 31 August 2023	0

The 9 internal reviews were finalised with the following outcomes:

- 3 internal review decisions affirmed the original decision
- 3 internal review decisions overturned the original decision and granted further access to documents in part
- 1 internal review of charges decision resulted in a reduction of the charges imposed, and
- 2 reviews of charges decisions resulted in charges being waived entirely.

Question 4: A current list of all boards, commissions, statutory appointments within the portfolio including date of appointment and cessation. Please include any vacant positions, the reason for the vacancy, when it became vacant and for how long it is expected to be vacant.

The department reports on ministerial appointments and vacancies under Senate Order 15. The latest available information is published at <https://www.dewr.gov.au/about-us/corporate-reporting/senate-order-listings/senate-order-15-departmental-and-agency-appointments-and-vacancies>.

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Question 5: The decision-maker's reasoning on why the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* does not have a Regulatory Impact Statement, but rather relies upon Impact Analysis Equivalent documents.

The *Australian Government Guide to Policy Impact Analysis* provides that, with the prior agreement of the Office of Impact Analysis (OIA), an agency may certify a review or other similar analysis that has been prepared through a process equivalent to an Impact Analysis (IA), for example a Senate inquiry report. When a review or similar analysis is certified, additional analysis can be prepared by an agency to supplement that review or similar analysis to ensure the seven IA questions made available by the OIA are answered (p. 9 of the guide refers). This approach helps remove duplication between certified review processes and IAs.

The department engaged with the OIA about which measures in the Closing Loopholes Bill required an analysis of estimated impacts. For those measures identified, an IAE process was used because comprehensive review processes had been undertaken elsewhere into issues addressed in these measures and could be certified by the department. Significant supplementary analysis was also undertaken as set out in the Explanatory Memorandum. The measures are:

- standing up for casual workers
- closing the labour hire loophole
- minimum standards and increased access to dispute resolution for independent contractors.

Where an Impact Analysis Equivalent process is undertaken by an agency, the OIA assesses documents for relevance to the policy proposal being put forward. For the Closing Loopholes Bill, the OIA confirmed via letters with the department that the options analysed were sufficiently relevant to the policies proposed. These letters were published on the OIA's website at <https://oia.pmc.gov.au/published-impact-analyses-and-reports> on 4 September 2023.

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Question 7: The email to staff that was sent in relation to the wage underpayment by the Department, as mentioned in the AFR article, *Employment department underpaid staff*, written by Myriam Robin on 17 August 2023.

A copy of the all-staff communication that was provided to Myriam Robin and referenced in the *Australian Financial Review* article on 17 August 2023 is provided below.

DEWR NEWS

Overtime entitlements for Non-SES Employees

Published 11/08/2023



Deborah Jenkins
Deputy Secretary
Corporate and Enabling Services
Chief Operating Officer

Good morning

We have recently identified that in certain circumstances some of our employees may not have been paid their overtime entitlement under the DEWR Determination 2022/2 (Non-SES employees) (the Determination).

We are taking this very seriously and, while aspects of the matter are complex, we are working quickly to resolve it and pay our employees all their entitlements as soon as possible.

When the department was established in July 2022 the Determination was created to provide terms and conditions for non-SES employees, aiming to preserve the conditions that were bargained for under the agreements that operated prior to the Machinery of Government change, including a bandwidth of 7am-7pm (for most employees transferring to the department).

The Determination contains a bandwidth of hours from 8am to 6pm in alignment with the Australian Public Service Enterprise Award 2015 (the Award), while still enabling employees to choose flexible work hours between 7am and 7pm.

These were always intended to be interim measures until we could negotiate an enterprise agreement for the department – a process we have commenced through Part A APS-wide bargaining.

I want to reassure everyone that employees have been paid consistently with how they would have been paid under their previously applying enterprise agreements. The changes made in the Determination mean that APS employees who have been directed to work their ordinary hours between 7-8am or 6-7pm from 7 July 2022 are entitled to an additional payment.

What we know

The Determination was drafted to preserve contemporary, flexible ways of working – employees could continue to choose to work their hours flexibly between 7am to 7pm since 7 July 2022 as they had done previously.

The situation is different under the Determination for APS employees who are **directed** to work their hours between 7-8am or 6-7pm. In this situation, overtime applies for those hours outside the 8am to 6pm bandwidth.

Who does this impact?

At this stage, we believe that this impacts a small cohort of employees who are directed to work between 7-8 am or 6-7pm (weekdays). We know this includes some of our contact centres and service desk employees who are rostered to work those hours and who were not paid overtime.

So far, we have identified 68 employees entitled to overtime based on an analysis of flex sheet and roster data between 7 July 2022 and 21 June 2023.

For everyone else, if you have worked overtime on a weekday in the last year, please be assured we will also be checking to see if you have been paid correctly.

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If we identify that you are impacted, we will be contacting you directly within the coming week.

As the review progresses, if you haven't heard from us and think you are affected, have questions, or have information you want to tell us, please email us at OvertimeReview@dewr.gov.au

Steps we have taken

When the issue was identified in June, we immediately took steps to better understand the nature and scope of the issue. These steps include:

- Seeking legal advice to ensure we understood the situation.
- Gathering roster and overtime pay data.
- Engaging an external advisor to conduct analysis and calculate entitlements owing to employees.
- Commencing an independent legal review of our determination to ensure there are no other areas of concern.
- Self-reported the matter to the Fair Work Ombudsman.

These steps are enabling us to identify employees who may not have received the correct overtime entitlements.

What we don't know yet

We don't have all the answers yet, including exactly how many people are affected and the amount of money they will be back paid.

We are committed to ensuring that all employees receive the pay and conditions they are entitled to and are working through this as quickly as possible, while making sure we get it right.

Bandwidth

An option that may be open to the department is to restore a broader, more contemporary 7am to 7pm bandwidth, consistent with what was bargained for under previous enterprise agreements that applied to DEWR employees before the Machinery of Government change.

We are continuing to explore this option and it is of utmost importance to us that we do this right. We will be talking to the Australian Public Service Commission, the Community and Public Sector Union, and seeking further legal advice before we do it to ensure there is no reduction in benefits for employees. If we confirm this is an option, we will also consult with you and the union before any change is made.

Next steps

We are committed to open and transparent communication throughout the process and will provide updates as new information becomes available.

We will be connecting with rostered employees to clarify your situation and directly impacted employees will be invited to information sessions for more information.

A broader review of overtime practices in the department and targeted audits informed by our legal advice will also occur to ensure we are getting it right.

We are prioritising this work in terms of resources, external and independent advice and senior engagement from the Secretary and Executive Board. This will continue to be a standing item on the Executive Board agenda until resolved.

The Executive Board approved principles for how we manage this. You can find these principles and more detailed information about this matter on the intranet at [Overtime Review](#).

We will be providing progress updates as we work through this and communicate openly with you. If you have questions or concerns about this matter, I encourage you to have a discussion with your manager or reach out to us directly by email to OvertimeReview@dewr.gov.au

Kind regards

Deb

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Question 12: A list of all meetings the Department has undertaken with external stakeholders which were at the request of the Minister for Employment and Workplace Relations and/or his office, since 1 May 2023.

The department regularly meets with a wide range of stakeholders as part of our business as usual and as part of specific projects. For example, the department undertook significant consultation to support the Government's workplace relations reform agenda.

Question 13: How many compliance notices have been issued under the new Workforce Australia employment services systems.

Question 14: The latest Workforce Australia Services, Workforce Australia Online and Transition to Work caseload.

Question 15: Number of long term and very long term jobseekers in the caseload broken down by how many years they have been in the system.

Answers to questions 13, 14 and 15 are publicly available on in the department's website at <https://www.dewr.gov.au/employment-services-data>.

Question 16: Latest estimates or data on the VET FEE-HELP Scheme Redress payments, broken down by state, age, average amount paid to each applicant, median amount per applicant, lowest amount paid, highest amount paid, average days to progress payment of redress, median days from application for redress to payment.

From 1 January 2016 to 30 September 2023, \$3.59 billion has been re-credited for 195,703 students.

Detailed breakdowns of application data are not readily available.

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Question 17: Most up to date data on the number of in-training apprentices and trainees, broken down by gender, age, state and electorate.

Numbers have been rounded to the nearest 5.

Data Source: National Centre for Vocational Education Research (NCVER) 2023, Australian vocational education and training statistics: apprentices and trainees 2023 — March quarter, NCVER, Adelaide.

Gender

Apprentices and trainees in training as at 31 Mar 2023

Gender	In training as at 31 March 2023
Female	114,635
Male	272,700
Not stated	170
Total	387,505

Age

Apprentices and trainees in training as at 31 Mar 2023

Age categories	In training as at 31 March 2023
14 years and under	220
15 to 19 years	119,110
20 to 24 years	117,525
25 to 29 years	50,035
30 to 39 years	55,015
40 to 49 years	27,605
50 to 59 years	14,175
60 to 64 years	2,795
65 years and over	1,010
Not known	10
Total	387,505

State

Apprentices and trainees in training as at 31 Mar 2023

State/territory	In training as at 31 March 2023
New South Wales	115,470
Victoria	81,210
Queensland	95,690
South Australia	29,370
Western Australia	45,375
Tasmania	10,830
Northern Territory	3,520
Australian Capital Territory	6,040
Total	387,505

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Electorate

Apprentices and trainees in training as at 31 Mar 2023

Electorates	In training as at 31 March 2023
Adelaide	6,925
Aston	2,110
Ballarat	2,435
Banks	1,635
Barker	3,465
Barton	1,500
Bass	2,155
Bean	1,650
Bendigo	2,520
Bennelong	1,370
Berowra	1,290
Blair	2,350
Blaxland	2,325
Bonner	2,800
Boothby	2,085
Bowman	2,225
Braddon	2,900
Bradfield	1,100
Brand	1,950
Brisbane	5,890
Bruce	1,910
Burt	2,145
Calare	3,290
Calwell	2,230
Canberra	2,770
Canning	1,990
Capricornia	5,260
Casey	2,240
Chifley	2,085
Chisholm	1,435
Clark	2,540
Cook	2,315
Cooper	1,905
Corangamite	1,910
Corio	3,095
Cowan	3,815
Cowper	3,325
Cunningham	3,250
Curtin	1,275
Dawson	3,295
Deakin	2,060
Dickson	2,900
Dobell	2,635
Dunkley	2,155

Electorates	In training as at 31 March 2023
Durack	5,900
Eden-Monaro	2,680
Fadden	3,290
Fairfax	3,195
Farrer	3,385
Fenner	1,565
Fisher	3,075
Flinders	3,145
Flynn	3,635
Forde	3,510
Forrest	3,025
Fowler	1,430
Franklin	1,730
Fraser	1,290
Fremantle	3,530
Gellibrand	2,400
Gilmore	2,725
Gippsland	2,245
Goldstein	830
Gorton	1,700
Grayndler	975
Greenway	1,805
Grey	3,645
Griffith	2,880
Groom	4,175
Hasluck	1,945
Hawke	1,535
Herbert	3,315
Higgins	970
Hindmarsh	3,710
Hinkler	2,180
Holt	1,180
Hotham	1,870
Hughes	1,830
Hume	2,730
Hunter	4,325
Indi	3,755
Isaacs	3,670
Jagajaga	1,550
Kennedy	2,930
Kingsford Smith	1,915
Kingston	1,665
Kooyong	990
La Trobe	2,020
Lalor	1,690
Leichhardt	3,215
Lilley	3,665
Lindsay	3,035

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Electoralates	In training as at 31 March 2023
Lingiari	1,745
Longman	2,415
Lyne	2,355
Lyons	1,495
Macarthur	2,900
Mackellar	2,045
Macnamara	2,370
Macquarie	2,115
Makin	1,770
Mallee	2,930
Maranoa	3,505
Maribyrnong	2,680
Mayo	1,800
McEwen	1,485
McMahon	3,285
McPherson	3,085
Melbourne	4,815
Menzies	1,220
Mitchell	2,260
Monash	1,910
Moncrieff	4,040
Moore	1,460
Moreton	4,210
New England	2,945
Newcastle	3,690
Nicholls	2,750
North Sydney	1,720
O'Connor	5,130
Oxley	3,195
Page	2,175
Parkes	3,170
Parramatta	2,150
Paterson	3,905
Pearce	2,760
Perth	3,425
Petrie	1,925
Rankin	2,885
Reid	1,955
Richmond	2,370
Riverina	4,375
Robertson	2,585
Ryan	1,405
Scullin	1,730
Shortland	2,570
Solomon	1,710
Spence	1,955
Sturt	2,320
Swan	4,795

Electoralates	In training as at 31 March 2023
Sydney	4,225
Tangney	2,120
Wannon	3,025
Warringah	1,470
Watson	1,165
Wentworth	1,085
Werriwa	1,710
Whitlam	2,555
Wide Bay	2,375
Wills	995
Wright	2,360
Unallocated, unknown, invalid and overseas codes	945
Total	387,505

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Question 18: Provide answers to any outstanding Questions on Notice.

The department has tabled 199 of 201 Questions on Notice from Budget Estimates.