

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

**2004-2005 ADDITIONAL SENATE ESTIMATES HEARING
17 FEBRUARY 2005**

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

QUESTIONS ON NOTICE

Outcome 2: Higher productivity, higher pay workplace

Output Group 2.1: Workplace relations policy and analysis

Outputs 2.1.1: Workplace relations policy advice

Question Number: W197-05

Question:

Senator Murray asked in writing:

The following Question on Notice to the Minister for Employment and Workplace Relations was first lodged on 11/06/04 in the previous parliament. It is now number 50 with the new notice-given date as 16/11/04 (the first day of the new parliament):

- (1) Can a table be provided of all unfair dismissal applications under federal and state law for the 1996 calendar year for each state and territory, showing the number of applications under federal law, state law, and the total.
- (2) Can a table be provided of all unfair dismissal applications under federal and state law for the 2003 calendar year for each of the states and territories, showing the number of applications under federal law, state law, and the total.
- (3) Can a table be provided showing the number and percentage change of applications for the 2003 calendar year against the 1996 calendar year for each of state and territory, broken down by whether the applications were lodged under federal or state law.
- (4) Can a breakdown be provided showing the same information shown in (1) to (3) above in relation to small business (classified as 20 or fewer employees).
- (5) Can an estimate be provided of the numbers of small businesses that fall under state and federal workplace relations law separately, for each state and territory.
- (6) Can an estimate be provided of the numbers of small business employees that fall under state and federal workplace relations law separately, for each state and territory.

Questions:

- (1) Has an answer to this question been completed and sent to the Minister for approval?
- (2) If so, when?
- (3) Please give detailed reasons for the length of time taken to answer this question.
- (4) When will this question be answered?
- (5) Are you aware that the Draft Senate Forward Legislation Program shows that the Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004 is due in the Sittings Week 2: 7 to 10 March 2005?
- (6) Are you aware that failure to answer this question fully may put the Senate in the position of needing to defer consideration of this Bill until those questions are answered in full?

Answer:

The Department cannot answer these questions as they relate to the provision of advice to the Minister. The Department is, however, able to provide the committee with responses to the questions relating to unfair dismissal statistics that are quoted to in Senator Murray's question.

- (1) The following table provides information on the number of termination of employment applications lodged under federal and state law for each state and territory for the 1996 calendar year.

State/Territory	Termination of employment applications lodged during the 1996 calendar year ¹		
	<i>Federal</i> ²	<i>State</i>	<i>Combined</i>
New South Wales	4290	2186	6476
Queensland	512	1932	2444
Western Australia	1875	918	2793
South Australia	633	1240	1873
Tasmania	360	114	474
Victoria	5958	358	6316
ACT ³	509	N/A	509
NT ³	396	N/A	396
Total	14,533	6748	21,281

Notes

1. Federal and state figures are based on calendar months, and incorporate estimates and interpolations where original data are not available. Official and unofficial sources are used.
2. Data collected on federal termination of employment applications do not differentiate between unfair dismissal and unlawful termination.
3. There are no separate territory unfair dismissal systems.

(2) The following table provides information on the number of termination of employment applications lodged under federal and state law for each state and territory during the 2003 calendar year.

State/Territory	Termination of employment applications lodged during the 2003 calendar year ¹		
	<i>Federal</i> ²	<i>State</i>	<i>Combined</i>
New South Wales	1270	4083	5353
Queensland	397	1642	2039
Western Australia ³	316	1314	1630
South Australia	153	980	1133
Tasmania	109	280	389
Victoria ⁴	4242	N/A	4242
ACT ⁴	227	N/A	227
NT ⁴	240	N/A	240
Total	6954	8299	15,253

Notes

1. Some figures in this table are based on records of monthly lodgements and may differ slightly from final annual figures.
2. Data collected on federal termination of employment applications do not differentiate between unfair dismissal and unlawful termination.
3. Western Australian state figures include both unfair dismissal applications and applications which combine claims of unfair dismissal and denial of contractual benefits.
4. There are no separate territory unfair dismissal systems, and there has been no separate Victorian unfair dismissal system since 1996.

(3) The following table provides information on the number and percentage change in termination of employment applications for the 2003 calendar year against the 1996 calendar year.

State/Territory	Change in the number of termination of employment applications —1996 v 2003 calendar years ¹					
	<i>Federal</i> ²		<i>State</i>		<i>Combined</i>	
	<i>number</i>	<i>%</i>	<i>number</i>	<i>%</i>	<i>number</i>	<i>%</i>
New South Wales ³	-3020	-70.4	1897	86.8	-1123	-17.3
Queensland	-115	-22.5	-290	-15.0	-405	-16.6
Western Australia ⁴	-1559	-83.1	396	43.1	-1163	-41.6
South Australia	-480	-75.8	-260	-21.0	-740	-39.5
Tasmania	-251	-69.7	166	145.6	-85	-17.9
Victoria ⁵	-1716	-28.8	-358	-100.0	-2074	-32.8
ACT ⁵	-282	-55.4	N/A	N/A	-282	-55.4
NT ⁵	-156	-39.4	N/A	N/A	-156	-39.4
Total	-7579	-52.2	1551	23.0	-6028	-28.3

Notes

1. Federal and state figures are based on calendar months, and incorporate estimates and interpolations where original data are not available. Official and unofficial sources are used.

2. Data collected on federal termination of employment applications do not differentiate between unfair dismissal and unlawful termination.

3. Between 1996 and 2003, the number of unfair dismissal applications made in the NSW State jurisdiction increased substantially and the number of applications in NSW in the federal jurisdiction declined substantially. These shifts may be attributed to: the fact that applications in 1996 were made under the more expansive unfair dismissal provisions in the *Industrial Relations Act 1988* rather than the more limited scheme in the *Workplace Relations Act 1996*, which did not come into effect until 31 December 1996; and the expansion in the NSW jurisdiction effected by the *Industrial Relations Amendment (Federal Award Employees) Act 1998* (NSW).

4. Western Australian state figures include both unfair dismissal applications and applications which combine claims of unfair dismissal and denial of contractual benefits.

5. There are no separate territory unfair dismissal systems, and there has been no separate Victorian unfair dismissal system since 1996.

(4) The Australian Industrial Registry (AIR) asks employers who are nominated as respondents in federal termination of employment matters a question relating to the size of their business. Around one third of such employers have responded to the AIR's question. The information collected by the AIR relates only to unfair dismissal applications under the federal Workplace Relations Act 1996, and has only been collected since 1 December 1997. As far as the Federal Government is aware, no state or territory is able to provide reliable data on the number of small businesses involved in unfair dismissal applications for the 1996 or 2003 calendar years. Therefore, it is not possible to provide tables for all small business unfair dismissal applications for the 1996 calendar year, small business unfair dismissal applications under federal and state law for the 2003 calendar year, or changes in the number of small business unfair dismissal applications between 1996 and 2003, as requested.

The following table provides information on federal unfair dismissal applications, broken down by the state and territory in which the application was lodged, for the 2003 calendar year. As not all employers involved in federal unfair dismissal matters responded to the AIR's request for information on employer size, the information in the table is considered indicative only. The number of employer respondents who provided information on employer size is included in the table.

	Federal unfair dismissal applications lodged during the 2003 calendar year^{1,2}			
Registry	Number of termination of employment applications lodged	Number of employer responses to AIR's question on employer size	Number of responses received from small businesses	Small business responses as a percentage of all responses received
New South Wales	1270	275	76	27.6
Queensland	397	186	29	15.6
Western Australia	316	64	16	25.0
South Australia	153	59	16	27.1
Tasmania	109	38	6	15.8
Victoria	4242	1353	524	38.7
ACT	227	53	18	34.0
NT	240	125	50	40.0
Total	6954	2153	735	34.1

Notes

1. The figures in this table are based on monthly lodgements and may differ slightly from final annual lodgement figures.
2. Data collected on federal termination of employment applications do not differentiate between unfair dismissal and unlawful termination.

(5) It is not possible to provide a reliable estimate of the numbers of small businesses that fall under state and federal workplace relations law separately for each state and territory.

A broad indication of the number of non-farm small business that fall under federal workplace relations law can be provided. Non-farm businesses exclude those in the agriculture, forestry and fishing industries.

Drawing upon a combination of data sources, the Department of Employment and Workplace Relations estimates that around one third of non-farm businesses with fewer than 20 employees have employees who are covered by federal awards, Australian Workplace Agreements or federal certified agreements, or are located in the Australian Capital Territory, the Northern Territory or the State of Victoria. It is not possible to break this figure down by state and territory.

The most recent estimate from the Australian Bureau of Statistics' publication Small Business in Australia [ABS cat. no. 1321.0] is that, in 2000–2001, there were 539,900 employing non-farm small businesses in Australia.

Based on these estimates, it is estimated that that around 180,000 non-farm small businesses fell under federal workplace relations law in 2000–2001.

(6) Similarly, it is not possible to provide a reliable estimate of the numbers of small business employees that fall under state and federal workplace relations law separately for each state and territory.

A broad indication of the number of non-farm small business employees who fall under federal workplace relations law can be provided. Employees of non-farm small businesses are those small business employees who were are not employed by businesses in the agriculture, forestry and fishing industries.

The Department of Employment and Workplace Relations estimates that around 35 per cent of employees of non-farm businesses with fewer than 20 employees are covered by federal awards, Australian Workplace Agreements or federal certified agreements, or are employed by businesses located in the Australian Capital Territory, the Northern Territory or the State of Victoria. It is not possible to break this figure down by state and territory.

The most recent estimate from the Australian Bureau of Statistics' publication Small Business in Australia [ABS cat. no. 1321.0] was that, in 2000–2001, 2,269,400 employees were employed by Australian non-farm small businesses.

Based on these estimates, it is estimated that that around 795,000 employees of non-farm small business fell under federal workplace relations law in 2000–2001.