

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2011-2012**

Agency - Fair Work Ombudsman

DEEWR Question No. EW1091_12

Senator Abetz asked on 15 February 2012 , Hansard page 52

Refers to previous DEEWR Question No [EW0504_12](#)

Question

FWO - EW0504_12 - Definition of small business

Senator ABETZ: Supplementary budget estimates, EW0504_12. It was a written question but in the supplementary budget estimates process. Mr Wilson: I am not sure we have that with us. We do not. Senator ABETZ: I will test someone's memory then. You gave me a very helpful table and in it you referred to small businesses fewer than 15 employees. In each of those sections, and I was quoted a whole lot of sections, is the definition of small business in the Fair Work Act the same as it is for the unfair dismissal section where it is a headcount as opposed to full time equivalents? I am just wanting to know whether in the Fair Work Act there is consistency. Mr Wilson: I am not sure we can answer that offhand. We will have to take that on notice.

Answer

The Fair Work Ombudsman has provided the following response.

Section 23 of the *Fair Work Act 2009* provides the definition of 'small business employer'

Section 23 is set out below:

- (1) A national system employer is a small business employer at a particular time if the employer employs fewer than 15 employees at that time.
- (2) For the purpose of calculating the number of employees employed by the employer at a particular time:
 - (a) subject to paragraph (b), all employees employed by the employer at that time are to be counted; and
 - (b) a casual employee is not to be counted unless, at that time, he or she has been employed by the employer on a regular and systematic basis.
- (3) For the purpose of calculating the number of employees employed by the employer at a particular time, associated entities are taken to be one entity.

- (4) To avoid doubt, in determining whether a national system employer is a small business employer at a particular time in relation to the dismissal of an employee, or termination of an employee's employment, the employees that are to be counted include (subject to paragraph (2)(b)):
- (a) the employee who is being dismissed or whose employment is being terminated; and
 - (b) any other employee of the employer who is also being dismissed or whose employment is also being terminated.

Sections 121(1)b (redundancy pay), 383 (unfair dismissal – minimum employment period) and 388 (Small Business Fair Dismissal Code) of the *Fair Work Act 2009* each refer to a 'small business employer'. It is the position of the Fair Work Ombudsman that the definition of small business employer provided at section 23 is applicable to these sections.