

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

**QUESTIONS ON NOTICE
Budget Estimates 2012-2013**

Agency - Fair Work Australia

DEEWR Question No. EW0018_13

Senator Abetz provided in writing.

Question

FWA - conciliation services

Please advise by name the person conducting the conciliations, since 1 January 2010 as to: a. How many conciliations have been conducted? b. How many conciliations have not resulted in proceeding to the tribunal? c. How many conciliations have resulted in the case being settled? d. The number of: i. Unfair dismissal cases; ii. Adverse action cases; iii. Other matters.

Answer

Fair Work Australia has provided the following response.

Members of Fair Work Australia can deal with a dispute in a number of ways, including by conciliation (section 595(2)(a) of the *Fair Work Act 2009* ('the FW Act')). The method by which members deal with matters is not separately recorded in the Case Management System and therefore cannot be extracted.

Conciliations for applications for unfair dismissal remedy (section 394 of the FW Act) are initially conducted by Fair Work Australia staff members. Fair Work Australia has 26 full time equivalent conciliators as at 31 May 2012.

Legal advice obtained by FWA suggests that the Minister, and not the General Manager, could claim public interest immunity from providing the names of persons conducting unfair dismissal conciliations in the first instance.

The public interest grounds for not providing the name of the person conducting conciliations are twofold; first, revealing the names of individual conciliators and their settlement rates gives the parties opportunity to 'forum shop' for a particular conciliator and; second, revealing the names of individual conciliators and their outcome data effectively involves an unreasonable and unwarranted disclosure of personal information about APS employees.

The list below includes conciliations conducted by staff members no longer employed by Fair Work Australia and conciliations conducted by Fair Work Australia staff members whose primary function is not conciliation.

It is not possible to accurately report on conciliations of applications for unfair dismissal remedy between 1 January 2010 and 1 July 2010 as the results framework which would allow reporting on this data was not in place until 1 July 2010.

(a) How many conciliations have been conducted?

Conciliator	a. total conciliations conducted	c. Settled
C1	924	706
C2	629	467
C3	39	35
C4	729	615
C5	898	734
C6	324	288
C7	837	686
C8	967	841
C9	902	679
C10	727	605
C11	668	534
C12	893	728
C13	184	139
C14	874	659
C15	825	684
C16	452	335
C17	831	703
C18	949	777
C19	63	42
C20	329	257
C21	812	626
C22	129	114
C23	875	777
C24	899	660
C25	839	711
C26	689	577
C27	804	628
C28	306	262
C29	808	551
C30	237	203
C31	13	11
C32	37	22
C33	47	43
C34	211	143
C35	1	1
C36	69	45
C37	15	10
C38	12	9
C39	11	8
C40	12	10
C41	16	13

Conciliator	a. total conciliations conducted	c. Settled
C42	17	15
C43	11	8
Sum	19914	15961

(b) How many conciliations have not resulted in proceeding to the tribunal?

In addition to the 15 961 matters reported at answer (c) that can be attributed to a conciliator, approximately 3000 matters were withdrawn after conciliation, or prior to a hearing before a member of the Tribunal.

(c) How many conciliations have resulted in the case being settled?

Please refer to the table at a. above.

(d) The number of:

The following is the number of applications received by Fair Work Australia in each of the required categories since 1 January 2010:

(i) Unfair dismissal cases;

Period	s394
1 Jan 2010 to 30 Jun 2010	5912
1 Jul 2010 to 30 Jun 2011	12301
1 Jul 2011 to 31 May 2012	12925
Sum	31138

(ii) Adverse action cases;

Period	s365	s372
1 Jan 2010 to 30 Jun 2010	758	160
1 Jul 2010 to 30 Jun 2011	1871	504
1 Jul 2011 to 31 May 2012	1995	564
Sum	4626	1228

(iii) Other matters.

Other termination of employment matters considered by Members of Fair Work Australia in conference are applications made under s773 of the Fair Work Act.

Period	s773
1 Jan 2010 to 30 Jun 2010	118
1 Jul 2010 to 30 Jun 2011	17
1 Jul 2011 to 31 May 2012	131
Sum	442