

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

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

**Agency - ABCC/FWBII**

**DEEWR Question No. EW0580\_13**

**Senator Wright provided in writing.**

**Question**

**FWBII - Diploma Constructions prosecution**

In the recent Diploma Constructions prosecution (<http://www.austlii.edu.au/au/cases/cth/FCA/2012/966.html>) which involved Mr McDonald and which was settled prior to the hearing, why did you not make reference in your media comments to the findings of the Court in that matter to the effect that Mr McDonald gave unchallenged evidence that: (i) he had assumed the order in question, made in December 2009, was no longer operative in February and June 2011, (ii) the basis for that assumption, (iii) his concerns about sham contracting by the subcontractor involved in the dispute (who was prosecuted and penalised by your agency for breach of the sham contracting provisions of the FW Act) and (iv) the Court taking these matters into account as evidence that Mr McDonald's conduct was not egregious [para 11]?

**Answer**

Fair Work Building and Construction has provided the following response:

The media release in this matter set out the contraventions that were admitted by the respondents.

The media release did refer to concerns raised about sham contracting on site and the ABCC's response to these concerns.