

Answers to questions on notice by Dr John Martin, Research and Policy Officer for the Queensland Council of Unions, asked by Senator Hume at a public hearing in Caboolture on 19 July 2018; received 14 August 2018.

Stephen Palethorpe
Secretary
Standing Committee on Education and Employment

On 19 July 2018 the following exchange took place in the committee hearing:

Senator HUME: Can you give me some examples of when that has occurred and organisations have inflicted that.

Dr Martin: ABNs?

Senator HUME: That have specifically put a job ad in the paper or on Seek.com or wherever it might be and then have asked for an ABN.

Dr Martin: I don't know whether I can for cleaning. I'm certain it would be fairly easy to do for the security industry, from what I have seen.

Senator HUME: I think it would be helpful to the committee if we could have some hard examples.

Dr Martin: I'm happy to do that. Obviously there's the same difficulty that we heard from the lawyers earlier in terms of de-identification of the workers involved—

Senator HUME: I don't need to know the workers, just the employers.

Dr Martin: Okay. I'd be happy to do my best. Obviously I'll have to seek some advice before I do that, but to the extent that I can assist you I will. I'd like to help you with that.

Senator HUME: Thank you.

Unfortunately, within the timeframes set for a response, I have not been able to find any examples of workers seeking employment being required to obtain an ABN within the context of the specific terms of reference of the inquiry.

However, an internet search of jobs undertaken on 13 August 2018 provided the following results that require an ABN for the position of cleaner in the northern suburbs of Brisbane:

https://au.indeed.com/cmp/Enviroclean-Oz/jobs/Contract-Cleaner-2e22431eddd62d9f?sdu=8EWtruxy728tzxKcUmN0cftUUnTiqAH5YG6XRHXH6iC6xLiNsIPPHA34bn2sklpJg-sFMJMPVmcgFleNOJN1VNO8_ben5uTnTNQ-WNgyLUAKYXtKeeWTd_7cuSnmQ58&tk=1cko97ogi80p1a7u&vjs=3

In this case the principal Enviroclean Oz seeks cleaners who are willing to be part of a team. This is incongruous with the cleaner being an independent contractor.

https://au.indeed.com/cmp/2-WG-Cleaning/jobs/Domestic-Detailed-Cleaner-ace9ca2da5023616?sdu=8EWtruxy728tzxKcUmN0cbu5TyA0I6pzPvJfAZcXNbl48Win8TWbDwkVlPE_MwbrqEAP7MEo9FbfKjx6a9QIMIGKZxJ7RSnGY7VpDeHpBEg&tk=1cko97ogi80p1a7u&vjs=3

In this case the principal 2 WGC also seeks the purported contractor to work as part of a team. In addition, the advertisement specifies that the purported contractor must be an Australian citizen and required to attend fortnightly meetings. The advertisement also specifies the job as being casual.

Answers to questions on notice by Dr John Martin, Research and Policy Officer for the Queensland Council of Unions, asked by Senator Hume at a public hearing in Caboolture on 19 July 2018; received 14 August 2018.

<https://au.indeed.com/cmp/Air-Con-Clean/jobs/Contract-Cleaner-Abn-06388dcd78b5187a?q=Cleaner+Abn&vjs=3>

In this case the principal, Air Con Clean, suggest that they will train the purported contractor. It defies logic that any principal letting a contract for services would need to train the contractor. This implies a level of control over how the work is to be done rather than letting out a contract for a completed service.

It should be noted that this was the first three positions for cleaners discovered when one searches for contract cleaners and ABN. It is unlikely that anyone who was engaged under these conditions as a cleaner would be found to be an independent contractor in terms of the legal definition. In particular the level of control sought to be exercised by the principals would indicate a contract of service. Moreover, the advertisements use the language one would expect to see in an advertisement for employment not that of an advertisement seeking expressions of interest for the letting of a contract. The specification of an ABN would be superfluous for a contract for service but in the above advertisements it features prominently.

An example that was alluded to in at the committee hearing is set out hereunder. This is an excerpt from a submission to the *Inquiry into wage theft in Queensland* currently being undertaken by the Education, Employment and Small Business Committee of the Queensland Parliament:

In February 2016, United Voice Queensland (UVQ) were contacted by members employed as cleaners at a large regional shopping centre. The cleaners had performed cleaning duties at the centre for various employers over a few years. A cleaning contractor "SSS" held the contract but had regularly sub contracted other companies to engage the labour under a dubious pyramid sub-contracting scheme.

The various companies were irregular in their compliance with the award, keeping records and providing taxation information.

The various companies engaging the labour had come and gone, and the employees had periodically been placed back on the "SSS" payroll. None of the transferring of employees from one employer's payroll to another seems to have been effected in accordance with regular industrial processes.

Employees contacted United Voice when they were told that "SSS" was, once again, not going to be their employer, but there was a new contractor "JS".

The employees were told that the new pay rate was "\$20" per hour with wages paid directly into their bank accounts by cash deposit.

Employees were asked to complete new "PAYE" forms, which did not include details of the new employer. Employees were not provided with any details of the new employer other than a mobile phone contact number and a contact's first name.

Employees were threatened that if they contacted the union they would be sacked. It transpired that employees remained working at the shopping centre, performing identical duties.

Employees were not provided with payslips and received reduced remuneration for the same hours of work, deposited into their bank accounts. No detail of the payer was made available to employees.

Answers to questions on notice by Dr John Martin, Research and Policy Officer for the Queensland Council of Unions, asked by Senator Hume at a public hearing in Caboolture on 19 July 2018; received 14 August 2018.

One of the employees called "JS's" contact number and enquired about her payslip. "JS's" contact stated that none of the employees were employed by "JS" yet, because they hadn't provided "JS" with an ABN. (emphasis added)

Another employee was absent through illness, provided a medical certificate as per usual practice to "SSS" and did not receive any sick pay.

It became clear, that "SSS" had intended to pyramid sub contract out the employees to "JS" who would employ all the cleaners under sham independent contracts under "ABNs" at reduced pay, performing exactly the same duties.

The union wrote to the shopping centre management and "SSS" setting out, inter alia, our concerns about potential breaches of the federal employment laws.

The union received a response from "SSS" advising that it no longer intended to engage "JS" to employ the cleaners, and that "SSS" intended to engage them all under the award.

Our members subsequently began receiving payslips from "SSS", but discovered that they were engaged as 'casuals', despite working the same regular rosters. After further intervention from the union, employees were re-classified as permanent part time.

This example clearly demonstrates the practice of using an ABN to attempt to change employees into independent contractors. It is within the retail sector and involves contract cleaners.

The Queensland Council of Unions has also been accepting stories from members of the public in relation to wage theft for the abovenamed Queensland Parliament inquiry. As at 30 July 2018, 16 per cent of the 175 responses received on our web site had listed "independent contractor" as the cause of wage theft. These are by no means all in the contract cleaning industry, however contract cleaning did account for 4.7 per cent of all responses received on our web site whilst it only accounts for 1.2 per cent of the total workforce according to the 2016 census. We are convinced that wage theft exists within contract cleaning and that sham contracting is one of the means by which it occurs.

I trust that this response has been of some assistance to the committee in its deliberations concerning exploitation of cleaners working in retail chains. Please feel free to contact me if any of the information contained in this email requires any further explanation.



Dr. John Martin
Research and Policy Officer
Queensland Council of Unions
Level 5, 16 Peel Street, South Brisbane Q 4101
t: 3010 2555 | m: 0419 788 587
w: www.queenslandunions.org.au

