

Senate Economics Reference Committee
Inquiry into the unlawful underpayment of employees' remuneration
ANSWERS TO QUESTIONS ON NOTICE
Australian Taxation Office
SEPTEMBER 2020

Department/Agency: ATO
Question: S3
Topic: ATO and FWO cases

Question:

Senator SHELDON: So all cases that you don't pursue you hand over to the Fair Work Ombudsman? Is that a correct understanding?

Mr Ford: I don't think we hand over all of them, but I'll get those figures for you.

Senator SHELDON: And also the criteria and the basis of them being handed over. Do you have criteria?

Mr Ford: I don't have that with me, no, but what I would say to you is that this is obviously a question of facts and evidence in each individual circumstance.

Answer:

The ATO investigates all matters referred to it where workers may be being incorrectly treated as contractors when they are in fact employees. In all cases where our investigation reveals there is an issue and a worker has been incorrectly treated as a contractor, we refer the matter to the Fair Work Ombudsman (FWO). We do not refer matters to FWO where, as a result of our investigation, we consider there is no issue because the worker is in fact a contractor.

Under the Memorandum of Understanding between the ATO and FWO, we provide FWO with the Australian Business Numbers (ABNs) of entities who have been found non-compliant with their employer obligations (Pay as You Go Withholding and / or Superannuation Guarantee) on a quarterly basis. Further discussion on this topic can be found on Page 6 of the hearing hansard,

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committee%2Fcommsen%2Ff03f58bd-8f5f-4240-aae7-486f44bfc8df%2F0000%22>.