

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

**QUESTIONS ON NOTICE  
Budget Estimates 2010-2011**

**Agency - Fair Work Ombudsman**

**DEEWR Question No.EW0267\_11**

**Senator Cameron asked on 1/06/2010, Hansard page 69.**

**Question**

**CLARIFY SHAM CONTRACTING**

Mr Wilson—If I can clarify one aspect, the work we do in relation to sham contracting, I would say, falls into capital ‘S’ and small ‘s’ sham. There are some which relate to the specific provisions of the sections of the act that Mr Johns has referred to, ‘S’, and then there are some which relate to circumstances where workers have been termed contractors when at law they are employees, but they do not fit the full sham contracting provisions. We will clarify that for you.

**Answer**

*The Fair Work Ombudsman has provided the following response.*

The Fair Work Ombudsman can enforce contraventions of the sham contracting provisions within Division 6 of Part 3-1 of Chapter 3 of the *Fair Work Act 2009* (the FW Act) in instances where there is sufficient evidence to establish that an employer has intentionally represented an employment relationship as a relationship between principal and contractor. See PQoN response EW0265\_11 for further information about the defences available to employers to avoid liability under these sham arrangements.

Where the Fair Work Ombudsman is satisfied that a person who is held out to be an independent contractor is more likely to be found to be an employee, but there is insufficient evidence to prove a contravention of Division 6 of Part 3-1 of Chapter 3 of the FW Act, then the Fair Work Ombudsman can take steps to enforce entitlements that would have been paid to that person if they had have been properly classified as an employee.