

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

**QUESTIONS ON NOTICE  
Budget Estimates 2011-2012**

**Agency - Fair Work Ombudsman**

**DEEWR Question No.EW0261\_12**

**Senator Abetz asked on 30/05/2011, Hansard page 52.**

**Question**

**Sham Contracting**

Senator FISHER:Back to the sham contracting allegations. You talked about cleaning, call centres and hair and beauty on the basis of information that you had received ... What are the actual activities that the Ombudsman is doing in investigating or assessing. You have talked about an audit of those industries ... I know you said Mr Wilson will report at the end of July, but without wanting to pre-empt that what are you able to say about the permeation of a problem in any of those sectors; any indicators about size of workforce or size of business where it is more prevalent rather than less?

**Answer**

*The Fair Work Ombudsman provided the following response.*

The Fair Work Ombudsman's Sham Contracting Operational Intervention has focussed on three industry sectors – Call Centres, Hair and Beauty, and Cleaning Services.

In April and May 2011, the Fair Work Ombudsman audited 112 enterprises to assess the degree to which workers in those industries have been incorrectly engaged as independent contractors rather than employees. Included in these audits were a number of second and third tier contracting enterprises in the cleaning industry.

While the information gathered in those audits is yet to be fully analysed, it appears that about half the audited enterprises were utilising contractors in a way consistent with the *Fair Work Act 2009*. It also appears that about one-quarter of the total may have misclassified as contractors, people who are actually employees.

The remaining one-quarter are yet to be fully analysed, and are subject to more serious questions about their overall compliance (including their compliance with the sham contracting provisions).

The nature of investigatory process necessarily indicates that even though questions of compliance arise, that is not synonymous with saying a breach has occurred – instead it is merely a case of there being a more detailed analysis required in order to determine the question.

The misclassification of employees as independent contractors was found in all three of the industries audited. The preliminary investigations also indicate that contraventions of the sham contracting provisions of the *Fair Work Act 2009* are likely.

Inappropriate contracting arrangements have been identified across a spread of business sizes, both in terms of the number of workers employed and the number of contractors engaged.

A detailed report into the conduct and findings of the Sham Contracting Operational Intervention will be released by the Fair Work Ombudsman at the conclusion of the project.

In addition to the Sham Contracting Operational Intervention, as part of the Fair Work Ombudsman's National Security Service Industry Follow Up Campaign 2011, employers who are audited will also be asked to provide information regarding their contract for service arrangements.