

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

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

Agency - Fair Work Ombudsman

DEEWR Question No. EW0496_12

Senator Abetz provided in writing.

Question

Sham Contracting

"Reference is made to the second Annual Report of the Fair Work Ombudsman. 1. What evidence is there of sham contracting being a 'growing issue' in the community? 2. Please identify the industries where sham contracting is a 'major issue'. a. For each industry, the number of complaints, contraventions, investigations and legal proceedings. 3. How many staff were involved in the National Sham Contracting Operational Intervention? a. What were the results of this project? 4. Please provide hard copies of all material that shows employers how to ensure that they are compliant with sham contracting provisions and also any materials that show employers how to correctly employ contractors should they wish to. "

Answer

The Fair Work Ombudsman has provided the following response.

Question 1: *What evidence is there of sham contracting being a 'growing issue' in the community?*

In the 2009-2010 financial year, the Fair Work Infoline received 320 enquiries regarding both independent contractors and/or sham contracting, compared with 379 in the 2010-2011 financial year.

The Fair Work Ombudsman completed 32 investigations into allegations of sham contracting in 2009-2010, this number increased to 100 in 2010-11.

In April and May 2011 the Fair Work Ombudsman commenced audits of trading enterprises to assess the extent to which workers engaged by independent contracts should more properly have been considered employees. In addition to enforcing compliance with the *Fair Work Act 2009*, one of the aims of the campaign was to evaluate the prevalence of the issue.

Prior to commencing the audit activity, stakeholders, including both employer and employee associations, were consulted and their views sought on the extent of sham or mistaken contracting in their respective industries. There was agreement that the practice was likely to exist to varying degrees in each of the industries nominated. The cleaning services, call centre and hair and beauty industries were selected for

audit, although our experience suggests that misclassified arrangements can exist in any industry and are not confined to these industries alone.

The audits found that of 102 enterprises audited, 21 had engaged independent contractors who the Fair Work Ombudsman assessed should more properly be considered as employees under the common law employment test.

It should be noted that the sample set was deliberately targeted towards businesses that did engage independent contractors, therefore, the data is not indicative of the prevalence of independent contracting more generally.

Question 2: *Please identify the industries where sham contracting is a 'major issue'. a. For each industry, the number of complaints, contraventions, investigations and legal proceedings.*

Sham contracting complaints received by the Fair Work Ombudsman have related to a variety of industries. No conclusions can be drawn from the complaints about which industries have experienced sham contracting as a 'major issue'.

Sham contracting proceedings initiated by the Fair Work Ombudsman and its predecessor, the Workplace Ombudsman, by industry, from 1 July 2008 to 30 June 2011 are as follows:

Retail	3
Hospitality	2
Call Centre	1
Financial Services	1
Telecommunications	1
Real Estate	1

Question 3: *How many staff were involved in the National Sham Contracting Operational Intervention? a. What were the results of this project?*

Thirty-four Fair Work Inspectors from the Fair Work Ombudsman participated in the National Sham Contracting Operational Intervention (SCOI). The involvement of these Fair Work Inspectors varied significantly, for example, some performed one audit, while others performed many.

The report on the preliminary outcomes of the National Sham Contracting Operational Intervention was released in 11 November 2011 and can be accessed on the Fair Work Ombudsman website.

Question 4: *Please provide hard copies of all material that shows employers how to ensure that they are compliant with sham contracting provisions and also any materials that show employers how to correctly employ contractors should they wish to.*

The Fair Work Ombudsman website has a dedicated page titled 'Independent Contractors' that provides information to employers on their obligations under the *Fair Work Act 2009* in relation to sham contracting. The page also directs visitors to www.business.gov.au for additional tools and resources for employers and independent contractors.

The Fair Work Ombudsman has produced a number of brochures about sham contracting that can be used by employers including some specific to the call centre, hair and beauty and cleaning services industry.

The Fair Work Ombudsman is currently developing an interactive online assessment tool to assist workers and businesses in identifying whether someone is more likely to be an employee or independent contractor. The assessment tool is scheduled for release in February 2012.

The relationship between a principle and an independent contractor is governed by contracts law. Businesses looking for advice on engaging contractors should consult the relevant business chambers or employer association or seek legal advice.

Hard copies of the brochures mentioned above can be provided on request.