

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Innovation, Industry, Science and Research Portfolio
Additional Estimates Hearing 2010-11
23 February 2011

AGENCY/DEPARTMENT: INNOVATION, INDUSTRY, SCIENCE AND RESEARCH

TOPIC: Sham contracting

REFERENCE: Question on Notice (Hansard, 23 February 2011, E67)

QUESTION No.: AI-26

Senator CAMERON—But you are the department that looks after small business. There is money being lost to government revenue. There are schoolchildren being exploited. Can you take on notice to respond as to exactly what you have done in relation to looking at this matter within the department over the last three years?

Mr Schwager—I will take that on notice and give you an answer.

ANSWER

Sham contracting is an offence under the *Fair Work Act 2009* and therefore falls within the responsibility of the Department of Education, Employment and Workplace Relations. The Department of Innovation, Industry, Science and Research administers the *Independent Contractors Act 2006* (IC Act). The IC Act ensures that genuine independent contractors are covered by commercial law and not employment law.

The Department of Innovation, Industry, Science and Research has produced a number of information resources for genuine independent contractors and their small business hirers. While not responsible for sham contracting policy we have taken an educative approach to the issue in the interests of all stakeholders. The information resources cover potential sham contracting arrangements and explain the factors taken into consideration by the courts when determining whether a person is a contractor or an employee. They explain that sham contracting is illegal under the *Fair Work Act 2009* and that a person who believes they are in a sham contracting arrangement can ask the Fair Work Ombudsman (FWO), the Australian Building and Construction Commission (ABCC) or their union to investigate.

Resources for small business hirers and independent contractors:

- *Independent contractors: the essential handbook* (the handbook)
- *Online Contractor Decision tool*
- Independent Contractors Hotline (1300 667 850)
- Web information at www.business.gov.au
- Web information at <http://www.innovation.gov.au> (search using sham contracting)

When developing the products the Department consulted with industry, government and union stakeholders to identify the information needs of independent contractors and their hirers. Our products were developed in consultation and with the cooperation of relevant stakeholders and responsible agencies including the Australian Taxation Office (ATO) and the FWO.

The Independent Contractors Hotline operates in conjunction with the Small Business Support Line. The Hotline provides information to workers, employers and small business operators about a variety of independent contracting matters including sham contracting and taxation obligations. Where a caller may be in a sham contracting arrangement the Hotline promotes the online *Contractor decision tool* and provides contact details of the FWO or the ABCC. For taxation matters, the Hotline provides a referral service to the ATO.