

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

Question: SBT 221

Topic: Sham Contracting (Odco. System)

Senator Cameron asked:

Senator CAMERON—Are you aware of this Odco system that is being peddled around various industries?

Mr Quigley—Sorry, what was that particular term?

Senator CAMERON—The Odco system.

Mr Quigley—No, Senator, I am not.

Senator CAMERON—I am quite surprised, because both the Australian Building and Construction Commission and the Fair Work Ombudsman have expressed concern about this system, which is being used to in some areas avoid tax and in some areas ensure workers do not have access to their legitimate entitlements. And you are not aware of this?

Mr Quigley—I am not aware of that particular terminology, Senator. It may be that some of my officers are actually looking at those types of arrangements. And, given that those other organisations are, I would suspect that we would be looking at something. But I am not aware of that particular—

Senator CAMERON—Could you take it on notice so you can advise me in relation to whether the Taxation Office is aware of these issues and is doing anything about it?

Mr Quigley—Sorry, could I clarify: we certainly are aware of those types of issues. What I am not familiar with is that particular term. But I certainly will take that on notice.

Answer:

Odco

Odco was a 1988 case heard in the Federal court before Woodward J (**Odco Pty Limited v Building Workers' Industrial Union of Australia and others [1989] FCA 336 (24 August 1989)**) and involved a labour hire arrangement. It examined the question of whether the workers were employees for the purposes of the Victoria Building Industry Agreement (VBIA), the critical relationship to be examined was that between the worker and the entity that engaged and paid them, rather than the entity that was the end user of the labour. The court found that the workers were not employees of the labour hire firm.

The *Odco* decision was addressed by the pay as you go withholding provisions that were enacted as part of the new tax system in 1999 which provided for labour hire workers to be covered by pay as you go withholding in the same manner as employees. Labour Hire firms, in the same manner as employers, are required to comply with these pay as you go withholding provisions and, if they fail to do so, are subject to compliance action in the same manner as other employers.

Similarly, in relation to Superannuation Guarantee, legislation enacted subsequent to the *Odco* decision requires superannuation contributions to be made on behalf of individual contractors where the contract is wholly or principally for the labour of the contractor.

Thus, Labour Hire workers are subject to pay as you go withholding, to ensure that their tax obligations are met and the Labour Hire firm is required to make Superannuation Guarantee contributions on behalf of their workers.

On occasions where ATO field staff encounter businesses claiming to rely on the *Odco* case to justify not withholding or not making superannuation guarantee contributions for labour hire

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION

(Supplementary Budget Estimates 20 October – 21 October)

workers, the business operator is advised that the *Odco* decision is not applicable and compliance is enforced to ensure that the workers' entitlements are met.