

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

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

**Agency - Fair Work Ombudsman**

**DEEWR Question No.EW0264\_11**

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

**Question**

**EVIDENCE FOR SHAM CONTRACTING**

Mr Wilson—I can, and I certainly understand and appreciate what it is that you are saying. In relation to the messaging about which matters go where, that is certainly something we are happy to take on as a task and try to improve. In relation to the earlier part of your question about surveys, I am not sure I would accept that proposition. We speak to people about their experiences and we do use surveys. There have been instances where we have taken matters to court that relate to sham contracting, and I am happy to bring some evidence to the table about what action we have in the courts about sham contracting. Senator CAMERON—That would be helpful.

**Answer**

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

The Fair Work Ombudsman has commenced four proceedings relating to sham contracting. Presently, three matters are before the courts (one in each of Tasmania, Queensland and New South Wales) and one matter has been finalised.

The finalised matter involved the successful prosecution of a New South Wales company *Land Choice Pty Ltd & Anor* [2009] FMCA 1255.

On 17 December 2009. Federal Magistrate Barnes imposed combined penalties of \$24,600 against Land Choice Pty Ltd and \$4,840 against Mr Sugiharto for eight breaches of the *Workplace Relations Act 1996* and notional agreement preserving the terms of the *Real Estate Industry (State) Award 2003* (the NAPSA) and one breach of the *Workplace Relations Regulations 2006*. The First and Second Respondents admitted the alleged contraventions prior to the hearing of this matter and the matter proceeded by way of an agreed statement of facts.

Her Honour made orders for the back payment of the complainant in the amount of \$15,119.07 plus \$3,104.94 on 10 November 2009. These amounts took into account \$5,000 that was paid to the complainant by the First Respondent immediately prior to the hearing of this matter.

The relatively low penalty in this case seems to reflect the fact that the Court did not find that the conduct of the Respondents was deliberate, intentional or wilful. The Court also accepted the Second Respondent's evidence that he was unaware that the complainant could not have been engaged as an independent contractor despite the fact the first Respondent admitted it

was reckless to the fact. The admissions of recklessness were made on the basis that the First Respondent had used a pro forma independent contractors agreement contained in a CD-rom obtained from the Real Estate Employers' Federation as the basis for the agreement entered into with the complainant and this CD-rom contained a statement that unlicensed real estate agents could not be engaged on a commission only basis.