

Notes from online meeting with DEWR, 30/01/26, in follow up to email exchanges on sham contracting and business closures in the road freight industry

Attendees: DEWR:

- Employee-like team (responsible for closing loopholes legislation): s22(1)(a)(ii)
- Workplace exploitation and compliance team (including FWO engagement on sham contracting): s22(1)(a)(ii)

DITRDCA: s22(1)(a)(ii) (Heavy Vehicle Policy team).

Who attended the roundtable on 5 November? The ATO and Department of Home Affairs attended the entire (day-long?) session, as did s22(1)(a)(ii) of DEWR. Various Ministers popped in and out during the day.

What was the focus of the discussion on the day? Industry attendees were calling on the ATO for better enforcement of the laws, with focus on its [Shadow Economy Compliance Program](#). Sham contracting was described as the tip of the iceberg in the road freight industry, in that it is likely a symptom of larger and deeper underlying pressures (competitive pressures, commercial viability, compliance with regulations).

The ATO asked for a tighter definition of 'employment', while industry attendees wanted more done on the definition of sham contracting. DEWR officers feel they have already done as much as they reasonably can on the latter¹ and pointed to the broader statutory review of the Closing Loopholes reforms that is happening in 2026.

The communique issued after the 5 November roundtable perhaps overstates the government actions that were agreed. Finding real instances of sham contracting to pass on to investigators would be very helpful (an advertisement is not sufficient). Heavy vehicle drivers are not necessarily unhappy with their arrangements, and a driver being paid via an ABN is not necessarily a sham contractor if they don't own the truck they drive.


There is very limited scope to intervene in matters before the Fair Work Commission, but the TWU has standing to pursue actions under the Fair Work Act, via the FWO. Minister Rishworth meets with the FWO fairly regularly.

What other industries might be experiencing sham contracting? Cleaning and construction industries are two.

DITRDCA promised to share the proposed scope of an 'analysis of the state of the road freight industry' with DEWR. This analysis could provide an evidence base to inform consideration of actions in response to sham contracting and business closures.

¹ The *Fair Work Amendment (Closing Loopholes No. 2) Act 2024* (Closing Loopholes reforms) amended the defence to sham contracting from 'recklessness' to a more objective test of 'reasonableness'. Employers who misclassify workers as independent contractors must now show they reasonably believed the classification was correct. Ignorance or an unreasonable mistake no longer provides a defence.

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 <p>Australian Government</p> <hr/> <p>Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts</p>	<p>Meeting/Event Brief</p> <p>MB25-002093</p>
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To: Catherine King

MEETING: Roundtable with Road Transport Industry

Timing: 05 November 2025

Venue: ACT APH

Meeting with:

Attendees we understand may be in attendance include:

- **The Hon Amanda Rishworth MP**, Minister for Employment and Workplace Relations
- **The Hon Matt Thistlethwaite MP**. Assistant Minister for Immigration, Assistant Minister for Foreign Affairs and Trade.
- **The Hon Dr Andrew Leigh MP** - Assistant Minister for Productivity, Competition, Charities and Treasury.
- **Rob Heferen** - Commissioner of Taxation, Australian Taxation Office (ATO).
- **Michael Kaine** - National Secretary, Transport Workers' Union (TWU).
- **Gary Mahon** - CEO of the Queensland Trucking Association (QTA).
- **Peter Anderson** - CEO of the Victorian Transport Association (VTA), Secretary of the Australian Road Transport Industrial Organization (ARTIO) National Council.
- **Warren Clark** - CEO of the National Road Transport Association (NatRoad).
- **Matt Munro** - CEO of the Australian Trucking Association (ATA)

Our Proposed Objectives:

- Assure the road freight industry that the Australian Government has heard their concerns about the unfairness of sham contracting and its threat to heavy vehicle productivity, safety and industry resilience.
- Work with members to identify priority actions for the Transport portfolio that could assist in addressing the issue of sham contracting.

Their Objective:

- Outline the impacts that sham contracting is having on transport companies and owner drivers and to explore solutions that will help stop this activity as well as support the productivity of transport workers and companies.

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Key Points:

1. We understand Minister Rishworth is attending the Roundtable. The agenda is expected to cover matters within her portfolio responsibilities.
2. Sham contracting is a threat to the productivity, safety and sustainability of the road freight sector.
3. Industry is concerned about unfairness, heightened risk, market distortion, reduced margins and increased insolvency rates being driven by sham contracting.

s47C
**Sensitive and Critical Information:** Nil.

Name: Sally Todd
Position: Assistant Secretary, Land Transport Policy
Division: Surface Transport Emissions and Policy
Ph: s22(1)(a)(ii)
Mob: s22(1)(a)(ii)
Date Cleared: 3 November 2025

Contact Officer: s22(1)(a)(ii)
Division: Heavy Vehicle Reform
Ph: s22(1)(a)(ii)
Mob: s22(1)(a)(ii)

Attachments:s22(1)(a)(ii)
**Attachment B:** Talking points**Attachment C:** Background information

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ATTACHMENT B**TALKING POINTS****Acknowledging the impact of sham contracting on the heavy vehicle sector**

- The Australian Government recognises sham contracting as a threat to the productivity, safety and sustainability of the road freight sector.
- We hear industry's concerns about the unfairness and heightened risk that sham contracting introduces to the sector and we agree that it's unfair and unsafe to have drivers missing out on award pay, super, sick leave, workers' comp and other protections.
- We share your concern about the flow on effects of sham contracting, in particular market distortion, reduced margins and increased insolvency rates.
- We want to work with industry and state and territory governments to try and resolve the issue of sham contracting as quickly as possible

Acknowledging recent legal changes to help prevent sham contracting

- The Government has recently taken action to address sham contracting, including in the road transport sector. These actions fall within the portfolio responsibilities of my colleague, Minister Rishworth, so I invite Minister Rishworth to talk to those reforms.

What industry wants:

- I have heard from industry about a number of ways to address sham contracting and I thank you for the time and effort that has gone into finding these solutions.
- These fall across several areas of portfolio responsibilities, and I would invite my colleagues to speak to the opportunities they see to drive continued improvements in the areas they are responsible for.

ATTACHMENT C

Background Information*Sham contracting*

- Sham contracting occurs when an employer misrepresents an employment relationship as an independent contracting arrangement. The government recognises that sham contracting arrangements deny workers their lawful entitlements and these arrangements are prohibited under the *Fair Work Act 2009*.
- The *Fair Work Amendment (Closing Loopholes No. 2) Act 2024* (Closing Loopholes reforms) amended the defence to sham contracting from ‘recklessness’ to a more objective test of ‘reasonableness’.
- Employers who misclassify workers as independent contractors must now show they reasonably believed the classification was correct. Ignorance or an unreasonable mistake no longer provides a defence.
- The Fair Work Ombudsman (FWO) is the independent statutory agency responsible for impartially enforcing and investigating breaches of Australia’s workplace laws. The FWO has a range of educational and enforcement tools to promote and ensure compliance with workplace laws. The FWO’s response to suspected contraventions is guided by its publicly available Compliance and Enforcement Policy, which sets out the factors it takes into account when considering an appropriate regulatory response.
- Since 2009 to 30 June 2025, the FWO has filed 35 matters with the courts involving sham contracting and secured over \$8.97 million in penalties against contravening businesses. Sham contracting disputes make up less than 1% of the disputes received by the FWO in 2024-25.

Protections for contractors in the road transport industry

- The Closing Loopholes reforms also empowered the Fair Work Commission (FWC) to set minimum standards to improve the safety, sustainability and viability of the road transport industry.
- The FWC can set enforceable minimum standards for independent contractors (regulated road transport contractors) and in road transport contractual chains. Subject to content rules, the FWC can determine which standards should apply, such as payment terms, deductions, insurance and cost recovery.
- The FWC is considering applications made by the Transport Workers’ Union for the following road transport minimum standards or contractual chain standards:
 - road transport minimum standards for ‘last-mile’ parcel/goods delivery work (application made in August 2024)

- road transport contractual chain standards, seeking 30-day payment terms, compulsory rate reviews and a prohibition on ‘set-off’ terms (application made in September 2024)
- road transport contractual chain standards in the cash-in-transit industry (application made in February 2025).
- The FWC is currently consulting on the applications in line procedural requirements in the Fair Work Act, which seek to ensure a gradual, consultative and evidence-based approach to standard-setting with industry views considered at each stage.
- The FWC also has the power to resolve disputes about unfair termination for eligible road transport contractors. If the FWC finds that a termination was unfair, it can order reinstatement, or compensation if reinstatement is not appropriate.
- The Closing Loopholes reforms also established a jurisdiction in the FWC for resolving disputes between independent contractors (below the contractor high income threshold) and principals about unfair contract terms in services contracts, including in the road transport industry. If the FWC decides that the term is unfair, it can make orders to set aside, amend or vary part of the contract.

Statutory review of Closing Loopholes reforms

- A statutory review of the Closing Loopholes reforms is required to commence from December 2025. This will include the reforms made to sham contracting and the new road transport jurisdiction in the FWC. The Government will make announcements about arrangements for the reviews in the coming months.

From: s22(1)(a)(ii)
To: s22(1)(a)(ii)
Cc: s22(1)(a)(ii)
Subject: RE: Input request re road transport and sham contracting [SEC=OFFICIAL]
Date: Monday, 15 December 2025 3:08:11 PM
Attachments: [image002.jpg](#)
[image003.png](#)
[Infrastructure input - Road Transport Industry Roundtable.docx](#)

Hi s22(1)(a)(ii),

Thanks for your call earlier.

I just wanted to confirm that we haven't received advice from our MO or SES representative who attended the roundtable to indicate that there are actions for DEWR to progress as an outcome. I've **attached** the background information that our team provided you in October on existing workplace relations measures which might go some way in addressing these issues. This information is largely still current and reflects the relevant workplace relations measures relating to this issue.

If your Minister is requesting advice on further actions in the WR portfolio, it would be good to set up a time for your area, our sham contracting colleagues and us to meet soon to get a bit more clarity on this request s22(1)(a)(ii)

Many thanks
s22(1)(a)(ii)

s22(1)(a)(ii)

Assistant Director
 Gig and Contractor Policy | Strategy and Protections Branch
 Employment Conditions Division
 Australian Government Department of Employment and Workplace Relations

s22(1)(a)(ii)
 s22(1)(a)(ii) [@dewr.gov.au](mailto:s22(1)(a)(ii)@dewr.gov.au)

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

s22(1)(a)(ii)

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Minister King meeting brief – Road Transport Industry Roundtable

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