

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION  
LEGISLATION COMMITTEE**

**2005-2006 SUPPLEMENTARY BUDGET SENATE ESTIMATES HEARING  
2 and 3 NOVEMBER 2005**

**EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

**QUESTIONS ON NOTICE**

**Outcome 2: Higher productivity, higher pay workplace**

**Output Group 2.2: Workplace Relations Implementation**

**Output 2.2.3: Workplace Relations Services**

**Question Number: W645-06**

**Question:**

Senator Marshall asked in writing:

*Complaints – OEA, OWS, ABCC/BIT* - Please table the policies or guidelines for handling complaints for both the OEA and OWS.

**Answer:**

**OEA**

The OEA trains its Workplace Relations Advisers in the investigation and resolution of complaints of breaches of the *Workplace Relations Act 1996* (the Act). The policies and procedures are contained in the OEA compliance manual (**Attachment A**).

The OEA seeks to resolve complaints (where the OEA determines there has been a breach of the Act, by voluntary compliance. Voluntary compliance means achieving change in behaviour which results in compliance, while avoiding the instigation or continuation of legal proceedings. A fact sheet explaining voluntary compliance is also attached (**Attachment B**).

**OWS**

OWS Policy Guide attached – (**Attachment C**).

**OEA Attachment A**

**Refer to attached document.**

**[OEA Attachment A](#)**

## Voluntary Compliance

Voluntary compliance (VC) means achieving change in behaviour which results in compliance, while avoiding the instigation or continuation of legal proceedings.

Typically, the potential respondent offers and commits to undertake appropriate measures to rectify existing breaches and to prevent them from happening again.

Voluntary compliance may be achieved by informal or formal means.

Informal VC - includes undertakings being given to the OEA. Examples of undertakings are:

- agreeing to enter an educational program, including talks from the OEA
- reinstating an employee
- agreeing to compensation.
- agreeing to stop a specific behaviour

Formal VC - occurs after legal proceedings have commenced, and undertakings are provided to the Court.

The Employment Advocate believes that in most circumstances, voluntary compliance without resort to litigation is the most appropriate method of resolving issues which arise within the jurisdictions administered by the OEA.

Breaches investigated by OEA officers are often inadvertent. In these cases, voluntary compliance can usually deliver a quick and satisfactory resolution.

Voluntary compliance produces a good outcome for employers and employees. Whilst the OEA does not shy away from court proceedings it is very much seen as a last resort. Legal action is always adversarial, can be protracted and expensive and may produce a second rate outcome. Legal action may result in an irretrievable breakdown in ongoing relationships, such as work relationships. Voluntary compliance facilitates the maintenance of an ongoing relationship through settlement that is agreed upon by the parties to a complaint.

### **Seeking voluntary compliance is a key element of the directions of:**

- the Employment Advocate to Authorised Officers, and
- the OEA's operating procedures

Voluntary compliance is sought at every stage of an investigation undertaken by the OEA.

It is important that undertakings where given to resolve an issue are expressed in specific terms.

Complainants are encouraged to remain in contact with the OEA to help oversight the VC process and insure that undertakings are being upheld.

Where the respondent has agreed to voluntary compliance and undertakings are provided these should be monitored to ensure compliance with the provisions of the WR Act which necessitated an investigation and a resolution by VC. An undertaking may also result in a respondent providing an educative program concerning relevant issues.