

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

**2006-2007 SUPPLEMENTARY BUDGET SENATE ESTIMATES HEARING
2ND NOVEMBER 2006**

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

QUESTIONS ON NOTICE

OFFICE OF WORKPLACE SERVICES

**Outcome 1 : The rights and obligations of workers and employers under the
Workplace Relations Act 1996 are understood and enforced fairly**

Output Group 1.1 : Education and Compliance Services

Question Number: W424-07

Question:

Senator Wong asked in writing:

What powers does OWS have to deal with abuse?

Answer:

The OWS' powers to investigate, rectify and seek penalties relating to breaches is not restricted by whether the employee involved is local or a foreign worker (eg a 457 workers). All suspected breaches are dealt with in the same way.

Section 169 of the *Workplace Relations Act 1996* (the Act) provides inspectors with powers to investigate compliance with:

- (a) workplace agreements;
- (b) awards;
- (c) the Australian Fair Pay and Conditions Standard;
- (d) minimum entitlements and orders under Part 12 of the Act; and
- (e) the requirements of the Act and regulations (eg freedom of association, unlawful termination, transmission of business, industrial action, coercion or duress in agreement making, agreement making requirements, contract outworker entitlements, compliance with court and Australian industrial Relations Commission orders).

Inspectors' powers include the ability to:

- (a) enter relevant premises;
- (b) interview any person;
- (c) inspect any work, material, machinery, appliance, article or facility;
- (d) require persons to provide relevant documents while undertaking an inspection;
- (e) require persons to provide relevant documents by written notice (introduced in 2004);
- (f) inspect, copy or take extracts of documents provided; and

- (g) require a person to tell the inspector who has custody of a document.

Non-compliance with a requirement made by a workplace inspector (i.e. in relation to the production of documents) can result in criminal proceedings and is punishable by six months imprisonment – or the monetary equivalent under the Crimes Act.

An inspector can exercise his or her powers with or without having received a claim alleging a breach of Federal workplace relations laws.

In addition to the above investigatory powers, OWS inspectors have a range of enforcement options under Part 14 of the Act, including to:

- prosecute seeking the imposition of penalties (and recovery of wages and orders for interest and court fees);
- recover wages on behalf of an employee; and
- recover wages on behalf of an employee utilising the small claims procedure (where the amount sought is \$10,000 or less).

The Act prescribes that penalties may be sought of up to \$6,600 for an individual, or \$33,000 for a body corporate, per breach.

From 27 March 2007, OWS workplace inspectors will have the ability to issue penalty infringement notices for non-compliance with the record-keeping obligations, and for failure to provide pay slips in the required form, as set out in the Regulations. The infringement notice penalty is one tenth (\$55 for an individual or \$275 for a body corporate) of the maximum penalty that a court can order (\$550 for an individual or \$2,750 for a body corporate).

The issue of an infringement notice does not preclude a workplace inspector from instituting court proceedings for the imposition of a court penalty of up to \$6,600 for an individual, or \$33,000 for a body corporate, per breach.

Where a matter falls outside of OWS' jurisdiction, the Act (section 170) provides OWS with the ability to provide relevant compliance information to the Department of Immigration and Multicultural Affairs and relevant State Government officials.

Estimated Cost: To prepare this answer has taken approximately 2.5 hours at a cost of \$50.00