

**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: W439-07

Question:

Senator Lundy asked at *Hansard* page 48:

Please provide an explanation of your decision making process as to whether or not you choose to litigate if a breach has been identified.

Answer:

The OWS retains discretion to litigate in respect of any breach of the *Workplace Relations Act 1996* and/or the *Workplace Relations Regulations 2006*. As a matter of policy, the OWS will litigate in all cases where it believes breaches of the Act and/or the Regulations are deliberate and/or routine.

In accordance with the Commonwealth Legal Services Directions 2005 and the obligations of the Commonwealth, under those Directions, to act as a model litigant, the OWS will litigate only where there are reasonable prospects of success.

The OWS considers a range of matters in considering a case for litigation including:

- The strength of the evidence, the likelihood of a penalty being granted by a court, and the likelihood of recovery of that penalty;
- The seriousness of the breach or breaches taking into account factors including:
 - The length of time the party failed to observe its obligations under the Act and or the Regulations;
 - OH&S matters including the number of people similarly affected;
 - The degree to which the matter affects the claimant or others concerned; and
 - The value of any underpayments(s);
- Whether the breach or breaches involve(s) vulnerable workers;

- Whether the employer has taken reasonable action to achieve compliance voluntarily;
- Whether the employer was acting in good faith;
- The age of the breach or breaches; and
- The compliance history of the employer and the industry sector to which it belongs.

Estimated Cost: To prepare this answer has taken approximately 3.5 hours at a cost of \$50.00