



Office of Workplace Services

Presentation to the Centre for Employment and Labour Relations
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8 February 2007.

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Introducing the Office of Workplace Services

- Workplace inspectors investigate:
 - breaches of an award or agreement
 - time and wages record keeping;
 - freedom of association;
 - right of entry by unions;
 - post-termination entitlements;
 - transmission of business; and
 - sham contracting arrangements provisions of the Independent Contractors Act 2006



Introducing the Office of Workplace Services

- Since 27 March 2007:
 - we have assisted over 9,500 people
 - we have recovered underpayments worth \$6.7m for more than 4,300 people
 - we have initiated litigations in 5 broad parts of WR Act
 - where we start is not always where we finish



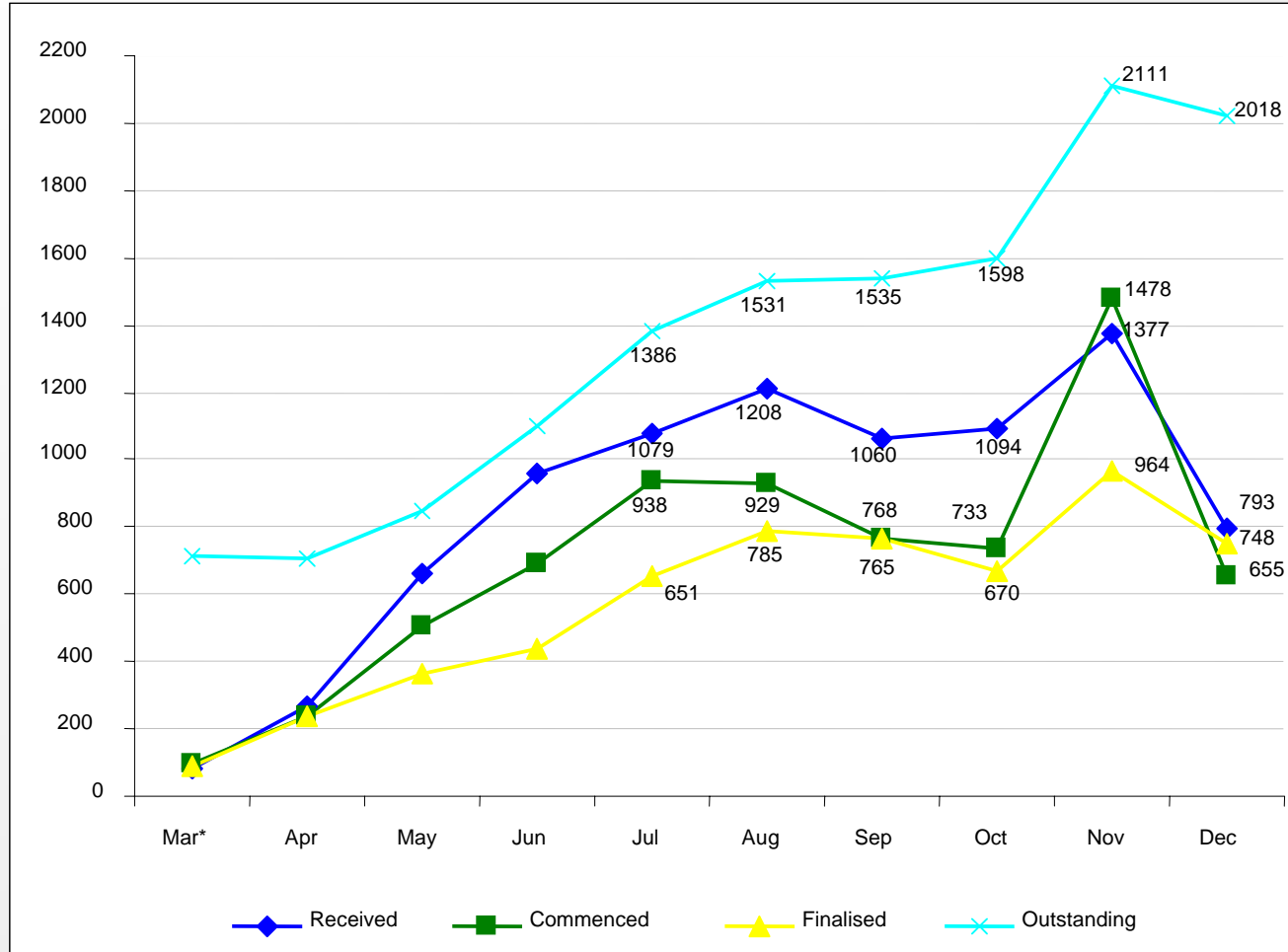
The first 10 months

- Work has steadily increased
- Workload has steadily broadened and become more complex
- OWS is well resourced, with well trained staff and a vigorous management
- OWS has shown itself to be a credible investigator and enforcer





Increasing workload



Broader, more complex work

- 33 litigations have been commenced
 - 25 underpayment of wages matters
 - 6 agreement making duress
 - 2 relate to duress in the course of a transmission of business
 - 1 also included false statements
 - 1 also included freedom of association breaches
 - 2 relating to agreement making deficiencies



Litigation considerations

- Is there a deliberate or knowing contravention?
- Is the breach a trivial or minor contravention?
- Is the breach a subsequent offence?
- Is there sufficient evidence?
- Has there been a deliberate obstruction of an inspector?
- Alternatives to OWS litigation
 - s720 & s724 & s725
 - Small claims jurisdiction for recovery of money owed
 - An inspector may initiate the action on behalf of an employee



Underpayment matters

- 3 matters have had penalties decided by the Courts:
 - Pangaea
 - *Mason v Harrington Corporation Pty Ltd [2007] FMCA 7 (16 January 2007)*
 - Zeffirelli
 - *Flattery v The Italian Eatery Pty Ltd trading as Zeffirelli's Pizza Restaurant [2007] FMCA 9 (2 February 2007)*
 - Snowline Management



Agreement making

- OWS has examined several aspects of deficiencies in agreement making
 - Duress
 - in the course of a transmission of business
 - Ten Talents and Cyberlink
 - BP Australia and No 1 Riverside Quay
 - otherwise
 - Locarno Management (Hepburn Spa Resort)
 - Mornington Inn
 - Collective agreement ballot processes
 - AC & MS Services



Agreement making

- Procedures for the lodgement of AWAs
- The making of greenfields agreements
- Protection of employees (freedom of association)/obstruction of an inspector
 - Merringtons
 - Hibberd and Prescott
- Role of advisers
 - Cyberlink (in relation to Ten Talents)



Future directions

- Underpayment of wages
 - Greater understanding of the Courts' views
 - Penalties
 - Evidence
 - Use of small claims courts
 - Consistency of decision making
- Agreement making
 - Duress
 - Rights following a transmission of business
 - Formation of agreements
 - balloting
 - greenfields



Future directions

- Freedom of association
 - Protections of an award or agreement
- Independent Contractors
 - Sham contracting arrangements
- Auditing
- Record keeping responsibilities



Contacting OWS

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