

Guidelines - Civil Remedies Function of the NSW Building Industry Task Force

In (1993) ACLN Issue #28, page 25 information was provided about the New South Wales Government's establishment of the Building Industry Task Force, to deal with the aftermath of the Royal Commission Into Productivity in the Building Industry in New South Wales. The Task Force has now published the following guidelines on its civil remedies functions:

These guidelines apply specifically to the following two functions identified in the Building Industry Task Force (BITF) brochure entitled "Cleaning Up The Building Industry" namely:

- applying for injunctions to restrain unions and their officials from engaging in unlawful secondary boycotts and black bans. The Government can apply to the Federal Court for an injunction to restrain actual or threatened breaches of the Trade Practices Act;
 - facilitating actions by small businesses affected by bans or boycotts, including the provision of advice.
1. If the complaint involves a Government site or a Government instrumentality, or relates to any activity or proposed activity by the Government or any Government instrumentality, the Attorney General may be prepared to bring an action in his own name to apply for injunctions to restrain unions and officials from engaging in unlawful secondary boycotts and blackbans.
 2. In relation to a complaint within paragraph 1. above, the BITF will facilitate the bringing of actions in the name of the Attorney General and will provide advice and assistance to facilitate any additional actions brought by small businesses affected by bans and boycotts.
 3. If the complaint does not fall within paragraph 1., then the Attorney General will generally not bring an action in his name to obtain an injunction or other relief. In these cases, the BITF may assist with the obtaining of an injunction by a private party affected by the ban or boycott. If the BITF does so assist, then such assistance will generally take the following form:
 - (a) obtain relevant evidence and provide this material to the relevant private party; and
 - (b) brief counsel (through the Crown Solicitor) to provide advice as to the prospects of success in an application for an injunction. That

advice to be passed on to the private party.

4. The BITF and the Crown Solicitor may consult with the private party regarding the selection of counsel to provide advice. The final selection of counsel to provide the advice rests with the BITF (through the Crown Solicitor).
5. Thereafter, whether proceedings are brought and how those proceedings are conducted will be matters for the affected private party (although the BITF may continue to assist with the provision of further evidence).
6. As regards matters falling within paragraph 3., the BITF will also consider the facilitation of any other actions that may arise out of the complaint (i.e. actions other than for an injunction).
7. In accordance with the BITF's role of co-ordinating the use of criminal and civil remedies, if the BITF investigations in any matter disclose criminal offences, the BITF may investigate and prosecute those offences in addition to whatever action is taken to pursue civil remedies.
8. The above should not be taken to fetter the discretion of the Attorney General to bring an action in his own name should he consider that such action is warranted in the circumstances. If the BITF considers that, notwithstanding the guidelines, a case not involving the Government should be the subject of an action in the name of the Attorney General, then it shall refer that case to the Attorney General for approval. □