

BORAL LAW REFORM SUBMISSION ~ OCT

Heydon Royal Commission - Overview of Boral's submission on law reform proposals

1 Context

The Heydon Royal Commission is tasked with, among other matters, reporting on the adequacy and effectiveness of existing systems of regulation and law enforcement for dealing with the conduct of unions and relevant entities in Australia.

The Royal Commission has invited Boral to make submissions on law reform. The Commissioner was particularly interested in Boral's views in light of the evidence of:

- the CFMEU's ongoing secondary boycott of Boral on construction sites in the Melbourne metropolitan area;
- the difficulties faced by the ACCC and other regulators investigating and considering enforcement proceedings against the CFMEU; and
- the CFMEU's apparent willingness to defy Court orders and potential legal sanctions.

Boral's law reform proposals are directed to three broad objectives:

- providing effective sanctions for secondary boycott conduct;
- ensuring effective enforcement of the secondary boycott laws; and
- improving union governance.

Boral's principal submissions under each of these heads are set out below.

2 Submissions on secondary boycott sanctions

- 2.1 The scope of cartel conduct laws should extend to include market sharing arrangements devised by a party who is not a competitor of the other cartel members. That would have several advantages including:
- more significant sanctions;
 - broader detection powers; and
 - cartel immunity and leniency policies would apply, providing a powerful incentive for parties to report such conduct to the regulator.
- 2.2 Greater incentives should exist for private enforcement.
- 2.3 Secondary boycott legislation should explicitly apply to a boycotted company's competitors that supply a customer knowing or reasonably suspecting that the customer is using them to replace a boycotted supplier.
- 2.4 Consideration should be given to the appropriateness of implementing legislation to combat illegal union activity based upon the *Racketeer Influenced and Corrupt Organizations Act*, 18 USC § 1961 et seq (**RICO**).

3 Submissions on secondary boycott enforcement

- 3.1 A reinstated Australian Building & Construction Commission (**ABCC**) should share jurisdiction with the ACCC to enforce secondary boycott laws.
- 3.2 The ABCC and ACCC should each have the power to access information obtained by other enforcement agencies which relates to potential breaches of the secondary boycott provisions.

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- 3.3 There should be an appropriately funded industry information campaign to ensure that industry participants that acquiesce in a secondary boycott may themselves be in breach of the law.
- 3.4 There should be a statutory obligation to report suspected secondary boycott conduct.
- 3.5 Participants in a secondary boycott that cooperate with the regulator in its investigations should receive immunity, to provide an incentive to report such conduct.

4 Submissions on union governance

- 4.1 An independent specialist regulator should have the power to enforce union officials' duties under the *Fair Work (Registered Organisations) Act 2009* (Cth) (**RO Act**).
- 4.2 Union officials' duties under the RO Act should be aligned with those of company directors under the *Corporations Act 2001* (Cth).
- 4.3 The scope of conduct that can be relied on to cancel a union's registration should be broadened.
- 4.4 Union members should be able to take union funded actions against union officials who breach their duties.
- 4.5 Union officials should be prohibited from using union funds to pay for officials' fines and similar payments.