

Secondary Boycotts

AUSTRALIAN DEMOCRATS ACTION PLAN SECONDARY BOYCOTTS CORPORATE AFFAIRS

Secondary boycotts fall under the Trade Practices Act (TPA). Provisions relating to secondary boycotts have been part of Australian law under both Labor and Coalition governments for three decades. Other countries such as the USA have similar provisions. Secondary boycotts occur when an organisation (for example a union or a company) that is in dispute with a second organisation, acts in some way to harm an often unrelated third party. This can happen where 'sympathy strikes' by other unions against other employers occur in support of a union involved in a particular industrial dispute. Secondary boycotts can harm innocent third parties that are not involved in the primary boycott action.

Our Action Plan

"The TPA is to protect competition and consumers; it is not about limiting freedom of expression or association"

Senator Andrew Murray
Spokesperson on Taxation Finance & Corporate Affairs

- Maintain the Democrats support for section 45, provided it continues as at present not to inhibit freedom of expression or association; or the freedom of consumers to protest on issues; or to boycott products; whether or not they impact on trade or commerce.
- Support change to the TPA so that representative action by the ACCC on section 45 is available for indigent small business and individuals, but not for big business or those with sufficient resources to conduct their own litigation.

Steps taken so far

In 1996, as part of its new Workplace Relations Act, the Government sought to continue the prohibition on secondary boycotts. The Democrats supported that, and negotiated improvements to the new Act to ensure that it would operate fairly. Some improvements achieved in 1996 in relation to secondary boycotts were:

- Boycotts by consumers or consumer groups of particular products for any reason (e.g. to protest the human rights stance of a company, or nuclear testing by a country) are excluded from the Act;
- Boycotts for the purposes of environmental protection are exempted from the Act;



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- Boycotts about employment-related disputes are exempted from the Trade Practices Act and are dealt with under the Workplace Relations Act;
- Courts must consider whether a dispute could be resolved by the Australian Industrial Relations Commission before making any orders;
- Peaceful protesting is not regarded as boycott activity by the Courts.

The Issues

The Australian Democrats have long been supporters of section 45D and 45E of the TPA which prohibit two or more persons from acting in concert to hinder or prevent the supply or acquisition of goods or services by a person or company that is the target of the boycott. If an organisation does breach these provisions, innocent third parties can obtain either an injunction to stop the boycott and or compensation for damage sustained by that party. If an organisation continues an illegal boycott, fines can be imposed.

The law does not allow, and the Democrats do not support, attempts to hinder the rights of people to engage in protests which involve boycotting products or services. The Democrats support these existing exclusions from the purview of the TPA:

- boycotts by consumers or consumer groups;
- boycotts for the purposes of environmental action; and,
- peaceful protesting, including on human rights issues.

These protest actions are all permissible under the law.

For the union movement and some members of the community, the secondary boycott provisions of the TPA have long been contentious. However, primary boycotts (that is, normal industrial action as part of a dispute) are exempted from the TPA, unless a primary boycott affects the movement of goods in and out of Australia.

The object of the TPA is to enhance the welfare of Australians through the promotion of competition and fair trading and to make provision for consumer protection. To date the secondary boycott provisions have not in any way stifled environmental, human rights, spiritual, cultural or consumer protest. Rather, they have provided a positive guarantee of the right to protest.

That does not mean that we do not have to be on our guard against authoritarian proposals. Comments by the federal Treasurer in a speech to the 2007 Pastoralists and Graziers Association of WA Centenary Convention referred to 'reforms' he proposed to the TPA, which would allow for action to be taken against activist groups using boycotts and protests to campaign against mulesing of sheep.

No law change has occurred as yet.



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