



To: ABCC Lawyer:
Telephone:
Email: @abcc.gov.au

Date: State:
Cc: Chief Counsel; Executive Director Legal [insert State/Territory]; State Director Legal
([insert State/Territory]); ABC Inspector [insert name]
Subject: [insert investigation no and reference name]

Summary of Counsel's advice

- A. [insert name] of Counsel has advised that there are reasonable grounds for commencing proceedings against [insert alleged wrongdoer] for the following contraventions:
- a) of the BCII Act;
 - b) of the FW Act;
 - c) of the WR Act.
- B. Counsel is also of the opinion that there are reasonable grounds for commencing proceedings against [insert alleged wrongdoer] for the conduct of [insert alleged wrongdoer] pursuant to [insert deeming provision] of the [insert relevant act] Act.

Introduction

1. The Litigation Advisory Committee (**LAC**) is asked to consider whether this matter is appropriate to proceed to litigation.

Proposed Respondents

2. The proposed respondents are:
- a) [insert name of individual respondent] (**Proposed Respondent**).
 - b) [insert name of company respondent].

Background

3. On or around [insert date], ABC Inspectors commenced an investigation into allegations that [insert allegations].
4. A summary of the relevant events are as follows:¹
- a) On [date], [insert as appropriate].

ABCC Litigation Policy

5. The following matters have been considered in accordance with the *ABCC's Litigation Policy*.
Sufficient evidence

¹ Counsel's Chronology provides a full outline of relevant events and is not replicated here.

6. Key evidence obtained by ABC Inspectors that supports the allegations outlined above includes **[insert as relevant only]**:
 - a) [insert relevant documents], which were obtained voluntarily from [insert relevant documents];
 - b) [insert relevant documents]obtained under section 59, BCII Act.
 - c) [insert relevant documents] obtained under section 720, FW Act.
 - d) [insert relevant documents or examination transcripts] obtained under section 52, BCII Act.
7. [insert name]declined to be interviewed by the ABCC.
8. Counsel's prospects advice and chronology of events dated [insert date] is attached for the LAC's consideration.
9. The primary sources of evidence Counsel considered in reaching the conclusion that there are reasonable grounds to commence litigation [is/are]:
 - (a)
10. Based on this information Counsel is of the view that sufficient evidence exists.
Public Interest Considerations
11. It is considered that commencing civil proceedings is in the public interest as:
 - (a) [insert as appropriate]

Conduct of matter

12. Should this matter proceed to litigation, this matter is [able/not able] to be conducted in-house because it falls within one of the following categories for which the ABCC has a current exemption:
 - (a) civil penalty litigation conducted in courts (other than courts of superior jurisdiction).
 - (b) intervention in court proceedings under s 71 of the BCII Act.
 - (c) litigation that is largely uncontested, including hearings on penalties on the basis of agreed facts.
 - (d) litigation involving challenges to the ABCC's powers.
 - (e) litigation concerning subpoenas and Freedom of Information (FOI) application received by the ABCC.
13. I [do/do not] recommend that the matter be conducted in-house taking into account the considerations set out in the following paragraph.
14. Decisions to conduct litigation in-house are required to be made only after considering the following issues (for each of which comments are also included):
 - (a) Other responsibilities and workloads of lawyers within the ABCC - [add comments].
 - (b) The availability of the relevant lawyer and their relative expertise- [add comments].
 - (c) The likelihood that this matter will be contested - [add comments].
15. If the matter is run in-house, there will be significant cost savings to the ABCC.

Additional considerations

16. [insert additional considerations if relevant]

Recommendation

17. I **recommend** that [insert as appropriate].

<p>.....</p> <p>[Name of ABC Inspector] [Position]</p> <p>Office of the Australian Building and Construction Commissioner</p> <p>Direct:</p> <p>Fax:</p> <p>Email: @abcc.gov.au</p>	<p>.....</p> <p>[Name of ABCC lawyer] [Position]</p> <p>Office of the Australian Building and Construction Commissioner</p> <p>Direct:</p> <p>Fax:</p> <p>Email: @abcc.gov.au</p>
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