

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(As read a first time)

**CONSTRUCTION INDUSTRY REFORM AND DEVELOPMENT
BILL 1991**

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1990-91

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 19 December 1991)

(MINISTER FOR INDUSTRIAL RELATIONS, SENATOR COOK)

A BILL

FOR

An Act to establish a Construction Industry Development Council and a Construction Industry Reform Agency for the purposes of promoting and facilitating development and reform of the construction industry in Australia, and for related purposes

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Construction Industry Reform and Development Act 1991*.

T

Commencement

2.(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period. 5

Interpretation

3. In this Act, unless the contrary intention appears:

“Agency” means the Construction Industry Reform Agency established by section 14; 10

“Board” means the Board of the Agency established by section 19;

“Board member” means a member of the Board;

“Chief Executive Officer” means the Chief Executive Officer of the Agency; 15

“Council” means the Construction Industry Development Council established by section 4;

“Council member” means a member of the Council who is not a Chairperson of the Council;

“industry agreement” means an agreement made between the Commonwealth and any of the following: 20

(a) the government of a State;

(b) the government of a Territory;

(c) an industry body;

the object of which is to commit the parties to the agreement to the aspects of the development and reform of the construction industry in Australia specified in the agreement; 25

“industry body” means any body or organisation involved in the construction industry in Australia;

“industry codes and practices” means guidelines and standard practices designed for adoption by or in connection with the construction industry in Australia. 30

PART 2—THE COUNCIL

Establishment of the Council

4. The Construction Industry Development Council is established. 35

Functions of the Council

5.(1) The functions of the Council are:

(a) to act as a national forum for the construction industry in Australia; and

- (b) to advise the Commonwealth government on matters concerning the construction industry in Australia; and
- (c) to liaise with the governments of the States and Territories, the Agency or any other persons or organisations in connection with the performance of its functions under paragraph (a) or (b).

(2) The Council may perform its functions to the extent only that they are not in excess of the functions that may be conferred on it by virtue of any of the legislative powers of the Parliament and, in particular, may perform its functions:

- (a) for purposes related to money appropriated for the purposes of the Commonwealth; and
- (b) for purposes related to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; and
- (c) for purposes related to the executive power of the Commonwealth; and
- (d) for purposes related to any or all of the Territories; and
- (e) for purposes related to a corporation to which paragraph 51(xx) of the Constitution is applicable; and
- (f) for purposes related to a Commonwealth place within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*; and
- (g) in relation to the Australian Public Service, an authority or instrumentality of the Commonwealth or a body corporate over which the Commonwealth is in a position to exercise control; and
- (h) for purposes related to an award made under a law of the Commonwealth or a Territory; and
- (i) for purposes related to the collection of statistics; and
- (j) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

Constitution of the Council

6.(1) The Council consists of the following members:

- (a) the Minister;
- (b) the Minister for Small Business and Customs;
- (c) not fewer than a prescribed number of members appointed by the Minister to represent the Commonwealth;
- (d) not fewer than a prescribed number of members appointed by the Minister to represent the governments of the States, the Northern Territory and the Australian Capital Territory, being members selected in accordance with the regulations;

- (e) not fewer than a prescribed number of members appointed by the Minister to represent prescribed industry bodies, being members selected in accordance with the regulations;
- (f) not fewer than a prescribed number of members appointed by the Minister to represent the Australian Council of Trade Unions, being members selected in accordance with the regulations; 5
- (g) not fewer than a prescribed number of members appointed by the Minister to represent prescribed trade unions, being members selected in accordance with the regulations; 10
- (h) any other members appointed by the Minister.

(2) The Council is to be taken to have been constituted if the total number of Council members appointed is not less than the number prescribed for the purpose of this subsection.

Chairpersons of the Council 15

7. The Minister and the Minister for Small Business and Customs are both to be Chairpersons of the Council.

Acting Chairperson

8.(1) The Minister may appoint a person to be the deputy of a Chairperson of the Council for such period as is specified in the instrument of appointment. 20

(2) If:

- (a) a deputy is appointed in relation to a Chairperson of the Council; and
- (b) that Chairperson is, for any reason, unable to attend a meeting of the Council; 25

the deputy may act as a Chairperson of the Council at that meeting.

(3) A person appointed under subsection (1) may resign by giving a signed notice of resignation to the Minister.

(4) The Minister may terminate an appointment made under subsection (1) at any time. 30

Terms of appointment, resignation etc.

9.(1) A Council member holds office:

- (a) on a part-time basis; and
- (b) for such period (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible for re-appointment. 35

(2) A Council member may resign by giving a signed notice of resignation to the Minister.

(3) The Minister may terminate the appointment of a Council member for misbehaviour or physical or mental incapacity. 40

Deputy of Council member

10.(1) The Minister may appoint a person to be the deputy of a Council member for such period as is specified in the instrument of appointment.

5 (2) If:

(a) a deputy is appointed in relation to a Council member; and

(b) that Council member is, for any reason, unable to attend a meeting of the Council;

the deputy may act as a Council member at that meeting.

10 (3) A person appointed under subsection (1) may resign by giving a signed notice of resignation to the Minister.

(4) The Minister may terminate an appointment made under subsection (1) at any time.

Meetings of the Council

15 11.(1) The Council must meet at least once every 12 months for the purpose of performing its functions.

(2) A meeting of the Council must be convened by at least one of the Chairpersons.

20 (3) The Chairpersons of the Council must preside jointly at a meeting of the Council at which they are present.

(4) If only one Chairperson of the Council is present at a meeting of the Council, he or she must preside at that meeting.

(5) In this section:

25 "Chairperson" includes a deputy who is acting as a Chairperson of the Council.

Quorum

12. At a meeting of the Council, a quorum is constituted by half of the Council members and one other Council member.

Conduct of meetings

30 13. The Council may regulate the conduct of the proceedings of its meetings as it thinks fit.

PART 3—THE AGENCY

Division 1—The Agency

Establishment of the Agency

35 14. The Construction Industry Reform Agency is established.

Cessation of the Agency

15. The Agency ceases to exist on 1 July 1995.

Agency is body corporate etc.

16.(1) The Agency:

- (a) is a body corporate; and 5
- (b) is to have a seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue or be sued in its corporate name.

(2) The seal of the Agency is to be kept in such custody as the Board directs, and is not to be used except as authorised by the Board. 10

(3) All courts, judges and persons acting judicially must:

- (a) take judicial notice of the imprint of the seal of the Agency appearing on a document; and
- (b) presume the imprint was duly affixed. 15

Functions of the Agency

17.(1) The Agency has the following functions:

- (a) to promote and facilitate the development and reform of the construction industry in Australia;
- (b) to assist in the implementation of industry agreements; 20
- (c) to develop, and assist in the implementation of, industry codes and practices;
- (d) to liaise with the governments of the States and Territories, the Council or any other persons or organisations, in connection with the performance of its functions under paragraph (a), (b) or (c). 25

(2) The Agency may perform its functions to the extent only that they are not in excess of the functions that may be conferred on it by virtue of any of the legislative powers of the Parliament and, in particular, may perform its functions: 30

- (a) for purposes related to money appropriated for the purposes of the Commonwealth; and
- (b) for purposes related to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; and 35
- (c) for purposes related to the executive power of the Commonwealth; and
- (d) for purposes related to any or all of the Territories; and
- (e) for purposes related to a corporation to which paragraph 51(xx) of the Constitution is applicable; and 40
- (f) for purposes related to a Commonwealth place within the

meaning of the *Commonwealth Places (Application of Laws) Act 1970*; and

- 5 (g) in relation to the Australian Public Service, an authority or instrumentality of the Commonwealth or a body corporate over which the Commonwealth is in a position to exercise control; and
- (h) for purposes related to an award made under a law of the Commonwealth or a Territory; and
- (i) for purposes related to the collection of statistics; and
- 10 (j) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

Powers of the Agency

15 **18.** The Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, in particular, may:

- (a) enter into contracts; and
- (b) acquire, hold and dispose of real or personal property; and
- 20 (c) occupy, use and control any land or building owned or held under lease in Australia and made available for the purposes of the Agency; and
- (d) engage a person to perform services for the Agency; and
- (e) accept gifts, grants, bequests and devises made to the Agency (whether on trust or otherwise) and act as trustee of money or other property vested in the Agency on trust; and
- 25 (f) invest the Agency's money, including money held by the Agency on trust, and to dispose of investments; and
- (g) do anything incidental to any of its powers.

Division 2—Board of the Agency

30 **Board of the Agency**

19. There is to be a Board of the Agency.

Constitution of the Board

20. The Board consists of the following members:

- (a) the Chief Executive Officer;
- 35 (b) 2 members appointed by the Minister to represent the Commonwealth;
- (c) one member appointed by the Minister following consultations with the governments of the States, the Northern Territory and the Australian Capital Territory;
- 40 (d) at least 8 other members appointed by the Minister.

Functions and powers of the Board

21.(1) The Board's functions are to:

- (a) determine the Agency's policies; and
- (b) direct the Chief Executive Officer in the carrying out of the Agency's functions or the exercise of the Agency's powers.

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(2) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Division 3—Meetings of the Board

Convening of meetings

22. The Chairperson of the Board:

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- (a) may convene meetings of the Board; and
- (b) must comply with any resolution of the Board with respect to the convening of meetings of the Board; and
- (c) must, on receipt of a written request signed by at least 4 Board members, convene a meeting of the Board.

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Presiding at meetings

23. The Chairperson of the Board must preside at all meetings of the Board.

Quorum

24. At a meeting of the Board, a quorum is constituted by half of the Board members and one other Board member.

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Voting at meetings

25.(1) All questions arising at a meeting of the Board must be determined by a majority of the votes of the Board members present and voting.

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(2) The Chairperson of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Conduct of meetings

26.(1) The Board may regulate the conduct of the proceedings of its meetings as it thinks fit.

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(2) The Board must keep minutes of its meetings.

Disclosure of interests

27.(1) A Board member who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

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(2) The disclosure must be recorded in the minutes of the meeting and, unless the Minister or the Board otherwise determines, the Board member must not:

- 5 (a) be present during any deliberation of the Board in relation to the matter; or
(b) take part in any decision of the Board in relation to the matter.

(3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a Board member who has made a disclosure under subsection (1), the Board member must not:

- 10 (a) be present during any deliberation of the Board for the purpose of the making of the determination; or
(b) take part in the making by the Board of the determination.

Division 4—Provisions relating to Board members

Appointment of Board members

15 28.(1) A person must not be appointed as a Board member for a term extending beyond 30 June 1995.

(2) The Minister must not appoint a person as a Board member unless the Minister is satisfied that the person has qualifications relevant to, or special experience or interest in, the construction industry in
20 Australia.

(3) The appointment of a Board member is not invalid only because of a defect or irregularity in connection with the Board member's appointment.

Appointment of Chairperson of Board

25 29. The Minister is to appoint a Board member (other than the Chief Executive Officer) as the Chairperson of the Board for a term specified in the instrument of appointment.

Part-time members

30 30. A Board member (other than the Chief Executive Officer) is to be appointed as a part-time member of the Board.

Entitlement to certain allowances

31. A Board member (other than a Board member mentioned in paragraph 20(b) or the Chief Executive Officer) is entitled to such allowances as are prescribed.

Acting appointments

35 32.(1) The Minister may appoint a Board member to act as Chairperson of the Board:

- (a) during a vacancy in the office of Chairperson of the Board,

whether or not an appointment has previously been made to the office; or

- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office. 5

(2) The Minister may appoint a person to act as a Board member (other than the Chief Executive Officer):

- (a) during a vacancy in the office of the Board member, whether or not an appointment has previously been made to the office; or 10

- (b) during any period, or during all periods, when the Board member is absent from duty or from Australia or is, for any reason (including the reason that the member is acting as the Chief Executive Officer), unable to perform the duties of the office. 15

(3) Anything done by or in relation to a person purporting to act under this section is not invalid only because:

- (a) there was a defect or irregularity in connection with the appointment; or

- (b) the appointment had ceased to have effect; or 20

- (c) the occasion for the person to act or to be appointed had not arisen or had ceased.

Termination of appointment and resignation

33.(1) The Minister may terminate the appointment of a Board member (other than the Chief Executive Officer) for misbehaviour or physical or mental incapacity. 25

(2) The Minister must terminate the appointment of a Board member (other than the Chief Executive Officer) if the member:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 30

- (b) is absent from 3 consecutive meetings of the Board, except on leave granted by the Chairperson of the Board; or

- (c) without reasonable excuse, fails to comply with section 27. 35

(3) A Board member (other than the Chief Executive Officer) may resign by giving a signed notice of resignation to the Minister.

Division 5—Chief Executive Officer, staff etc.

Duties of Chief Executive Officer

34. The Chief Executive Officer is to conduct the affairs of the Agency subject to the directions of, and in accordance with policies determined by, the Board. 40

Acts done by Chief Executive Officer taken to have been done by the Agency

35. All acts and things done in the name of, or on behalf of, the Agency by, or with the authority of, the Chief Executive Officer, are taken to have been done by the Agency.

Appointment of Chief Executive Officer

36.(1) The Chief Executive Officer is to be appointed by the Minister and holds office for the term specified in the instrument of appointment.

(2) The Minister must not appoint a person as the Chief Executive Officer for a term extending beyond 30 June 1995.

Remuneration and allowances

37.(1) The Chief Executive Officer is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, are to be paid such remuneration as is prescribed.

(2) The Chief Executive Officer is to be paid such allowances as are prescribed.

(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence

38.(1) Subject to section 87E of the *Public Service Act 1922*, the Chief Executive Officer has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

39. The Chief Executive Officer may resign by giving a signed notice of resignation to the Minister.

Termination of appointment

40.(1) The Minister may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of the Chief Executive Officer if the Chief Executive Officer:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(b) is absent from duty for 14 consecutive days, or for 28 days in any 12 months, except on leave granted under section 38; or

- (c) engages, except with the approval of the Minister, in paid employment outside the Chief Executive Officer's duties; or
- (d) without reasonable excuse, fails to comply with section 27 or 41.

Disclosure of interests

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41. The Chief Executive Officer must give written notice to the Minister of all direct or indirect pecuniary interests that the Chief Executive Officer has or acquires in any business or in any body corporate carrying on a business.

Acting Chief Executive Officer

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42.(1) The Minister may appoint a person to act as Chief Executive Officer:

- (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any reason, unable to perform the functions and duties of the office.

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(2) Anything done by or in relation to a person purporting to act as Chief Executive Officer under this section is not invalid only because:

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- (a) there was a defect or irregularity in connection with the appointment; or
- (b) the appointment had ceased to have effect; or
- (c) the occasion for the person to act or to be appointed had not arisen or had ceased.

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Employees

43.(1) The Chief Executive Officer may, on behalf of the Agency, employ such persons as the Board considers necessary for the performance of its functions and the exercise of its powers.

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(2) An employee is to be employed on such terms and conditions as are determined by the Board.

(3) An employee is not to be employed for a period extending beyond 30 June 1995.

Consultants

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44.(1) The Chief Executive Officer may, on behalf of the Agency, engage persons having suitable qualifications and experience as consultants to the Agency.

(2) The terms and conditions of engagement are to be determined by the Board.

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(3) A consultant is not to be engaged for a period extending beyond 30 June 1995.

Division 6—Financial matters, annual reports etc.

Appropriation of money

5 **45.(1)** There is payable to the Agency such money as is appropriated by the Parliament for the purposes of the Agency.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money mentioned in subsection (1) is to be paid to the Agency.

10 **Estimates**

46.(1) The Agency must prepare estimates, in such form as the Minister directs, of the receipts and expenditure of the Agency for each financial year and, if the Minister so directs, for any other period specified by the Minister.

15 (2) The Agency must submit estimates so prepared to the Minister not later than such date as the Minister directs.

(3) Estimates so prepared are not to include estimates of receipts by the Agency of money to be held on trust or of expenditure by the Agency of money held on trust.

20 (4) The Agency's money, other than money held on trust, must not be spent otherwise than in accordance with estimates of expenditure approved by the Minister.

Application of money

47. The Agency's money is to be applied only:

- 25 (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the agency in the performance of its functions and the exercise of its powers; and
 (b) in payment of remuneration and allowances payable under this Part.

30 **Borrowing**

48. The Agency must not borrow money from any person.

Investment of money

49.(1) The money of the agency not immediately required for the purposes of the Agency must be invested:

- 35 (a) on deposit with an approved bank; or
 (b) in Commonwealth securities; or
 (c) in any other manner approved by the Treasurer.

(2) In subsection (1):

“approved bank” means:

- (a) a bank as defined in subsection 5(1) of the *Banking Act 1959*;
or
- (b) another bank approved by the Treasurer, or by a person authorised by the Treasurer to give approvals under section 63E of the *Audit Act 1901*.

Contracts

50.(1) The Agency must not, except with the Minister’s written approval:

- (a) enter into a contract involving the payment or receipt by the Agency of an amount exceeding \$100,000 or, if a higher amount is prescribed, that higher amount; or
- (b) enter into a lease of land for a period extending beyond 30 June 1995.

(2) Paragraph (1)(a) does not apply to the investment of money by the Agency in accordance with section 49.

Application of Division 3 of Part XI of the *Audit Act 1901*

51.(1) The Agency is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

(2) The Agency must, in each report prepared under section 63M of the *Audit Act 1901* (as applied under subsection (1) of this section):

- (a) include the particulars of the activities carried out by the Agency during the financial year to which the report relates; and
- (b) include the particulars of each direction (if any) given to the Agency by the Minister under section 54 that is applicable in relation to the financial year to which the report relates.

Trust money

52.(1) The Board must ensure that any money received or held by the Agency on trust is paid into an account, or more than one account, opened and maintained under section 63J of the *Audit Act 1901* (as applied under subsection 51(1) of this Act) that does not contain any money of the Agency not held on trust.

(2) In spite of anything in this Division:

- (a) money or other property held by the Agency on trust is to be applied or dealt with only in accordance with the powers and duties of the Agency as trustee; and
- (b) money held by the Agency on trust may be invested:
 - (i) in any manner in which the Agency is authorised to invest that money by the terms of the trust; or
 - (ii) in any manner in which trust money may, for the time being, be invested under law;

but not otherwise.

(3) Section 63K of the *Audit Act 1901* (as applied under subsection 51(1) of this Act) has effect as if:

- (a) the reference in that section to transactions and affairs included a reference to transactions and affairs relating to money or property received or held by the Agency on trust; and
- (b) the reference in that section to moneys or to assets included a reference to money, or assets, as the case may be, received or held by the Agency on trust.

(4) Section 63L of the *Audit Act 1901* (as applied under subsection 51(1) of this Act) has effect as if:

- (a) the reference in subsection 63L(1) to financial transactions included a reference to transactions relating to money received or held by the Agency on trust; and
- (b) the reference in subsection 63L(4) to moneys or to assets included a reference to money, or assets, as the case may be, received or held by the Agency on trust.

Liability to taxation

53.(1) The Agency is subject to taxation (other than income tax) under the laws of the Commonwealth.

(2) The Agency is not subject to taxation under a law of a State or Territory.

Division 7—Miscellaneous

Minister may give directions

54.(1) The Minister may, by notice in writing to the Chairperson of the Board, give directions to the Board about the performance of its functions and the exercise of its powers.

(2) The Board must comply with any directions given to it under this section.

Periodic reports

55.(1) The Agency must, in addition to the requirement to prepare an annual report under section 63M of the *Audit Act 1901* (as applied under subsection 51(1) of this Act) prepare a report in accordance with the regulations for each prescribed period.

(2) The Board must, as soon as possible after a report under subsection (1) is prepared, cause a copy of it to be given to each of the following:

- (a) the Minister;
- (b) the Minister for Small Business and Customs;
- (c) the Minister for Administrative Services;

- (d) the Minister for Employment, Education and Training;
- (e) the Minister for Health, Housing and Community Services;
- (f) the Minister for Defence.

(3) The Board may cause a copy of a report prepared under subsection (1) to be given to the Council. 5

PART 4—REGULATIONS

Regulations

56.(1) The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or 10
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Governor-General may make regulations making such transitional or savings provisions as are necessary or convenient as a result of the Agency's ceasing to exist under section 15. 15