

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BUILDING INDUSTRY BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Employment and Industrial Relations,  
the Hon Ralph Willis MP)



## OUTLINE

- (1) The purpose of the Bill is to enable certain action to be taken in relation to the Australian Building Construction Employees' and Builders Labourers' Federation ("the Federation").
- (2) Before such action may be taken, the Bill provides for a hearing before a Full Bench of the Australian Conciliation and Arbitration Commission ("the Commission") upon application by the Minister at which the Commission will be required to determine whether the Federation or a prescribed person has engaged in certain specified forms of industrial misconduct.
- (3) Prescribed persons, for the purposes of the Bill, are committees of management of the Federation or its branches, officers, employees or agents of the Federation in the performance of their duties, or a member dealing with employers on behalf of members. The Federation is also responsible, for the purposes of the Bill, for industrial action or other conduct by its members where the Federation or a prescribed person has instigated or encouraged it or not taken all reasonable steps to prevent it.
- (4) The Bill provides for the proceedings before the Commission to be dealt with expeditiously and facilitates the hearing of the application by authorising the Commission to have regard to certain statements, evidence and findings in other proceedings before it, the Industrial Registrar, the Federal Court of Australia and a Royal Commission appointed to inquire into the activities of the Federation.
- (5) Where the Commission declares that it is satisfied that the Federation has engaged in any of the prescribed forms of conduct, the Minister may:
  - (i) direct the cancellation of the Federation's registration;

- (ii) order the termination or suspension of any of the rights, privileges or capacities of the Federation or of its members, as such members under the Conciliation and Arbitration Act or under the rules of the Federation (other than the rules referred to below);
  - (iii) order that the rules of the Federation relating to the industry in respect of which it is registered under the Conciliation and Arbitration Act and to the conditions of eligibility for membership of the Federation (the "industry and eligibility rules") cease to have effect in a specified part or parts of Australia;
  - (iv) order that other unions registered under the Conciliation and Arbitration Act be given, with their consent, coverage of work in the industry in respect of which the Federation is or has been registered, and such an order may relate to all or part of such work and to a specified part or parts of Australia;
  - (v) where the Minister decides not to make such an order, the Minister may enable the Commission to determine whether, in the interests of achieving the objects of the Conciliation and Arbitration Act and ensuring that the employees concerned will be effectively represented for the purposes of that Act, other registered unions should, with their consent, be given coverage of such work, and, if so, to make a declaration which will have that result.
- (6) The Bill provides that the Minister may exercise the powers described in paragraphs 5(i) to (iv) where he is of the opinion that it is desirable to do so having regard to the public interest in securing the prevention and settlement by conciliation and arbitration of industrial disputes extending beyond the limits of any one State or in maintaining peace, order and good government in a Territory.

- (7) Where the registration of the Federation is cancelled, the Minister will be able to specify conditions with which the Federation must comply to be registered again. If it is so registered and fails to comply with those conditions, the Commission may, on application by the Minister, so declare and the powers described under paragraph 5 above will be available in relation to the Federation.
- (8) Where no conditions are specified for the Federation to be registered again, the Minister must consent before the Federation can be so registered.
- (9) The Minister will be able, where the Federation's registration is cancelled, to specify provisions of the Conciliation and Arbitration Act and Conciliation and Arbitration Regulations which are not to apply in relation to an application by the Federation to be registered again.
- (10) Where the registration of the Federation is cancelled, consequences will ensue similar to those under the Conciliation and Arbitration Act where an organization's registration is cancelled. This will include the cessation of the force and effect of any awards in relation to the Federation and its members.
- (11) Where the Minister does not cancel the registration of the Federation, but orders that its industry and eligibility rules are not to have force and effect in relation to work in a part or parts of Australia, awards applying to the Federation and its members will cease to have force and effect in relation to them unless within 28 days the Commission varies those awards so that they cease to operate in relation to the part or parts of Australia concerned.
- (12) The Act will cease to be in force on a day to be fixed by Proclamation.

NOTES ON CLAUSES

CLAUSE 1

This clause gives the short title of the Bill.

CLAUSE 2: COMMENCEMENT

The legislation is to come into operation on Assent.

CLAUSE 3: INTERPRETATION

Significant terms used throughout the Bill are defined.

CLAUSE 4: APPLICATION TO COMMISSION FOR DECLARATION IN  
RELATION TO THE AUSTRALIAN BUILDING CONSTRUCTION  
EMPLOYEES' AND BUILDERS LABOURERS' FEDERATION  
("THE FEDERATION")

Under sub-clause 4(1), the Minister may apply to the Australian Conciliation and Arbitration Commission ("the Commission") for a declaration that the Federation or a prescribed person has engaged in conduct of any of the various types listed in the sub-clause, whether before or after the commencement of the legislation. The Commission has to make such a declaration in writing if it is satisfied that such conduct has been engaged in. A declaration by the Commission is required before any action contemplated by the Bill against the Federation can be taken.

Under paragraph 4(1)(a), the grounds for a declaration are that the Federation or a prescribed person has engaged in industrial action, or made a claim supported by industrial action, constituting a contravention of, or which is contrary to the intent of:

- an undertaking given to the Commission, the Industrial Registrar or to the Federal Court of Australia on behalf of the Federation - sub-paragraph 4(1)(a)(i);

- . an undertaking relating to the performance of work, claims concerning terms and conditions of employment or to the prevention and settlement of industrial disputes given on behalf of the Federation to a party to a proceeding in which the Federation is a party before any of those tribunals - sub-paragraph 4(1)(a)(ii); or,
- . an agreement relating to the performance of work, claims concerning terms and conditions of employment, or to the prevention and settlement of industrial disputes in the building industry or a part of the building industry - sub-paragraph 4(1)(a)(iii).

Paragraph 4(1)(b) makes it a ground for a declaration under clause 4 where conduct engaged in by the Federation or a prescribed person prevents or seriously hinders the achievement of an object of the Conciliation and Arbitration Act.

Under paragraph 4(1)(c), it is also a ground for a declaration under clause 4 where the Federation or a prescribed person has engaged in conduct that is inimical to the prevention and settlement of industrial disputes by means of conciliation and arbitration.

Sub-clause 4(2) operates so that for the purposes of sub-paragraph 4(1)(a)(i), an undertaking includes one given on behalf of the Federation after its registration as an organization under the Conciliation and Arbitration Act was cancelled in 1974 but before it was registered again in 1976.

Under sub-clause 4(3), the Federation is deemed to have engaged in any industrial action or industrial activity which has been engaged in by its members in certain circumstances. This occurs where it is proved that the Federation or a prescribed person instigated or encouraged that industrial action or conduct or, in any other case,

where the Federation does not prove that it or a prescribed person took all reasonable steps to prevent that industrial action or conduct.

Sub-clause 4(4) defines the persons who constitute a prescribed person for the purposes of clause 4. These are committees of management in the Federation or a branch of it; officers, employees or agents of the Federation in the performance of their duties; or a member of the Federation dealing with an employer on behalf of members of the Federation.

The Bill provides in sub-clause 4(5) that, when dealing with an application by the Minister, the Commission may have regard to statements made, evidence given and findings made in other proceedings before it or before the Industrial Registrar, or to evidence given and findings made in proceedings before the Federal Court of Australia. The Commission may also have regard to evidence which was given to a Royal Commission appointed to inquire into the activities of the Federation and to any Report of such a Royal Commission.

Under sub-clause 4(6), the Commission is to hear and determine an application expeditiously.

#### CLAUSE 5: ORDERS BY MINISTER IN RELATION TO THE FEDERATION

Sub-clause 5(1), which may only be invoked if there is in force a declaration by the Commission under the Bill, empowers the Minister to direct the Industrial Registrar to cancel the registration of the Federation. Alternatively, the Minister may make orders which terminate or suspend the rights, privileges or capacities of the Federation, or its members as members of the Federation, under the Conciliation and Arbitration Act or under the rules of the Federation.



An order in relation to the rules of the Federation as to the industry in respect of which it is registered or the conditions of eligibility for membership of the Federation is to be made under clause 8 and not clause 5. An appropriate exclusion is therefore made in sub-clause 5(1).

The Minister may take action under sub-clause 5(1) where he is of the opinion that it is desirable to do so having regard to the public interest in securing the prevention and settlement by conciliation and arbitration of industrial disputes extending beyond the limits of any one State or in maintaining peace, order and good government in a Territory.

Under sub-clause 5(2), the Minister may make such further order or orders in writing as may be necessary to give effect to an order under sub-clause 5(1) as to the rights, privileges or capacities of the Federation or of its members.

Sub-clause 5(3) requires the Industrial Registrar to make any necessary alterations to the rules of the Federation to give effect to any orders of the Minister relating to the rights, privileges or capacities of the Federation or its members. Under this provision, no further alterations to the rules are permitted where that would be inconsistent with the Minister's orders.

Under sub-clause 5(4), except for the purposes of the operation in a Territory of the provisions of clause 5 as to the exercise of the powers of the Minister in relation to the rights, privileges or capacities of the Federation or its members, references to the Federation in those provisions means the Federation as registered under the Conciliation and Arbitration Act. In other words, except in a Territory, the Minister may only take such action in relation to the Federation while it is so registered.

Sub-clause 5(5) makes it clear that the making by the Minister of an order in relation to the rights, privileges or capacities of the Federation under clause 5 does not prevent the Minister subsequently ordering the cancellation of its registration.

Sub-clause 5(6) enables the Minister, where he has made an order directing the Registrar to cancel the Federation's registration, to specify conditions with which the Federation is required to comply before it may be registered again under the Conciliation and Arbitration Act.

By sub-clause 5(7), where the registration of the Federation has been cancelled by a direction of the Minister, the Federation is not entitled to be registered again under the Conciliation and Arbitration Act unless the Minister is satisfied that any condition or conditions placed on that registration have been complied with and he so declares. Where such conditions have not been specified, the Federation cannot be registered again unless the Minister declares that it may apply for registration.

Sub-clause 5(8) provides that, where the Minister makes a declaration under the last sub-clause, the Minister may also declare that, for the purposes of an application for the registration of the Federation, a provision or provisions of the Conciliation and Arbitration Act or the Conciliation and Arbitration Regulations do not apply.

Sub-clause 5(9) relates to the compliance by the Federation with any conditions for its re-registration. Under this provision, the Commission is required on an application by the Minister to make a declaration that it is satisfied that the Federation, where it has been registered again, has ceased to comply with any such conditions.

Under sub-clause 5(10), if the Commission makes such a declaration, action of the same type as in sub-clause 5(1)

may be taken against the Federation by the Minister as if the declaration made by the Commission was one made under clause 4.

Sub-clause 5(11) provides a penalty of \$10,000 for failure to comply with an order made by the Minister under sub-clause 5(1) to restrict the rights, privileges or capacities of the Federation, or with a consequential order under sub-clause 5(2).

Sub-clause 5(12) enables the Federal Court, on application by the Minister, to grant appropriate injunctions for the purpose of ensuring compliance with clause 5.

CLAUSE 6: POWERS AND PROCEDURE OF THE CONCILIATION AND ARBITRATION COMMISSION

Sub-clause 6(1) provides that the powers of the Commission under the Bill may only be exercised by a Full Bench.

By sub-clause 6(2), the provisions of the Conciliation and Arbitration Act and the Conciliation and Arbitration Regulations as to the procedure and powers of the Commission in relation to proceedings before it apply, so far as that is possible, for the purpose of proceedings before the Commission under the Bill.

Sub-clause 6(3) provides that where the Commission is dealing with matters under this Bill, the Federation is to be given an opportunity of being heard and that the Minister, the Federation or an intervener in the proceedings before the Commission may be represented by counsel or solicitor.

CLAUSE 7: EFFECT ON FEDERATION OF CANCELLATION OF REGISTRATION

sub-clause 7(1) provides that, where the registration of the Federation has been cancelled under the Bill, the following consequences ensue:

- under sub-clause 7(2) - which adopts certain provisions of section 143 of the Conciliation and Arbitration Act concerning the cancellation of an organization's registration - the Federation or its members would not be relieved from any penalty or liability incurred prior to such cancellation, the Federation would not cease to be an association and its property would be capable of being held and applied for the purposes of the association in accordance with the constitution and rules of the Federation;
- any award applying to the Federation or its members would cease to have any force or effect in relation to the Federation and its members - sub-clause 7(3);
- the Federation would not be capable of being a party to or an intervener in a proceeding before the Commission or to an award made by the Commission, and the Commission would not have any powers under the Conciliation and Arbitration Act in relation to an industrial dispute in so far as that dispute involved members of the Federation - sub-clause 7(4); and
- a person or an organization or association of employees would not be entitled to be represented by an officer or agent or member of the Federation in proceedings before the Federal Court, High Court, Commission or the Industrial Registrar except for the purposes of re-registration - sub-clause 7(5).

#### CLAUSE 8: LIMITATION ON COVERAGE OF WORK BY FEDERATION

Under sub-clause 8(1) where a declaration has been made by the Commission under the Bill in relation to the Federation, the Minister may declare by order in writing that the rules of the Federation relating to the industry in relation to which it is registered under the Conciliation and Arbitration Act and the conditions of eligibility for membership of the Federation shall cease to have any effect in relation to work in a part or parts of Australia specified in the order.

Under sub-clause 8(1), such an order is only to be made where the Minister is of the opinion that it is desirable to do so having regard to the public interest in securing the prevention and settlement by conciliation and arbitration of industrial disputes extending beyond the limits of any one State or in maintaining peace, order and good government in a Territory.

Where the Minister makes such an order, then, under paragraph 8(2)(a), the Industrial Registrar is required to alter the rules of the Federation to give effect to the order. No further alteration to the rules without the consent of the Minister is permitted, to the extent that such alteration relates to work in a part of Australia specified in the order.

Under paragraph 8(2)(b), the Federation may not for the purposes of the Conciliation and Arbitration Act, make any claims for or on behalf of any persons, or represent any members in the part or parts of Australia specified in the order of the Minister.

Sub-clause 8(3) provides that any award applying to the Federation and its members ceases 28 days after the making by the Minister of an order under clause 8 to have any force or effect in relation to them. The cancellation of such an award will not occur, however, if within that period the Commission varies the award so that it ceases to apply to the Federation and its members in the part or parts of Australia specified in the Minister's order.

Sub-clause 8(4) provides that section 5 of the Conciliation and Arbitration Act is not to apply in certain respects where an order is made under clause 8. Section 5 prohibits discrimination by an employer against an employee on various grounds including union membership or participation in union activity. In effect sub-clause 8(4) excludes employees who are members, officers or delegates of the Federation or a branch of the Federation from the scope of section 5, but

this exclusion is limited to employees in a part of Australia subject to an order by the Minister under this clause.

CLAUSE 9: MINISTER MAY ALLOCATE COVERAGE OF FEDERATION WORK TO OTHER ORGANIZATIONS

Sub-clauses 9(1) and (2) provide that, where the Commission has made a declaration under clauses 4 or 5 in relation to the Federation, the Minister may make orders, the effect of which would be to grant to other registered organizations, where they consent, coverage of work in an industry in respect of which the Federation is or has been registered.

Sub-clause 9(3) enables the rules of an organization in respect of which an order is made under clause 9 and which has given its consent to have its rules widened by the Industrial Registrar so that employees engaged in work of the type specified in the order may be admitted to membership.

Under sub-clause 9(4), an order may be made under clause 9 where the Minister is of the opinion that it is desirable to do so having regard to the public interest in securing the prevention and settlement by conciliation and arbitration of industrial disputes extending beyond the limits of any one State or in maintaining peace, order and good government in a Territory.

Sub-clause 9(5) ensures that an order made under this clause is not affected by the cancellation or re-registration of the Federation.

CLAUSE 10: COMMISSION MAY ALLOCATE FEDERATION WORK TO OTHER ORGANIZATIONS

Under sub-clause 10(1) the Minister may certify that he does not propose to make any orders under section 9 in respect of

a particular part of Australia. In that case, an organization of employees registered under the Conciliation and Arbitration Act or the Minister may apply to the Commission for a declaration, in which the Commission may declare that clause 10 applies in relation to an organization of employees which is so registered. The organization specified in that declaration need not be an applicant. Such a declaration is to be made in relation to work in the part of Australia concerned in an industry in respect of which the Federation is or has been registered under the Conciliation and Arbitration Act.

Sub-clause 10(2) permits the Commission to make different declarations in relation to different organizations of employees and in respect of different types of work.

Sub-clause 10(3) only permits the Commission to make a declaration under clause 10 where:

- . employees employed in the work concerned are not eligible for membership of the organization in respect of which the declaration is to be made;
- . that organization consents to the making of the declaration; and
- . the Commission considers it desirable that such employees be eligible for membership so as to ensure that the objects of the Conciliation and Arbitration Act are achieved and the employees concerned will be effectively represented for the purposes of the Act.

Under sub-clause 10(4), where the Commission makes a declaration pursuant to this clause, the Registrar is to make the necessary alterations to the rules of the organization concerned.

Sub-clause 10(5) is in similar terms and has like effect as sub-clause 9(5).

CLAUSE 11: PROCEEDINGS UNDER SUB-SECTION 139(1) OF THE  
CONCILIATION AND ARBITRATION ACT

Clause 11 makes it clear that, notwithstanding clauses 9 and 10, an organization of employees may seek to alter its rules under the usual processes of sub-section 139(1) of the Conciliation and Arbitration Act in relation to work in respect of which the Minister or the Commission may exercise their powers under clauses 9 and 10. However, where the Minister or the Commission has done so under either provision and the Industrial Registrar is taking action in relation to the rules of an organization or organizations as required under those clauses, the Industrial Registrar will not be able to deal with the application under sub-section 139(1) to the extent that there is any overlap between that application and the action by the Registrar under clause 9 or 10.

CLAUSE 12: EVIDENCE OF DECLARATION

This clause provides that a document signed by the Industrial Registrar stating that the Commission made a declaration under clauses 4, 5, or 10 is to be prima facie evidence of what is stated in the document.

CLAUSE 13: ORDERS BY THE MINISTER

This clause provides that, where the Minister makes an order under the terms of the Bill, a copy of the order is to be published in the Gazette and that order comes into force on the day on which a copy of it is so published.

CLAUSE 14: REGULATIONS

This clause gives the Governor-General a regulation making power for the purposes of the Bill.

CLAUSE 15: CESSATION OF ACT

The legislation, once enacted, is to cease to be in force on a day to be fixed by Proclamation.