

1990

THE PARLIAMENT OF THE  
COMMONWEALTH OF AUSTRALIA

SENATE

BUILDERS LABOURERS' FEDERATION LEGISLATION AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated on the authority of the  
Minister for Industrial Relations,  
Senator the Hon Peter Cook)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE  
OF REPRESENTATIVES TO THE BILL AS INTRODUCED





**BUILDERS LABOURERS' FEDERATION**  
**LEGISLATION AMENDMENT BILL 1990**

**OUTLINE**

This Bill proposes amendments to the Builders Labourers' Federation (Cancellation of Registration - Consequential Provisions) Act 1986 (the Principal Act).

The objectives of the proposed amendments are:

- (a) to extend the period during which the Australian Building Construction Employees and Builders Labourers' Federation (the Federation) or an equivalent association is excluded from applying for registration under the Industrial Relations Act 1988; and
- (b) to make more effective the operation of the provisions of the Principal Act under which the Federation or an equivalent association is excluded from the jurisdiction of the Australian Industrial Relations Commission (the Commission).

In particular the proposed amendments will:

- (a) exclude the Federation from applying for registration under the Industrial Relations Act 1988 until 14 April 1996;
- (b) prevent the State registered branches of the Federation or any other association, a substantial number of the members of which perform work which would make them eligible for membership of the Federation, or would have made them eligible for membership of the Federation immediately prior to the cancellation of its registration in 1986, from applying for registration under the Industrial Relations Act 1988 until 14 April 1996; and
- (c) allow, in limited circumstances, the Australian Industrial Relations Commission to hear State registered branches of the Federation, in relation to matters in which they may have an interest.

**Financial Impact Statement**

The proposals in this Bill should not involve any expenditure by the Commonwealth.

NOTES ON CLAUSESClause 1 - Short Title

The short title is given in subclause (1).

Subclause (2) defines the term Principal Act for the purposes of the Bill to mean the Builders Labourers' Federation (Cancellation of Registration - Consequential Provisions) Act 1986

Clause 2 - Commencement

Clauses 1, 2 and 5 will commence on receiving Royal Assent. The other provisions commence on a day or days to be fixed by proclamation, but if the commencement of a provision is not gazetted within 6 months after the Bill receives the Royal Assent, the provision concerned is thereupon repealed.

It is also provided that if subclause 4(2) is not proclaimed to commence at the same time as paragraph (b) of subclause 4(1) then subclause 4(2) is repealed.

Clause 3 - Interpretation

This clause makes a number of amendments to section 3 of the Principal Act which contains definitions of terms used in that Act

Paragraphs (a), (b) and (c) of clause 3 of the Bill amend the definition of "non-registered association" in the Principal Act. Under the Principal Act a "non-registered association" is effectively excluded from the jurisdiction of the Australian Industrial Relations Commission (the Commission) and is not capable of being a party to or an intervener in any proceeding before the Commission. Similarly, a non-registered association may not be a party to an award made by the Commission.

Paragraph (a) of clause 3 of the Bill inserts the term "State association" into the definition of "non-registered association" in section 3 of the Principal Act. A definition of "State association" is inserted into section 3 by paragraph (d) of clause 3. Paragraph (a) of the definition of "State association" specifies particular State branches of the Federation which are registered under State industrial legislation. Paragraph (b) of that definition ensures that the definition applies to a State branch of the Federation specified in paragraph (a) which changes or has changed its name.

Paragraph (b) of clause 3 of the Bill makes a drafting amendment.

Paragraph (c) of clause 3 of the Bill proposes the replacement of subparagraph (b)(iii) in the definition of "non-registered

association". The new subparagraph will expand that definition to include, in addition to an association a substantial number of the members of which are or have been members of the Federation, associations, a substantial number of the members of which are persons who:

- perform work that would, or would if performed in another part of Australia, make them eligible to be members of the Federation; or
- perform work which would have or would have if performed in another part of Australia, immediately before the Federation was de-registered in 1986, made them eligible to be members of the Federation.

Clause 4 - Effect on Federation of cancellation of registration

This clause makes a number of amendments to section 4 of the Principal Act which provides for the consequences of the de-registration of the Federation as an organisation of employees under the (repealed) Conciliation and Arbitration Act 1904 and the consequences of the continued cancellation of the registration of the Federation as an organisation under the Industrial Relations Act 1988.

Paragraph (a) of subclause 4(1) of the Bill proposes a machinery amendment to take account of a proposed new subsection 4(3A).

Paragraph (b) of subclause 4(1) proposes the insertion of new subsection 4(3A). Paragraph (a) of 4(3A) will provide that a State association, as defined in amended section 3 of the Principal Act, [other than the New South Wales State association specified in sub-paragraph (b)(i) of that definition] may, in particular matters and with the leave of the Australian Industrial Relations Commission (the Commission), intervene in certain proceedings before the Commission.

Intervention under paragraph 4(3A)(a) is permitted only in relation to the possible exercise of powers by the Commission under subparagraphs 111(1)(g)(i)(ii) and (iii) of the Industrial Relations Act 1988. Under these sub-paragraphs the Commission may dismiss or refrain from dealing with a matter or dispute, or part of a dispute, on the grounds that:

- (i) the industrial dispute or part is trivial;
- (ii) the dispute or part has been dealt with, is being dealt with or is proper to be dealt with by a State industrial authority; or
- (iii) that further proceedings are not necessary or desirable in the public interest.

It is considered that since the State associations which are registered under the industrial laws of their respective

States may, with the exception of the New South Wales State association, participate in the formal industrial relations systems in the States concerned, it is appropriate that they should be able to seek leave to intervene before the Commission to argue that a matter is not suitable for the exercise of the Commission's jurisdiction.

Under proposed paragraph 4(3A)(b), a State association may make an objection in proceedings under Part IX of the Industrial Relations Act 1990. Part IX deals with, among other things, proceedings concerning the operation of organisations and allows objections to be made in matters concerning their registration or amalgamation and the alteration of their rules.

Proposed subclause 4(2) provides that intervention or objection by State associations in matters before the Commission under proposed subsection 4(3A) may occur only in proceedings which were instituted after the provisions of paragraph (b) of proposed subsection 4(1) commence. This is intended to prevent the disruption of existing proceedings, or their delay.

Paragraph (c) of clause 4 of the Bill repeals sub-section 4(6) of the Principal Act which is no longer considered to be appropriate. That subsection excludes an officer, employee, agent or member of a non-registered association from representing a person or union in most proceedings before the Commission.

The insertion of a new sub-section 4(6) is proposed to make it clear that the Commission's jurisdiction over a matter is not affected merely because a non-registered association is involved in proceedings which are being heard by a State industrial tribunal in the presence of the Commission, as permitted by section 175 of the Industrial Relations Act 1988.

#### Clause 5 - Registration

This clause amends section 5 of the Principal Act which provides that a 'non-registered association' may not apply to be registered under the Industrial Relations Act 1988, nor be registered, unless a period of five years has elapsed from the day of commencement of the Builders Labourers' Federation (Cancellation of Registration) Act 1986 (the Cancellation of Registration Act) and a number of other requirements are satisfied. The Cancellation of Registration Act commenced on 14 April 1986.

Under the provisions of this clause the period which must elapse before a 'non registered association' may apply to be registered under the Industrial Relations Act 1988 is increased to 10 years from the date of commencement of the Cancellation of Registration Act.

Clause 6 - Application

This clause makes it clear that the provisions of this Act will apply to proceedings under the Industrial Relations Act 1988 whether those proceedings commenced before or after this Act.

The clause will not, however, apply to the rights of intervention and objection conferred by proposed subsection 4 (3A) which is to be inserted by paragraph (b) of subclause 4(1), if subclause 4(2) is proclaimed to take effect at the same time as paragraph (b) of subclause 4(1). This is because subclause 4(2) will expressly prevent those rights being available in relation to a proceeding which was instituted before the commencement of paragraph (b) of subclause 4(1).

If subclause 4(2) does not commence at the same time as paragraph (b) of subclause 4(1), it will be repealed by force of clause 2.

