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THE HOUSE OF REPRESENTATIVES

CONSTRUCTION INDUSTRY REFORM AND DEVELOPMENT
BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industrial
Relations, Senator the Honourable Peter Cook)

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

Construction Industry Reform and Development Bill 1992

OUTLINE

The Bill establishes two bodies to be known as the Construction Industry Development Council (the Council) and the Construction Industry Development Agency (the Agency).

The primary purpose of the Council is to act as a national forum for the construction industry in Australia, enabling industry and government representatives to put forward ideas to promote and facilitate the development of the construction industry in Australia. The Minister for Industrial Relations and the Minister for Small Business, Construction and Customs are to jointly chair the Council.

The primary purpose of the Agency is to promote and facilitate reform of the construction industry in Australia. This will be achieved largely through the implementation of agreements between governments, employers and unions and through the development of codes of practice for the construction industry in Australia.

The Agency is to be body corporate, to have a limited life and is to cease to exist on 1 July 1995. A Board of the Agency is to be established to provide policy and direction for the Agency. A Chief Executive Officer of the Agency is to be appointed to conduct the affairs of the Agency subject to the requirements of the Board.

Clauses dealing with membership of both the Council and the Agency ensure that these bodies are representative of the major interests in the construction industry. Other clauses in the Bill deal with the constitution, powers and meetings of both the Council and the Board of the Agency and the financial arrangements and reporting requirements for the Agency.

FINANCIAL IMPLICATIONS

The cost of the construction industry reform strategy, of which this Bill forms an integral part will be approximately \$10.8 million. It is anticipated that this cost will be substantially offset by contributions from industry.

NOTES ON CLAUSES

PART 1 – PRELIMINARY

Clause 1 – Short title

The short title of the Act is specified.

Clause 2 – Commencement

Subclause 2 (1) provides that the Act is to commence on a date fixed by proclamation.

Subclause 2 (2) provides that if the Act does not commence within 6 months of receiving the Royal Assent, it commences on the first day after the end of the 6 month period.

Clause 3 – Interpretation

The terms "Agency", "Board", "Board member", "Chief Executive Officer", "Council", "Council member", "industry agreement", "industry body" and "industry codes and practices" are defined for the purposes of the Act.

PART 2 – THE COUNCIL

Clause 4 – Establishment of the Council

The Construction Industry Development Council is established.

Clause 5 – Functions of the Council

Subclause 5 (1) provides that the functions of the Council are:

- to act as a national forum for the construction industry in Australia;
- to advise the Commonwealth government on matters concerning the construction industry in Australia; and
- to liaise with State and Territory governments, the Agency or other persons or organisations in connection with the performance of its functions.

Subclause 5 (2) provides that the Council may perform its functions under subclause 5 (1) only to the extent that they are functions that are able to be conferred on it by the legislative powers of the Parliament. The Council is not able to perform its functions in excess of those powers.

Clause 6 – Constitution of the Council

This clause sets out the composition of the Council. The Council is to comprise the Minister for Industrial Relations; the Minister for Small Business, Construction and Customs; members appointed to represent the Commonwealth; the governments of each of the States, the Northern Territory and Australian Capital Territory; prescribed industry bodies; the Australian Council of Trade Unions ; prescribed trade unions and any other members appointed by the Minister for Industrial Relations.

Subclause 6(2) provides that the Council is taken to have been constituted if the total number of council members appointed is not less than the number prescribed for the purpose of subclause 6(1).

Clause 7 – Chairpersons of the Council

This clause provides that the Minister for Industrial Relations and the Minister for Small Business, Construction and Customs are to jointly chair the Council.

Clause 8 – Acting Chairperson

Subclause 8(1) provides for the appointment of a deputy of a chairperson of the Council.

Subclause 8(2) provides that if a deputy is appointed in relation to a Chairperson of the Council and the Chairperson is unable to attend a meeting of the Council the deputy may act as the Chairperson of the Council at that meeting.

Subclause 8(3) provides that a person who has been appointed under subclause 8 (1) may resign by forwarding a written notice of resignation to the Minister.

Subclause 8(4) provides that the Minister may terminate at any time an appointment made under subclause 8(1).

Clause 9 – Terms of appointment, resignation etc.

Under subclause 9(1) a Council member holds office on a part-time basis and for a maximum period of 3 years but is eligible for re-appointment.

Subclauses 9(2) and (3) provide for the resignation of or the termination of the appointment of a Council member.

Clause 10 – Deputy of Council member

Subclause 10(1) provides for the appointment of a deputy of a Council member.

Under subclause 10(2) if a Council member is unable to attend a meeting of the Council, a deputy may attend and is deemed to be a member of the Council for the purposes of that meeting.

Subclause 10(3) provides for the resignation of a deputy of a Council member and subclause 10(4) provides that the Minister may terminate an appointment of a deputy at any time.

Clause 11 – Meetings of the Council

Under subclause 11(1) the Council must meet at least once every 12 months for the purpose of performing its functions. It is anticipated that at least in the first year of its existence the Council will meet more often than once each year.

Under subclause 11(2) a Council meeting must be convened by at least one of the Chairpersons.

Subclause 11(3) provides that the Chairpersons of the Council must preside jointly at Council meetings.

Subclause 11(4) provides that in the situation where only one of the Chairpersons is present at a Council meeting that person must preside at that meeting.

Subclause 11(5) provides that "Chairperson" for the purposes of this clause includes a deputy of a Chairperson who is acting, in accordance with clause 8 as a Chairperson.

Clause 12 – Quorum

This clause provides that a simple majority of Council members will constitute a quorum at a meeting of the Council.

Clause 13 – Conduct of Meetings

Under this clause the Council may regulate its own proceedings at meetings.

PART 3 – THE AGENCY

Division 1 – The Agency

Clause 14 – Establishment of the Agency

The Construction Industry Development Agency is established.

Clause 15 – Cessation of the Agency

This is a "sunset" clause which provides that the Agency ceases to exist on 1 July 1995. As the Agency is to be established for the purpose of assisting in the reform of the construction industry it is only to have a limited life.

Clause 16 – Agency is body corporate etc.

Clause 16 provides for the Agency to be a body corporate with the usual characteristics and consequences that follow from corporate status.

Clause 17 – Functions of the Agency

Subclause 17(1) provides that the functions of the Agency are to promote and facilitate the development and reform of the construction industry in Australia; to assist in the implementation of industry agreements, to develop and assist in the implementation of industry codes and practices and to liaise with State and Territory governments, the Council and any other persons or organisations in connection with the performance of these functions.

Subclause 17(2) provides that the Agency may perform its functions under sub-clause 17(1) only to the extent that they are functions that are able to be conferred on it by the legislative powers of the Parliament. The Agency is not able to perform its functions in excess of those powers.

Clause 18 – Powers of the Agency

This clause sets out the powers of the Agency.

Division 2 – Board of the Agency

Clause 19 – Board of the Agency

This clause establishes a Board of the Agency.

Clause 20 – Constitution of the Board

Clause 20 provides for the composition of the Board of the Agency. The Board is constituted by the Chief Executive Officer, 2 members appointed by the Minister representing the Commonwealth, 1 member appointed by the Minister following consultations with State and Territory Governments and at least 8 other members appointed by the Minister.

Clause 21 – Functions and powers of the Board

This clause provides that the Board's functions are to determine the Agency's policies and direct the Chief Executive Officer in the carrying out of the Agency's functions or the exercise of the Agency's powers. In addition, the Board has power to do all things that are necessary or convenient to be done in connection with the performance of its functions.

Division 3 – Meetings of the Board

Clause 22 – Convening of meetings

Under this clause the Chairperson of the Board may convene meetings of the Board, but must comply with any resolution of the Board in this respect.

Subclause 22(c) provides that the Chairperson of the Board upon receiving a signed request from at least 4 Board members must convene a Board meeting.

Clause 23 – Presiding at Meetings

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

Clause 24 – Quorum

Under this clause a simple majority of Board members constitutes a quorum for a Board meeting.

Clause 25 – Voting at meetings

This clause provides for the manner in which a decision of the Board may be determined.

Clause 26 – Conduct of meetings

Under this clause the Board may regulate its own proceedings and is required to keep minutes of those meetings.

Clause 27 – Disclosure of interests

Subclause 27(1) requires a Board member to disclose to a Board meeting any direct or indirect pecuniary interest in a matter being considered by the Board.

Under subclause 27(2) there is a requirement that any disclosure be recorded in the minutes. In addition, unless the Minister or the Board has determined otherwise, the Board member is not to be present during any deliberations or

decisions of the Board relating to disclosure of interests. Failure to comply with this section will result in the termination of the appointment of the Board member concerned under clause 33.

Division 4 – Provisions Relating to Board members

Clause 28 – Appointment of Board members

Under this clause Board members are to be appointed by the Minister who must not appoint a person as a Board member unless he is satisfied that the person has qualifications that are relevant to, or a special experience or interest in, the construction industry in Australia.

Because of the "sunset" clause (clause 15) Board members cannot be appointed for a term extending beyond 30 June 1995. The appointment of a Board member is not invalidated solely because of a defect or irregularity in connection with the Board member's appointment.

Clause 29 – Appointment of Chairperson of Board

Clause 29 provides that the Minister is to appoint a Board member as Chairperson of the Board for a term specified in the instrument of appointment. The Chief Executive Officer is not to be Chairperson of the Board.

Clause 30 – Part-time members

This clause provides that a Board member, other than the Chief Executive Officer, is to be appointed in a part-time capacity.

Clause 31 – Entitlements to certain allowances

This clause provides that a Board member is entitled to prescribed allowances. A Board member will be entitled to travelling and accommodation allowances only but will not be entitled to any remuneration in the nature of sitting fees. This clause does not apply to the members appointed by the Minister to represent the Commonwealth or to the Chief Executive Officer.

Clause 32 – Acting appointments

Subclause 32(1) makes provision for the Minister to appoint a Board member to act as the Chairperson of the Board in the absence of the Chairperson or if an appointment has not been made to the position of Chairperson. Under subclause 32(2) the Minister may also appoint a person to act as a member of the Board in the absence of a Board member or if there is a vacancy in the position.

Subclause 32(3) provides that any action taken by a person under this clause is not invalid because of any "technical" defect.

Clause 33 – Termination of appointment and resignation

Clause 33 sets out the circumstances in which the Minister has a discretion to or must terminate the appointment of a Board member. A Board member (other than the Chief Executive Officer) may resign by giving a written notice to that effect to the Minister.

Division 5 – Chief Executive Officer, staff etc

Clause 34 – Duties of Chief Executive Officer

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

Clause 35 – Acts done by Chief Executive Officer taken to have been done by the Agency

This clause deems any action taken or any thing done in the name of the Agency with the authority of the Chief Executive Officer to have been done by the Agency.

Clause 36 – Appointment of Chief Executive Officer

This clause provides that the Chief Executive Officer is appointed by the Minister holding office for the term specified in the instrument of appointment. The Chief Executive Officer must not be appointed for a term extending beyond 30 June 1995. This is because of the "sunset" clause – clause 15.

Clause 37 – Remuneration and allowances

Clause 37 provides for the remuneration and allowances of the Chief Executive Officer to be determined by the Remuneration Tribunal, or if no determination has been made by the Remuneration Tribunal then as prescribed.

Clause 38 – Leave of absence

Subclause 38(1) provides that the Chief Executive Officer will have recreation leave entitlements determined by the Remuneration Tribunal. If the Chief Executive Officer is appointed from the Australian Public Service any leave entitlements will be preserved by the operation of section 87E of the *Public Service Act 1922*.

Under subclause 38(2) the Minister may grant to the Chief Executive Officer leave of absence on such terms and conditions as to remuneration determined by the Minister. For the purposes of this subclause leave of absence does not include recreation leave.

Clause 39 – Resignation

The Chief Executive Officer may resign by forwarding a signed notice to that effect to the Minister.

Clause 40 – Termination of appointment

Subclause 40(1) provides that the Minister may terminate the appointment of the Chief Executive Officer in the case of misbehaviour or physical or mental incapacity.

Subclause 40(2) set out those circumstances which require the Minister to terminate the appointment of the Chief Executive Officer.

Clause 41 – Disclosure of interests

This clause provides that the Chief Executive Officer is to give written notice to the Minister of all direct or indirect pecuniary interests that he or she has acquired in any business or any body corporate carrying on a business.

Clause 42 – Acting Chief Executive Officer

Under subclause 42(1) the Minister may appoint a person to act as Chief Executive Officer during a vacancy in the office or during any period when the Chief Executive Officer is absent from duty or from Australia or is for any other reason unable to perform the functions and duties of the office.

Subclause 42(2) provides that a technical defect in an appointment of an acting Chief Executive Officer will not invalidate any action taken by that person.

Clause 43 – Employees

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

Subclause 43(2) provides that terms and conditions of employment of Agency staff are to be determined by the Board.

Subclause 43(3) provides that employees are not to be employed beyond 30 June 1995. The Agency will cease to exist on that date because of clause 15.

Clause 44 – Consultants

Under subclause 44(1) the Chief Executive Officer, on behalf of the Agency, is able to engage persons with suitable qualifications and experience as consultants to the Agency.

Subclause 44(2) provides that the Board will determine the terms and conditions of engagement, by the Agency, of consultants .

Subclause 44(3) provides that consultants are not to be engaged beyond 30 June 1995 due to the operation of clause 15.

Division 6 – Financial matters, annual reports etc

Clause 45 – Appropriation of money

Under subclause 45(1) the amount of money that has been appropriated by the Parliament for the purposes of the Agency is payable to the Agency.

Subclause 45(2) provides that the Minister for Finance may give directions as to the amounts and the times which money mentioned in subclause 45(1) is to be paid to the Agency.

Clause 46 – Estimates

Subclause 46(1) provides that the Agency is to prepare estimates, in a form that the Minister approves, of the receipts and expenditure of the Agency for each financial year and for any other period that the Minister may specify.

Subclause 46(2) provides for the submission of the Agency's estimates at the direction of the Minister.

Subclause 46(3) provides that the estimates referred to in subclause (1) do not include estimates of receipts or expenditure of moneys held on trust by the Agency.

Under subclause (4) the Agency's money, other than money held on trust, must be spent in accordance with the estimates of expenditure approved by the Minister.

Clause 47 – Application of money

Clause 47 provides that the Agency's money is to be applied exclusively in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Agency in performing its functions and exercising its powers and in payment of remuneration or allowances payable under the Act.

Clause 48 – Borrowing

This Agency is prohibited from borrowing money from any person.

Clause 49 – Investment of money

This clause provides for the investment of money by the Agency in the circumstances and in the manner set out in the clause.

Subclause 49(2) provides that for the purposes of subclause 49(1) "approved bank" means a bank defined in subsection 5(1) of the *Banking Act 1959* or another bank approved by the Treasurer or by a person that the Treasurer has authorised to give approvals under section 63E of the *Audit Act 1901*.

Clause 50 – Contracts

Paragraph 50(1)(a) prohibits the Agency from entering into a contract involving the payment or receipt by the Agency of an amount exceeding \$100,000 or, if a higher amount has been prescribed, that higher amount.

Paragraph 50(1)(b) prohibits the Agency from entering into a lease of land for a period that extends beyond 30 June 1995 as the Agency will cease to exist on that date under clause 15.

The prohibition in paragraphs 50(1) (a) and (b) does not operate where the Minister has given his written approval to the Agency in the terms of paragraphs 50(1)(a) and (b).

Subclause 50(2) provides that paragraph 50(1)(a) does not apply to the investment of money by the Agency in accordance with clause 49.

Clause 51 – Application of Division 3 of Part XI of the Audit Act 1901

Subclause 51(1) provides that Division 3 of Part XI of the *Audit Act 1901* applies to the Agency which is a public authority for the purpose of that Division.

Subclause 51(2) provides that the Agency in each report prepared under section 63M of the *Audit Act 1901* must include particulars of the activities that are set out in the subclause.

Subclause 51 (3) provides that the Agency must include in each annual report a statement of the principal objectives of the Agency and an assessment of the extent to which the Agency has achieved those objectives.

Clause 52 – Trust money

Subclause 52(1) provides that the Board is to ensure that any money received or held by the agency on trust is paid into an account that has been opened and maintained under section 63J of the *Audit Act 1901* and which does not contain any money of the Agency not held on trust.

Paragraph 52(2)(a) provides in spite of anything in Division 6 of Part 3, 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.

Paragraph 52(2)(b) provides that in spite of anything in Division 6 of Part 3 money held by the Agency on trust may be invested in any manner that the Agency is

authorised by the terms of the trust or in any manner which trust money may be invested in accordance with the law but not otherwise.

Subclause 52(3) provides that section 63K of the *Audit Act 1901* has effect as if the reference in that section to transactions and affairs included a reference to transactions and affairs that relate to money or property received or held by the Agency on trust and a reference in that section to monies or to assets included a reference to money or assets received or held by the Agency on trust.

Subclause 52(4) provides that section 63L of the *Audit Act 1901* has effect as if the reference in subsection 63L(1) to financial transactions included a reference to transactions relating to money that has been received or has been held by the Agency on trust and the reference in subsection 63L(4) to monies or to assets includes a reference to money, or assets that had been received or held by the Agency on trust.

Clause 53 – Exemption from taxation

This clause provides that the Agency is not subject to income taxation under Commonwealth law but is subject to other forms of taxation under Commonwealth law. The Agency is not subject to taxation under State or Territory law.

Division 7 – Miscellaneous

Clause 54 – Minister may give directions

This clause enables the Minister, by notice in writing to the Chairperson of the Board, to give written directions to the Board as to the performance of its functions and the exercise of its powers. The Board must comply with any directions given to it.

Clause 55 – Periodic reports

Subclause 55(1) provides that the Agency in addition to the requirement to prepare an annual report under section 63M of the *Audit Act 1901* is to prepare a periodic report for each prescribed period.

Subclause 55(2) provides that the Board, as soon as possible after a report has been prepared under subclause 55(1), must give a copy to the Minister for Industrial Relations, the Minister for Small Business, Construction and Customs, the Minister for Administrative Services, the Minister for Employment, Education and Training, the Minister for Health, Housing and Community Services and the Minister for Defence.

Subclause 55(3) provides that the Board may also give a copy of any report prepared under subclause 55(1) to the Council.

Subclause 55(4) provides that the Minister must table a report, provided in accordance with this section, in each House of Parliament within 15 sitting days of its receipt.

Part 4 – Regulations

Clause 56 – Regulations

This clause enables the Governor-General to make regulations prescribing matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

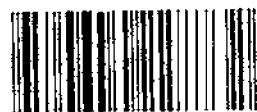
It also enables the Governor-General to make regulations making such transitional or savings provisions as are necessary or convenient as a result of the Agency's ceasing to exist on 1 July 1995.

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