

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**BUILDING INDUSTRY BILL 1985**

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1985

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Presented and read a first time, 20 August 1985

*(Minister for Employment and Industrial Relations)*

**A BILL**

FOR

**An Act relating to the building industry**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**Short title**

1. This Act may be cited as the *Building Industry Act 1985*.

5 **Commencement**

2. This Act shall come into operation on the day on which it receives the Royal Assent.

**Interpretation**

3. (1) In this Act, unless the contrary intention appears—

10 “award” means an award made under the Conciliation and Arbitration Act, an order made by the Commission under that Act, an industrial agreement made pursuant to that Act or a memorandum certified in accordance with section 28 of that Act;

15 “branch”, in relation to an organization, includes any part of the organization established under the rules of the organization;

“Commission” means the Australian Conciliation and Arbitration Commission;

“Conciliation and Arbitration Act” means the *Conciliation and Arbitration Act 1904*;

“Federation”—

- (a) subject to the following paragraphs, means the organization registered under the Conciliation and Arbitration Act by the name “The Australian Building Construction Employees’ and Builders Labourers’ Federation” or, if the name of that organization is changed, that organization under the new name; 10
- (b) if the registration of the organization referred to in paragraph (a) is cancelled under section 5, means, in relation to a time after the cancellation—
  - (i) the association that was registered as that organization; or 15
  - (ii) if the name of that association is changed or all or a substantial number of the members of that association form a new association in or in connection with the industry or a part of the industry in or in connection with which that association was formed—that association under the new name or the new association, as the case may be; or 20
- (c) if the registration of the organization referred to in paragraph (a) is cancelled as mentioned in paragraph (b) and the association that constitutes the Federation by virtue of paragraph (b) becomes registered, by whatever name, as an organization under section 132 of the Conciliation and Arbitration Act, means, in relation to a time after the registration of that association under that section, that association as so registered; 25 30

“Full Bench” means a Full Bench of the Commission constituted in accordance with section 17 of the Conciliation and Arbitration Act;

“industrial action” means—

- (a) the performance of work (being work the terms and conditions of which are prescribed, wholly or partly, by an award) in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to such work, where the performance of the work in that manner or the adoption of that practice results in a restriction or limitation on, or a delay in, the performance of the work; 35 40
- (b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by an award;
- (c) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work; or 45

(d) action that hinders or prevents a person from performing work, but does not include the performance of work in a manner, the adoption of a practice, a ban, limitation or restriction, a failure or refusal, or action, that is authorised by the employer of the persons concerned;

“organization” means an organization registered under the Conciliation and Arbitration Act;

“Registrar” means the Industrial Registrar or a Deputy Industrial Registrar appointed under the Conciliation and Arbitration Act;

“undertaking” includes any promise, commitment, pledge or other assurance and also includes a statement of intention or policy.

(2) Conduct is capable of constituting industrial action notwithstanding that the conduct concerned relates to part only of the duties that persons are required to perform in the course of their employment.

(3) A reference in this Act to industrial action shall be read as including a reference to a course of conduct consisting of a series of industrial actions.

#### **Application to Commission for declaration in relation to Federation**

4. (1) If, on application by the Minister, the Commission is satisfied that—

(a) the Federation or a prescribed person has, whether before or after the commencement of this Act, engaged in industrial action that constituted a contravention of, was in support of a claim that constituted a contravention of, or was inconsistent with the intent of—

(i) an undertaking given to the Commission, to the Registrar or to the Federal Court of Australia on behalf of the Federation;

(ii) an undertaking relating to the performance of work, to claims concerning the terms and conditions of employment, or to the prevention or settlement of industrial disputes, given on behalf of the Federation to a party to a proceeding before the Commission, the Registrar or the Federal Court of Australia to which the Federation was a party; or

(iii) an agreement relating to the performance of work, to claims concerning the terms and conditions of employment or to the prevention or settlement of industrial disputes in the building industry or a part of the building industry;

(b) the Federation or a prescribed person has, whether before or after the commencement of this Act, engaged in conduct that prevented or seriously hindered the achievement of an object of the Conciliation and Arbitration Act; or

(c) the Federation or a prescribed person has, whether before or after the commencement of this Act, engaged in conduct that is inimical to the prevention and settlement of industrial disputes by means of conciliation and arbitration,

the Commission shall make a declaration that it is so satisfied and cause the declaration to be recorded in writing.

(2) In relation to a time before the commencement of this Act, being a time after the registration under the Conciliation and Arbitration Act of the organization known as "The Australian Building Construction Employees' and Builders Labourers' Federation" was cancelled and before the association that had been registered as that organization again became registered as an organization under that Act, the reference in sub-paragraph (1) (a) (i) to an undertaking given on behalf of the Federation shall be construed as a reference to an undertaking given on behalf of that association. 5

(3) For the purposes of this section, any industrial action or any conduct that has been or is engaged in by members of the Federation shall be deemed to have been engaged in by the Federation if— 10

- (a) it is proved that the Federation or a prescribed person instigated or encouraged that industrial action or that conduct; or
- (b) in a case to which paragraph (a) does not apply—the Federation does not prove that the Federation or a prescribed person took all reasonable steps to prevent that industrial action or that conduct. 15

(4) For the purposes of this section, the person or group of persons referred to in any one of the following paragraphs constitutes or constitute a prescribed person:

- (a) the committee of management of the Federation; 20
- (b) the committee of management of a branch of the Federation;
- (c) an officer, employee or agent of the Federation in the performance of duties as such an officer, employee or agent;
- (d) a member of the Federation in the performance of the function of dealing with an employer on behalf of members of the Federation. 25

(5) In the hearing of an application by the Minister under this section, the Commission may have regard to—

- (a) any evidence given or statements made in any other proceedings before the Commission, whether constituted as a Full Bench or otherwise, and any findings made by the Commission in any such proceedings; 30
- (b) any evidence given or statements made in any proceedings before the Registrar and any findings made by the Registrar in any such proceedings;
- (c) any evidence given in any proceedings before the Federal Court of Australia and any findings made by that Court in any such proceedings; and 35
- (d) any evidence given in any proceedings of a Royal Commission that was appointed to inquire into the activities of the Federation and any report made by such a Royal Commission. 40

(6) Where an application is made by the Minister under this section, the Commission shall hear and determine the application as quickly as is appropriate having regard to all the circumstances.

# **Orders by Minister in relation to Federation**

5 **5. (1)** Where the Commission makes a declaration under section 4, the Minister may, if 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—

- 10 (a) by order in writing, direct the Registrar to cancel the registration of the Federation under the Conciliation and Arbitration Act; or
- 15 (b) by order in writing, terminate, or suspend to the extent specified in the order, any of the rights, privileges or capacities of the Federation or of all or any of its members, as such members, under the Conciliation and Arbitration Act or under the rules of the Federation (other than rules relating to the industry in or in connection with which the Federation is registered under the Conciliation and Arbitration Act or rules relating to the conditions of eligibility for membership of the Federation).

(2) Where the Minister makes an order under paragraph (1) (b) in relation to the Federation, the Minister may make such further order or orders in writing as is or are necessary to give effect to the first-mentioned order.

20 (3) Where the Minister makes an order or orders under paragraph (1) (b), or under that paragraph and under sub-section (2)—

- 25 (a) the Registrar shall forthwith consider whether any alterations need to be made to the rules of the Federation (other than rules relating to the industry in or in connection with which the Federation is registered under the Conciliation and Arbitration Act or rules relating to the conditions of eligibility for membership of the Federation) for the purpose of giving effect to the order or orders; and
- 30 (b) if the Registrar determines that any such alterations need to be made, the Registrar shall certify in writing the alterations so determined and, upon the Registrar so certifying—
  - (i) those rules shall be deemed to be altered accordingly; and
  - (ii) no further alterations to those rules may be made if the making of those alterations would be inconsistent with the order or orders made by the Minister.

35 (4) Except for the purposes of the application of the provisions of paragraph (1) (b) or of sub-section (2) or (3) in or in relation to a Territory, a reference in those provisions to the Federation shall be construed as a reference to the organization registered under the Conciliation and Arbitration Act by the name “The Australian Building Construction Employees’ and Builders’  
40 Labourers Federation” or, if the name of that organization is changed, that organization under the new name.

(5) The making of an order or orders by the Minister in relation to the Federation under paragraph (1) (b) does not prevent the Minister from making an order in relation to the Federation under paragraph (1) (a).

(6) Where the Minister, by order under sub-section (1), directs the Registrar to cancel the registration of the Federation under the Conciliation and Arbitration Act, the Minister may, by that order or by a later order in writing, specify a condition or conditions with which the Federation is required to comply before it may be registered under section 132 of the Conciliation and Arbitration Act. 5

(7) Notwithstanding anything in section 132 of the Conciliation and Arbitration Act, where the registration of the Federation is cancelled in accordance with a direction given by the Minister under sub-section (1), the Federation is not entitled to be registered under section 132 of the Conciliation and Arbitration Act unless— 10

- (a) if the Minister has, in accordance with sub-section (6), specified a condition or conditions in relation to the Federation—the Minister declares, by order in writing, that that condition has, or those conditions have, been complied with; or 15
- (b) in a case to which paragraph (a) does not apply—the Minister declares, by order in writing, that the Federation may apply to be registered under section 132 of the Conciliation and Arbitration Act.

(8) Where a declaration has been made under paragraph (7) (a) or (b), the Minister may also, by order in writing, declare that, for the purpose of any application by the Federation to be registered under section 132 of the Conciliation and Arbitration Act, a provision or provisions of the Conciliation and Arbitration Act, or of regulations in force under that Act, specified in the order does not or do not apply to or in relation to the Federation. 20

(9) Where— 25

- (a) the registration of the Federation is cancelled in accordance with a direction given by the Minister under sub-section (1);
- (b) after the cancellation, the Federation becomes registered as an organization under section 132 of the Conciliation and Arbitration Act; 30
- (c) the Minister has, in accordance with sub-section (6), specified a condition or conditions in relation to the Federation; and
- (d) on application by the Minister, the Commission is satisfied that the Federation has ceased to comply with that condition or any one or more of those conditions, 35

the Commission shall make a declaration that it is so satisfied and cause the declaration to be recorded in writing.

(10) Where a declaration is made by the Commission under sub-section (9), sub-section (1) has effect in like manner as it has effect in relation to a declaration made by the Commission under section 4. 40

(11) A person shall not contravene or fail to comply with an order made by the Minister under paragraph (1) (b) or sub-section (2).

Penalty: \$10,000.

(12) The Federal Court of Australia may, upon application by the Minister, grant such injunctions as it thinks necessary for the purpose of ensuring compliance with this section.

**Powers and procedure of Commission**

6. (1) The powers of the Commission under this Act are exercisable by a Full Bench and not otherwise.

(2) The provisions of the Conciliation and Arbitration Act, and of the regulations in force under that Act, with respect to the procedure and powers of the Commission in relation to proceedings before the Commission under that Act apply, so far as they are capable of application, to and in relation to proceedings before the Commission under this Act.

(3) On an application under section 4 or 5—

(a) the Commission shall give the Federation an opportunity of being heard; and

(b) the Minister, the Federation and any person granted leave to intervene may be represented by counsel or solicitor.

**Effect on Federation of cancellation of registration**

7. (1) If the registration of the Federation under the Conciliation and Arbitration Act is cancelled under section 5, the following provisions of this section have effect.

(2) Sub-section 143 (5) of the Conciliation and Arbitration Act does not apply in relation to the Federation or to its members but sub-sections 143 (4) and (6) of that Act apply.

(3) Any award that would, but for this sub-section, apply to the Federation or to its members ceases to have any force or effect in relation to the Federation and its members.

(4) The Federation is not capable of being a party to, and shall not be permitted to intervene in, a proceeding before the Commission and is not capable of being a party to an award made by the Commission and the Commission does not have any powers under the Conciliation and Arbitration Act in relation to an industrial dispute within the meaning of that Act in so far as that dispute involves members of the Federation.

(5) A person or an organization or association of employees is not entitled to be represented by an officer, employee, agent or member of the Federation in any proceedings before the Federal Court of Australia, the High Court, the Commission or the Registrar other than proceedings by the Federation for registration under section 132 of the Conciliation and Arbitration Act.

**Limitation on coverage of work by Federation**

8. (1) Where the Commission makes a declaration under section 4 or under sub-section 5 (9), the Minister may, if 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, by order in writing, declare that the rules of the Federation relating to the industry in or in connection with which the Federation is registered under the Conciliation and Arbitration Act and to 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. 5

(2) Where the Minister makes an order under sub-section (1)—

(a) the Registrar shall forthwith determine the alterations that need to be made to the rules of the Federation for the purpose of giving effect to the order and shall record the alterations so determined in the register, and upon the certificate of registration, under the Conciliation and Arbitration Act, and, when those alterations are so recorded— 10

(i) those rules shall be deemed to be altered accordingly; and

(ii) no further alteration to those rules, to the extent (if any) that the alteration would relate to work in a part of Australia specified in the order, may be made without the consent in writing of the Minister; and 15

(b) the Federation is not entitled, for the purposes of the Conciliation and Arbitration Act, to make any claims for or on behalf of any persons, or to represent any members, in a part or parts of Australia specified in the order. 20

(3) At the expiration of 28 days after the making of an order under sub-section (1), any award that would, but for this sub-section, apply to the Federation or to its members ceases to have any effect in relation to the Federation and its members unless the Commission has, within that period, varied the award so that it ceases to apply to the Federation and to its members in relation to work performed in the part or parts of Australia specified in the order. 25

(4) While an order is in force under sub-section (1), section 5 of the Conciliation and Arbitration Act has effect in relation to, or in relation to the employment of, an employee in a part of Australia specified in the order, or in relation to work by an employee in the service of his or her employer in such a part of Australia, as if references in that section to an organization or to a branch of an organization did not include references to the Federation or to a branch of the Federation. 30 35

#### **Minister may allocate coverage of Federation work to other organizations**

9. (1) Where the Commission makes a declaration under section 4 or under sub-section 5 (9), the Minister may, by order in writing, declare that this section applies in relation to an organization of employees specified in the order in respect of work, in a part or parts of Australia specified in the order, in an industry in respect of which the Federation is or has been registered under the Conciliation and Arbitration Act. 40

(2) The Minister may make different orders under sub-section (1) in respect of different organizations of employees in respect of different kinds or classes of work.

(3) Where—

(a) an order is made under sub-section (1) in relation to an organization of employees;

(b) under the rules of that organization, employees who are employed in work of a kind or class specified in the order are not eligible for membership of that organization; and

(c) that organization consents to the making by the Minister of a declaration under this sub-section in respect of that organization, the Minister may, by order in writing, declare that it is desirable that those employees be eligible for membership of that organization and, if such an order is made—

(d) the Registrar shall forthwith determine the alterations that need to be made to those rules in order to make those employees eligible for membership of that organization and shall record the alterations so determined in the register, and upon the certificate of registration, under the Conciliation and Arbitration Act; and

(e) when those alterations are so recorded, those rules shall be deemed to be altered accordingly.

(4) The Minister shall not make an order under this section unless the Minister is of the opinion that it is desirable to make the order 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.

(5) An order made under this section after the cancellation of the registration of the Federation under section 5 continues in force notwithstanding that the Federation again becomes registered under the Conciliation and Arbitration Act.

#### **Commission may allocate coverage of Federation work to other organizations**

10. (1) If, after the making by the Commission of a declaration referred to in sub-section 9 (1), the Minister certifies in writing that the Minister does not propose to make any orders under section 9 in consequence of that declaration in respect of a particular part of Australia, the Commission may, subject to this section, upon application by an organization of employees or by the Minister, make a declaration that this section applies in relation to an organization of employees specified in the order (whether or not the organization that made the application) in respect of work, in that part of Australia, in an industry in respect of which the Federation is or has been registered under the Conciliation and Arbitration Act and, where the Commission makes such a declaration, it shall cause the declaration to be recorded in writing.

(2) The Commission may make different declarations under sub-section (1) in respect of different organizations of employees in respect of different kinds or classes of work.

- (3) The Commission is not entitled to make a declaration under sub-section (1) in respect of an organization of employees in respect of a kind or class of work unless the Commission is satisfied that—
- (a) under the rules of that organization, employees who are employed in work of that kind or class are not eligible for membership of that organization; 5
  - (b) that organization consents to the making by the Commission of the declaration; and
  - (c) the Commission considers that it is desirable that those employees be eligible for membership of that organization to ensure that the objects of the Conciliation and Arbitration Act are achieved and that those employees will be effectively represented for the purposes of that Act. 10
- (4) Where the Commission makes a declaration under sub-section (1) in respect of an organization of employees—
- (a) the Registrar shall forthwith determine the alterations that need to be made to the rules of that organization to make the employees concerned eligible for membership of that organization and shall record the alterations so determined in the register, and upon the certificate of registration, under the Conciliation and Arbitration Act; and 15
  - (b) when those alterations are so recorded, those rules shall be deemed to be altered accordingly. 20
- (5) A declaration made under sub-section (1) after the cancellation of the registration of the Federation under section 5 continues in force notwithstanding that the Federation again becomes registered under the Conciliation and Arbitration Act. 25

#### **Proceedings under sub-section 139 (1) of the Conciliation and Arbitration Act**

11. Nothing in section 9 or 10 prevents an organization of employees from making an application to the Registrar under sub-section 139 (1) of the Conciliation and Arbitration Act for consent to a change in the rules of the organization in so far as they relate to conditions of eligibility for membership or the description of the industry in connection with which the organization is registered but the Registrar shall not deal with such an application to the extent (if any) to which the matter that is the subject of the application is a matter in respect of which the Registrar is taking action under paragraph 9 (3) (d) or 10 (4) (a) of this Act. 30 35

#### **Evidence of declaration**

12. A document signed by the Registrar stating that the Commission made a declaration under section 4, sub-section 5 (9) or section 10 on a day specified in the document and purporting to set out the terms of the declaration is *prima facie* evidence of the matters stated in the document. 40

**Orders by the Minister**

**13.** Where the Minister makes an order under this Act—

- (a) a copy of the order shall be published in the *Gazette*; and
- (b) the order comes into force on the day on which the copy of the order is published in the *Gazette*.

**Regulations**

**14.** The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

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

**Cessation of Act**

**15.** This Act shall cease to be in force on a day to be fixed by Proclamation.





