

BLF (De-recognition) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 18 July 1985

(Brought in by Mr Crabb and Mr Walsh)

A BILL

To make provision with respect to The Australian Building Construction Employees' and Builders Labourers' Federation and the members thereof and for other purposes.

5 BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

Short title.

1. This Act may be cited as the *BLF (De-recognition) Act 1985*.

Commencement.

10 2. (1) Subject to sub-section (2), the several provisions of this Act shall come into operation on a day or on the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette*.

(2) A proclamation made under this Act shall not fix a day for a provision of this Act to come into operation that is before—

15 (a) the day on which the right of the The Australian Building Construction Employees' and Builders Labourers' Federation to represent employees in the State of Victoria

is limited or restricted by or under the Commonwealth Act or any other Act of the Parliament of the Commonwealth; or

- (b) the day on which the registration pursuant to the Commonwealth Act of The Australian Building Construction Employees' and Builders Labourers' Federation is cancelled— 5

whichever first occurs.

Interpretation.

3. In this Act, unless inconsistent with the context or subject-matter— 10

“BLF” means—

- (a) the organization registered pursuant to the Commonwealth Act and known as The Australian Building Construction Employees' and Builders Labourers' Federation; 15
- (b) any other organization or any association within the meaning of the Commonwealth Act which is declared by an Order made by the Governor in Council and published in the *Government Gazette* to be an organization or association that has as members a substantial number of persons who are or were immediately before the commencement of this section members of the organization referred to in paragraph (a); or 20
- (c) if at any time the registration pursuant to the Commonwealth Act of the organization referred to in paragraph (a) is cancelled— 25
- (i) the association within the meaning of the Commonwealth Act which was the organization referred to in paragraph (a) immediately before the cancellation of that organization's registration pursuant to the Commonwealth Act; or 30
- (ii) any other association within the meaning of the Commonwealth Act which is declared by an Order made by the Governor in Council and published in the *Government Gazette* to be an association that has as members a substantial number of persons who were members of the organization referred to in paragraph (a) immediately before the cancellation of that organization's registration pursuant to the Commonwealth Act. 35

“Board” means a Conciliation and Arbitration Board constituted under the *Industrial Relations Act 1979*.

“Commission” means the Industrial Relations Commission of Victoria established under the *Industrial Relations Act 1979* 45

and includes the Commission in full session, the Commission in Court session and a Commissioner sitting alone.

5 “**Commonwealth Act**” means the *Conciliation and Arbitration Act* 1904 of the Commonwealth as amended and in force for the time being.

“**Construction industry**” has the same meaning as in the *Construction Industry Long Service Leave Act* 1983.

10 “**Contract to which this Act applies**” means a contract (whether made before or after the commencement of section 4)—

(a) between—

(i) the State, a Minister or a public statutory body; and

(ii) a contractor; or

15 (b) between a contractor and a sub-contractor—

which is for or in relation to the performance of any work or the provision of any services for the State, the Minister or the public statutory body.

20 “**Contractor**” means a person who or body (whether corporate or unincorporate) which is engaged to perform work or provide services for the State, a Minister or a public statutory body.

“**Member of BLF**” means—

25 (a) a person whose name is on any register or other record of members kept by BLF; or

(b) a person who has within the preceding 12 months paid any dues or other money payable in respect of that person’s membership or renewal of membership of BLF—

30 but does not include a person who has given to BLF notice of that person’s resignation from BLF notwithstanding that the resignation has not yet taken effect.

35 “**Officer of BLF**” includes any person holding any office, position, place of authority or stewardship in or carrying out any duties for BLF under its rules or for its members or any section thereof (whether for remuneration or otherwise) and includes any person who purports to be an officer of BLF.

“**Person**” includes a body or association (corporate or unincorporate) and a partnership.

40 “**Registrar**” means registrar of the Commission appointed under Part II. of the *Industrial Relations Act* 1979.

Condition to be implied in certain contracts.

4. (1) Notwithstanding anything to the contrary in any other Act or in any rule of law, in a contract to which this Act applies there is an implied condition on the part of any contractor or sub-contractor who is a party to the contract that no person who is a member of BLF will, at any time after the expiration of seven days after the commencement of this section, be engaged or continue to be engaged under a contract of employment in carrying out any work or doing any other act or thing under or for the purposes of the contract.

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(2) A term of a contract to which this Act applies that purports to exclude, restrict or modify or purports to have the effect of excluding, restricting or modifying the condition implied by sub-section (1) is void.

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Remedy in the event of a breach of implied condition.

5. (1) Where, in relation to a contract to which this Act applies, there is a breach of the condition that is, by virtue of section 4 (1), implied in the contract—

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(a) in the case of such a contract as is referred to in paragraph (a) of the interpretation of “Contract to which this Act applies” in section 3, the State, the Minister or the public statutory body; or

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(b) in any other case, the contractor—

is entitled to rescind the contract by causing to be served on the contractor or sub-contractor (as the case requires) a notice in writing giving particulars of the breach.

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(2) Where by virtue of sub-section (1) (b) a contractor is entitled to but does not rescind a contract to which this Act applies, the State, a Minister or a public statutory body is entitled to rescind a contract to which this Act applies between the State, the Minister or the public statutory body and that contractor whether or not the State, the Minister or the public statutory body is entitled to rescind that contract by virtue of sub-section (1) (a).

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(3) The right of rescission conferred by sub-section (2) may be exercised by causing to be served on the contractor a notice in writing giving particulars of the breach of contract by the sub-contractor.

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(4) The right of rescission conferred by this section is in addition to, and not in derogation of, any other right or remedy under any other Act or under any rule of law.

Removal of BLF and its members from participation in and protection of State industrial system.

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6. (1) Notwithstanding anything to the contrary in the *Industrial Relations Act 1979* or any other Act or in any rule of law, on the day on which this section comes into operation—

- (a) any award of a Board or of the Commission shall cease to apply to the employment in the construction industry of persons who are members of BLF;
- 5 (b) BLF shall cease to be recognized as an association under the *Industrial Relations Act 1979* and shall cease to be entitled to exercise any of the rights or enjoy any of the privileges of a recognized association under that Act;
- 10 (c) any member, officer or employee of BLF who is a member or is deemed to be a member of a Board shall go out of office; and
- (d) any member, officer or employee of BLF who is a member of the Construction Industry Long Service Leave Board established under Part II. of the *Construction Industry Long Service Leave Act 1983* shall go out of office.
- 15 (2) Notwithstanding anything to the contrary in the *Industrial Relations Act 1979* or any other Act or in any rule of law, the following provisions shall have effect on and from the day on which this section comes into operation:
- 20 (a) BLF shall not be entitled to appear before or make submissions to the Commission or a Board;
- (b) BLF shall not be entitled to be represented before the Commission or a Board by a member, officer or employee of BLF or by any other agent;
- 25 (c) BLF or a member of BLF shall not be entitled to nominate a person for membership of a Board;
- (d) A member, officer or employee of BLF shall not be eligible to be appointed as a member of a Board or of a General Board under section 25 of the *Industrial Relations Act 1979*;
- 30 (e) BLF or a member of BLF shall not be entitled to appoint a person to act as deputy of a member of a Board during any period of inability of that member of the Board;
- (f) A member, officer or employee of BLF shall not be eligible to be appointed as a member of the Construction Industry Long Service Leave Board established under Part II. of the *Construction Industry Long Service Leave Act 1983*;
- 35 (g) BLF shall not be eligible to make application to the registrar to be recognized as an association under the *Industrial Relations Act 1979*;
- 40 (h) A member of BLF shall not, while employed in the construction industry, be entitled to the benefit of any award of a Board or of the Commission relating to that employment;
- 45 (i) A member of BLF shall not, while employed in the construction industry, be entitled in relation to that employment to exercise any of the rights or enjoy any of the

privileges conferred on employees by or under the *Industrial Relations Act 1979*; and

- (j) A member of BLF, while employed in the construction industry, shall in relation to that employment, for the purposes of Part VI. of the *Industrial Relations Act 1979*, be deemed not to be a worker within the meaning of that Part.

(3) Nothing in paragraphs (h), (i) or (j) of sub-section (2) shall be construed as depriving a person of the benefit of any rights accrued immediately before the day on which this section comes into operation.

Power to restrict use of funds or property.

7. (1) For the purpose of protecting the rights of persons who have ceased to be members of BLF, the Governor in Council may by Order published in the *Government Gazette* provide for the restriction of the use of funds or property of BLF and for the control of those funds or that property.

(2) An Order made under sub-section (1)—

(a) shall come into force upon the date of publication of the Order in the *Government Gazette*; and

(b) shall, unless sooner revoked, cease to be in force at the expiration of 6 months from the date on which it came into force but may, at any time while it remains in force (including a time when it remains in force by virtue of a previous extension or previous extensions under this paragraph), be extended in duration by a further Order made by the Governor in Council and published in the *Government Gazette*.

(3) A person shall not contravene an Order made under sub-section (1).

Penalty: 100 penalty units.

Statutory declarations.

8. A statutory declaration made and subscribed by a person declaring that the person is not a member of BLF shall be evidence and, in the absence of evidence to the contrary, shall be conclusive evidence of the facts and matters declared therein.

Immunity of certain persons from suit.

9. (1) No matter or thing done by the State or by a Minister or public statutory body or by a contractor or any other person whomsoever shall, if the matter or thing was done in good faith for the purpose of—

(a) giving effect to this Act;

(b) exercising a right conferred by this Act; or

(c) preventing or ending a breach of the condition that is, by virtue of section 4 (1), implied in a contract to which this Act applies—

5 subject the State or any such Minister, public statutory body, contractor or other person personally to any action, liability, claim or demand whatsoever.

(2) In sub-section (1) a reference to the doing of any matter or thing includes a reference to the dismissal from employment of a person who is a member of BLF.

10 Service of documents.

10. (1) Any notice or other document required or permitted by or under this Act to be served on or given to a person may be served on or given to—

(a) a natural person—

15 (i) by delivering it to the person personally; or
(ii) by leaving it at, or by sending it by pre-paid post to, the address of the place of residence or business of the person last known to the person serving or giving the notice or other document; or

20 (b) a body corporate—by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate.

(2) Service of a notice or other document on a member of a partnership or on a member of the committee of management of an unincorporated association or other body of persons shall be deemed, for the purposes of this Act, to constitute service of the notice or other document on each member of the partnership or each member of the association or other body of persons, as the case may be.

30 (3) The provisions of this section are in addition to and not in derogation of the provisions of sections 528, 529 and 530 of the *Companies (Victoria) Code*.

Cessation of operation of Act.

11. This Act shall cease to have effect at the expiration of one year after the day on which it receives the Royal Assent unless—

35 (a) all of the provisions of this Act have by then been proclaimed to come into operation; or

(b) this Act is sooner repealed.

