

BLF (De-recognition) Bill

EXPLANATORY MEMORANDUM

Clause 1—Sets out the short title.

Clause 2—Provides for the Act to come into operation by proclamation or successive proclamations.

Provides that a proclamation shall not fix a day for the operation of the Act before the registration of the BLF under the Commonwealth Conciliation and Arbitration Act has been cancelled or the right of the BLF to represent employees in Victoria is limited or restricted by the Commonwealth, whichever occurs first.

Clause 3—Provides for the relevant definitions for the purposes of the Act.

Clause 4—Provides that notwithstanding any other Act or rule of law there is to be an implied condition in every contract to which the Act applies on the part of any contractor or sub-contractor that within seven days after the commencement of the section no person who is a member of the BLF shall be engaged or continue to be engaged under a contract of employment in carrying out any work or doing anything for the purposes of that contract.

In this context Clause 3 defines “contract to which this Act applies” as 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

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

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

Clause 5—

Sub-clause (1)—Provides that where in relation to such a contract there is a breach of the implied condition set out in Clause 4—

- (a) in the case of a contract between the State, a Minister or a public statutory body and a contractor, the relevant party; or
- (b) in any other case, the contractor—

is entitled to rescind the contract by the service of a notice in writing which states the particulars of the breach.

Sub-clause (2)—Provides that where a contractor is entitled to rescind a contract, but does not do so, the State, the Minister or the public statutory body is entitled to rescind a contract with that contractor whether or not that entitlement arises from sub-clause (1) (a).

Sub-clause (3)—Provides the method of the rescission of a contract.

Sub-clause (4)—Provides that the right of rescission given under Clause 5 is in addition to any other right or remedy under any other Act or rule of law.

Clause 6—Provides for the removal of the BLF and its members from participation in and protection of the State Industrial System.

Sub-clause (1)—

ceases the application of State Awards in the construction industry to members of the BLF;

ceases the standing of the BLF as a recognized association under the *Industrial Relations Act 1979* and thus the privileges attaching to such standing;
removes any BLF member from a Conciliation and Arbitration Board.
removes any BLF member from the Construction Industry Long Service Leave Board.

Sub-clause (2) removes any entitlements in relation to the BLF or members of the BLF concerning—

ability to appear or be represented before the Industrial Relations Commission or a Conciliation and Arbitration Board;
the nomination of a person for membership of a Conciliation and Arbitration Board;
eligibility for appointment as a member or deputy member of a Conciliation and Arbitration Board;
eligibility for appointment as a member of the Construction Industry Long Service Leave Board;
ability to make application to the Registrar of the Industrial Relations Commission seeking to be recognized as an association for the purposes of the Act;
the benefits of any State Award while working in the construction industry;
the exercising of any rights or privileges conferred by the *Industrial Relations Act 1979* on employees;
annual holidays which are conferred by Part VI. of the Industrial Relations Act, while employed in the construction industry.

Sub-Clause (3)—Provides that nothing in sub-clause (2) shall deprive a person of any benefits or rights in relation to—

a benefit under an award;
the exercising of a right under the Industrial Relations Act;
accrual of annual holidays;

which were in existence before the commencement of the section.

Clause 7—Provides the Governor in Council with the power to restrict the use of funds or property of the BLF by Order in Council. It also sets out a penalty of 100 penalty units for a contravention of such an Order.

Clause 8—Enables a person to make a statutory declaration that the person is not a member of the BLF and such a declaration is to be conclusive evidence of that unless evidence to the contrary is given.

Clause 9—Provides an immunity of certain persons from suit where such persons are—
giving effect to the Act;
exercising a right conferred by the Act;
preventing or ending a breach of the implied condition of a contract.

Clause 10—Provides for the service of documents.

Clause 11—Provides that the Act shall cease to have effect one year after it receives the Royal Assent unless—

all of the provisions of the Act have by then been proclaimed to come into operation;
or
it is sooner repealed.