



SENATE EDUCATION AND EMPLOYMENT COMMITTEE  
*Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017*  
MASTER BUILDERS AUSTRALIA  
*Answers to questions taken on notice*  
Melbourne 28 September 2017

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**Senator KETTER:** *Can I ask each organisation what level of consultation has taken place in respect of this particular bill, and when did those consultation exercises commence? Perhaps we could start with the MBA.*

**Mr Schmitke:** *I suppose the consultation started after the announcement during the election campaign at the last election. We subsequently, in dialogue with the minister's office, raised this amongst a list of other issues in terms of the commitments that had been made and that were on the government's agenda to implement. The next time that we interacted with the minister's office in this respect was when we received official notification that an application had been filed for the amalgamation proceedings. We subsequently wrote to the minister and outlined our concerns with respect to the proposed amalgamation. Master Builders Australia is also a member of the Workplace Relations Consultative Committee. We saw a copy of the bill during that process, as I think Mr Barklamb outlined earlier to the committee.*

**Senator KETTER:** *The proposed amalgamation of these unions has been on the drawing board for some time. I've seen media reports going back at least two years. Did you raise this issue around that time, say 2015?*

**Mr Schmitke:** *I joined Master Builders only at the beginning of 2016 so I can't answer with any degree of certainty, but we knew it may well be a prospect. It was once we received official notification that we formally corresponded with the minister.*

**Senator KETTER:** *You initiated the contact on this?*

**Mr Schmitke:** *Yes. It was simply correspondence from our CEO to the minister.*

ANSWER FROM MASTER BUILDERS AUSTRALIA:

**Clarification:** The correspondence referred to in the above exchange was authored by the witness who gave evidence to the Committee during hearings in Melbourne. The reference to it being from Master Builders CEO was incorrect. A copy of the correspondence is attached dated 15 July 2017. Email correspondence from the chambers of Gostencnik DP advising of the commencement of formal amalgamation proceedings was sent on Wednesday 12 July 2017 at 11:09 AM.

**Additional information:** The National Board of Master Builders Australia endorsed in-principle the recommendations for law reform arising from the *Heydon Royal Commission* report in March 2016. Implementation of the *Heydon Royal Commission* recommendations therefore became a standing item that Master Builders raised during subsequent interactions with the Minister and/or her office.

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**Mr Schmitke:** *What we did was we met with the minister after the election. In that discussion—*

**Senator LINES:** *At whose request?*

**Mr Schmitke:** *I honestly don't know the answer.*

**Senator LINES:** *Can you take that on notice?*

**Mr Schmitke:** *I will take that on notice, yes.*

## ANSWER FROM MASTER BUILDERS AUSTRALIA:

Master Builders Australia requested the meeting.

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**Mr Schmitke:** From the Fair Work Commission, that's right. We then corresponded with the minister, from memory, about one week later, outlining our broad concerns and reminding her of the government's election commitment.

**Senator LINES:** So that's the letter. When you responded to Senator Ketter's questions you said you wrote to the minister after the election. That's the same letter, is it?

**Mr Schmitke:** No, no. We met with the minister after the election. We wrote to the minister on this specific issue after we were notified by the commission that the proceedings had commenced.

**Senator LINES:** Sorry; I heard you say to Senator Ketter that after the election you wrote to the minister about a range of matters, including this matter.

**Mr Schmitke:** I will take it on notice, Senator, because it's an important question. It would have been raised in the context of all of the other commitments the government had made and probably broadly in the sense of implementing the Heydon recommendations.

**Senator LINES:** So you had a meeting and you're going to take on notice the issue of when the letter was sent. I asked you about the issues in your letter and your conversations with the minister. How many of the issues you raised, apart from this one, have been implemented?

**Mr Schmitke:** There have been a number, yes.

**Senator LINES:** You had 15 on the list. Have 10 been implemented? What are we talking about?

**Mr Schmitke:** It's very hard to say. If we talked about implementing the Heydon recommendations, that would have been a point. But there were, I think, 70-plus recommendations in that report. Certainly there's been the restoration of the Australian Building and Construction Commission, there's been the Senate's consideration of alterations to the Building Code 2016, and there have been a number of other changes that Master Builders had supported for a long time, including the establishment of a registered organisations commission. That's also been implemented.

**Senator LINES:** All right. Perhaps if you look at the contents of the letter. Are you able to table the letter?

**Mr Schmitke:** I would need to go and track a copy down.

**Senator LINES:** Sure. Did the minister respond in writing?

**Mr Schmitke:** I don't think so, no.

**Senator LINES:** Can you check that and advise the committee.

**Mr Schmitke:** Yes, I will.

## ANSWER/CLARIFICATION FROM MASTER BUILDERS AUSTRALIA:

Master Builders Australia wrote to the Minister subsequent to the 2016 election in correspondence dated 28 July 2016. However, that letter only extended Master Builders' congratulations for being re-appointed as Minister for Employment and noted the Government's commitment to re-establishing the Australian Building and Construction Commission. There were no other policy subject matters raised in that letter and it did not contain a 'list' as such.

To assist the Committee, regard may be had to Master Builders' policy priorities at that time. This was contained in a document titled "Strong Building, Strong Economy" and this was released during the 2016 Federal Election. A copy is attached.

Master Builders Australia did not request a reply to our correspondence of 28 July 2016 we have no record of a response from the Minister.

**Senator LINES:** Do you have the minister's mobile number?

**Mr Schmitke:** I do, yes.

**ADDITIONAL INFORMATION FROM MASTER BUILDERS AUSTRALIA:**

Access to the mobile number arose in the context of the witnesses' employment before his commencement with Master Builders Australia. The number was obtained in approximately 2009 before Senator Cash became a Minister.

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**Mr Schmitke:** Yes, absolutely. That's exactly right. There is a long and extensive history in Australian workplace law about regulating registered organisations. In preparing for this hearing, and in writing our submission, I had cause to have a look at the original version of the 1904 Conciliation and Arbitration Act. That act has, I think in section 60—it is testing my memory—powers to deregister parts of a registered organisation, and section 50, I think, gave powers to disqualify officials for breaking the law. In fact, from memory, that particular power was available upon application to a court by any interested person. It didn't even necessarily need to be a person with a sufficient interest. If I look at the legislation that Prime Minister Hawke introduced to deregister the BLF, he gave the then industrial commission a power to make certain that an independent body had established that that organisation was acting in a manner that was inconsistent with the act, but he then conferred the power on the minister of the day to determine what action would be taken if the commission found that there had been misconduct. That included deregistration, disqualification and making new orders as to who else could represent that sector. This is not a situation where we're breaking new ground in terms of new law; these are established concepts. The current law, as I indicated, is deficient in this respect.

**ADDITIONAL INFORMATION FROM MASTER BUILDERS AUSTRALIA:**

A copy of the 1904 Act and a speech from former Prime Minister Hawke referenced in the above exchange are attached. Sections 50 and 60 from the 1904 Act, and sections from the speech outlining the content of the BLF Bill, are reproduced below.

**50.** Any person adjudged to be guilty of any contravention of Part II. of this Act or of wilful default in compliance with any award shall, if the Court in its discretion so orders, in addition to any penalty imposed for the offence, be and continue subject to any or all of the following disabilities :—

- (a) He shall not be entitled to any rights privileges benefits or advantages under this Act, and this Act shall, so far as any such rights privileges benefits or advantages are concerned, cease to apply to him :
- (b) He shall cease to be a member or officer of any organization, or of any association which is, or is part of, any organization, and shall not be qualified to become a member or officer of any organization or of any such association :
- (c) He shall lose all existing or accruing rights to any payment out of the funds of any organization, or of any association which is, or is part of, any organization, and the receipt by him of any such payment, or the making of any such payment to him by any person or organization, or by any such association, shall be an offence under this Act.

Penalty : Twenty pounds.

Provided that the Court may at any time in its discretion, if it appears that the contravention or wilful default has been sufficiently punished, and that the effective administration of this Act will not be prejudiced by the removal of the disabilities, order that the disabilities or any of them be removed.

**60.** (1) If it appears to the Registrar—

- (a) that for any reasons the registration of an organization ought to be cancelled ; or
- (b) that an organization has been registered erroneously or by mistake ; or

- (c) that the rules of a registered organization have been altered so as to no longer comply with the prescribed conditions or have not *bona fide* been observed ; or
- (d) that the rules of a registered organization or their administration do not provide reasonable facilities for the admission of new members or impose unreasonable conditions upon the continuance of their membership or are in any way tyrannical or oppressive ; or
- (e) that the proper authority of a registered organization wilfully neglects to provide for the levying and collection of subscriptions, fees, or penalties, from members of the organization ; or
- (f) that the accounts of a registered organization have not been audited in pursuance of the rules, or that the accounts of the organization or of the auditor do not disclose the true financial position of the organization ; or
- (g) that a registered organization has wilfully neglected to obey any order of the Court ; or
- (h) that the number of the members of the organization, or of their employees, as the case may be, would not entitle them to registration under section fifty-five,

he shall make application to the Court for the cancellation of the registration of the organization, giving notice thereof to the organization at its registered office.

(2) The Court shall hear the application, and if it is of opinion that the registration should be cancelled, it shall so order, and thereupon the registration of the organization under this Act shall be cancelled.

(3) Where the Registrar has, on application made to him, refused to make an application for the cancellation of the registration of an organization, the Court may, if it thinks fit, on the application of any organization or person interested, order that the registration of the first-mentioned organization under this Act be cancelled, and thereupon the registration of the organization shall be cancelled.

(4) The cancellation shall not relieve the organization or any member thereof from the obligation to comply with any award, or from any penalty or liability incurred prior to the cancellation.

ACCORDINGLY A FUNDAMENTAL ELEMENT OF THE BILL IS THE ROLE OF A FULL BENCH OF THE CONCILIATION AND ARBITRATION COMMISSION IN DETERMINING WHETHER THE BLF HAS ENGAGED IN CONDUCT THAT HAS PREVENTED OR SERIOUSLY HINDERED ARBITRAL PROCESSES.

SUCH A DETERMINATION BY THE ARBITRATION COMMISSION WOULD BE A PREREQUISITE OF ANY GOVERNMENT DECISION TO DEREGISTER THE BLF

"IN THE GOVERNMENT'S VIEW, THE ACTION WHICH IS CONTEMPLATED IN THIS LEGISLATION IS SO SERIOUS THAT IT IS ESSENTIAL THAT THERE BE IMPARTIAL CONSIDERATION BY AN INDEPENDENT TRIBUNAL OF THE FEDERATION'S CONDUCT. THIS WILL OCCUR AGAINST SPECIFIC CRITERIA WHICH ARE APPROPRIATE TESTS OF WHETHER THE FEDERATION HAS BEHAVED RESPONSIBLY AS AN ORGANISATION REGISTERED UNDER THE CONCILIATION AND ARBITRATION ACT AND IN A WAY WHICH IS CONSISTENT WITH THE OBJECTIVES OF OUR INDUSTRIAL RELATIONS SYSTEM."

THE BILL BEFORE THE HOUSE ALSO PROVIDES FOR THE MINISTER FOR EMPLOYMENT AND INDUSTRIAL RELATIONS TO BE ABLE TO DECIDE UPON APPROPRIATE ACTION FOLLOWING A FINDING OF MISCONDUCT BY THE UNION.

HONOURABLE MEMBERS WILL ALSO APPRECIATE THAT THIS BILL PROVIDES FOR A RANGE OF GOVERNMENT ACTION WHICH COULD BE TAKEN AGAINST THE BLF EXTENDING FROM

- NATIONAL DEREGISTRATION OF THE BLF UNDER THE CONCILIATION AND ARBITRATION ACT TO
- SELECTIVE ACTION AGAINST THE BLF IN RELATION TO TERMINATING OR SUSPENDING RIGHTS, PRIVILEGES OR CAPACITIES OF THE BLF UNDER THE CONCILIATION AND ARBITRATION ACT.

12.

HONOURABLE MEMBERS WILL APPRECIATE THAT DEREGISTRATION, PARTICULARLY IN CURRENT CIRCUMSTANCES, WOULD BE A POTENT ACTION AGAINST THE BLF

- ANY AWARD APPLYING TO THE BLF WOULD CEASE TO HAVE ANY EFFECT IN RELATION TO THE BLF AND ITS MEMBERS
- THE BLF WOULD NOT BE CAPABLE OF BEING A PARTY TO A PROCEEDING BEFORE THE COMMISSION OR TO AN AWARD MADE BY THE COMMISSION, AND THE COMMISSION WOULD NOT HAVE ANY POWERS UNDER THE CONCILIATION AND ARBITRATION ACT IN RELATION TO AN INDUSTRIAL DISPUTE IN SO FAR AS THAT DISPUTE INVOLVED MEMBERS OF THE FEDERATION.

IT WOULD ALSO BE OPEN TO THE MINISTER TO MAKE ORDERS WHICH WOULD HAVE THE EFFECT OF GRANTING TO OTHER REGISTERED ORGANISATIONS COVERAGE OF WORK IN AN INDUSTRY OR IN A LOCATION IN RESPECT OF WHICH THE BLF IS OR HAS BEEN REGISTERED.

**HANSARD PAGE 56**

**Senator LINES:** *Mr Schmitke, I'm not sure if you're aware, but there have been quite a number of workplace deaths on building sites in the CBD in Western Australia. What representations, if any, have you made to the minister about tighter health and safety legislation to stop these deaths?*

**Mr Schmitke:** *I will take that question on notice.*

**ANSWER FROM MASTER BUILDERS AUSTRALIA:**

Workplace health and safety is regular matter for Master Builders to raise during meetings with the Minister.

Master Builders Australia confirms that the underpinning intent of any representation would always be to reduce the number of fatalities and serious incidents in the building and construction sector.

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**Senator LINES:** *Were workplace deaths in the building industry one of the things in your letter to the minister?*

**Mr Schmitke:** *I can't recall, but I will take that on notice.*

**ANSWER FROM MASTER BUILDERS AUSTRALIA:**

While Master Builders Australia did not refer specifically to 'workplace deaths' in our correspondence to the Minister of 15 July 2017 (attached) we did raise safety as one issue for which there could be adverse consequences, including a potential for intent of safety law to be undermined.



**MASTER BUILDERS**  
A U S T R A L I A

15 July 2017

Senator the Hon Michaelia Cash  
Minister for Employment, Women and Assisting the Prime Minister for the Public Service  
Senator for Western Australia  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Minister,

Master Builders Australia write to express our concern regarding the proposed amalgamation between the Maritime Union of Australia (MUA) the Construction, Forestry, Mining and Energy Union of Australia (CFMEU) and the Textile, Clothing and Footwear Union of Australia (TCFUA) and to request the Government consider options to oppose such a move.

While it has been flagged for some time, you would now be aware that documents have been filed in the Fair Work Commission to formalise this amalgamation. This means that Commission consideration is now imminent. Master Builders is opposed to the amalgamation and is considering what options may be available to involve ourselves in future proceedings.

While there are many reasons as to why this amalgamation is not only contrary to the interests of Master Builders members and the public, it is also our view that it may also be contrary to policy positions we understand are maintained by the Government. To that end, we ask that consideration be given to whatever options the Government considers appropriate.

#### *Consequences*

The visible likely consequences of the amalgamation have been the subject of previous public debate and we do not seek to repeat them here; save to observe that the capacity for widespread industrial action and its resultant adverse impact on jobs and the domestic economy are severe and acute. There are, however, other unintended and possibly less obvious consequences were the amalgamation to proceed we also note below for your attention.

- The amalgamation would significantly boost the capacity and opportunities for unions to exert industrial pressure on a construction project by disrupting supply of products necessary for that project.
  - While it is difficult to accurately quantify, as much as 75 percent of the total product composition in any typical construction project is likely to involve the use of product manufactured overseas and therefore enters through a port. A range of building materials manufactured domestically are also transported by ship between ports, including cement, steel and other materials used in construction.
  - Such disruption, even by way of 'go slow' or other operationally focussed industrial tactic at a port, would remove the need for project action in situ thereby inflicting significant cost to Master Builders members whom would need to stand down employees in the absence of any alternative work on which they could be deployed. In other words, the same industrial pressure could be exerted on a site without necessarily involving the party or workforce directly involved.

- This would result in a range of problems, including project delays that concurrently incur additional costs, including exposure to liquidated damages contractual provisions which, as you are aware, are a common feature of the building and construction industry.
- Master Builders understands that many Government policies are designed to achieve positive cultural change amongst union officials, particularly in those sectors displaying a historical attitude of 'being above the law'.
  - The CFMEU and MUA are commonly considered to be exemplars of such historical attitude which would only be exacerbated by their combination to the detriment of outcomes sought by existing Government policy.
  - It is also understood that the bodies seeking amalgamation are examining options to combine resources including through shared office facilities. Such arrangement would not only reinforce, but more likely worsen, existing MUA/CFMEU culture that conveys a belief that the law is something they are either above or should be broken where disliked.
- It would not be difficult to envisage a circumstance where port related activities are used as a tactic in a broader campaign activity.
  - The use of building products that are manufactured overseas which is one current and obvious example, where the position of the CFMEU is to not utilise particular products unless satisfied they meet requisite standards and do not pose a risk to community safety. Such campaign could be amplified through port disruption and/or the involvement of traditional MUA members at ports.
  - Conversely, we understand the MUA is an ardent supporter of the BDS movement. An amalgamation would expand the opportunities for BDS related activity and manifest itself locally. This could occur, for example, with reference to the investor profile of larger construction and infrastructure projects.
  - There are also, we would suggest, implications for our national obligations that exist pursuant to World Trade Organisation agreements.
- The merger would increase the extent of difficulty that government agencies and regulators experience in enforcing existing law.
  - For example, the complexities associated with determining circumstances that represent a secondary boycott under existing law are already numerous, as exemplified by matters involving Boral in Victoria. The extension to, and coverage of, major key elements within the chain of supply and construction would undoubtedly increase these complexities and jeopardise the capacity for regulars to enforce the law.
  - This is a particularly important consideration given the recent attention given to the building and construction industry by the Australian Competition and Consumer Commission and related recommendations for law reform contained in the Final Report of the *Royal Commission in to Trade Union Governance and Corruption* (Heydon Report).
- Master Builders is aware of media reports indicating the Government will move to disqualify officials from holding office in a registered organisation whom repeatedly contravene laws or related court orders.
  - While this proposal would be supported by Master Builders, the amalgamation would triple the number of persons within one entity who hold, or have held, official roles at a senior level and this, when combined with those concerns regarding culture noted earlier, would reduce the capacity for the law to achieve what we understand to be its central policy aim.
- The TCFUA is an entity capable of utilising certain provisions and exercising particular powers<sup>1</sup> under the *Fair Work Act 2009* that are not commonly available elsewhere.
  - Examples of these provisions include waiving the usual requirement to provide 24 hours' notice when exercising entry, the ability to seek entry to private premises, and reduced burden levels necessary to establish reasonable suspicion of contravention. The

<sup>1</sup> See *Fair Work Act 2009*, Chapter 3, Part 3-4, Division 2 - Subdivision AA



amalgamation proposed would, in practical terms, make these powers available to the MUA and CFMEU.

- It would mean that many of the officials currently before courts facing charges under industrial and other laws, and the many more who have previously been found to have broken the law, would have the right to enter any private premises at any time with no notice and without any meaningful obligation to justify their reason, action or conduct.
- It is no secret that unions deploy a broad range of tactics under a wide range of guises when seeking to achieve certain industrial relations outcomes. The misuse of safety laws to circumvent certain industrial laws, for example, is an unfortunate yet common practice in the building and construction sector as evidenced by Heydon Report.
  - Providing those with an established history of circumventing certain industrial laws with yet another avenue to do so can only have significant adverse consequences. Most importantly, just as safety is sullied and undermined by those who misuse WHS law in its name, so too will the importance of those for whom the outworker provisions exist to protect.
- The CFMEU and the MUA are two unions whose members are frequently subject to the provisions of the *Building and Construction Industry Improving Productivity Act 2016* (BCI Act) including higher penalties to deter breaches of industrial law.
  - It is a matter of public record that those subject to these higher penalties rarely, if ever, show contrition or remorse for breaking the law and associated penalty orders appear to be considered as nothing more than a cost of doing business.
  - It is understood that the MUA has significant financial resources and the CFMEU has a significant membership. The amalgamation as proposed will boost both for each and this would, in Master Builders view, further reduce the extent to which higher penalties are effective, deter future breaches of the law, and hinder regulator capacity to bring necessary proceedings in a timely fashion.
- Master Builders understands that the Government has committed to introducing a 'public interest' test as part of the Fair Work regime that deals with amalgamation of registered organisations. It is our view that, on any reasonable assessment, the amalgamation proposed could only be considered contrary to the public interest and would fail therefore the proposed test.

The above consequences are just a snapshot of the other adverse consequences that would flow were the amalgamation to proceed. Not only do these consequences have significant negative consequences for Master Builders members, they also are directly contrary to much of the Governments policy agenda and the related outcomes sought.

Master Builders would support moves by the Government to urgently amend the existing law to insert the proposed public interest test, and welcome any other move to oppose the amalgamation including direct Commonwealth intervention.

We would be pleased to discuss this matter with you further at any time.

Yours sincerely

Shaun Schmitke  
National Director  
IR, SAFETY, CONTRACTS



**STRONG BUILDING**

**STRONG ECONOMY**

Master Builders Policy Priorities  
for the Next Australian Government

## INTRODUCTION

The 2016 Federal Election provides Master Builder members with the opportunity to have their say about the way our nation is governed for the next three years.

Master Builders will be the leading voice for the building and construction industry and the leading advocate for what we need for the building industry from the next Federal Government.

Master Builders *Strong Building Strong Economy* Campaign will advocate for policies to deliver a stronger building and construction industry, and a stronger economy.

Master Builders' key priorities are:

- ◆ **Safe and Productive Workplaces:** Our industrial relations system must be balanced, fair and simple, starting with the re-establishment of the Australian Building and Construction Commission (ABCC) to tackle the ongoing unlawful industrial behaviour in the building and construction industry.
- ◆ **Affordable Housing:** Keeping home ownership within reach of everyday Australians, through more affordable housing options to reduce the cost of living and improve opportunities for more families and young people to buy their own home. Negative gearing rules must stay.
- ◆ **Jobs and skills for the future:** Better investment in skills and apprenticeship training to satisfy the growing demand for construction and trade skills, and to avoid future skill and labour shortages.
- ◆ **Economic settings for stability and growth:** Overhauling the tax system and adopting a responsible approach to structural budget repair that gives confidence to consumers and investors, and establishes a lasting, long-term economic strategy based on sound economic principles.
- ◆ **More infrastructure and investment:** Greater cooperation between public and private sectors to fund investment in urban and regional infrastructure.
- ◆ **More small business and less red-tape:** Increased emphasis on the needs of small contractors by continued cuts to red-tape and regulation.

I am asking our Members and their communities to get behind Master Builders *Strong Building Strong Economy* campaign by engaging with candidates and showing your support for business and building industry friendly policies that allow us to do what we do best — construct more houses, more community infrastructure, employ more people and train more apprentices.

**Wilhelm Harnisch**  
Chief Executive Officer  
Master Builders Australia

*A strong building and construction industry is vital to a strong economy. It creates jobs, trains apprentices, drives wider economic growth and builds better communities*





**STRONG BUILDING**

**STRONG ECONOMY**

Economic Settings for Stability  
and Growth

## ECONOMIC SETTINGS FOR STABILITY AND GROWTH

A strong building industry is a crucial driver of a strong economy. It creates jobs, train apprentices, drive wider economic growth and build better communities.

Australia needs a strong building industry as we continue the transition from the resources boom. But this will only be possible if we get the basic economic settings right.

Addressing Australia's structural budget deficit and adjusting economic policy settings to create a business-friendly economic environment will help restore confidence to investors and consumers.

We need a tax system that is simple, efficient, fair and competitive. The problem isn't simply paying too many taxes which need to come down: it's the compliance burdens associated with these tax payments creating a 'double whammy' for businesses in the building industry.

The heavy tax burden adds to the costs of training apprentices, building affordable homes, schools, hospitals and other vital community infrastructure.

Numerous inquiries have shown that Australia's tax system is fundamentally flawed, the tax rate is globally uncompetitive, inefficient, overly complex and burdened with compliance obligations. This distorts investment decisions, discourages entrepreneurship and innovation, and reduces business investment and jobs growth.

More investment is needed in houses, offices, sporting facilities and community facilities such as schools, hospitals, roads, rail and ports. Greater investment will create job opportunities, stimulate the economy and help build more liveable communities.

Our nation must become more productive and this means unleashing our performance which is held back by barriers in key policy areas, like tax, industrial relations and other similar regulation. Addressing our economic challenges is the key to a strong building industry, a strong economy and a more prosperous Australia.

*A business-friendly environment is essential for a stronger economy and more jobs.*



## Master Builders' Policy Priorities are:

- ◆ A clear pathway to a budget surplus must be developed and delivered. This must involve eliminating waste and inefficiency in public spending, and ensuring fiscal settings have a neutral impact on interest rates.
- ◆ Reducing the company tax rate to 25 per cent.
- ◆ Closing the gap between the company tax rate and the higher marginal personal income tax rates to help improve tax compliance productivity and workforce participation.
- ◆ Reducing the capital gains tax burden through the introduction of a reducing stepped rate of tax on capital gains to encourage longer-term investment decisions and discourage speculative investments.
- ◆ Abolishing stamp duty on business conveyances, as promised in the 1999 Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations. This must be followed by careful consideration of the potential benefits of abolishing stamp duty on sales of residential property.
- ◆ Eliminating the cumulative impact of the Goods and Services Tax (GST). The application of the GST to stamp duties amounts to 'a tax on a tax', which cannot have been the intention of the Federal Government when the GST originally came into effect.
- ◆ Unnecessary compliance costs and business regulations, such as 'red' and 'green' tape must be eliminated.
- ◆ Improving access to affordable housing and stimulating activity in the residential building sector. This means removing unnecessary supply constraints, and abolishing or reducing inefficient taxes and charges. Negative gearing must stay.
- ◆ Developing innovative funding arrangements and more effective public infrastructure investment policies to boost construction activity and improve economic and community wellbeing.
- ◆ Ensuring an adequate and flexible skilled workforce for the future, focusing on apprenticeship training, up-skilling of the existing construction workforce and targeted skilled migration.
- ◆ Reforming developer (or infrastructure) charges. In their current form these charges add to the construction cost of new homes, raise rents and contribute to Australia's housing under-supply problem.

## JOBS AND SKILLS FOR THE FUTURE

The building and construction industry plays a crucial role in the economy as the third largest employer of Australians, creating more than a million jobs and training around 50,000 apprentices each year.

To meet current projected demand, we need an additional 300,000 employees, apprentices and independent contractors over the next decade and 50,000 new entrants each year over the next ten years, and to offset the increasing number of workers entering retirement.

Unless this demand is met, we will suffer a crippling skills shortfall, and even greater housing affordability pressures, as has happened in the past.

Australia's future productivity and competitiveness depend on a highly skilled and trained workforce. The national vocational and educational training system has not kept up pace with the changes in work practices in the construction industry. There is a need for both qualifications and skill sets to enable industry to recognise the skills of its workforce.

Employers have reported that apprentice quality is the number one issue impacting on their businesses. Master Builders believes in training young Australians first. The building industry is proud to train more apprentices each year than any other industry.

However, the industry also relies on the immigration system to help meet skills shortages, particularly in remote areas or for jobs requiring specialised technical expertise.

Skilled migrants play an important role in meeting immediate and longer term skills shortages and in enhancing innovation through knowledge transfer.

Reasonable access to temporary skilled migrants on 457 visas is important to meeting urgent demand for specific skill sets not immediately available in the broader Australian workforce.

*Greater investment in vocational education now will give young people skills they'll need for the future.*



## Master Builders' Policy Priorities are:

- ◆ Targeted measures to assist and encourage employers to take on even more apprentices and to increase the completion rates for building trade apprenticeships, including the return of, and increases to, previously available incentive programmes.
- ◆ Targeted pre-apprenticeship programmes that support site-ready and productive apprentices to boost business productivity and improve safety in the workplace.
- ◆ Significantly boost financial assistance to building and construction industry employers who invest in the training and mentoring of young people while completing their apprenticeships.
- ◆ Greater support for industry led programmes to increase female participation in the labour market.
- ◆ Improved investment in Vocational Education and Training (VET) so young people can access publicly funded industry-focused training when they leave school.
- ◆ Review the national VET training system to remove current complexities, increase business and parent understanding, and implement consistent funding models.
- ◆ Provide industry with a greater role in determining quality training outcomes from Registered Training Organisations (RTOs) by allowing industry to provide feedback on their performance to consumers.
- ◆ Better support for mentoring programmes that are proven to increase apprentice completions.
- ◆ More support for partnership programmes between VET and universities to develop and promote new strategies aimed at developing the next generation of highly skilled and innovative construction professionals by increasing the number of apprentices who go to attain degrees in engineering and construction management.
- ◆ Setting the permanent net migration intake at around 240,000 persons per annum to reflect increasing skill demands in a growing number of industry sectors.
- ◆ Ensure the 457 program remains uncapped with easy to navigate transitions to a permanent visa for those eligible and necessary protections against exploitation.
- ◆ Reducing the visa sponsorship period for employer-nominated visas from three to two years, to help employers engaged in the construction of large projects.
- ◆ Review the 'highly skilled' threshold within employer-nominated visa classes to reduce ongoing skills shortages in 'middle and semi-skilled' occupations and resulting project bottlenecks.



## AFFORDABLE HOUSING

Home ownership and the adequate supply of a diverse range of housing options are vital components of the national economy and Australia's social fabric.

Building homes for families drives the national economy, creates jobs, stimulates other industries and helps to create safer communities.

A key policy objective for the next Federal Government must be to ensure affordable housing is available for all Australians.

This can be achieved through a nationally co-ordinated policy agenda to promote home ownership, and to reverse the current downward trend which has seen home ownership become out of reach for a growing share of the Australian population, particularly young people.

Removing or changing negative gearing rules is not the answer.

For too many younger Australians, home ownership has become an unattainable dream.

A number of factors have led to a worsening of housing affordability. These include inefficient land release strategies, excessive development levies, taxes and charges, excessive planning and building requirements, and uncoordinated local and state government environmental regulations.

We need to remove the impediments to the building of more new homes if we are to enjoy the benefits of a strong building industry and a strong economy.

*Home ownership and the adequate supply of a diverse range of housing options are a vital component of the national economy and Australia's social fabric. Negative gearing rules must remain.*





*More homes, fewer taxes, quicker approvals and less red-tape are essential elements to keep home ownership within reach of everyday Australians.*

### **Master Builders' Policy Priorities are:**

- ◆ Introducing payments to higher-performing local governments based on national competition policy principles. This would reward best practice performance and encourage improved delivery of housing-related services.
- ◆ Streamlined and simplified development approvals processes. These would be achieved through greater reliance on code-based assessment and identification of best practice development approvals processes in State, Territory and Local Governments.
- ◆ State and Local Governments developing and implementing individual, realistic and tailored Land Release Plans. These would set out timelines for the release of identified land for residential development and identify ways to overcome regulatory or other impediments to the process.
- ◆ Creating a genuine, comprehensive and enforceable uniform building code and regulatory system. The Council of Australian Governments must play a leading role in developing the Building Code of Australia into a nationally-consistent set of building requirements recognised as the central authority by all jurisdictions through legislative reform.
- ◆ Ensuring State and Territory Governments honour their commitment to abolish stamp duties on business conveyances of real property. This should be followed by a rigorous review of the impact of stamp duty on residential property.
- ◆ Annual publication of developer and infrastructure charges applied by all local governments in Australia. This would examine the incidence of such charges and the processes followed when they are imposed on 'brownfields' and "greenfields" developments.

## INFRASTRUCTURE AND INVESTMENT

Australia is a vast country with diverse topography which makes infrastructure crucial to securing our standard of living in the future. More infrastructure investment will improve our economic and social wellbeing

Targeted infrastructure keeps us out of traffic jams, ensures we are better connected, allows us to be healthier and raises our education levels and it makes our cities more productive. It also helps create a strong building industry and a strong economy, creating job and training opportunities for more Australians.

Our infrastructure challenges will become more complex in the future; our population is expected to grow by more than a third in the next 20 years.

We need to tackle transport bottlenecks, improve public transport in capital cities and regional areas, and build more hospitals, schools, aged care centres and other community facilities closer to where we live.

In regional and remote communities, infrastructure is especially important. In many instances, the origins of small communities and towns are linked to infrastructure proximity and their future often depends upon infrastructure being maintained and improved.

Australia's infrastructure challenge requires an investment of around \$30 billion annually by 2020 according to Infrastructure Australia. Separately, Infrastructure Partnerships Australia estimates it could cost as much as \$770 billion just to deal with existing infrastructure gaps.

The next Federal Government must continue to develop new and innovative ways for public and private sector investment to occur for funding key economic and social infrastructure.

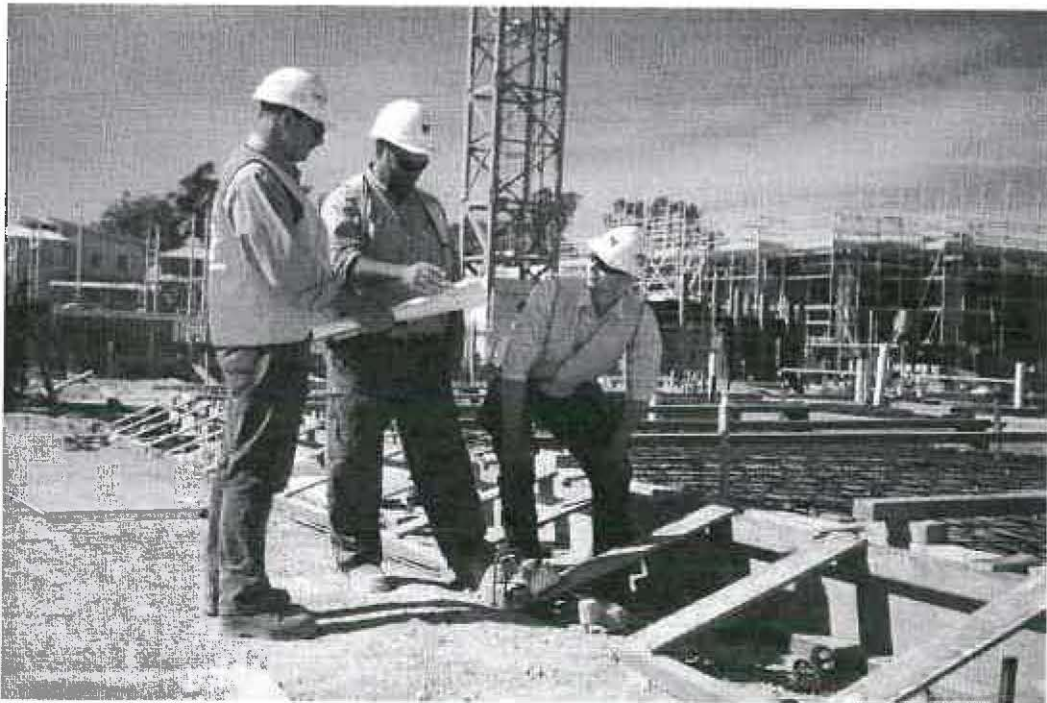
Infrastructure funding proposals must be streamlined as more investment in infrastructure will improve Australia's quality of life and create jobs.

*Australia needs more infrastructure to improve our economic productivity and the liveability of our communities in regional areas and cities.*



## Master Builders' Policy Priorities are:

- ◆ Increased public and private sector investment in infrastructure, with a target of 6 per cent of GDP.
- ◆ Expanding the use of privatisation models. Revenue from the sale of existing infrastructure assets should be used to fund the development of new infrastructure.
- ◆ Developing and marketing tradeable public infrastructure bonds on terms of trade and conditions which appeal to a broad spectrum of investors.
- ◆ Redirection of government outlays away from recurrent and less productive spending, toward investment in efficiency and competitiveness-enhancing infrastructure.
- ◆ Better policy co-ordination among the levels of government. The next Federal Government should lead the Council of Australian Governments to develop an integrated plan to address Australia's economic and social infrastructure needs.
- ◆ Minimising bid-costs for infrastructure supply and financing to ensure the broadest possible range of engagement by potential investors. Tendering processes for smaller investors should be simplified.
- ◆ Reducing the political risk associated with investment in infrastructure. This would involve focusing on 'stop-start' government decision-making, and the tendency for constant changing of processes, rules and other key elements of a project once underway.



## SMALL BUSINESS AND LESS RED AND GREEN TAPE

Small businesses account for nearly 98 per cent of firms in the building and construction industry. These 344,000 small businesses are a key engine of productivity in the building and construction industry.

Small building and construction businesses produce more than half the industry's output and create almost a third of the jobs - well ahead of other industries.

Without a confident, energetic, entrepreneurial and innovative small business sector, we cannot have a strong building and construction industry, a strong economy, more liveable communities, strong employment growth, and more training opportunities.

But too much of the drive and effort of small business people, including independent contractors, is dragged down by onerous taxes, over-regulation and excessive and complex compliance burdens.

The building and construction industry is one of the most intensely regulated industries in Australia, with legislation and regulation imposed at all three levels of Government.

Unnecessary over-regulation shackles the industry with 'red' and 'green' tape burdens sapping entrepreneurial effort and productivity. Red and Green tape impacts on all business, large and small, as well as by consumers who have to pay the higher costs of building homes and community infrastructure.

It stops small business from doing what it does best – creating jobs.

The next Federal Government must accelerate the process of removing regulation that is unnecessary, is out of date or duplicates regulation in other jurisdictions and simplify those that remain.

New regulations and legislation should only be allowed if a rigorous cost-benefit analysis has been undertaken and available for public scrutiny.

Closer and deeper engagement with the business community – both in terms of assessing the costs of new regulations, and in undertaking the review and reform of existing regulations – is essential.

*The building and construction industry is one of the most intensely regulated industries in Australia. This adds to cost of building homes and community infrastructure.*



## Master Builders' Policy Priorities are:

- ◆ Delivering a small business-friendly regulatory environment and boosting confidence through stable economic settings.
- ◆ Targeted measures to assist small business employers to take on more apprentices and help to increase the completion rates for building trade apprentices.
- ◆ Streamlining and simplifying development approvals processes to help smaller businesses stem the growing shortfall in new housing supply.
- ◆ Simplified tender processes and reduced costs to encourage more small businesses participation in government funded building and construction projects.
- ◆ Removing unnecessary and non-productive business regulations and reducing the compliance burden of remaining regulations.
- ◆ Subject all new regulations impacting the building and construction industry to a transparent and rigorous cost-benefit analyses.
- ◆ Simplify business tax compliance, recognising that inefficient collection and administration of taxes distort economic decision-making, and divert resources which could otherwise be used more productively elsewhere.
- ◆ Assist small businesses by reducing the broader complexity of taxation and industrial relations laws, tackle the compliance costs of regulation, increase their ability to access debt and equity finance and do more to facilitate their participation in government procurement.

*Small business is a crucial part of the building industry, the economy and our country. More small businesses and less regulation are essential ingredients for our future prosperity.*



## SAFE AND PRODUCTIVE WORKPLACES

The building industry places a high priority on a safe and productive workplace relations environment. Harmonious, safe and productive workplaces are vital for a strong building industry, a thriving economy and more job opportunities for all Australians.

We need 300,000 more workers, independent contractors and apprentices over the next decade, but current workplace laws discourage many from hiring more workers and training more apprentices.

The building and construction industry is committed to delivering safe and productive workplaces for the more than one million people it employs. The personal and community cost of serious injury and death at work cannot be underestimated and must be addressed.

Safer and more productive workplaces can be achieved without adding to the existing level of complexity and compliance. A common sense, practical approach is needed.

The focus must be on the quality, rather than the quantity, of legislation and regulation. The focus must also be on education and awareness, injury prevention, and the practical and achievable management of foreseeable risk, not just paper based compliance. It's about creating a genuine 'safety culture' in the workplace.

To address these challenges Australia must return to a balanced and fair industrial relations system. It must be easily understood and simple.

The building and construction industry unions have a long history of militant and unlawful behaviour, such as unlawful strikes and other illegal activities, which disrupts workplaces, stifles productivity and adds up to 30% to the cost of building community facilities such as hospitals and schools – an impost funded by taxpayers.

The Australian Building and Construction Commission (ABCC) must be re-established to increase productivity, reduce disputes and delays, foster greater cooperation between workers and employers on commercial building sites and the economy in general.

*The building industry needs a safe and productive workplace relations environment.*



## Master Builders' Policy Priorities are:

- ◆ Restore respect for the rule of law in the building and construction industry by re-establishing the Australian Building and Construction Commission (ABCC).
- ◆ Preserve the rights of independent contractors by retaining the current laws to give people choice about how they work and encourage entrepreneurship.
- ◆ Establish a Registered Organisations Commission (ROC) to ensure building unions are accountable to members and their officials act like everyday people, and adopt the Heydon Royal Commission recommendations for law reform.
- ◆ Adopt a workplace bargaining system in which employers and employees can freely enter into appropriate and lawful workplace agreements, underpinned by simple safety net conditions.
- ◆ Ensure all workplace laws respect that employers and employees are the two most important parts of an employment relationship. The role of third parties should only exist where necessary or invited, and must never take precedence over the wishes of employees and employers.
- ◆ Implement fair and simple dismissal laws that place more emphasis on the right of employers to manage their own business, reflect community expectations and embrace the notion of 'common sense'.
- ◆ Continue to pursue nationally consistent workplace safety laws and increase the focus on practical safety outcomes where a safety-oriented workplace culture and individual responsibility takes precedence over, and is considered as more important, than paper-based compliance.
- ◆ Stop and reverse the growth in overlap between safety laws and industrial relations laws, to improve compliance, and reduce complexity and confusion.
- ◆ Ensure that the concept of workplace safety is not further sullied by prohibiting notions of 'safety' from being exploited as a tactic to achieve industrial relations outcomes.
- ◆ Review the operation and work of Safe Work Australia to reduce duplication with other bodies, focus operational activity and improve engagement with employers, including through the appointment of more business representatives to its Board.

*Safe and productive workplaces leads to more jobs, better pay and a stronger economy.*







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## PRIME MINISTER

PRIME MINISTER'S ADDRESS TO PARLIAMENT ON THE BLF  
21 AUGUST 1985 E & O E - PROOF ONLY

MR SPEAKER,

BEFORE I ADDRESS MYSELF SPECIFICALLY TO THE BILL BEFORE THE HOUSE, LET ME SAY THAT THIS GOVERNMENT DOESN'T NEED ANY ADVICE ON THE CONDUCT OF INDUSTRIAL RELATIONS FROM THOSE ON THE OTHER SIDE OF THIS HOUSE, WHO BY THEIR INEPTITUDE BROUGHT ABOUT A SITUATION OF ANARCHY IN INDUSTRIAL RELATIONS IN THE BEGINNING OF THE 1980s.

AND IF THEY WERE TO HAVE THE OPPORTUNITY, WHICH THEY WILL NOT HAVE, REPRODUCE EXACTLY THE SAME SITUATION BY THE NONSENSE THAT THEY ARE TALKING ABOUT IN INDUSTRIAL RELATIONS.

THEY WOULD SCRAP ENTIRELY THE SYSTEM OF CENTRALISED WAGE FIXATION. THEY TALK ABOUT MUDGINBERRI. THEY WOULD HAVE A SITUATION WHERE THE STRENGTH OF TRADE UNIONS AND THE STRENGTH OF EMPLOYERS WOULD BE PITTED CONSISTENTLY AGAINST ONE ANOTHER AROUND THIS COUNTRY. IT'S A POLICY WHICH BROUGHT CHAOS IN 1981-82.

THEY LEARN NOTHING. THEY WOULD INFLICT IT UPON AUSTRALIA AGAIN. NEITHER THIS COUNTRY NOR THIS GOVERNMENT WANTS ANY ADVICE FROM THIS COLLECTION INCOMPETENTS IN THE AREA OF INDUSTRIAL RELATIONS.

THE BILL NOW BEFORE THE HOUSE IS A UNIQUE AND I BELIEVE ESPECIALLY IMPORTANT PIECE OF LEGISLATION.

IT STEMS DIRECTLY FROM THE GOVERNMENT'S CONVICTION THAT NO GOVERNMENT CAN TOLERATE, OR IN ANY WAY ACQUIESCE, IN THE FORMS OF UNIONISM PERPETRATED BY UNIONS SUCH AS THE BLF.

AS I SAID WHEN FORESHADOWING THIS LEGISLATION LAST WEEK:

"THE BLF'S COMPLETE DISDAIN FOR THE LAW, THEIR FREQUENT RESORT TO PRACTICES OF THUGGERY AND PHYSICAL COERCION, HAVE NO PLACE IN OUR SOCIETY."

THE BLF HAS FORFEITED ANY CLAIM IT MIGHT OTHERWISE HAVE HAD EITHER ON THE COMMUNITY AT LARGE OR ON THE TRADE UNION MOVEMENT.

THE GOVERNMENT BELIEVES THAT OVER MANY YEARS THE BLF HAS DEMONSTRATED NOTHING BUT CONTEMPT FOR THE SYSTEM AND VALUES OF AUSTRALIAN SOCIETY. THERE SHOULD NOW BE NO BASIS UPON WHICH IT CAN HOPE TO ELICIT ANY MEASURE OF PROTECTION OR SUPPORT FROM OUR SOCIETY.

I KNOW OF NO SENSE IN WHICH THE TRADE UNION MOVEMENT CAN REGARD THE INDUSTRIAL THUGGERY PRACTISED BY THE BLF WITH ANYTHING BUT PROFOUND DISQUIET. THE BLF CONSISTENTLY NOW HAS PUT ITSELF OUT OF LINE WITH THE MAINSTREAM OF WHAT LEGITIMATE TRADE UNIONISM IS ABOUT. IT IS FOR THIS REASON

THE GOVERNMENT EXPECTS THAT THE LEGISLATION NOW PROPOSED TO THIS HOUSE WILL GET - INDEED ALREADY HAS GOT - THE NECESSARY LEVEL OF SUPPORT FROM THE TRADE UNION MOVEMENT.

THE GOVERNMENT FOR ITS PART IS DETERMINED TO CREATE A NEW INDUSTRIAL ENVIRONMENT IN THE BUILDING INDUSTRY, AN ENVIRONMENT OF GREATER PEACE AND SUBSTANTIALLY IMPROVED INDUSTRIAL RELATIONS

- WITH BENEFITS TO BOTH WORKERS AND EMPLOYEES AND FOR EMPLOYERS
- AND FOR THE ECONOMY AS A WHOLE

THE GOVERNMENT HAS NOT BEGUN LIGHTLY THIS LEGISLATIVE INITIATIVE AGAINST THE BLF. TO PROPOSE AS WE NOW DO MEASURES WHICH COULD RESULT IN THE CANCELLATION OF THE REGISTRATION OF THE BUILDERS LABOURERS' FEDERATION UNDER THE CONCILIATION AND ARBITRATION ACT, OR THE EFFECTIVE EQUIVALENT OF SUCH DEREGISTRATION IN PARTS OF AUSTRALIA, IS A MAJOR STEP - NOT LEAST FOR A LABOR GOVERNMENT.

BUT THERE COMES A POINT AT WHICH GOVERNMENT HAS TO SAY - ENOUGH. AND WE HAVE DONE THAT.

WE AND OTHERS INVOLVED WITH THE INDUSTRY HAVE SHOWN INDEED CONSIDERABLE PATIENCE IN THE FACE OF REPEATED FAILURE BY THE BLF TO ADHERE TO INDUSTRIAL AGREEMENTS.

THE ACTIONS OF THE BLF HAVE POSED A CONTINUOUS THREAT TO THE STABILITY OF THE BUILDING INDUSTRY, THE EMPLOYMENT OF OTHER BUILDING WORKERS, AND TO THE PRICES AND INCOMES ACCORD.

THERE ARE MANY ASPECTS OF THE BLF APPROACH THAT ARE THOROUGHLY REPREHENSIBLE BY THE STANDARDS OF CONTEMPORARY SOCIETY:

- THEY USE THE STRIKE WEAPON AND OTHER INDUSTRIAL TACTICS SUCH AS SELECTIVE BANS AND LIMITATIONS WITH THE OBJECTIVE OF "THE MOST HARM TO THE BOSS, THE LEAST HARM TO (THEMSELVES)". (STEVE BLACK, NSW SECRETARY OF BLF - 1979).

- SUCH ACTION FREQUENTLY IS ACCOMPANIED BY THE USE OF VIOLENCE, DAMAGE TO PROPERTY, INTERRUPTION OF CONCRETE POURS AND INTIMIDATION OF FELLOW WORKERS AS WELL AS EMPLOYERS TO ACHIEVE BLF OBJECTIVES.

- STANDOVER METHODS AND GUERRILLA TACTICS ARE COMMON WEAPONS OF THE BLF

. THEY HAVE USED THEIR CENTRAL POSITION IN THE INDUSTRY WITH DEVASTATING EFFECT THROUGH MEASURES SUCH AS

- BANS ON STRATEGIC PARTS OF JOBS AND EQUIPMENT
- ONE DAY AND ONE WEEK BANS ON CONCRETE POURS, BREAKAGE OF CONCRETE POURS
- BANS ON TRUCK DELIVERIES AND UNLOADING

- SAFETY AND OVERTIME BANS.

THEIR ACTION IS NOT CONFINED TO DIRECT INDUSTRIAL FORAYS. THEY HAVE ALSO OCCUPIED BUILDINGS OF INSURANCE COMPANIES, PRIVATE ORGANISATIONS, AND, AT LEAST ON ONE OCCASION, PREMISES OF ANOTHER UNION. THE SIGHT OF THE BLF ENGAGING IN VIOLENT DEMONSTRATIONS AND PHYSICAL ASSAULT AGAINST FELLOW UNIONISTS HAS BECOME COMMONPLACE.

THE BLF'S BEHAVIOUR AND TACTICS ARE ADDRESSED IN DETAIL IN THE 1982 WINNEKE ROYAL COMMISSION REPORT, AND I QUOTE BRIEFLY FROM IT, MR DEPUTY SPEAKER, IN THESE TERMS:

"THESE TACTICS FIND NO SUPPORT OR CONDONATION IN ANY INDUSTRIAL LEGISLATION IN THIS COUNTRY. THEIR CONDUCT NOT ONLY EXCEEDS THE BOUNDS OF INDUSTRIAL PROPRIETY BUT, IN MANY INSTANCES, BLATANTLY TRANSGRESSES CRIMINAL LAW. IN MANY, IF NOT MOST, INSTANCES DEMANDS ARE MADE ACCOMPANIED BY THREATS. THOSE THREATS ARE FREQUENTLY IMPLEMENTED AND THE IMPLEMENTATION HAS GONE FAR BEYOND FINANCIAL LOSS AND HAS INVOLVED DAMAGE TO PROPERTY AND PERSON..... THE RESULT HAS BEEN TO PLACE THE BLF IN A UNIQUE POSITION - A POSITION OF BEING ABOVE THE LAW."

THE FEDERATION HAS ALSO SHOWN CONTEMPT FOR THE PROCESSES OF CONCILIATION AND ARBITRATION. IT HAS CONTINUALLY REFUSED TO ABIDE BY ORDERS OF THE COMMISSION AND CONSISTENTLY - DESPITE MANY UNDERTAKINGS - PURSUED CLAIMS OUTSIDE THE GUIDELINES OF THE COMMISSION.

THE DISDAIN INFORMING THE BLF APPROACH TO THE CONCILIATION AND ARBITRATION COMMISSION COMES THROUGH CLEARLY IN REMARKS BY BLF OFFICE HOLDERS. A FEW EXAMPLES:

"...WE ARE NOT PREPARED TO ACCEPT ANY DECISION FROM THE COMMISSION ON A DEMARCATION BETWEEN BUILDERS' LABOURERS AND THE AWU." (R. DALTON - 1979).

"...UNDERTAKINGS CANNOT BE FOREVER AND EVER.... WE ARE NOT GOING TO BE HELD TO AN AGREEMENT FOREVER AND EVER." (NORM GALLAGHER - 1979).

"THE FEDERATION WILL NOT ABIDE BY ANY DECISION OR ORDER THAT WOULD FOLLOW. THE FEDERATION WOULD PURSUE ITS CLAIMS OUTSIDE THE COMMISSION IN THE FIELD."  
(J. CAPOGRECO - 1980).

SUCH EXPRESSIONS OF ATTITUDE BY BLF OFFICIALS UNFORTUNATELY HAVE NOT BEEN IDLE THREATS. THEY HAVE INFORMED THOSE VERY ACTIONS OF THE BLF WHICH NOW MAKE NECESSARY THE ACTION PROPOSED BY THE GOVERNMENT.

BLF ACTIVITIES THAT THE GOVERNMENT REGARDS AS FAR BEYOND THE BOUNDS OF WHAT IS ACCEPTABLE WOULD INCLUDE THE FOLLOWING:

- BREAKING THE FUNDAMENTAL UNDERTAKING TO THE INDUSTRIAL REGISTRAR REGARDING FUTURE CONDUCT WHICH WAS A CONDITION FOR RE-REGISTRATION IN 1976

1.

BETWEEN 1976 AND 1982 THE BLF REPEATEDLY PURSUED CLAIMS OUTSIDE THE SYSTEM, USED VIOLENCE AND INTIMIDATION IN PURSUIT OF ITS CLAIMS AND INDUSTRIAL ACTION OVER NON-INDUSTRIAL ISSUES.

- DISREGARDING THE MORATORIUM ON INDUSTRIAL ACTION AGREED IN 1983 IN RETURN FOR NEGOTIATIONS TOWARDS A FORMAL AGREEMENT WHICH WOULD REPLACE DEREGISTRATION PROCEEDINGS COMMENCED UNDER THE FORMER GOVERNMENT

. DESPITE THE MORATORIUM, THE BLF MOUNTED WHAT THE CHAIRMAN OF THE NATIONAL BUILDING AND CONSTRUCTION CONFERENCE, MR VOSTI, DESCRIBED AS THE "INTOLERABLE" ACTION OVER THE FLETCHER WATTS DISPUTE.

- BREACHING OF ITS NO FURTHER CLAIMS UNDERTAKING IN OCTOBER 1983 TO THE COMMISSION AS REQUIRED TO ACHIEVE NATIONAL WAGE CASE INCREASES.

. THESE BREACHES WERE FLAGRANT. TWO MONTHS AFTER GIVING THE UNDERTAKING THE BLF ENGAGED IN A CAMPAIGN FOR AN EXTRA \$9 PER WEEK IN 1984, MADE DEMANDS FOR A 36 HOUR WEEK AT SHOPPING CENTRE SITES, MADE CLAIMS FOR THE 1985 2.6% NATIONAL WAGE CASE INCREASE PRIOR TO ITS RATIFICATION BY THE COMMISSION AND TOOK INDUSTRIAL ACTION IN SUPPORT OF SITE ALLOWANCE CLAIMS.



AND THE LIST GOES ON. IN DECEMBER 1983 THE BLF MADE UNDERTAKINGS TO THE GOVERNMENT WHICH WERE ACCEPTED BY THE GOVERNMENT AS GROUNDS FOR ITS WITHDRAWAL FROM THE DEREGISTRATION CASE. BUT BY FEBRUARY 1984, THE BLF HAD LAUNCHED A NATIONAL CAMPAIGN FOR AN EXTRA \$9 PER WEEK RATHER THAN PARTAKING IN NEGOTIATIONS DIRECTED TOWARDS A SUPERANNUATION SCHEME. IN APRIL 1984 THE BLF ENGAGED IN A DISRUPTIVE DISPUTE OVER A DEMARCATION ISSUE AT THE ALCAN KURRI KURRI SMELTER SITE. DURING THIS DISPUTE THE BLF PICKETTED THE SITE AND DAMAGED CARS OF EMPLOYEES. THE OFFICES OF THE COMPANY'S SOLICITORS WERE ALSO INVADED.

THIS PERIOD ALSO WITNESSED THE MCG LIGHT TOWERS DEMARCATION DISPUTE DURING WHICH THE SITE WAS FENCED OFF AND POLICE WERE REQUIRED TO COUNTER A BLF PICKET OUTSIDE THE SITE. BLF MEMBERS WERE ARRESTED ON A NUMBER OF CHARGES INCLUDING TRESPASS AND RESISTING ARREST. SUPPORTING BANS WERE ALSO PLACED ON OTHER VICTORIAN GOVERNMENT PROJECTS. ON TWO OCCASIONS THE BLF ATTEMPTED TO INVADE THE OFFICES OF THE RIVAL UNION, THE AMU.

NO GOVERNMENT CAN IGNORE ANARCHY OF THIS KIND.

WHILE WE HAVE BEEN PREPARING FOR THE EVENTUALITY OF SUCH LEGISLATION

- THE NEW SOUTH WALES GOVERNMENT HAS NOW DEREGISTERED THE BLF

- AND THE CAIN GOVERNMENT IN VICTORIA HAS TAKEN LEGISLATIVE ACTION THAT WOULD AMOUNT TO EFFECTIVE DEREGISTRATION OF THE BLF FROM THE VICTORIAN INDUSTRIAL RELATIONS SYSTEM

TO BE FULLY EFFECTIVE THESE MEASURES BY VICTORIA AND NEW SOUTH WALES NEED TO BE ABLE TO BE COMPLEMENTED BY FEDERAL GOVERNMENT ACTION

- PARTICULARLY IN NEW SOUTH WALES AND VICTORIA WHERE THE FEDERALLY REGISTERED BLF HAS BEEN A SOURCE OF MAJOR DISRUPTION

IN ITS DETERMINATION TO BRING THE BLF TO ACCOUNT, THE GOVERNMENT HAS REMAINED MINDFUL OF COMMUNITY CONCERN THAT THE DEREGISTRATION POWERS WE NOW PROPOSE SHOULD NOT BE USED INDISCRIMINATELY OR CAPRICIOUSLY

- WE SEE NO BASIS - EITHER BY WAY OF PRECEDENT OR PRACTICE - FOR THE PRESENT LEGISLATION BEING APPLIED IN A WIDER, TOTALLY CRUDE EXERCISE IN UNION BASHING. THE CIRCUMSTANCES POSED BY THE BEHAVIOUR OF THE BLF ARE GENUINELY UNIQUE.

THESE CONCERNS HAVE BEEN CAREFULLY WEIGHED IN THE BILL THAT WAS INTRODUCED TO THE PARLIAMENT YESTERDAY, HAVING REGARD TO THE OVERWHELMING NEED TO TAKE ACTION AGAINST KEY ELEMENTS OF THE BLF AND THE NEED TO MINIMISE THE POTENTIAL FOR ABUSE.

ACCORDINGLY A FUNDAMENTAL ELEMENT OF THE BILL IS THE ROLE OF A FULL BENCH OF THE CONCILIATION AND ARBITRATION COMMISSION IN DETERMINING WHETHER THE BLF HAS ENGAGED IN CONDUCT THAT HAS PREVENTED OR SERIOUSLY HINDERED ARBITRAL PROCESSES.

SUCH A DETERMINATION BY THE ARBITRATION COMMISSION WOULD BE A PREREQUISITE OF ANY GOVERNMENT DECISION TO DEREGISTER THE BLF

- WE ARE CONSCIOUS OF THE OVERWHELMING NEED TO ENSURE THAT JUSTICE IS DONE IN THIS MATTER, BUT THAT ALSO IT IS SEEN TO BE DONE

THE BASIS FOR THE GOVERNMENT'S INTRODUCING THIS SPECIAL LEGISLATION IS THAT WE BELIEVE THE BLF'S CONDUCT AMOUNTS TO A REPUDIATION OF THE FEDERAL SYSTEM FOR THE PREVENTION AND SETTLEMENT OF INDUSTRIAL DISPUTES AND OF ITS RESPONSIBILITIES AS A FEDERALLY REGISTERED ORGANISATION OF EMPLOYEES, AS WELL AS BEING UTTERLY DISRUPTIVE TO INDUSTRIAL PEACE.

AS THE MINISTER SAID YESTERDAY:

"IN THE GOVERNMENT'S VIEW, THE ACTION WHICH IS CONTEMPLATED IN THIS LEGISLATION IS SO SERIOUS THAT IT IS ESSENTIAL THAT THERE BE IMPARTIAL CONSIDERATION BY AN INDEPENDENT TRIBUNAL OF THE FEDERATION'S CONDUCT. THIS WILL OCCUR AGAINST SPECIFIC CRITERIA WHICH ARE APPROPRIATE TESTS OF WHETHER THE FEDERATION HAS BEHAVED RESPONSIBLY AS AN ORGANISATION REGISTERED UNDER THE CONCILIATION AND ARBITRATION ACT AND IN A WAY WHICH IS CONSISTENT WITH THE OBJECTIVES OF OUR INDUSTRIAL RELATIONS SYSTEM."

THE BILL BEFORE THE HOUSE ALSO PROVIDES FOR THE MINISTER FOR EMPLOYMENT AND INDUSTRIAL RELATIONS TO BE ABLE TO DECIDE UPON APPROPRIATE ACTION FOLLOWING A FINDING OF MISCONDUCT BY THE UNION.

HONOURABLE MEMBERS WILL ALSO APPRECIATE THAT THIS BILL PROVIDES FOR A RANGE OF GOVERNMENT ACTION WHICH COULD BE TAKEN AGAINST THE BLF EXTENDING FROM

- NATIONAL DEREGISTRATION OF THE BLF UNDER THE CONCILIATION AND ARBITRATION ACT TO
- SELECTIVE ACTION AGAINST THE BLF IN RELATION TO TERMINATING OR SUSPENDING RIGHTS, PRIVILEGES OR CAPACITIES OF THE BLF UNDER THE CONCILIATION AND ARBITRATION ACT.

HONOURABLE MEMBERS WILL APPRECIATE THAT DEREGISTRATION, PARTICULARLY IN CURRENT CIRCUMSTANCES, WOULD BE A POTENT ACTION AGAINST THE BLF

- ANY AWARD APPLYING TO THE BLF WOULD CEASE TO HAVE ANY EFFECT IN RELATION TO THE BLF AND ITS MEMBERS
- THE BLF WOULD NOT BE CAPABLE OF BEING A PARTY TO A PROCEEDING BEFORE THE COMMISSION OR TO AN AWARD MADE BY THE COMMISSION, AND THE COMMISSION WOULD NOT HAVE ANY POWERS UNDER THE CONCILIATION AND ARBITRATION ACT IN RELATION TO AN INDUSTRIAL DISPUTE IN SO FAR AS THAT DISPUTE INVOLVED MEMBERS OF THE FEDERATION.

IT WOULD ALSO BE OPEN TO THE MINISTER TO MAKE ORDERS WHICH WOULD HAVE THE EFFECT OF GRANTING TO OTHER REGISTERED ORGANISATIONS COVERAGE OF WORK IN AN INDUSTRY OR IN A LOCATION IN RESPECT OF WHICH THE BLF IS OR HAS BEEN REGISTERED.

THE GOVERNMENT WILL REQUIRE THE ASSISTANCE OF EMPLOYERS, THE ACTU AND OTHER BUILDING UNIONS TO ENSURE THE SUCCESS OF ITS PROPOSALS.

THERE WILL BE A PARTICULARLY HEAVY ONUS ON EMPLOYERS IN THE INDUSTRY TO TAKE A FIRM STAND. TOO OFTEN IN THE PAST EMPLOYERS HAVE BEEN PREPARED TO DO SEPARATE DEALS WITH THE BLF AGAINST THE BEST INTERESTS OF THE INDUSTRY AS A WHOLE.

FURTHER, EMPLOYERS HAVE ADOPTED INDUSTRIAL RELATIONS PRACTICES WHICH HAVE FACILITATED THE SUCCESS OF THE BLF'S TACTICS.

EMPLOYERS CAN HELP BY NOT ONLY REFUSING TO ABIDE THE BEHAVIOUR OF THE BLF, BUT EVEN MORE IMPORTANTLY DOING NOTHING TO LEND SOLACE OR SUCCOUR TO ITS POSITION. THE GOVERNMENT WOULD ALSO EXPECT EMPLOYERS TO HONOUR THEIR OBLIGATIONS IN RELATION TO AN APPROPRIATE STANDARD OF INDUSTRIAL BEHAVIOUR - INCLUDING BY ADHERENCE TO PROCEDURES OF THE BUILDING INDUSTRY AGREEMENT, BY REFUSING TO PAY FOR TIME LOST DURING STRIKES AND OTHER INDUSTRIAL ACTION, BY ENSURING THAT SAFE WORKING CONDITIONS ARE APPLIED AND BY SEEING THAT EMPLOYEES ARE ENROLLED IN BUILDING INDUSTRY SUPERANNUATION.

WHAT BUILDERS NEED TO UNDERSTAND IS THAT IN THE LONGER TERM THEIR INTERESTS, AND THE INTERESTS OF THE COMMUNITY, DEPEND UPON HAVING A RATIONAL SYSTEM OF INDUSTRIAL RELATIONS WITHIN WHICH THERE IS, AS THERE APPROPRIATELY SHOULD BE WITHIN A DEMOCRACY, THE OPPORTUNITY FOR LEGITIMATE TRADE UNIONS TO PUT POINTS OF VIEW AND FOR THERE TO BE RATIONAL INTERCHANGES BETWEEN EMPLOYERS AND ORGANISED WORKERS. THIS RELATIONSHIP OBVIOUSLY HINGES ON THE PARTIES TO THE RELATIONSHIP BEING ABLE TO RELY ON THERE BEING CIVILIZED BEHAVIOUR WITHIN THE INDUSTRIAL ENVIRONMENT.

CERTAINLY THE COMMUNITY HAS HAD ENOUGH OF THE BEHAVIOUR OF THE BLF AND OF INDUSTRIAL RELATIONS IN THE BUILDING INDUSTRY AS A WHOLE. THE COMMUNITY EXPECTS EMPLOYERS AND ALL UNIONS INVOLVED TO RESPOND TO THE CLEAR COMMUNITY POSITION ON THIS.

IT IS IN THIS SPIRIT THAT THE GOVERNMENT IS GIVING CONSIDERATION TO NON-LEGISLATIVE MEASURES DESIGNED TO ENSURE THAT CONTRACTORS ON GOVERNMENT PROJECTS ADHERE TO GOVERNMENT INDUSTRIAL RELATIONS PRACTICES.

- THIS GOVERNMENT BELIEVES FIRMLY IN LEADERSHIP BY EXAMPLE IN THIS MATTER AND WILL BE APPROACHING STATE AND LOCAL GOVERNMENTS TO ADOPT SIMILAR MEASURES.

MR SPEAKER,

IT IS WELL KNOWN I BELIEVE THAT I WOULDN'T ALWAYS EMBRACE WHAT IS IN THE EDITORIALS OF THE 'AUSTRALIAN' NEWSPAPER BUT I DO BECAUSE THEY ARE SOMETIMES WRONG. BUT ON THIS OCCASION THEY ARE PRE-EMINENTLY RIGHT. AND ON THE 19TH JULY OF THIS YEAR IN AN EDITORIAL IN THE 'AUSTRALIAN' THIS WAS SAID

"THE BLF HAS SHOWN ABSOLUTE DESREGARD FOR BOTH THE INDUSTRIAL AND CIVIL LAWS OF AUSTRALIA FOR YEARS. IT HAS IGNORED THE ORDERS OF INDUSTRIAL COURTS, INVADED PRIVATE OFFICES AND DESTROYED PROPERTY, EMPLOYED WHAT CAN ONLY BE DESCRIBED AS STANDOVER TACTICS IN NEGOTIATIONS WITH BUILDING COMPANIES AND COST THE COUNTRY UNTOLD MILLIONS OF DOLLARS THROUGH QUESTIONABLE INDUSTRIAL ACTION".

WE INTEND PUTTING AN END TO THIS SITUATION.

I SUPPOSE, MR DEPUTY SPEAKER, IT DOESN'T NEED TO BE EMPHASISED BUT I DO MAKE THE POINT WITH THE BACKGROUND I HAVE IN THE TRADE UNION MOVEMENT IT GIVES ME NO PLEASURE TO HAVE ARRIVED AT THIS SITUATION, BUT IT IS A NECESSARY POSITION THAT WE HAVE REACHED NOW AND WE INTEND TO TAKE THE ACTION WHICH IS NECESSARY IN THE INTERESTS OF THIS SOCIETY.

WE DO SO IN THE NAME OF THE COUNTRY AS A WHOLE AND LOOK TO THIS HOUSE FOR FULL AND UNQUALIFIED SUPPORT IN THE ACTION NOW PROPOSED.

I COMMEND THE BILL TO THE HOUSE.

\* \* \* \* \*



**No. 13 of 1904.**

**A N A C T**

**Relating to Conciliation and Arbitration for the Prevention and Settlement of Industrial Disputes extending beyond the Limits of any one State.**

**Assented to [15<sup>th</sup> December, 1904.]**

## [No. 13 of 1904]

## A N A C T

Relating to Conciliation and Arbitration for the Prevention and Settlement of Industrial Disputes extending beyond the Limits of any one State.

[Assented to 15<sup>th</sup> December, 1904.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

## PART I.—INTRODUCTORY

1. This Act may be cited as the *Commonwealth Conciliation and Arbitration Act 1904*.

Short title.

2. The chief objects of this Act are—

Objects of Act.

- I. To prevent lock-outs and strikes in relation to industrial disputes;
- II. To constitute a Commonwealth Court of Conciliation and Arbitration having jurisdiction for the prevention and settlement of industrial disputes;
- III. To provide for the exercise of the jurisdiction of the Court by conciliation with a view to amicable agreement between the parties;
- IV. In default of amicable agreement between the parties, to provide for the exercise of the jurisdiction of the Court by equitable award;
- V. To enable States to refer industrial disputes to the Court, and to permit the working of the Court and of State Industrial Authorities in aid of each other;

VI. To

- VI. To facilitate and encourage the organization of representative bodies of employers and of employees and the submission of industrial disputes to the Court by organizations, and to permit representative bodies of employers and of employees to be declared organizations for the purposes of this Act;
- VII. To provide for the making and enforcement of industrial agreements between employers and employees in relation to industrial disputes.

## Parts.

## 3. This Act is divided into Parts as follows :—

- Part I. —Introductory.
- Part II. —Prohibition of Lock-outs and Strikes in relation to Industrial Disputes.
- Part III. —The Commonwealth Court of Conciliation and Arbitration.  
 Division 1.—The Constitution of the Court.  
 Division 2.—The Jurisdiction of the President and of the Court.  
 Division 3. —Cognizance of Disputes and Ordinary Procedure.  
 Division 4.—Special Powers of the Court and the President.
- Part IV. —The Enforcement of Orders and Awards.
- Part V. —Organizations.
- Part VI. —Industrial Agreements.
- Part VII. —Miscellaneous.

## Interpretation.

## 4. In this Act, except where otherwise clearly intended—

“Association” means any trade or other union, or branch of any union, or any association or body composed of or representative of employers or employees, or for furthering or protecting the interests of employers or employees;

“Employer” means any employers in any industry;

“Employee” means any employee in any industry;

“Industrial Agreement” means an industrial agreement made pursuant to this Act;

“Industrial dispute” means a dispute in relation to industrial matters—

(a) arising between an employer or an organization of employers on the one part and an organization of employees on the other part, or

(b) certified by the Registrar as proper in the public interest to be dealt with by the Court—

and extending beyond the limits of any one State, including disputes in relation to employment upon State railways, or to employment in industries carried on by or under the control of the Commonwealth or a State or any public authority constituted under the Commonwealth or a

State ;

N.S.W. 1901,  
 No. 59, s. 2.  
 N.Z. 1900, No.  
 51, s. 2.  
 W.A., 64 Vict.,  
 No. 20, s. 2.  
 S.A. 1894,  
 No. 598, s. 3.

State ; but it does not include a dispute relating to employment in any agricultural, viticultural, horticultural, or dairying pursuit;

- “Industrial matters” includes all matters relating to work, pay, wages, reward, hours, privileges, rights, or duties of employers or employees, or the mode, terms, and conditions of employment or non-employment ; and in particular, but without limiting the general scope of this definition, includes all matters pertaining to the relations of employers and employees, and the employment, preferential employment, dismissal, or non-employment of any particular persons, or of persons of any particular sex or age, or being or not being members of any organization, association, or body, and any claim arising under an industrial agreement; N.S.W. 2.  
N.Z. 2.  
W.A. 2.
- “Industry” means business, trade, manufacture, undertaking, calling, service, or employment, on land or water, in which persons are employed for pay, hire, advantage, or reward, excepting only persons engaged in domestic service, and persons engaged in agricultural, viticultural, horticultural, or dairying pursuits; N.S.W. 2.  
N.Z. 2.  
W.A. 2.
- “Lock-out” includes the closing of a place or part of a place of employment, or the total or partial suspension of work by an employer, with a view to compel his employees, or to aid another employer in compelling his employees, to accept any term or condition of employment ; N.S.W. 2.
- “Organization” means any organization registered pursuant to this Act, and so far as applicable it also includes any proclaimed organization to which the Governor-General declares this Act to apply;
- “Registrar” means the Industrial Registrar or a Deputy Industrial Registrar appointed under this Act;
- “Registry” includes District Registry;
- “Special Magistrate” means a magistrate appointed by that name under the law of a State;
- “State Industrial Authority” means any Board or Court of Conciliation or Arbitration, or tribunal body or persons, having authority under any State Act to exercise any power of Conciliation or Arbitration with reference to industrial disputes within the limits of the State; or any Special Board constituted under any State Act relating to factories or such other State Board or Court as is prescribed;
- “Strike” includes the total or partial cessation of work by employees, acting in combination, as a means of enforcing compliance with demands made by them or other employees on employers; N.S.W. 2.
- “The Court” means the Commonwealth Court of Conciliation and Arbitration constituted pursuant to this Act;
- “The President” means the President of the Court.

## 5. When

Penalty in case  
offence repeated or  
continued.

5. When any person is convicted of an offence against any provision of this Act for which a pecuniary penalty is provided, the Court before which he is convicted may direct that the defendant shall not continue or repeat the offence under pain of imprisonment, and if thereafter the defendant continues or repeats the offence, he shall be liable, in addition to the pecuniary penalty for the offence, to imprisonment for any period not exceeding three months.

PART II.—PROHIBITION OF LOCK-OUTS AND STRIKES IN  
RELATION TO INDUSTRIAL DISPUTES.

Penalty for lock-out  
or strike.  
N.S.W. 34.  
N.Z. 100.  
S.A. 63.  
W.A. 30.

6. (1) No person or organization shall, on account of any industrial dispute, do anything in the nature of a lock-out or strike, or continue any lock-out or strike.

Penalty : One thousand pounds.

(2) No proceeding for any contravention of this section shall be instituted without the leave of the President.

Onus of proof.

(3) This section shall not apply to anything proved to have been done for good cause independent of the industrial dispute, but on a prosecution for any contravention of this section the onus of such proof shall lie on the defendant, and in default of such proof, and on proof of the lock-out strike or continuation and of the industrial dispute, the lockout strike or continuation shall be deemed to have been on account of the industrial dispute.

Employers or  
employees refusing  
to offer or accept  
employment upon  
the terms of an  
award or agreement.

7. Where persons, with a view to being associated as employers and employees respectively in any industry, or representatives of such persons, have entered into an industrial agreement with respect to employment in that industry, any of such persons who, without reasonable cause or excuse, refuses or neglects to offer or accept employment upon the terms of the agreement, shall be deemed to be guilty of a lock-out or strike as the case may be.

Organization  
ordering its  
members to refuse  
to offer or accept  
employment.

8. Any organization of employers or employees which, for the purpose of enforcing compliance with the demands of any employers or employees, orders its members to refuse to offer or accept employment, shall be deemed to be guilty of a lock-out or strike, as the case may be.

Employers not to  
dismiss employees  
on account of  
award.  
N.S.W. 35.

9. (1) No employer shall dismiss any employee from his employment by reason merely of the fact that the employee is an officer or member of an organization or is entitled to the benefit of an industrial agreement or award.

Penalty : Twenty pounds.

(2) No proceeding for any contravention of this section shall be instituted without the leave of the President or the Registrar.

Onus on employer.

(3) In any proceeding for any contravention of this section, it shall lie upon the employer to show that any employee, proved to have been dismissed whilst an officer or member of an organization or entitled as aforesaid, was dismissed for some reason other than those mentioned in this section.

10. (1) No

10. (1) No employee shall cease to work in the service of an employer by reason merely of the fact that the employer is an officer or member of an organization or is entitled to the benefit of an industrial agreement or award.

Employee not to cease work on account of award.

Penalty : Twenty pounds.

(2) No proceeding for any contravention of this section shall be instituted without the leave of the President or the Registrar.

(3) In any proceeding for any contravention of this section, it shall lie upon the employee proved to have ceased to work in the service of an employer whilst the employer was an officer or member of an organization or entitled as aforesaid to show that he ceased so to work for some reason other than those mentioned in this section.

Onus on employee.

### PART III.—THE COMMONWEALTH COURT OF CONCILIATION AND ARBITRATION.

#### DIVISION 1.—THE CONSTITUTION OF THE COURT.

11. There shall be a Commonwealth Court of Conciliation and Arbitration, which shall be a Court of Record, and shall consist of a President.

Constitution of Court.  
N.S.W. 16.  
N.Z. 59, 60, 61.  
W.A. 53, 54.

12. (1) The President shall be appointed by the Governor-General from among the Justices of the High Court. He shall be entitled to hold office during good behaviour for seven years, and shall be eligible for re-appointment, and shall not be liable to removal except on addresses to the Governor-General from both Houses of the Parliament during one session thereof praying for his removal on the ground of proved misbehaviour or incapacity.

Appointment and term of office of President.

(2) In the event of the period of office of the President expiring during the continuance of any investigation on which the Court has entered, the Governor-General may continue him in office for such time as may be necessary in order to enable him to take part in the completion of the matter.

Power to continue President in office.  
S.A. 48.

13. The President shall be paid no other salary in respect of his services under this Act than his salary as Justice of the High Court, and shall be paid such travelling expenses as are prescribed.

Travelling expenses of President.  
N.S.W. 21.

14. The President may, by instrument under his hand, appoint any Justice of the High Court or Judge of the Supreme Court of a State, to be his deputy in any part of the Commonwealth, and in that capacity to exercise, during the pleasure of the President, such powers and functions of the President as he thinks fit to assign to such deputy; but the appointment of a deputy shall not affect the exercise by the President himself of any power or function.

Appointment of Deputy President.

15. The President or Deputy President shall, before proceeding to discharge the duties of his office, take before a Justice of the High Court or a Judge of the Supreme Court of a State an oath or affirmation in the form in Schedule A.

Oath to be taken by President or Deputy.  
N.S.W. 27.  
N.Z. 69.  
W.A. 56.

#### DIVISION 2.

## DIVISION 2.—THE JURISDICTION OF THE PRESIDENT AND OF THE COURT.

Duty of  
President.  
S.A. 39, 49.

16. The President shall be charged with the duty of endeavouring at all times by all lawful ways and means to reconcile the parties to industrial disputes, and to prevent and settle industrial disputes, whether or not the Court has cognizance of them, in all cases in which it appears to him that his mediation is desirable in the public interest.

President may  
review decision of  
Registrar.  
N.S.W. 40.  
S.A. 76.  
Jurisdiction of  
Court.  
N.Z. 71.  
W.A. 56.

17. The President may review annul rescind or vary any act or decision of the Registrar in any manner which he thinks fit.

18. The Court shall have jurisdiction to prevent and settle, pursuant to this Act, all industrial disputes.

## DIVISION 3.—COGNIZANCE OF DISPUTES AND ORDINARY PROCEDURE.

Disputes of which  
the Court has  
cognizance.  
N.S.W. 28 (b)  
(2).

19. The Court shall have cognizance of the following industrial disputes:—

(a) All industrial disputes which are certified to the Court by the Registrar as proper to be dealt with by it in the public interest;

N.S.W. 28, 29.  
N.Z. 58.  
W.A. 51, 52.

(b) All industrial disputes which are submitted to the Court by an organization, by complaint, in the prescribed manner; and

(c) All industrial disputes with which any State Industrial Authority, or the Governor in Council of a State in which there is no State Industrial Authority, requests the Court to deal.

State Court to cease  
dealing with dispute  
on request of the  
Court.

20. If it appears to the Court that any State Industrial Authority is dealing or about to deal with an industrial dispute the Court may in the prescribed manner direct that Authority not to deal with the dispute; and thereupon the Authority shall cease to proceed in the matter of the dispute, which shall be dealt with the Court.

Certificate of  
Registrar.

21. A certificate by the Registrar that any dispute relating to industrial matters is an industrial dispute extending beyond the limits of any one State shall be *prima facie* evidence that the fact is as stated.

Reference by  
organization.  
N.S.W. 28.  
N.Z. 98.

22. No industrial dispute shall without the approval of the President be submitted to the Court by an organization unless the Registrar certifies—

(a) that he is satisfied that the consent of the organization to the submission has been given in manner prescribed by the rules of the organization; or

(b) that the consent of the organization to the submission has been given by resolution of a general meeting of members convened in manner prescribed for the consideration of the question, or as the result of a poll of members of the organization on the question taken in manner prescribed; or

(c) that consent to the submission has been given in writing under the hands of a majority of the Committee of Management of the organization.

23. (1) The

23. (1) The Court shall, in such manner as it thinks fit, carefully and expeditiously hear inquire into and investigate every industrial dispute of which it has cognizance and all matters affecting the merits of the dispute and the right settlement thereof. Inquiry by Court.  
N.Z. 53 (1).  
S.A. 42.  
W.A. 47.
- (2) In the course of such hearing inquiry and investigation the Court shall make all such suggestions and do all such things as appear to it to be right and proper for reconciling the parties and for inducing the settlement of the dispute by amicable agreement. Settlement of  
dispute.  
N.Z. 53 (3).  
S.A. 43.  
W.A. 47.
24. (1) If an agreement between the parties is arrived at, a memorandum of its terms shall be made in writing and certified by the President, and the memorandum when so certified shall be filed in the office of the Registrar, and unless otherwise ordered and subject as may be directed by the Court shall, as between the parties to the dispute, have the same effect as, and be deemed to be, an award. Agreement to have  
effect of award.  
N.Z. 53 (5).  
W.A. 51.
- (2) If no agreement between the parties is arrived at within a reasonable time, and the President so certifies, the Court shall, by an award, determine the dispute. Award in default of  
agreement.  
S.A. 43.
25. In the hearing and determination of every industrial dispute the Court shall act according to equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform its mind on any matter in such manner as it thinks just. Court to decide  
according to equity  
and good  
conscience.  
N.Z. 76, 77 (10).  
W.A. 49, 60.
26. Any organization represented before the Court on the hearing and determination of an industrial dispute shall be deemed a party to the dispute. Organization  
represented to be  
deemed party to  
dispute.
27. On the hearing or determination of any industrial dispute an organization may be represented by a member or officer of any organization, and any party not being an organization may be represented by an employee of that party; but no party shall (except by consent of all the parties or by leave of the President) be represented by counsel or solicitor. Representation of  
parties at hearing.
28. (1) The award shall be framed in such a manner as to best express the decision of the Court and to avoid unnecessary technicality, and shall subject to any variation ordered by the Court continue in force for a period to be specified in the award, not exceeding five years from the date of the award. Form and  
continuance of  
award.  
N.Z. 86.  
S.A. 43.  
W.A. 70.
- (2) After the expiration of the period so specified, the award shall, unless the Court otherwise orders, continue in force until a new award has been made.
29. The award of the Court shall be binding on— On whom award is  
to be binding.  
S.A. 53.
- (a) all parties to the industrial dispute who appear or are represented before the Court ;
- (b) all parties who have been summoned to appear before the Court as parties to the dispute, whether they have appeared in answer to the summons or not, unless the Court is of opinion that they were improperly summoned before it as parties ;
- (c) all



(c) all organizations and persons on whom the award is at any time declared by the Court to be binding as a common rule ; and

(d) all members of organizations bound by the award.

Awards and orders to prevail over State awards and orders.

30. When a State law or an award order or determination of a State Industrial Authority is inconsistent with an award or order lawfully made by the Court, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Award not to be challenged or questioned.  
N.S.W. 32.  
N.Z. 90.  
S.A. 79.  
W.A. 82.  
Cf., 36 and 37.  
Vic., c. 48, s. 25.

31. (1) No award of the Court shall be challenged, appealed against, reviewed, quashed, or called in question in any other Court on any account whatever.

(2) The President may, if he thinks fit, in any proceeding before the Court, at any stage and upon such terms as he thinks fit, state a case in writing for the opinion of the High Court upon any question arising in the proceeding which in his opinion is a question of law.

(3) The High Court shall hear and determine the question, and remit the case with its opinion to the President, and may make such order as to costs as it thinks fit.

#### DIVISION 4.—SPECIAL POWERS OF THE COURT AND THE PRESIDENT.

Powers of President as to interlocutory matters.

W.A. 59.

32. The President, on the application of any party to an industrial dispute of which the Court has cognizance, may, on summons returnable before the President sitting in Chambers, make in relation to the dispute any order which he thinks just as to—

(a) any interlocutory proceeding to be taken before the hearing, the costs thereof, the issues to be submitted to the Court, the persons and organizations to be served with notice of proceedings, particulars of the claims of the parties, admissions, discovery, interrogatories, inspection of documents or of real or personal property, examination of witnesses, and the place time and mode of hearing; and

(b) any matter which by rule of Court the President is empowered to hear when sitting in Chambers.

Security on reference.  
W.A. 4.

33. (1) The President may at any time require, from any organization submitting any industrial dispute to the Court, security to his satisfaction or to the satisfaction of the Registrar for the performance of the award, and in default of such security may stay the proceedings.

(2) No such security shall exceed Two hundred pounds.

Amount of security.  
W.A. 4.

Reference to conciliation committee.

S.A. 44.  
W.A. 50 (1)

Power to appoint assessors.  
N.S.W. 23.  
N.Z. 101.  
W.A. 92.

34. The Court may temporarily refer any matters before it to a conciliation committee consisting of an equal number of representatives of employers and employees, who shall endeavour to reconcile the parties.

35. (1) The Court shall on the application of any original party to an industrial dispute, and may without such application, at any stage of the dispute appoint two assessors for the purpose of advising it in relation to the dispute, and the assessors shall discharge such duties as are directed by the Court or as are prescribed.

(2) One

(2) One of the assessors shall be a person nominated by such of the parties to the dispute as, in the opinion of the Court, have interests in common with the employers, and the other shall be a person nominated by such of the parties to the dispute as, in the opinion of the Court, have interests in common with the employees.

Nomination of assessors.

(3) If default is made in nominating either or both of the assessors as required by the Court, or if the parties consent, the Court may appoint an assessor or assessors without any nomination.

Default in nomination.

33. (1) The Court may refer any industrial dispute of which it has cognizance, or any matter arising out of the dispute, to a Local Industrial Board for investigation and report, and may delegate to that Board such of its powers, including all powers of the Court in relation to conciliation and the settlement of the dispute by amicable agreement, as it deems desirable. A Local Industrial Board may be—

Court may refer dispute to a Local Board for report.  
N.Z. 81.

- (a) any State Industrial Authority willing to act; or
- (b) any Local Board constituted as prescribed or as directed by the Court, and consisting of equal numbers of representatives of employers and of employees and a Chairman who shall be a Justice of the High Court or a Judge of the Supreme Court of a State.

(2) On the report of the Local Industrial Board the Court may, with or without hearing further evidence or argument or both, decide the dispute and make its award.

Court may act on report of Local Board.

37. The Court may issue an order to any person to take evidence on its behalf in relation to any industrial dispute of which it has cognizance, and that person shall have all the powers of the Court in relation to the summoning of witnesses, the production of books and documents, and the taking of evidence on oath or affirmation.

Power to issue orders to take evidence.  
N.Z. 77 (7).  
W.A. 69.

38. The Court shall, as regards every industrial dispute of which it has cognizance, have power—

Powers of Court.

- (a) to hear and determine the dispute in manner prescribed ;
- (b) to make any order or award or give any direction in pursuance of the hearing or determination ;
- (c) to fix maximum penalties for any breach or non-observance of any term of an order or award, not exceeding One thousand pounds in the case of an organization or an employer, not being a member of an organization bound by the order or award, or Ten pounds in the case of any individual member of an organization :

N.S.W. 37(7).  
N.Z. 91.  
S.A. 57.  
W.A. 83.

Provided that in the case of members of an organization of employers consisting of less than one hundred members, the maximum penalty may be fixed at any sum not exceeding such sum as would, when multiplied by the number of members, amount to One thousand pounds ;

- (d) to impose penalties, not exceeding the maximum penalties fixed (or, if maximum penalties have not been fixed, not exceeding the maximum penalties which could have been

N.S.W. 37.

fixed)

Fixed) under the last preceding paragraph, for any breach or non-observance of any term of an order or award proved to the satisfaction of the Court to have been committed ;

(e) to enjoin any organization or person from committing or continuing any contravention of this Act ;

(f) to declare, by any award or order, that any practice, regulation, rule, custom, term of agreement, condition of employment or dealing whatsoever determined by an award in relation to any industrial matter shall be a common rule of any industry in connexion with which the dispute arises ;

Provided that the Court, before declaring a common rule, shall pay due regard to the extent to which the industries or the persons affected enter or are likely to enter into competition with one another.

Provided also that before any common rule is so declared, the President shall by notification published in the *Gazette* and in such other publications, if any, as the Court directs specifying the industry and the industrial matter in relation to which it is proposed to declare a common rule, make known that all persons and organizations interested and desirous of being heard may, on or before a day named, appear or be represented before the Court ; and the Court shall in manner prescribed hear all such persons and organizations so appearing or represented.

N.S.W. 37.

(g) to direct with due regard to local circumstances within what limits of area, if any, and subject to what conditions and exceptions, the common rule so declared shall be binding upon the persons engaged in the industry whether as employers or employees, and whether members of an organization or not ;

N.S.W. 26 (a).  
N.Z. 82.  
W.A. 75.

(h) to dismiss any matter or refrain from further hearing or from determining the dispute if it appears that the dispute is trivial, or that the dispute has been dealt with, or is being dealt with, or is proper to be dealt with, by a State Industrial Authority, or that further proceedings by the Court are not necessary or desirable in the public interest ;

N.S.W. 26 (f).  
N.Z. 83.  
W.A. 77.

(i) to order any party to the dispute to pay to any other party such costs and expenses, including expenses of witnesses, as are specified in the order, but so that no costs shall be allowed for the services of any counsel solicitor or agent ;

N.S.W. 26 (h).  
N.Z. 105.  
W.A. 73.

(j) to proceed to hear and determine the dispute in the absence of any party thereto who has been summoned or served with notice to appear therein ;

N.S.W. 26 (i).

(k) to sit in any place for the hearing and determination of the dispute ;

(l) to

- (l) to conduct its proceedings or any part thereof in private ; ( N.S.W. 26 (j).  
( N.Z. 107.  
( proviso).  
( W.A. 96.  
( N.S.W. 26 (k).  
( N.S.W. 26 (l).  
( W.A. 68.
- (m) to adjourn its sittings to any time and place ;
- (n) to refer any technical matters or matters of account to an expert, and to accept his report as evidence ;
- (o) to vary its orders and awards and to re-open any question ;
- (p) to direct parties to be joined or struck out ;
- (q) to correct amend or waive any error defect or irregularity whether in substance or in form ; ( N.S.W. 26 (o).  
( N.Z. 87 (1).  
( W.A. 79.  
( N.S.W. 26 (g)  
(1).  
( N.Z. 102.  
( W.A. 90.
- (r) to extend any prescribed time ;
- (s) to summon before it the parties to the dispute, and witnesses, and to compel the production before it of books, documents, and things for the purpose of reference to such entries or matters only as relate to the dispute ; ( N.S.W. 26 (m).
- (t) to take evidence on oath or affirmation ; and ( N.Z. 77 (8).  
( N.S.W. 26 (g)  
(iv).  
( N.Z. 102 (d).  
( W.A. 90 (4).
- (u) generally to give all such directions and do all such things as it deems necessary or expedient in the premises.

39. The Court may exercise any of its powers on its own motion or on the application of any party to the industrial dispute, or of any organization or person bound by the award of the Court; but no order or award shall be varied and no submission shall be re-opened except on the application of an organization or person affected or aggrieved by the order or award.

Powers may be exercised by Court on its own motion.

( N.S.W. 26 (j).

40. The Court, by its award, or by order made on the application of any party to the proceedings before it, at any time in the period during which the award is binding, may—

Minimum wage and preference for members of organizations.  
( N.S.W. 36.  
( N.Z. 92.  
( W.A. 85.

- (a) prescribe a minimum rate of wages or remuneration, and in that case shall on the application of any party to the industrial dispute, or of any organization or person bound by the award make provision for enabling some tribunal specified in the award or order to fix, in such manner and subject to such conditions as are specified in the award or order, a lower rate in the case of employees who are unable to earn the minimum wage so prescribed ; and
- (b) direct that as between members of organizations of employers or employees and other persons offering or desiring service or employment at the same time, preference shall be given to such members, other things being equal ; and
- (c) appoint a tribunal to finally decide in what cases an employer or employee to whom any such direction applies may employ or be employed by a person who is not a member of any such organization.

Provided always that before any preference to members of organizations is directed as aforesaid the President shall by notification published in the *Gazette* and in such other publications, if any, as the Court directs, specifying the industry and the industrial matter in relation to which it is proposed to direct such preference,

make

make known that all persons and organizations interested and desirous of being heard may on or before a day named appear or be represented before the Court ; and the Court shall in manner prescribed hear all such persons and organizations so appearing or represented.

And provided further that no such preference shall be directed to be given unless the application for such preference is in the opinion of the Court approved by a majority of those affected by the award who have interests in common with the applicants.

In any case in which the Court directs that preference shall be given it may subsequently suspend or qualify the direction for such time or subject to such conditions as it thinks fit if, in the opinion of the Court, the rules of the organization are burdensome or oppressive or do not provide reasonable conditions for admission to or continuance in membership or that the organization has acted unfairly or unjustly to any of its members in the matter of preference.

Power of  
inspection.  
N.S.W. 31.  
N.Z. 108.  
W.A. 47, 67.

41. The President and every person authorized in writing by the President or Registrar may at any time during working hours enter any building, mine, mine working, ship, vessel, place, or premises of any kind wherein or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place in relation to which any industrial dispute is pending, or any award has been made, or any offence against this Act is suspected, and may, to the extent and for the purposes named in the authority, inspect and view any work, material, machinery, appliances, or article therein.

Obstructing Court.  
N.S.W. 31.  
N.Z. 108.  
W.A. 48, 67.

42. No person shall hinder or obstruct the President or any person authorized as aforesaid, in the exercise of any power conferred by the last preceding section.

Penalty : Ten pounds.

Rules of Court.  
N.S.W. 26 (e).

43. (1) The Court may, subject to the approval of the Governor-General, make rules regulating the practice and procedure of the Court, and subject to such rules the practice and procedure of the Court shall be as directed by the Court or when the Court is not sitting by the President.

(2) All such rules shall be laid before both Houses of the Parliament within thirty days after the making thereof, or, if the Parliament is not then sitting, within thirty days after the next meeting of the Parliament.

(3) If either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules have been laid before such House disallowing any rule, such rule shall thereupon cease to have effect.

PART IV.

## PART IV.—THE ENFORCEMENT OF ORDERS AND AWARDS.

44. (1) Where any organization or person bound by an order or award has committed any breach or non-observance of any term of the order or award any penalties which the Court has power to impose may be imposed by any Court of summary jurisdiction constituted by a Police Stipendiary or Special Magistrate.

Imposition and recovery of penalties.

(2) Any such penalty may be sued for and recovered by—

- (a) the Registrar; or
- (b) any organization which is affected, or whose members or any of them are affected, by the breach or non-observance; or
- (c) any member of any organization who is affected by the breach or non-observance.

45. Where the Court, or any Court of summary jurisdiction, imposes any penalty for any breach or non-observance of any term of an order or award, it may order that the penalty, or any part thereof, be paid into the Consolidated Revenue Fund, or to such organization or person as is specified in the order.

Application of penalties.

46. Where the Court has imposed a penalty for a breach or non-observance of any term of an order or award, or has ordered the payment of any costs or expenses, a certificate under the hand of the Registrar, specifying the amount payable and the organizations and persons by and to whom respectively it is payable, may be filed in any Federal or State Court having civil jurisdiction to the extent of that amount, and shall thereupon be enforceable in all respects as a final judgment of that court.

Enforcement of penalties imposed by the Court.  
N.Z. 94 (5).

Provided that where there are two or more creditors under any such certificate, process may be issued separately by each creditor for the enforcement of the certificate as if there were separate and distinct judgments.

N.Z. 94 (6).

47. (1) For the purpose of enforcing compliance with any order or award, process may be issued and executed against the property of any organization or in which any organization has a beneficial interest, whether vested in trustees or howsoever otherwise held, in the same manner as if the organization were an incorporated company and the absolute owner of the property or interest.

Process against property of organization.  
N.S.W. 40.  
N.Z. 94 (6).  
S.A. 58.  
W.A. 88 (6).

(2) The property of an organization shall be deemed to include the property of any association forming, or forming part of, the organization, or in which any such association has a beneficial interest, whether vested in trustees or howsoever otherwise held.

(3) Where the property of an organization on execution is insufficient to satisfy fully any process for enforcing any order or award, the members of the organization shall, to the extent of the maximum penalties defined in paragraph (c) of section thirty-eight, be liable for the deficiency.

48. The

Power to make orders to observe award.  
N.S.W. 37 (4).  
W.A. 80.

48. The Court may, on the application of any party to an award, make an order in the nature of a mandamus or injunction to compel compliance with the award or to restrain its breach under pain of fine or imprisonment, and no person to whom such order applies shall, after written notice of the order, be guilty of any contravention of the award by act or omission. In this section the term "award" includes "order."

Penalty : One hundred pounds or Three months' imprisonment.

Enforcement of award.  
S.A. 61.

49. No person shall wilfully make default in compliance with any order or award.

Penalty : Twenty pounds.

Disability upon contravention of Part II. or wilful non-compliance with award.

50. Any person adjudged to be guilty of any contravention of Part II. of this Act or of wilful default in compliance with any award shall, if the Court in its discretion so orders, in addition to any penalty imposed for the offence, be and continue subject to any or all of the following disabilities :—

(a) He shall not be entitled to any rights privileges benefits or advantages under this Act, and this Act shall, so far as any such rights privileges benefits or advantages are concerned, cease to apply to him :

(b) He shall cease to be a member or officer of any organization, or of any association which is, or is part of, any organization, and shall not be qualified to become a member or officer of any organization or of any such association :

(c) He shall lose all existing or accruing rights to any payment out of the funds of any organization, or of any association which is, or is part of, any organization, and the receipt by him of any such payment, or the making of any such payment to him by any person or organization, or by any such association, shall be an offence under this Act.

Penalty : Twenty pounds.

Provided that the Court may at any time in its discretion, if it appears that the contravention or wilful default has been sufficiently punished, and that the effective administration of this Act will not be prejudiced by the removal of the disabilities, order that the disabilities or any of them be removed.

## PART V.—ORGANIZATIONS.

### *Registries and Registrars.*

Power to establish Registries and appoint Registrars.

51. The Governor-General may—

(a) establish a Principal Registry for the registration of organizations ;

(b) establish District Registries for the registration of organizations;

(c) appoint an Industrial Registrar and Deputy Industrial Registrars.

52. (1) The

52. (1) The Principal Registry shall, when the seat of Government is established within Federal territory, be situated at the seat of Government, but until that time the Principal Registry shall be situated at such place as the Minister directs.

Situation of Registries.

(2) Each District Registry shall be situated in the capital city of the State in which it is established.

53. The Principal Registry shall be under the charge of the Industrial Registrar, and each District Registry shall be under the charge of a Deputy Registrar.

Charge of Registries.

54. (1) The Industrial Registrar shall keep, at the Principal Registry, a register of all organizations registered under this Act and a list of all proclaimed organizations.

Duty of Industrial Registrar.

(2) Each Deputy Registrar shall keep, at the Registry under his charge, a register of all organizations registered under this Act at that Registry and a list of all proclaimed organizations existing in the State.

Duties of Deputy Industrial Registrars.

*Registered Organizations.*

55. (1) Any of the following associations may, on compliance with the prescribed conditions, be registered in the manner prescribed as an organization :—

Registration of organizations.

(a) Any association of employers in or in connexion with any industry, who have in the aggregate, throughout the six months next preceding the application for registration, employed on an average taken per month not less than one hundred employees in that industry ; and

(b) Any association of not less than one hundred employees in or in connexion with any industry.

Provided that no such organization shall be entitled to any declaration of preference by the Court when and so long as its rules or other binding decisions permit the application of its funds to political purposes, or require its members to do anything of a political character.

And further provided that no organization shall be entitled to appear before the Court to oppose an application for preference by any organization so long as its rules or other binding decisions permit the application of its funds to political purposes, or require its members to do anything of a political character.

“Political purposes” in this section does not include obtaining or maintaining provisions applying to all persons in any particular industry, without discrimination as between those who are and those who are not members of an organization, with respect to the regulation of the following matters :—

- (i.) Preservation of life and limb.
- (ii.) Compensation for injuries or death.
- (iii.) Sanitation.
- (iv.) The sex and age of employees.
- (v.) The hours of labour.
- (vi.) The remuneration of labour.
- (vii.) Protection of salaries and wages.
- (viii.) Other conditions similarly affecting employment.

(2) The



Prescribed conditions of registration.

(2) The conditions to be complied with by associations so applying for registration shall, until otherwise prescribed, be as set out in Schedule B.

(3) Upon registration, the association shall become and be an organization.

Adoption of rules to comply with prescribed conditions.

56. Any association applying to be registered as an organization may on application to the President obtain power to adopt and may thereupon adopt any rules to enable it to comply with the prescribed conditions as part of its rules, and any rules adopted in pursuance of this section shall not withstanding anything in the constitution or rules of the association be binding on the members of the association.

Certificate of registration.  
N.S.W. 4.  
N.Z. 6 (1).  
W.A. 5

57. The Registrar shall issue to each organization registered under this Act a certificate of registration in the prescribed form, which certificate shall until proof of cancellation be conclusive evidence of the registration of the organization therein mentioned and that it has complied with the prescribed conditions to entitle it to be registered.

Incorporation of organization.  
N.S.W. 7.  
N.Z. 7.  
W.A. 6 and 7.

58. Every organization registered under this Act shall for the purposes of this Act have perpetual succession and a common seal, and may purchase take on lease hold sell lease mortgage exchange and otherwise own possess and deal with any real or personal property.

Power to refuse registration of certain organizations.  
N.Z. 11 (1).

59. The Registrar may refuse to register any association as an organization if an organization, to which the members of the association might conveniently belong, has already been registered in the State in which the application is made.

Application for cancellation of registration.  
N.S.W. 8.

60. (1) If it appears to the Registrar—
- (a) that for any reasons the registration of an organization ought to be cancelled ; or
  - (b) that an organization has been registered erroneously or by mistake ; or
  - (c) that the rules of a registered organization have been altered so as to no longer comply with the prescribed conditions or have not *bona fide* been observed ; or
  - (d) that the rules of a registered organization or their administration do not provide reasonable facilities for the admission of new members or impose unreasonable conditions upon the continuance of their membership or are in any way tyrannical or oppressive ; or
  - (e) that the proper authority of a registered organization wilfully neglects to provide for the levying and collection of subscriptions, fees, or penalties, from members of the organization ; or
  - (f) that the accounts of a registered organization have not been audited in pursuance of the rules, or that the accounts of the organization or of the auditor do not disclose the true financial position of the organization ; or
  - (g) that a registered organization has wilfully neglected to obey any order of the Court ; or

(h) that

(h) that the number of the members of the organization, or of their employees, as the case may be, would not entitle them to registration under section fifty-five,

he shall make application to the Court for the cancellation of the registration of the organization, giving notice thereof to the organization at its registered office.

(2) The Court shall hear the application, and if it is of opinion that the registration should be cancelled, it shall so order, and thereupon the registration of the organization under this Act shall be cancelled.

Court to decide application for cancellation. N.S.W. 8.

(3) Where the Registrar has, on application made to him, refused to make an application for the cancellation of the registration of an organization, the Court may, if it thinks fit, on the application of any organization or person interested, order that the registration of the first-mentioned organization under this Act be cancelled, and thereupon the registration of the organization shall be cancelled.

(4) The cancellation shall not relieve the organization or any member thereof from the obligation to comply with any award, or from any penalty or liability incurred prior to the cancellation.

61. During the pendency of any dispute or matter before the Court no resignation of or discharge from the membership of any such organization shall have effect.

No resignations & c. of members while dispute pending. N.S.W. 9. N.Z. 20 (1).

#### *Proclaimed Organizations.*

62. The Governor-General may, on the recommendation of the President, by proclamation declare this Act to apply to any association, and thereupon the association shall be deemed to be and shall become an organization for such of the purposes of this Act as are directed by the proclamation or as are prescribed.

Application of Act to proclaimed organizations.

63. (1) The power of adopting rules conferred by section fifty-six shall apply to any proclaimed organization.

Adoption of rules by proclaimed organization.

(2) In default of the adoption of rules by a proclaimed organization within a prescribed time, any rules prescribed or directed by the Court shall be applied to the organization.

Default in adoption of rules.

64. The Governor-General on the recommendation of the President may, by proclamation, revoke any proclamation issued pursuant to section sixty-two, and thereupon this Act shall, subject to such conditions, if any, as are fixed by the proclamation cease to apply to the association specified in the revoked proclamation.

Revocation of proclamation.

#### *Organizations Generally.*

65. Every organization shall be entitled—

Privileges of organizations.

(a) to submit to the Court any industrial dispute in which it is interested ;

(b) to be represented before the Court in the hearing and determination of any industrial dispute in which it is interested.

66. Any

Organisations may  
sue and be sued.  
N.Z. 18.  
S.A. 82.

**66.** Any organization may sue or be sued for the purpose of this Act in its registered or other name, and service of any notice or process on the president, chairman, or secretary, or at the registered office of the organization shall be sufficient for all purposes.

Protection to  
organizations.  
N.S.W. 7 (3) (a).

**67.** Unless the contrary intention appears in this Act, no organization or member of an organization shall be liable to be sued, or to be proceeded against for a pecuniary penalty, except in the Court, for any act or omission in respect of which the Court has jurisdiction.

Powers of  
organizations to  
recover fines, &c.  
W. A. 19.

**68.** All fines fees levies or dues payable to an organization by any member thereof under its rules may, in so far as they are owing for any period of membership subsequent to the registration or proclamation of the organization, be sued for and recovered in the name of the organization in any Court of summary jurisdiction constituted by a Police, Stipendiary, or Special Magistrate.

Disputes between  
organization and its  
members.  
N.S.W. 12.

**69.** Every dispute between an organization and any of its members shall be decided in the manner directed by the rules of the organization ; and the Court on the application of the trustee or other officers authorized to sue on behalf of or in the name of the organization may order the payment by any member of any fine, penalty, or subscription payable in pursuance of the rules aforesaid, or any contribution to a penalty incurred or money payable by the organization under an award or order of the Court ; but no such contribution shall exceed the sum of Ten pounds.

Court may order  
that persons shall  
cease to be  
members of  
organizations.

**70.** The Court may, on the application of any organization, made in the manner prescribed by rules of Court, order that any member of an organization shall cease to be a member thereof from a date and for a period to be named in the order.

Act not to prevent  
transfer of shares.  
N.S.W. 10.

**71.** Nothing in this Act shall prevent a transfer of shares in any registered company, or in any association which is, or is part of, an organization, but no such transfer shall relieve the transferrer from any liability incurred by him under this Act up to the date of such transfer.

Returns to  
Registrar.  
N.S.W. 7 (2) (a).  
N.Z. 17 (4).  
S.A. 73.  
W.A. 16.

**72.** Each organization shall as prescribed forward to the Registrar such returns of its members, accounts, and alterations of its rules as are prescribed.  
Penalty : Two pounds per week for each week in default.

#### PART VI.—INDUSTRIAL AGREEMENTS.

Industrial  
agreements.  
N.S.W. 13.

**73.** Any organization may make an industrial agreement with any other organization or with any person for the prevention and settlement of industrial disputes by conciliation and arbitration.

Agreement only  
affects persons  
bound by it.

**74.** No proceedings under any industrial agreement shall extend to affect any organizations or persons who are not bound by the agreement.

**75.** Every

75. Every industrial agreement shall be in writing and for a term to be specified therein not exceeding three years from the date of the making thereof, and shall be in a form commencing as follows :—

“This Industrial Agreement made pursuant to the *Commonwealth Conciliation and Arbitration Act 1904*, this                      day of  
Between                      I”; and the date of the making of the agreement shall be the date when the agreement is first executed by any party thereto, and that date and the names of all organizations and persons parties to the agreement shall be truly stated therein.

Term and form.  
N.Z. 24 (2).  
S.A. 29.  
W.A. 22.

76. A duplicate of every industrial agreement shall be filed in the office of the Industrial Registrar, and of every organization affected thereby, within thirty days of the making thereof, and shall be open to inspection as prescribed, and the Registrar, if thereunto required by any person interested therein, shall investigate the matter, in such manner as he thinks fit, and if satisfied that the agreement has been duly made and executed pursuant to this Act, by or on behalf of the parties thereto, shall give a certificate to that effect, which certificate shall be conclusive evidence that the fact is as stated.

Duplicate to be filed.  
N.Z. 25.  
S.A. 25.  
W.A. 23.

77. Every industrial agreement shall during its continuance be binding on—

- (a) all parties thereto ; and
- (b) all members, at any time during such continuance, of any organization which is a party thereto.

Effect of industrial agreement.  
N.Z. 27.  
S.A. 31.

78. (1) Any organization or person bound by an industrial agreement shall for any breach or non-observance of any term of the agreement be liable to a penalty not exceeding such amount as is fixed by the industrial agreement ; and if no amount is so fixed, then to a penalty not exceeding in the case of an organization Five hundred pounds, in the case of an employer Two hundred and fifty pounds, and in the case of an employee Ten pounds.

Enforcement of agreement.

(2) Such penalties may be proceeded for and recovered in the same manner as penalties for breach or non-observance of an order or award of the Court.

79. An industrial agreement may be rescinded or varied by any other industrial agreement made between the same parties or their representatives.

Rescinding or varying of agreement.  
N.Z. 28.  
S.A. 32.

80. On the application of an organization in manner prescribed the Court may order that any industrial agreement be varied so far as is necessary to bring it into conformity with any common rule declared by the Court.

Variation of agreement by Court to conform with common rule.

81. In

Continuance of agreement unless terminated by notice.  
N.Z. 24 (4).

**81.** In default of any express agreement to the contrary therein contained, an industrial agreement shall, unless rescinded, and subject to any variation, continue in force after the expiration of the term specified therein, until the expiration of one month after some party thereto has given written notice to the Registrar and to the other parties of his desire to determine it.

#### PART VII.—MISCELLANEOUS.

Judge not bound to accept appointment under Act.

**82.** Nothing in this Act shall require any Judge of the Supreme Court of a State to accept any appointment under this Act, and no such appointment shall be made without the previous approval of the Governor of the State.

Contempt of Court.  
N.Z. 103.  
W.A. 72.

**83.** No person shall wilfully insult or disturb the Court, or interrupt the proceedings of the Court, or use any insulting language towards the Court or by writing or speech use words calculated to improperly influence the Court or any assessor or any witness before the Court or to bring the Court into disrepute, or be guilty in any manner of any wilful contempt of the Court.

Penalty : One hundred pounds.

Contempt by witness.  
N.Z. 77 (6).

**84.** No person who has been summoned to appear or who has appeared before the Court as a witness shall (without just cause proof whereof shall lie upon him)—

- (a) disobey the summons to so appear ; or
- (b) refuse to be sworn as a witness ; or
- (c) refuse to answer any question which he is required by the Court to answer ; or
- (d) refuse to produce any books or documents which he is required by the Court to produce.

Penalty : One hundred pounds.

Disclosure of trade secrets.  
N.S.W. 27.  
N.Z. 69, 74.  
W.A. 56.

**85.** (1) No evidence relating to any trade secret, or to the profits or financial position, of any witness or party, shall be disclosed except to the Court or published without the consent of the person entitled to the trade secret or non-disclosure.

Penalty : Five hundred pounds or Three months' imprisonment.

(2) All such evidence shall, if the witness or party so requests, be taken in private.

Contents of books not to be disclosed.  
N.S.W. 26  
(proviso).  
N.Z. 77 (4).  
W.A. 63, 64.

**86.** All books papers and other documents produced in evidence before the Court may be inspected by the Court and also by such of the parties as the Court allows, but the information obtained therefrom shall not be made public without the permission of the Court.

Provided that such books papers and documents relating to any trade secret, or to the profits or financial position, of any witness or party, shall not without his consent be inspected by any party.

Penalty : Five hundred pounds or Three months' imprisonment.

**87.** Every

- 87.** Every person who, or organization which, is directly or indirectly concerned in the commission of any offence against this Act, or counsels takes part in or encourages the commission of any such offence, shall be deemed to have committed that offence and shall be punishable accordingly. Counselling or procuring offences. S.A. 82.
- 88.** Any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence had been committed. Attempts to commit offences.
- 89.** For the purposes of this Act, a State Court or Magistrate, whose jurisdiction is limited, as to area, subject matter, or parties, to any part of a State, shall be deemed to have jurisdiction throughout the State. Jurisdiction of State Courts.
- Provided that on the hearing of any proceeding in a Court of summary jurisdiction for the recovery of any penalty, fine, fee, levy, or due, the Court, if in the interests of justice it thinks fit, may adjourn the hearing to a Court of summary jurisdiction to be held at some other place in the same State. Cf. Vict. No. 1105, sec. 75.
- 90.** An office copy of every award shall be filed in the Principal Registry and in the District Registry in each State within the limits of which the award has effect, and may be inspected by any person on payment of a fee of Sixpence. Office copy of award to be filed at Registries. S.A. 54.
- 91.** An office copy of an award, purporting to be sealed with the seal of the Court or certified to be true under the hand of the Registrar, shall be received in all Courts as evidence of the award without proof of the seal of the Court or of the signature of the Registrar. Evidence of award.
- 92.** The Governor-General may make Regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act. Power to make Regulations. S.A. 80.

## SCHEDULES.

## SCHEDULES.

### SCHEDULE A.

Oath to be taken  
by President or  
Deputy.

I, A.B., do swear that I will well and truly serve our Sovereign Lord the King in the office of (President *or* Deputy President *as the case may be*) of the Commonwealth Court of Conciliation and Arbitration, and that I will faithfully and impartially perform the duties of that office, and that I will not, contrary to my duty, disclose to any person any evidence or other matter brought before the Court : SO HELP ME GOD.

*Or, I, A.B., do solemnly and sincerely promise and declare that (&c., as above, omitting words, "So help me God.")*

### SCHEDULE B.

#### CONDITIONS TO BE COMPLIED WITH BY ASSOCIATIONS APPLYING FOR REGISTRATION AS ORGANIZATIONS.

N.S.W.  
Schedule I.  
N.Z. 5 (3).  
S.A. 10.  
W.A. 4 (3).

The affairs of the association must be regulated by rules specifying the purposes for which it is formed, and providing for the following matters :—

- (a) The appointment and continuance of a Committee of Management, a Chairman or President, and a Secretary ;
- (b) The powers, duties, and removal of the Committee and of the Chairman or President and the Secretary ;
- (c) The control of the Committee by General or Special Meetings ;
- (d) The mode in which industrial agreements and other instruments may be made by or on behalf of the association ;
- (e) The manner in which industrial disputes may be submitted by the association to the Court ;
- (f) The manner in which consent of the association shall be given to any submission to the Court ;
- (g) The manner in which the association may be represented before the Court ;
- (h) The times when, terms of which, persons may become, or cease to be members of the association, but so that no member shall discontinue his membership without giving at least three months' previous written notice to the Secretary of his intention so to do, nor without paying all membership subscriptions and dues owing by him to the association ;
- (i) The control of the property and the investment of the funds of the association and the periodical audit of the accounts of the association, such audit to be made at least once a year ;
- (j) The conditions, as to notice and other matters, to be complied with before the funds of an association may be disbursed except for its ordinary expenses as defined in the rules ;
- (k) The keeping of a register of the members of the association ; and
- (l) The conduct of the business of the association at some convenient address to be specified, and to be called the registered office of the association.

S.A. 12.

The rules of an association may also provide for any other matters not contrary to law, and for the repeal or alteration of the rules, but so that the above condition shall always be complied with.

SCHEDULE B.

SCHEDULE B—*continued*

The name of every registered organization shall contain the name of the industry in connexion with which it is established.

N.S.W. 11.  
N.Z. 7 (2).  
S.A. 13.  
W.A. 5 (1).

No two organizations shall be registered in the same State as organizations under the same name.

An application, in the prescribed form, for registration of an association as an organization must be made to the Registrar in charge of the Registry in the State where the office of the association is situated, and shall be signed by two or more officers of the association.

N.Z. 10.  
W.A. 9.  
N.S.W. 5.

Every application for registration shall be accompanied by—

- (a) Two copies of a list of the members and officers of the association ;
- (b) Three copies of the rules of the association ; and
- (c) Two copies of a resolution passed by a majority of the members present at a general meeting of the association specially called in accordance with the rules for that purpose only, and desiring registration of the association as an organization ; or
- (d) Two copies of a resolution by the Committee of Management passed by an absolute majority of the Committee, desiring registration of the association as an organization.

N.Z. 5 (1) (2).  
W.A. 4 (1) (2).

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act relating to Conciliation and Arbitration for the Prevention and Settlement of Industrial Disputes extending beyond the Limits of any one State," which has been passed by the Senate and the House of Representatives, and that the said Bill originated in the House of Representatives.

In the name and on behalf of  
His Majesty, I assent to this Act.

[Northcote]  
*Governor-General.*

[Government House]  
15<sup>th</sup> December 1904.

[C.Gavan Duffy]  
*Clerk of the House of Representatives.*