

WESTERN AUSTRALIA

BUILDING INDUSTRY (CODE OF CONDUCT) ACT

(No. 28 of 1986)

ARRANGEMENT

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BUILDING INDUSTRY (CODE OF CONDUCT) ACT

No. 28 of 1986

AN ACT to promote better industrial relations in the building and construction industry by providing for a code of conduct to be observed by The Australian Builders' Labourers' Federated Union of Workers—Western Australian Branch, for procedures to facilitate the use of section 73 of the *Industrial Relations Act 1979* for breach of that code, and for connected matters.

[Assented to 29 July 1986.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Building Industry (Code of Conduct) Act 1986*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

Interpretation

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

“Chief Commissioner” has the meaning assigned to it by the *Industrial Relations Act*;

“Code of Conduct” means the Code of Conduct provided for by section 4;

“Commission” has the meaning assigned to it by the *Industrial Relations Act*;

“employer” includes the Crown and any agent of the Crown;

“industrial action” means an act, omission, or circumstance done, effected, or brought about for the purpose of compelling an employer to accept any terms or conditions of employment or to enforce compliance with any demand relating to employment, and includes a threat or promise calculated to induce an employer not to give a notification under section 6, but does not include an application made under the *Industrial Relations Act*;

“*Industrial Relations Act*” means the *Industrial Relations Act 1979*;

“Registrar” has the meaning assigned to it by the *Industrial Relations Act*;

“Union” means the organization registered under the *Industrial Relations Act* as The Australian Builders’ Labourers’ Federated Union of Workers—Western Australian Branch, or if the name of that organization is changed, that organization under its new name.

Code of Conduct

4. (1) The Minister shall enact a Code of Conduct specifying those things that he considers the Union should do, or refrain from doing, in the interests of good industrial relations in the building and construction industry.

(2) The Minister may amend the Code of Conduct, or revoke it and substitute a new Code for it.

(3) The Code of Conduct, and any amendment thereof, shall be published in the *Government Gazette* and shall come into operation on the day of publication, or where another day is specified or provided for in the Code of Conduct or amendment, on that day.

Enforcement

5. (1) The Union shall comply with the Code of Conduct.

(2) For the purposes of sections 177 and 178 of *The Criminal Code* it is declared that the Code of Conduct is enforceable as provided in this Act, and not otherwise.

(3) Nothing in subsection (2) affects any other civil or criminal proceedings that may be taken under any other law in respect of an act or default that is contrary to a provision of the Code of Conduct.

Notification of industrial action

6. (1) An employer of persons who carry out any work in the building and construction industry shall notify the Chief Commissioner of any industrial action that is taken or brought about by the Union in respect of that employer, and that in the opinion of that employer is in breach of the Code of Conduct.

Penalty: \$500.

(2) A notification under subsection (1) in respect of any industrial action shall be made by lodging with the Registrar a written statement describing that industrial action, and shall be so made within 7 days after the day on which the industrial action first came to the employer's notice.

(3) The Chief Commissioner may in writing require an employer who has given a notification under subsection (1)—

- (a) to provide further particulars of, or to answer particular questions concerning, any industrial action notified to him; or
- (b) to report to him on the state of the industrial action,

within such period, or at such time or times, as the Chief Commissioner may specify, and the employer shall comply with any such requirement.

Penalty: \$500.

(4) A requirement under subsection (3) may include particulars of, or information concerning, the employer's attitude in response to the industrial action notified.

(5) An employer shall not for the purposes of this section make a statement or give any information which he knows is false in a material particular.

Penalty: \$500.

(6) No action shall be brought against an employer on account of a statement made in good faith and on reasonable grounds for the purposes of this section.

Union to be informed

7. (1) An employer who lodges a written statement under section 6 (2) shall serve a copy of the statement on the Union within 7 days after the day of lodgement.

(2) Where the Chief Commissioner receives information from an employer pursuant to a requirement under section 6 (3), the Chief Commissioner shall, in such manner as he thinks fit, communicate that information to the Union within 7 days of its receipt by him.

Reporting by Chief Commissioner

8. (1) The Chief Commissioner—

- (a) shall in respect of each period ending on the last days of October, February and June in each year; and
- (b) may at any other time,

furnish a report in writing to the Minister under this section.

(2) A report under this section for a period—

- (a) shall inform the Minister of industrial action that is notified to the Chief Commissioner during that period under section 6 and that the Chief Commissioner considers should be reported to the Minister for the purposes of this Act;
- (b) shall convey to the Minister any inference or opinion that the Chief Commissioner may draw or form, including his reasons therefor, as to the Union's compliance or non-compliance with the Code of Conduct;

- (c) may inform the Minister on any other matter relating to industrial relations in the building and construction industry; and
 - (d) may make any recommendation to the Minister touching on the purposes of this Act.
- (3) The Minister may in writing require the Chief Commissioner—
- (a) to report to him on any matter relating to industrial relations in the building and construction industry which the Minister may specify;
 - (b) to report further to him on any matter arising out of a report furnished by the Chief Commissioner.
- (4) In the performance of his functions under this section the Chief Commissioner—
- (a) has the protection and immunity referred to in section 13 of the *Industrial Relations Act* as if they were functions under that Act; and
 - (b) is not bound by the rules of evidence and may inform himself in such manner as he thinks fit.

Proceedings for cancellation or suspension of registration

9. (1) If the matters that come to the notice of—

- (a) the Minister, in any report under section 8; or
- (b) the Chief Commissioner under section 6,

in his opinion show that there is sufficient material for a finding that—

- (c) there has been substantial non-compliance by the Union with the Code of Conduct; and
- (d) by reason of that non-compliance the continuance of the registration of the Union is not consistent with, or will not serve the objects of, the *Industrial Relations Act*,

he may, notwithstanding section 73 (13) of that Act, in writing—

- (e) in the case of the Minister, request the Chief Commissioner to, and the Chief Commissioner shall thereupon, direct the Registrar to issue a summons to the Union under section 73 (1) of that Act; or

- (f) in the case of the Chief Commissioner, direct the Registrar to issue such a summons.

(2) Without limiting the grounds on which the Full Bench may make an order under section 73 (7) of the *Industrial Relations Act*, it is declared that the matters referred to in subsection (1) (c) and (d) constitute sufficient grounds for any such order.

(3) Where a direction is given to the Registrar under subsection (1), the provisions of section 73 of that Act have effect, subject to the following modifications—

- (a) subsection (3) does not apply;
- (b) subsection (4) applies as if the reference to “direction to the Registrar under subsection (1)” were a reference to “direction to the Registrar under section 9 (1) of the *Building Industry (Code of Conduct) Act 1986*”;
- (c) subsection (5) applies as if the reference to “the Commissioner who constituted the Commission that gave the direction” were a reference to “the Chief Commissioner”;
- (d) subsection (6) applies as if the reference to “the Commissioner referred to in subsection (5)” were a reference to “the Chief Commissioner”; and
- (e) subsection (12) does not apply.

Procedure, and position of Registrar

10. (1) For the purposes of the *Industrial Relations Act* and regulations thereunder relating to practice and procedure, in any proceedings consequent on a direction under section 9 (1)—

- (a) the proceedings shall be deemed to be an application;
- (b) the Registrar shall be deemed to be, and shall take part in the proceedings as, the applicant; and
- (c) the Union shall be the respondent.

(2) The *Industrial Relations Act* shall, with all necessary changes, apply to any function performed by the Registrar for the purposes of this Act as if they were functions under that Act, and in particular an order for costs shall not be made against him in respect of any function performed under this Act.

Chief Commissioner's report may be received in proceedings

11. (1) Where a matter is to be determined in any proceedings consequent on a direction under section 9 (1), the Chief Commissioner shall furnish to the Registrar and to the Union a copy of any report made by him under section 8 that, in his opinion, is relevant to those proceedings.

(2) In any proceedings referred to in subsection (1), the Full Bench may receive any report made by the Chief Commissioner under section 8 but may not exercise the power in section 26 (1) (b) of the *Industrial Relations Act* in relation to a report so received.

Union not to be re-registered

12. (1) If the registration of the Union is cancelled by order made in proceedings consequent on a direction under section 9 (1), the Union may not apply to be registered under the *Industrial Relations Act*.

(2) In subsection (1) "Union" in the second place where it occurs means—

- (a) the organization that was registered before the coming into effect of the order of cancellation; or
- (b) if the name of that organization is changed or all or a substantial number of the members of that organization form a new organization in or in connection with the building and construction industry or a part of that industry, that organization under the new name or the new organization as the case may be.

Saving

13. Nothing in this Act shall be read as precluding—

- (a) the Commission from giving a direction to the Registrar under section 73 of the *Industrial Relations Act*, whether at the request of the Minister or of any employer or organization under that Act, or otherwise; or
- (b) the hearing and determination of any matter resulting from the giving of such a direction.

Acts of members to be those of Union

14. (1) For the purposes of this Act, any industrial action or non-compliance with the Code of Conduct that is or has been taken or brought about by members of the Union is taken or brought about by the Union if—

- (a) it is proved that the Union or an agent of the Union instigated or encouraged the industrial action or non-compliance; or
- (b) where paragraph (a) does not apply, the Union does not prove that the Union or an agent of the Union took all steps reasonably available to it or him to prevent that industrial action or non-compliance.

(2) If a question arises as to a person's membership of the Union and it appears that he is eligible to apply for membership, he is deemed to be a member of the Union until the contrary is proved.

(3) In subsection (1) "agent" means—

- (a) the executive committee of the Union;
- (b) an officer, employee or person acting on behalf of the Union in the performance of functions as such; and
- (c) a member of the Union in the performance of the function of dealing with an employer on behalf of members of the Union.

Regulations

15. (1) If the registration of the Union is cancelled or suspended by order made in proceedings consequent on a direction under section 9 (1), the Governor may make regulations to provide for the transition of the Union from the status of a body corporate to that of an unincorporated body of persons or, where a suspension of registration ceases, from the status of an unincorporated body of persons to that of a body corporate.

(2) Without limiting the generality of subsection (1), regulations made thereunder may—

- (a) provide for the vesting or devolution of assets, rights, remedies, obligations and liabilities and the continuance of proceedings in respect thereof; and
- (b) be made retrospective to the day on which the cancellation or suspension of registration took effect, or the suspension ceased.

Duration of Act

16. (1) Subject to subsection (2), this Act shall cease to be in operation at the expiration of 2 years from the day on which it comes into operation.

(2) If the Minister is satisfied that The Australian Building Construction Employees' and Builders Labourers' Federation has become registered (whether under that name or another name) as an organization under section 132 of the *Conciliation and Arbitration Act 1904* of the Commonwealth Parliament, he shall cause a notice to be published in the *Government Gazette* declaring that he is so satisfied for the purposes of this section, and on the day of publication of that notice this Act shall cease to be in operation.
