

MOUTEVELIS, Michael

From: Shane Lanning [Shane.Lanning@aec.gov.au]
Sent: Monday, 3 November 2014 4:22 PM
To: Orgs; ceo@aha.org.au; Industrial Elections
Subject: PER - AHA - National Accommodation Division - E2014/203 -Post Election Report and Declaration of Results [DLM=For-Official-Use-Only]

For-Official-Use-Only

Good afternoon,

Please find attached the post election report for the Australian Hotels Association –National Accommodation Hotels Division.

Mr.Shane T Lanning | Manager, Industrial Elections
VIC State Office | VIC State Office
Australian Electoral Commission
T: (03) 9285 7145 | M: 0422 433 922 | F: (03) 9285 7149



E2014 203 -
Declaration of Res..



E2014 203 Post
Election Report...

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Australian Hotels Association National Accommodation Hotels Division

Declaration of Results for Uncontested Offices

E2014/203

Below are the results of the election for the following offices, conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation.

National

President / Representative to National Board

Candidates

GREENAWAY, Nigel James

Vice-President

Candidates

DAWSON, Robert

Secretary

Candidates

HILL, Andrew David

Representative from the National Accommodation Hotels Division to National Board (3)

Candidates

DABNER, John

MOORE, Gregory

No further nomination was accepted

As the number of nominations accepted did not exceed the number of positions to be filled, I declare the above candidates elected.



Ben Murray
Returning Officer

3 November 2014

Mr Stephen Ferguson
National CEO
Australian Hotels Association
Level 1 1 Little Collins St
MELBOURNE VIC 3000

Post Election Report For: Australian Hotels Association – National Accommodation Division
Election E No 2014/203

I refer to the above election for your organisation.

Section 197(1) of Schedule 1 of the Fair Work (Registered Organisations) Act 2009 requires the AEC to provide a written report on the conduct of the election to the Industrial Registrar and to the organisation or branch for whom the election was conducted. A copy of the report in relation to this election is attached.

Section 198 of Schedule 1 requires that if an organisation or branch is given a post election report under section 197 that identifies a rule that was difficult to interpret or apply, the organisation or branch must, within 30 days, give a written response to the AEC on that aspect of the report. The response must specify whether the organisation or branch intends to take any action in relation to the rule, and if so, what action it intends to take.

If the attached Report identifies a rule that was difficult to interpret or apply, you should forward your response to the AEC by email to 'industrial.elections@aec.gov.au' within thirty days of the date of the report.

Section 198 and the regulations also require an organisation to make the post election report and the organisation's response to the report (if applicable) available to members. Further, Regulation 141(4) of the Fair Work (Registered Organisations) Act 2009 requires an organisation or branch to publish a notice on its web site advising members that a copy of the post election report is available upon request. If a website is not available, publishing a notice in a journal or newsletter would be considered appropriate.

Please contact me if you wish to clarify any aspect of this report.

Ben Murray
Returning Officer
3 November 2014

Fair Work (Registered Organisations) Act 2009

POST ELECTION REPORT

**AUSTRALIAN HOTELS ASSOCIATION
National Accommodation Division**

ELECTION/S COVERED IN THIS REPORT

Election Decision No/s: E2014/203

RULES

Rules used for the election: [024n: Incorporates alterations of 1/1/2014 certified on 31/12/2013 (R2013/91)]
(replaces version of 20 December 2011 (R2011/241))
Rules difficult to apply/interpret: None
Model Rule reference (if any): N/A

Ballot required

IRREGULARITIES

Details of written allegations of irregularities, Nil
and action taken by AEC:

Other irregularities identified, and action taken: Nil

ATTACHMENTS

Declaration of results for uncontested and contested offices

Ben Murray
Returning Officer

3 November 2014



DECISION

Fair Work (Registered Organisations) Act 2009
s.189—Arrangement for conduct of an election

Australian Hotels Association (E2014/203)

MR ENRIGHT

MELBOURNE, 9 SEPTEMBER 2014

Arrangement for conduct of election.

[1] On 29 August 2014 the Australian Hotels Association (AHA) lodged with the Fair Work Commission (the Commission) the prescribed information in relation to an election, for the remainder of the term, for the following offices:

National Accommodation Hotels Division

President/Representative to National Board	(1)
Vice President	(1)
Secretary	(1)
Representatives to National Board (number to be determined in accordance with rules 11 and 42(d)(ii))	

[2] On 29 August 2014, the abovenamed organisation requested an extension of time to lodge prescribed information which, in accordance with s 189(2) of the *Fair Work (Registered Organisations) Act 2009* (the Act) was due to be lodged around December 2013. Although approximately nine months had passed since the prescribed day for lodgement, the AHA applied for an extension of time and stated in the application that the reasons for the delay in lodgement included that since the appointment in December 2013 or January 2014 of a new Chief Executive Officer (CEO), the holder of that position 'had been of the mistaken belief that elections had been held in December 2013'.

[3] The application filed on 29 August 2014 was made in circumstances in which the Commission had specifically written to the AHA by correspondence dated 4 December 2013 reminding the organisation of its requirement to lodge prescribed information for the above election. Despite that reminder correspondence, no lodgement of prescribed information occurred. The ongoing failure of the AHA to lodge prescribed information resulted in further correspondence from the Commission dated 26 August 2014 again raising the required election issue.

[4] In response to the further correspondence from the Commission dated 26 August 2014, the AHA lodged the current application on 29 August 2014 which included a request

for an extension of time to lodge the prescribed information on the basis that the CEO 'had been of the mistaken belief that elections had been held in December, 2013'.

[5] It is clear that elections for the above offices are significantly overdue. The AHA was twice notified in writing by the Commission of its failure to comply both with its own rules with respect to elections and the requirements of the RO Act with respect to the lodgement of prescribed information.

[6] I have considered the circumstances and the reasons provided by the AHA and have decided to extend the time for lodgement of the prescribed information until 29 August 2014 pursuant to subsection 189(2) of the Act. I have taken this step so as to prevent any further delay in the conduct of the requisite elections.

[7] I am satisfied that an election for the abovenamed offices is required to be held under the rules of the organisation and, under subsection 189(3) of the *Fair Work (Registered Organisations) Act 2009*, I am making arrangements for the conduct of the election by the Australian Electoral Commission.

[8] However, having regard to the rules of the AHA, the requirements of the RO Act and the two reminder letters provided to the AHA, I do not accept that the reasons provided satisfactorily explain the failure referred to above. In particular, the application does not make clear the basis upon which the CEO of the AHA had held a mistaken belief that elections for positions such as the President, Vice President, Secretary and Representatives to the National Board for the National Accommodation Division of the AHA had been conducted in 2013 when no such elections had actually been conducted.

[9] The AHA is urged to carefully consider its compliance obligations with respect to its own rules and the RO Act with respect to scheduled elections. Although arrangements are being made for the conduct of an election for the above offices, this does not exclude the possibility of action being undertaken under section 305 of the *Fair Work (Registered Organisations) Act 2009*.



DELEGATE OF THE GENERAL MANAGER

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Copy of Prescribed Information

Title of Matter: Application/Notification by Australian Hotels Association
Section: s.189(1) RO Act - Notification of elections for office
Subject: Scheduled Elections
Matter Number(s): E2014/203

Attn: Electoral Officer

A copy of the Prescribed Information in relation to the above matter is attached for your information.

The election decision will be forwarded to your office in due course.

Inquiries:

Any inquiries relating to this are to be directed to: orgs@fwc.gov.au.

29 AUGUST 2014

MOUTEVELIS, Michael

From: Ceo AHA [ceo@aha.org.au]
Sent: Friday, 29 August 2014 10:17 AM
To: Orgs
Subject: NAD election notification
Attachments: NAD election notification 28 Aug 2014.pdf

Dear Sir,
Please see the attached

Thanks

**STEPHEN FERGUSON
NATIONAL CEO
AUSTRALIAN HOTELS ASSOCIATION**



+61 412 654 000

www.aha.org.au

24 Brisbane Ave, Barton ACT, 2600

P.O. Box 4286, Manuka, ACT, 2603

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Fair Work (Registered Organisations) Act 2009
Section 189(1);
Fair Work (Registered Organisations) Regulations 2009
Regulation 138

Prescribed Information
Elections in Australian Hotels Association
Officers of the National Accommodation Hotels Division for 2014

a) Name of each office for which election is required:

- President
- Vice President
- Secretary
- Three (3) additional Delegates to the National Board

b) Reasons for election:

Elections for these offices are required to be conducted annually under the Rules of the organisation and the terms of office are due to expire.

It is intended that these elections will be conducted at the meeting of the Committee of the National Accommodation Hotel Division in Melbourne at the Victorian AHA Offices 1 Little Collins Street Melbourne on Monday 3 November 2014.

c) The number of offices to be filled:

One for each of the offices of President, Vice-President and Secretary, plus three additional Delegates to the National Board.

d) Date and time of the commencement and expiration of period for calling of nominations:

The Returning Officer shall call for nominations in the presence of all members at the time designated in paragraph (b).

e) The day provided in the Rules of the Organisation as the day on which the roll of voters is to close:

Not applicable as the second stage of a collegiate election.

f) Method of election:

Collegiate voting system.

The information referred to in this statement is lodged in accordance with Section 189(1) of the Act.
I am an officer of the Organisation authorised to make this statement.



Mark Sproat
President – National Accommodation Hotels Division
Date: 28 August 2014

MOUTEVELIS, Michael

From: Ceo AHA [ceo@aha.org.au]
Sent: Friday, 29 August 2014 10:16 AM
To: Orgs
Subject: NAD letter to FWC re late elections
Attachments: NAD letter to FWC re late elections 28 Aug 2014.pdf

Dear Sir,
Please see the attached

Thanks

STEPHEN FERGUSON
NATIONAL CEO
AUSTRALIAN HOTELS ASSOCIATION



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24 Brisbane Ave, Barton ACT, 2600

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AUSTRALIAN HOTELS ASSOCIATION

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Web: www.aha.org.au

28 August 2014

General Manager
Fair Work Commission
GPO Box 1994
Melbourne Vic 3001

Dear Sir,

Elections National Accommodation Division

I refer to the letter from Robert Pfeiffer (Senior Adviser, Regulatory Branch) dated 26 August 2014 in regard to elections for the National Accommodation Hotels Division (NAD). I have **attached** an election notification for Monday 3 November 2014 in Melbourne.

The letter observes that the rules of the organisation do not provide an express provision for when nominations open for the annual election, but that historically the elections had been held in December each year. The letter also notes the last election was 7 December 2012. The letter also requires application to the General Manager for a later date (extension of time) including reasons as set out below.

- In December 2013 and January 2014, there was a change in CEO and senior management at the Australian Hotels Association.
- The new CEO had been of the mistaken belief that elections had been held in December 2013

I look forward to your favourable decision to provide an extension as requested. I apologise for any inconvenience.

MARK SPROAT
CHAIRMAN



26 August 2014

Mr Colin Waller
Secretary/Treasurer
Australian Hotels Association
Sent by email: aha@aha.org.au

Dear Mr Waller,

Election for offices in the National Accommodation Hotels Division [E2013/317]

I refer to a courtesy letter sent to Mr Des Crowe, Chief Executive Officer, of the Australian Hotels Association (the organisation) on 4 December 2013.

The letter advised Mr Crowe that, according to the rules of the organisation, the annual election for office positions within the National Accommodation Hotels Division (NAHD) was imminent and that it was timely for the organisation to lodge an election notification (also known as the prescribed information) with the Fair Work Commission (the FWC).

A perusal of our records discloses that an election notification was never lodged by the organisation. While the rules of the organisation do not provide an express provision for when nominations open for the annual election, historically the organisation has lodged an election notification in December each year for the NAHD positions including positions of Delegates of the NAHD to the National Board.

The last election notification for NAHD positions was received by FWA (predecessor in name to the FWC) on 7 December 2012. Therefore the notification is well overdue.

Section 189(2) of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) and Regulation 138(3) of the *Fair Work (Registered Organisations) Regulations 2009* (the Regulations) requires an organisation to lodge its election notification **two (2) months** before nominations open for the election. As stated, the relevant election notification should have been lodged with the FWC by now. That being the case, the organisation will be required to apply to the General Manager for a later date (an extension of time) when the election notification is lodged. Such request will need to set out the reason why the organisation was unable to comply with the timeline requirements.

If you have a different interpretation of the month and year for the commencement of the NAHD elections under your rules please let me know, otherwise, the election notification should contain details of the election as required by regulation 138(1) of the Regulations, and should include any subsequent elections such as an election for offices under the collegiate electoral system. A sample of an election notification can be found on our website at www.fwc.gov.au/sample_documents. The election notifications can be emailed to orgs@fwc.gov.au

It should be noted section 189(2) of the RO Act is a civil penalty provision. Failure to comply may result in legal proceedings being issued with the possibility of a pecuniary penalty being imposed upon an officer and/or your organisation. Accordingly, please provide your extension of time application under section 189(2) of the RO Act by Friday, 12 September 2014. Please note, should your organisation fail to provide a response by this date, this matter will be referred to the General Manager for consideration of making inquiries into your organisation's non-compliance under section 330(2).

Should you seek any clarification in relation to the above, please contact me on (03) 8661 7936 or via email at robert.pfeiffer@fwc.gov.au.

Yours sincerely,



Robert Pfeiffer
Senior Adviser
Regulatory Compliance Branch



4 December 2013

Mr Des Crowe
Chief Executive Officer
Australian Hotels Association
Sent by email: aha@aha.org.au

Dear Mr Crowe,

Courtesy Letter - Election for offices [E2013/317]

A perusal of the rules of the abovenamed organisation discloses that an election for offices within the organisation is due to commence shortly, where nominations for the election appear to open in the month of March next year.

This letter relates to the election for office positions within the National Accommodation Hotels Division (NAHD) of your organisation. I am aware that an election for National Office bearer positions are due later in 2014 but that election is not encompassed in this advice. This letter is sent to you as a courtesy reminder of your organisation's obligation to lodge information (known as the 'prescribed information') about the NAHD election pursuant to s.189(1) of the *Fair Work (Registered Organisations) Act 2009* (the 'Act').

If you have a different interpretation of the month and year for the commencement of the election under your rules please let me know, otherwise, the prescribed information should contain details of the election as required by regulation 138(1) of the *Fair Work (Registered Organisations) Regulations 2009* (the 'Regulations'), and should include any subsequent elections such as an election for offices under the collegiate electoral system, if that is relevant. A sample of the prescribed information can be found on our website at [www.fwc.gov.au/sample documents](http://www.fwc.gov.au/sample_documents).

Section 189(2) of the Act and regulation 138(3) of the Regulations require the prescribed information to be lodged with the Fair Work Commission **two (2) months** before nominations open for the election. The prescribed information can be emailed to orgs@fwc.gov.au. Should your organisation believe that it will be unable to comply with the prescribed day as set out in the Regulations, it will need to apply to the General Manager for a later date. Such request will need to set out in detail the reason why your organisation is unable to comply with the requirement. While the General Manager will consider such an application, there is no assurance that consent to a later day will be allowed.

It should be noted Section 189(2) is a civil penalty provision. Failure to comply may result in legal proceedings being issued with the possibility of a pecuniary penalty being imposed upon an officer and/or your organisation.

Should you seek any clarification in relation to the above, please contact me on (03) 8661 7936 or via email at robert.pfeiffer@fwc.gov.au.

Yours sincerely,

Robert Pfeiffer
Senior Adviser
Regulatory Compliance Branch