

YOUR REF:

OUR REF: PJP:21636

CONTACT:

PARTNER: Peter Punch

Direct Line: 9291 7177
Email: ppunch@codea.com.au



**CARROLL
& O'DEA**
SOLICITORS

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Deputy Industrial Registrar
National Organisations
Industrial Relations Commission
"Terrace Towers"
80 William Street
EAST SYDNEY NSW 2010

1 April, 2003

Dear Sir/Madam

**RE: ELECTION IN ACCOMMODATION HOTELS DIVISION OF THE
AUSTRALIAN HOTELS ASSOCIATION, NSW BRANCH - SECTION
214(1), WORKPLACE RELATIONS ACT 1996 (GTH)**

We act for the Australian Hotels Association, New South Wales Branch.

We write to you concerning the question as to whether our client needs to make application pursuant to the above mentioned provisions for the Industrial Registrar to arrange an election in respect of positions to be filled in the National Accommodation Hotels Division.

We refer to the Rules of the Australian Hotels Association (the Federal AHA) registered under the Act. Rule 42 of those Rules establishes a "National Accommodation Hotels Division" and makes provision for each Branch of the Federal AHA to have its own "Accommodation Hotels Division". (There is such a state Division in New South Wales.) Sub Rule (c) of Rule 42 makes provision for State Accommodation Hotels Divisions to elect representatives to the "National Accommodation Hotels Division" in the manner provided for in that Rule (which appears to be a secret postal ballot of all members of the relevant Division).

Recently in Brisbane the National Accommodation Hotels Division met and it was suggested at that meeting that the representatives from New South Wales were not



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BELINDA FISHER, DIP., LAW.
THERESA NEILSON, DIP., LAW.

PJP/ KXJ/1433411



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duly elected as they had not been elected in the manner provided for by Rule 42. Apparently it was also suggested that representatives from that State should be elected pursuant to the Act (ie through an election conducted by the Australian Electoral Commission).

We are instructed that elections under the Act have not previously been required for representatives of the State Accommodation Hotels Division in the National Accommodation Hotels Division.

For your ease of reference we also **enclose** a copy of the said Rule 42 of the Federal Rules.

We draw your attention to Sub Rule (f) of Rule 42. In light of that provision, the definition of "office" in Section 4(1) of the Act, and case law authorities including *APMEPKIU v Fohmsbee* (1998) 81 I.R.120, we have some doubt as to whether the positions in question are subject to election under the Act. That is, we are not at all sure that the Divisions in question here are "branches" in the relevant sense and, even if they are, we have some doubt that the persons elected to the National Accommodation Hotels Division hold an "office" as defined.

Our client has asked us to take up this matter for it. Having examined the relevant Rules and discussed the matter informally with Mr Roy Hill, AEC returning officer for elections within our client, we write now to advise that, if your office believes an election under the Act is required for these positions, then we are instructed to make application for such election to be conducted and ask that this letter be regarded as that form of application.

We also **enclose** a form providing the prescribed information pursuant to Regulation 61. If you confirm an election is required we shall have the within form executed by the appropriate officer and forwarded to you

If you wish to discuss this matter with us you are welcome to contact our Mr Punch.

Yours faithfully
Carroll & O'Dea
Per:
Encl

If the member charged does not attend such meeting, the charge may be heard in his absence.

If the Committee find the charge proven and do not accept the explanation of justification (if any) of the member charged, it may fine such member a sum not exceeding \$200.00 (two hundred dollars), suspend him from membership for a period not exceeding two (2) years or expel him from membership.

Any member expelled from membership as the result of any such charge may by notice in writing delivered or posted to each his Branch Secretary and the National Secretary within fourteen (14) days of being notified of such expulsion appeal to National Executive.

National Executive shall consider such appeal at its then next meeting and after hearing or reading any submission the expelled member may make, may allow the appeal, confirm the expulsion or may in lieu of such expulsion suspend the member from membership for a period not exceeding two (2) years or fine such member a sum not exceeding \$400.00 (four hundred dollars).

If a member brings a charge against another which the Branch Committee of Management determines to be frivolous or vexatious, he may be fined by the Branch Committee of Management a sum not exceeding \$100.00 (one hundred dollars).

41 - SPECIAL ALTERATIONS IN RULES

Notwithstanding anything elsewhere contained in these Rules, the Rules may be amended, added to or a Rule or Rules may be rescinded for the purpose of meeting any requirement of the Industrial Registrar where in the opinion of the Industrial Registrar such alterations are necessary to conform with the Australian Industrial Relations Act 1988 and for that purpose only by the National President and the National Secretary on the advice of Counsel.

42 - ACCOMODATION HOTELS DIVISION

- (a) Notwithstanding anything elsewhere contained in these Rules, each State Branch of the Association may constitute from among its members a Accomodation Hotels Division in which the Division in turn may be comprised of one or more Accommodation Sub-Divisions organised on a geographic basis as determined by that Branch.
- (b) Such Division shall consist of such members as are financial members of the Australian Hotels Association resident in the State or Territory in which the Branch has constituted the same, having bedrooms available to the public in such number as the Branch may from time to time determine and which such members in writing express their desire to become members of the Division.
- (c) Each Division shall elect annually from their number in the manner provided by rule 16 for the election of the officers of the National Board by postal ballot, mutatis mutandis such number of representatives as appear thereunder to the body to be known as the National Accommodation Hotels Division -

The New South Wales Accommodation Hotels Division:
2 representatives;

The Victoria Accommodation Hotels Division: 2 representatives



The Queensland Accommodation Hotels Division: 2 representatives;

The South Australia Accommodation Hotels Division: 1 representative;

The Western Australia Accommodation Hotels Division: 1 representative;

The Tasmania Accommodation Hotels Division: 1 representative;

The Australian Capital Territory Accommodation Hotels Division: 1 representative, when that Branch Division is officially established in accordance with the rules and the requirements of the Industrial Registrar;

The Northern Territory Accommodation Hotels Division representative, 1 representative, when that Branch Division is officially established in accordance with the rules and the requirements of the Industrial Registrar;

or such other number of representatives as the National Board may at the request of the National Accommodation Hotels Division or of its own motion from time to time determine. Notwithstanding anything elsewhere contained in these rules or the rules of the Queensland Branch, the representative/s of the Queensland Accommodation Hotels Division shall be elected from and by the membership of the Accommodation Hotels Division of the respective sub-division which they represent.

(d) When such National Accommodation Hotels Division is constituted, it shall -

(i) meet at least once a year at such time and place as it determines or if it does not so determine as its President appoints and at such other times and places as it or its President from time to time determines; and

(ii) at its annual meeting in the manner provided by rule 15 mutates mutandis elect its officers who shall consist of a President, Vice-President and a Secretary together with representatives to the National Board who shall not exceed one representative from each properly constituted Branch Accommodation Division.

The President of the Division shall be appointed ex-officio to the National Board and in addition one member from each properly constituted Branch Accommodation Division with the exception of the Branch Division of which the President is a member, shall be elected.

(e) The expenses of a representative from a division to the National Accommodation Hotels Division shall be borne by the Division he represents and the expenses of the representatives of the National Accommodation Hotels Division to the National Board shall be borne by the State Branch of which the representative is a member.

(f) Each Accommodation Hotels Division shall have the right to recommend to the Committee of Management of its Branch such matters and things concerning accommodation hotels as it determines and the National Accommodation Hotels Division may make recommendations concerning similar matters and things to the National Board.

- (g) Each State or Territory Division and the National Accomodation Division may make and from time to time alter its own Rules for the conduct of its business, the number and description of its officers and committees, payments made to it by its members and such other matters as it determines but such Rules shall be subject to and shall not conflict with these Rules nor in the case of a State Division with the Rules of its Branch. Provided that any rule or alteration of rule of the National Accomodation Hotels Division relating to payments to be made to it by its members shall, before becoming effective, be submitted to the National Executive for approval.
- (h) No such Division, including the National Division, shall be entitled to initiate any industrial dispute or attempt to conduct or negotiate in any such dispute and in the event of a dispute arising concerning its members or any of them shall forthwith report the same to the appropriate Branch General Secretary or to the National Secretary by letter or telegram.
- (i) The duties of the President, Vice-President and Secretary shall be as prescribed by rule 20, rule 21 and rule 23 respectively mutatis mutandis.
- (j) Where a casual vacancy occurs in the office of a representative to the National Board such vacancy may be filled by appointment by the relevant Branch Committee.

43 - PLEBISCITE

- (a) The National Board shall have the power to take a plebiscite of members of the Association on any matter.
- (b) The National Board shall take a plebiscite of members of the Association upon receipt of a petition signed by not more than 5% of members of the Association or two hundred and fifty (250), whichever is the least requiring a plebiscite, and properly specifying the issue or issues to be determined.
- (c) The Plebiscite shall be conducted by the Returning Officer by postal ballot of all financial members of the Association and the decision of the Plebiscite shall be binding on the National Board.

44 - ABSENTEE VOTING

If a member who is entitled to vote at any election held under these rules will be absent from his usual address during a ballot such member may apply to the Returning Officer for a ballot paper to be sent to him at an address which he nominates.

45 - SPECIAL RULE FOR BRANCHES WITH NO BRANCH RULES

Notwithstanding Rules 8, 39 and 41, the National Board may create and adopt rules for the management and administration of the relevant branch, provided that, this Rule shall cease to operate upon the certification of Rules for the relevant branch.

For the purposes of this Rule:

"Certification of Rules" shall mean the first complete set of Rules of the relevant branch that comply with Sub-rule 8(b).

"Relevant Branch" shall mean any branch which at the date of certification of this Rule has not adopted Rules of its own in accordance with Sub-rule 8(b).

Workplace Relations Act 1996 (Cth)

Section 214(1); Regulation 61



Prescribed Information

Election in Australian Hotels Association, New South Wales Branch

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

Representative of the Australian Hotels Association, NSW Branch in the Accommodation Hotels Division of the National Organisation.

(b) Reasons for election:

Election is required to be conducted annually (see Rule 42 of the Rules) of the Australian Hotels Association.

(c) The number of offices to be filled:

Two(2)

(d) The name of the branch to which the election relates:

The Australian Hotels Association, New South Wales Branch

(e) Date and time of commencement and expiration of period for calling of nominations:

See Rule 42 and Rule 16 of the Rules of the Australian Hotels Association.

(f) Method of election:

Direct voting system

Secret postal ballot

The information referred to in this statement is lodged in accordance with Section 214(1) of the Act.

I am an officer of the Branch authorised to make this statement.

.....
Secretary/Treasurer



AUSTRALIAN INDUSTRIAL REGISTRY

Level 35, Nauru House
80 Collins Street, Melbourne, VIC 3000
GPO Box 1994S, Melbourne, VIC 3001
Telephone: (03) 8661 7817
Fax: (03) 9654 6672

Mr Peter Punch
Carroll & O'Dea Solicitors
Level 19, St James Centre
111 Elizabeth Street
SYDNEY 2000

Dear Mr Punch,

**Re: Australian Hotels Association - New South Wales Branch
Accommodation Hotels Division**

I refer to your question concerning whether your client, the Australian Hotels Association - New South Wales Branch, needs to make application under subsection 214(1) of the *Workplace Relations Act 1996* (the Act) in respect of positions to be filled in the National Accommodation Hotels Division.

Subrules 42 (c) and (d)(ii) of the National rules provide, in part, that each Accommodation Hotels Division shall elect annually from their number representatives to the National Accommodation Hotels Division. Once elected, the National Accommodation Hotels Division elects its officers and one representative from each Branch Accommodation Division to the National Board.

As the National Board is the highest deliberative body of the organisation, all positions on that body are 'offices' as defined under section 4 of the Act. Where no application is made for the conduct of an election for representatives to the National Accommodation Hotels Division from the Branch Accommodation Division it could be seen as disenfranchising persons of that Division to a position on the National Board of the organisation.

Historically, lodgement of the prescribed information in relation to elections for representatives of the New South Wales Accommodation Hotels Division to the National Accommodation Hotels Division Branch were made regularly until 5 June 1998, and were made separately to other positions for election within the New South Wales Branch. The onus to lodge in the Registry the prescribed information in relation to elections rest with the organisation or branch concerned.

Appropriate notification would therefore be expected pursuant to subsection 214(1) of the Act in relation to an election for representatives of the relevant Accommodation Hotels Division to the National Accommodation Hotels Division.

Should you wish to discuss this letter, please contact me on (03) 8661 7817 or email robert.pfeiffer@air.gov.au

Yours sincerely,

Robert Pfeiffer
Statutory Services Branch

8 April 2003

YOUR REF:

OUR REF: PJP:21636

CONTACT:

PARTNER: Peter Punch

Direct Line: 9291 7177
Email: ppunch@codea.com.au

CARROLL & O'DEA LAWYERS

10 April 2003

Mr Robert Pfeiffer
Statutory Services Branch
Australian Industrial Registry
GPO Box 1994S
MELBOURNE VIC 3001

Dear Mr Pfeiffer

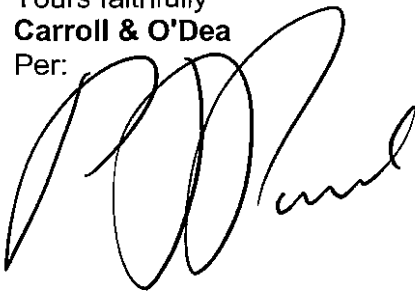
AUSTRALIAN HOTELS ASSOCIATION - NEW SOUTH WALES BRANCH - ACCOMMODATION HOTELS DIVISION

Thank you for your letter of 8 April last responding promptly to our letter to the Registry of 1 April 2003.

Bearing in mind the contents of your letter, we shall be recommending to our client that they make application to the Industrial Registrar pursuant to Section 214(1) of the Act, and that formal application will be lodged with you in the very near future.

Thank you for your attention to this matter.

Yours faithfully
Carroll & O'Dea
Per:



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BELINDA FISHER, D.I.P., LAW.

Consultants

M. CONCANNON, LL.M.
MICK SHEILS



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CARROLL & O'DEA LAWYERS

16 April 2003

Mr Robert Pfeiffer
Statutory Services Branch
Australian Industrial Registry
GPO Box 1994S
MELBOURNE VIC 3001

Dear Mr Pfeiffer

**AUSTRALIAN HOTELS ASSOCIATION - NEW SOUTH WALES BRANCH -
ACCOMMODATION HOTELS DIVISION**

We refer to our letter of 1 April last to the Deputy Industrial Registrar and your response of 8 April last.

Please now find **enclosed** form of Prescribed Information pursuant to Regulation 61 signed by the Secretary/Treasurer of our client Branch, Mr Bruce Wood.

Would you please treat our letter to the Deputy Industrial Registrar of 1 April 2003 last as the formal application on behalf of our client Branch pursuant to Section 214(1) of the Workplace Relations Act 1996 (Cth) and proceed accordingly.

If you have any enquiries about this matter, you are welcome to contact our Mr Punch.

Thank you in anticipation for your assistance herein.

Yours faithfully
Carroll & O'Dea
Per:

Encl

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Workplace Relations Act 1996 (Cth)

Section 214(1); Regulation 61

Prescribed Information

E2003/73

Election in Australian Hotels Association, New South Wales Branch

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

Representative of the Australian Hotels Association, NSW Branch in the Accommodation Hotels Division of the National Organisation.

- (b) Reasons for election:

Election is required to be conducted annually (see Rule 42 of the Rules) of the Australian Hotels Association.

- (c) The number of offices to be filled:

Two(2)

- (d) The name of the branch to which the election relates:

The Australian Hotels Association, New South Wales Branch

- (e) Date and time of commencement and expiration of period for calling of nominations:

See Rule 42 and Rule 16 of the Rules of the Australian Hotels Association.

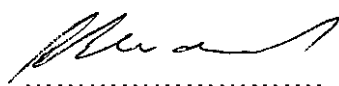
- (f) Method of election:

Direct voting system

Secret postal ballot

The information referred to in this statement is lodged in accordance with Section 214(1) of the Act.

I am an officer of the Branch authorised to make this statement.



Secretary/Treasurer

16/04/03

PFEIFFER, Robert

From: PFEIFFER, Robert
Sent: Wednesday, 23 April 2003 11:40 AM
To: 'industrial.elections@aec.gov.au'
Subject: Election notice (E2003/73) AHA - NSW Branch

As with most AHA - National Accommodation Hotels Division reps elections from various Branches, all appear to be running late. The NSW Branch is no exception.



AHA - NSW.tif

Transmission of Documents initiated in CMS by RP on 24/4/2003 at 2:39PM

Address	Dispatch Method	Document Title
(02) 9281 1857	Fax	E2003/73 - TO Woods,Mr Bruce, Australian Hotels Association-New South Wales Branch re Print filed on 24/4/2003

Please note: You should refer to your Outlook account for details of the success or failure of the transmission of each document.

PFEIFFER, Robert

From: PFEIFFER, Robert
Sent: Thursday, 24 April 2003 2:16 PM
To: 'industrial.elections@aec.gov.au'
Subject: Election Decision (E2003/73) AHA - NSW Branch

A copy of the Registrar's decision and rules are attached.



AHA - NSW
1D)(E2003-73).x



AHA - 024nfd
(12-4-99).doc



AHA 024n-nsw
[4-9-02].doc

WORKPLACE RELATIONS ACT 1996
s.214 arrangement for conduct of election

AUSTRALIAN HOTELS ASSOCIATION
(E2003/73)

D. STAUNTON
DEPUTY INDUSTRIAL REGISTRAR

MELBOURNE, 24 APRIL 2003

DECISION

On 23 April 2003, the New South Wales Branch of the abovenamed organisation lodged in the Industrial Registry prescribed information in relation to an election for the following offices:

Representatives of the New South Wales Accommodation Hotels Division to the National Accommodation Hotels Division (2)

I am satisfied that an election is required to be held under the rules of the organisation and, under subsection 214(2) of the Workplace Relations Act 1996, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



**Australian Hotels Association
New South Wales Branch, Accommodation Hotels
Division**

DECLARATION OF RESULTS FOR CONTESTED OFFICES

Results of the election for the following offices conducted in accordance with Schedule 1B of the Workplace Relations Act 1996 and the rules of the organisation.

E No. 73 of 2003

Ballot papers issued	87
Duplicate ballot papers issued	0
TOTAL BALLOT PAPERS ISSUED	87
Ballot papers / envelopes returned for scrutiny	35
Less ballot papers / envelopes rejected at	0
TOTAL BALLOT PAPERS ADMITTED TO	35
Percentage of ballot papers returned to number	40%
Ballot papers returned as unclaimed mail	1
Ballot papers not returned	51

Representatives of the New South Wales Branch, Accommodation Hotels Division to the National Accommodation Hotels Division (2)

<u>Candidates</u>	<u>Votes</u>
CORNE, Nigel	26
GRIFFIN, Patrick Langley	22
BARBER, Craig Hedley Buxton	17
Formal ballot papers	35
Informal ballot papers	0

I declare Nigel Corne and Patrick Langley Griffin elected.

Roy Hill
Returning Officer
Australian Electoral Commission

14 July 2003