

Industrial Relations Act 1988

s.211 application for an organisation to conduct its elections

AUSTRALIAN EARTHMOVERS AND ROAD CONTRACTORS FEDERATION

(R No. 30103 of 1994)

M.KELLY
INDUSTRIAL REGISTRAR

MELBOURNE
8 SEPTEMBER 1994

DECISION

This matter concerns an application by the committee of management of the Western Australian Branch of the Australian Earthmovers and Road Contractors Federation for an exemption from the provisions of subsection 210(1) of the Industrial Relations Act 1988 (the Act).

Subsection 210(1) reads:

" Each election for an office in an organisation or branch of an organisation shall be conducted by the Australian Electoral Commission."

Australian Earthmovers and Road Contractors Federation is an organisation registered under the Act.

An application pursuant to section 211 of the Act was lodged in the Registry on 12 April 1994.

This application met the requirements of section 211 of the Act and regulation 55 of the Industrial Relations Regulations (the Regulations), in that:

- . the application was in writing signed by a member of the committee of management of the branch;
- . the application stated the grounds upon which the exemption was being sought; and
- . the application was accompanied by a statutory declaration by a member of the committee of management declaring that:
 - the committee of management had resolved to make the application, and

- the committee of management had notified the members of the branch - by a means prescribed in subregulation 55(2) of the Regulations - of the making of the resolution.

Notices setting out details of the application were published in accordance with subsection 211(4) of the Act and regulation 56 of the Regulations for the purpose of bringing the notice to the attention of members of the organisation.

No objections were received to the application by any member of the organisation.

As required by subsection 212(2) of the Act, I heard this application in Perth on 20 July 1994.

Under subsection 213(1) of the Act, I may exempt a branch of an organisation from subsection 210(1) of the Act if I am satisfied:

- . that the rules of the organisation or branch comply with the requirements of the Act relating to the conduct of elections; and
- . that, if the branch is exempted from subsection 210(1) of the Act, the elections for the branch will be conducted under the rules of the organisation and the Act; and
- . that, if the branch is exempted from subsection 210(1) of the Act, the elections for the branch will be conducted in a manner that will afford members entitled to vote at such elections an adequate opportunity of voting without intimidation.

In proceedings on 20 July, Mr M Morris represented the applicant. Mr Morris submitted that the rules of the organisation comply with the requirements of the Act relating to the conduct of elections. Mr Morris confirmed the application of various rules in connection with the election of office-bearers of the branch.

The rules of the Organisation provide for election by a direct voting system.

I am satisfied that the following rules of the organisation meet the requirements of the Act in relation to the conduct of elections. In addition, Mr Morris, by way of confirmation, drew my attention to some, if not all, of the rules set out below:

- . rules 25(a), 46(a) and 46(e) which satisfy the requirement of subparagraph 197(1)(a)(i) of the Act - that the rules provide for election by a direct voting system;
- . rules 27(a) and 45(a) which satisfies the requirement of paragraph 197(1)(b) of the Act - that the rules provide for the conduct of each election by a returning officer who is not an office holder or employee of the organisation;
- . rules 27(d), 28A(c), 45(b) and 46(a) which satisfy the requirements of paragraph 197(1)(c) of the Act concerning provisions dealing with defective nominations;
- . rules 28(a), 46(a)(i)-(iii) and 46A(b) which satisfy the requirements of subparagraph 197(1)(d)(i) concerning the manner in which persons may become candidates for election;
- . rules 27, 45(b) and 46A(b) which satisfy the requirement of subparagraph 197(1)(d)(ii) of the Act concerning the duties of returning officers;
- . rules 27(k), 28(b), 28(c)(xi), 46(d) and 46(e) which satisfy the requirements of subparagraph 197(1)(d)(iii) of the Act concerning the declaration of the results of an election;
- . rules 28(c)(v), 46(a), 46(e)(v) and 46A(b) which satisfy the requirement of subsection 197(1)(e)(i) of the Act - that, where a ballot is required the rules provide for absent voting;
- . rules 28 and 46 which satisfy the requirements of subparagraph 197(1)(e)(iii) of the Act which refers to the conduct of the ballot;
- . rules 27(e), 28A(f) and 45(b) which satisfy the requirement of subparagraph 197(1)(e)(iii) of the Act concerning the appointment, conduct and duties of scrutineers;

- . general provisions in the rules which satisfy the requirements of paragraph 197(1)(f) of the Act - that the rules shall ensure, as far as practicable, that no irregularities can occur in relation to an election;
- . rules 28(c)(iii)&(vii), 46(e)(ii) and 46A(b) which satisfy the requirements of paragraph 198(1) of the Act for the ballot to be a secret postal ballot;
- . rules 28(a), 46(a)(i) and 46A(a) which satisfy the requirements of section 199 of the Act - that the rules provide for terms of office for office-bearers; and
- . rules 29, 46(h) and 46A(e) which satisfy the provisions of section 200 of the Act - that the rules provide for the filling of casual vacancies of office-bearers.

I am satisfied, on the material before me, that the rules of the organisation concerning elections comply with the requirements of the Act relating to the conduct of elections and meet the standard set out in subsection 213(1) of the Act for the granting of an exemption.

I turn now to the requirement in subsection 213(1) of the Act that I be satisfied that, if an exemption is granted, elections will be conducted under the rules of the organisation and the Act.

In relation to this matter, I was assisted by the submissions of Mr Morris concerning the appointment of the returning officer. It appears that the returning officer has the required independence from the organisation and the material before me did not disclose any aspects which would lead me to form doubts that the standards required in the Act would be applied. Accordingly, I am satisfied on this aspect for the purposes of subsection 213(1) of the Act.

Finally, I turn to the requirement in subsection 213(1) of the Act that I be satisfied that, if an exemption is granted, elections will be conducted in a manner that will afford members entitled to vote an adequate opportunity of voting without intimidation.

Mr Morris confirmed that there had never been any official inquiries concerning any disputed election for office-bearers of the organisation. It was further submitted that no internal investigations concerning elections, the conduct of elections or the outcome of elections had been raised within the Federation.

On the basis of the material put before me, particularly that there have been no allegations of ballot irregularities concerning intimidation of voters, and in the absence of any objections to the application, I have no reason to form doubts that the organisation will conduct elections in a manner that will afford members entitled to vote an adequate opportunity of voting without intimidation.

Accordingly, I am satisfied on this aspect for the purposes of subsection 213(1) of the Act.

In view of the foregoing, I have decided to grant an exemption, as sought, from the provisions of subsection 210(1) of the Act in relation to elections for the following offices in the Western Australian Branch of the Australian Earthmovers and Road Contractors Federation:

- . Branch President
- . Branch Vice President
- . Branch Treasurer
- . Branch Committee Members
- . National Councillors
- . Branch Executive Director

A certificate to this effect was issued separately on 20 July 1994.

M. Kelly
INDUSTRIAL REGISTRAR



INDUSTRIAL RELATIONS ACT 1988

MR IAIN STEWART

MR M.D. KELLY, Industrial Registrar

R No 30103 of 1994

**APPLICATION BY THE AUSTRALIAN
EARTHMOVERS AND ROAD CONTRACTORS
FEDERATION FOR AN EXEMPTION UNDER
SECTION 211 OF THE ACT WITH RESPECT
TO THE WESTERN AUSTRALIAN BRANCH**

PERTH

2.15 PM, WEDNESDAY, 20 JULY 1994

with the requirements of the act. Now that will actually lead us to looking at whether or not the requirements of section 197, 198 and 199 and 200 are actually achieved within your rules. You would be aware that your rules were amended under section 203 not long ago.

5 MR MORRIS: Yes, quite recently.

THE REGISTRAR: Are you in a position to actually indicate those rules which provide for, for example, section 197, the election by direct voting system, for example?

MR MORRIS: Yes, Mr Kelly, I have a copy of our rules with me.

10 THE REGISTRAR: Right.

MR MORRIS: I can refer to the relevant clauses.

THE REGISTRAR: If you could that would be most helpful.

MR MORRIS: Okay. Now rule 46, branch elections - I will just find the relevant part.

15 THE REGISTRAR: That is all right. I think you'll find at 46(a)(i) that it is clear that it will be a direct voting system and if you look at (b) sub (e) again it's clear that there will be a secret ballot and that that will be a secret postal ballot.

20 MR MORRIS: My apologies, Mr Kelly; for some reason I can't find it. But the rules do allow that - normally it's a direct voting system.

THE REGISTRAR: It's a direct voting system, right.

MR MORRIS: Where the number of nominations may exceed the positions we then, as you mentioned in rule 46(b)(e), have a secret ballot run by the returning officer by mail.

25 THE REGISTRAR: All right. Perhaps if we move on to the returning officer and the provisions in relation to that particular appointment where your rules provide that it will not be an office holder or employee. I think that's rule 27.

30 MR MORRIS: Yes, rule 27; also rule 45, branch returning officers, which refers to rule 27 clearly states that the branch returning officer who is appointed at the annual general meeting shall not be an office-holder or an employee of the federation.

5 extra nominations for the same position. In a case where possibly a person may be nominated for president or vice-president or treasurer as well as some other position, well the nominations lapse after those positions of the three prime candidates, which I'll call president, vice-president and honorary treasurer.

If he finds a nomination that is not correct he is to contact the member and get them to make an appropriate amendment; or, if need be, arrange for a secret ballot - a postal ballot.

10 THE REGISTRAR: In regard to declaring the result of the election, I notice from my own research that again where rules 28, 27 and 46 make various provisions in relation to the declaration of results.

MR MORRIS: Yes. If the returning officer finds that the number of nominations equals the number of positions available he'll declare the election. If that is not the case he will arrange for a ballot to take place.

15 THE REGISTRAR: The next area that I am required to be satisfied about is the absent voting provisions and again it appears we're dealing with rules 28 and 46 again and I think in the case of rule 28 - - -

MR MORRIS: If I may refer to rule 46(e) subsection (v):

20 *Any financial member who expects to be absent from his or her usual place on making written application to the returning officer at each branch.*

We would expect that once the notice of elections has been made that he would advise the returning officer that he will be at another location than he normally is.

25 THE REGISTRAR: The appointment of scrutineers and their conduct and duties - if you might just point me to where - I think it is 27 and 45 again.

MR MORRIS: The rules allow for a - - -

30 THE REGISTRAR: Yes, at 27(e), I think you will find that there is the provision for appointment of scrutineers and their role.

MR MORRIS: That's correct, yes.

THE REGISTRAR: And the last provision of section 197 that we need to look at is to ensure that where, as far as possible, no irregularities occur and I think we might find that in 27(c).

instance, how do you go about that?

MR MORRIS: Well, we selected somebody that's been known and affiliated with the organisation for some period of time and somebody who is well known, I guess, for their business acumen and their - sorry, I've lost the word - their prestige, for want of a better word.

THE REGISTRAR: Right.

MR MORRIS: And we approach them and ask them to do that job for us so they can stand alone.

THE REGISTRAR: And presumably, according to your own rules, that won't be a current employee or holder of an office, obviously?

MR MORRIS: No, no. Our rules don't allow that.

THE REGISTRAR: And you would do such things as make available the full set of your current rules to that person?

MR MORRIS: Yes, yes.

[2.30pm]

THE REGISTRAR: Because I mean the importance of then those rules being applied fairly strictly - - -

MR MORRIS: Yes, it would be my intention to involve that person with the election process from the start.

THE REGISTRAR: The last matter that I'm required to be satisfied about, Mr Morris, is that the election - or in this case, the elections will be conducted in a manner that will afford members entitled to vote an adequate opportunity of voting without intimidation. I take it from what you said at the very beginning you've never had any official inquiries or internal investigations into the conduct of elections up to now?

MR MORRIS: No, we haven't to my - in the time I've been with the federation and from my inquiries before making this submission that hasn't occurred. The nomination forms are usually mailed to each member so that they receive that form on their own volition and make their own decisions.

THE REGISTRAR: All right. Is there anything else that you'd like to put to me in relation to the application?

MR MORRIS: Just that we feel that - the branch in general feels that - because there has sometimes there's been some confusion over where to

Industrial Relations Act 1988
s.211 application for an organisation to conduct its elections


AUSTRALIAN EARTHMOVERS AND ROAD CONTRACTORS FEDERATION

(R No. 30103 of 1994)

I hereby certify that under subsection 213(1) of the Industrial Relations Act 1988, I have granted to the Western Australian Branch of the abovenamed organisation an exemption from the requirements of subsection 210(1) of the Act in relation to the following offices:

- . Branch President
- . Branch Vice President
- . Branch Honorary Treasurer
- . Branch Committee Member (8)
- . National Councillors (2)
- . Branch Executive Director

Mike Kelly
M. Kelly
INDUSTRIAL REGISTRAR
WESTERN AUSTRALIA
REGISTRY



20 July 1990



AUSTRALIAN INDUSTRIAL REGISTRY

ref: hw

PRINCIPAL REGISTRY

Mr M Morris
Branch Executive Director
Australian Earthmovers and Road Contractors Federation
Western Australian Branch
P.O. Box 875
VICTORIA PARK 6100

5 July 1994

Dear Mr Morris

re: **R30103 - Application for an exemption under section 211 of the Industrial Relations Act**

I refer to our previous correspondence under the signature of Mr Iain Stewart whereby a tentative date for hearing of the above matter was set for 20 July 1994.

The Industrial Registrar, Mr Mike Kelly, has now confirmed the following details in relation to the hearing -

DATE	Wednesday 20 July 1994
TIME	2.15 p.m.
LOCATION	Second Floor National Westminster House 251 Adelaide Terrace Perth.
CONTACT PHONE	(09) 325 2507 (Deputy Industrial Registrar)

If you require further clarification or assistance, I can be contacted on (03) 653 8384.

Yours sincerely

Heather Worland
for INDUSTRIAL REGISTRAR



AUSTRALIAN INDUSTRIAL REGISTRY

PRINCIPAL REGISTRY

Our Ref:IS:267V

Mr L Croker
Branch President
Western Australia Branch
Australian Earthmovers and Road Contractors Federation
PO Box 875
Victoria Park WA 6100

Dear Mr Croker,

**Re: Australian Earthmovers and Road Contractors Federation -
Western Australia Branch (R NO. 30103 of 1994)**

Application for exemption under section 211 of the Industrial Relations Act 1988

I understand that the advertisement required pursuant to subsection 211 (4) of the Industrial Relations Act (the Act) appeared in the West Australian on Saturday 28 May 1994. The Act provides that members of the Branch who wish to lodge an objection to the application may do so within 28 days [see subsection 212(1) of the Act and regulation 57(1) of the Industrial Relations Regulations (the Regulations)]. Consequently and having regard to the unavailability of the Industrial Registrar this matter cannot be listed until 20 July 1994. As I advised your Executive Director, Mr Morris, in a telephone conversation on 7 June 1994 that date is tentative only and will be confirmed on the Industrial Registrars return from leave.

In the event that the Registrar grants an exemption, such exemption would apply to elections that fall due subsequent to the approval of your application. I note that the rules of the organisation require the Branch Returning Officer to call for nominations not less than 50 days prior to the Annual General Meeting (see rule 46). I understand that the Annual General Meeting is scheduled for 23 September 1994. Accordingly, nominations must be called for by 5 August 1994. In the circumstances the Branch should prepare the necessary prescribed information, in accordance with subsection 214(1) of the Act, for lodging immediately following the hearing in the event the application should be refused.

If you wish to discuss this or related matters, please contact Ms Heather Worland on 6538443.

Yours sincerely,

Iain Stewart

Iain Stewart
for **INDUSTRIAL REGISTRAR**

8 June 1994

STATUTORY DECLARATION

(1) Here insert name, address and occupation of person making the declaration.

I, ⁽¹⁾ Lance Croker, President, Australian Earthmovers and Road Contractors Federation, Western Australia Branch of 7 Zenith Street, Shelley WA 6145 do solemnly and sincerely declare⁽²⁾

(2) Here insert matter declared to. Where the matter is long, add the words 'as follows;' and then set the matter out in numbered paragraphs.

in relation to the Australian Earthmovers and Road Contractors Federation, Western Australian Branch's application to conduct its own elections under Section 211 of the Industrial Relations Act 1988, the Branch Committee of Management has complied with Sub Section 2 of Section 211 of the Industrial Relations Act 1988.

Below is the resolution passed at the Australian Earthmovers and Road Contractors Federation, Western Australian Committee of Management Meeting on 18th March 1994. Members were notified by the Minutes on 24th March 1994.

Moved H. Versteeg:

"The Executive Director, on behalf of the WA Branch of the Australian Earthmovers and Road Contractors Federation make application for exemption from Sub Section 210 (1) in relation to election for the offices in the Branch.

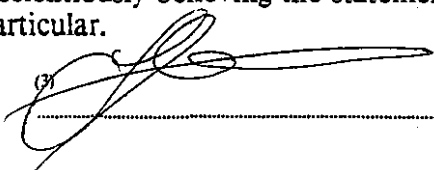
The Executive Director to ensure that the requirements of Section 211 Sub Section 2 (b) are fulfilled.

The President, Mr Lance Croker be the member of the Management Committee to Sign the Statutory Declaration as required under Sub Section 3 of Section 211".

Seconded J. Vincent. Carried unanimously.

I make this solemn declaration by virtue of the *Statutory Declarations Act 1959* as amended and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

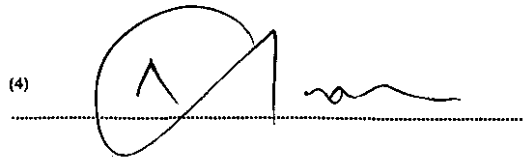
(3) Signature of person making the declaration.



Declared at *VIENNA MAR*
on *5th April*, 1994,

(4) Signature of person before whom the declaration is made.

before me,



(5) Here insert printed name, qualification and address of person before whom the declaration is made.

(5) **R. SCARFONE**
Justice of the Peace

NOTE 1.—A person who wilfully makes a false statement in a statutory declaration under the *Statutory Declarations Act 1959* as amended is guilty of an offence against that Act, the punishment for which is a fine not exceeding \$200 or imprisonment for a term not exceeding six months or both if the offence is prosecuted summarily, or imprisonment for a term not exceeding four years if the offence is prosecuted upon indictment.



AUSTRALIAN INDUSTRIAL REGISTRY

PRINCIPAL REGISTRY

IS:267V

Mr L Croker
Branch President
Western Australia Branch
Australian Earthmovers and Road Contractors Federation
PO Box 875
Victoria Park WA 6100

Dear Mr Croker,

**Re: Australian Earthmovers and Road Contractors Federation -
Western Australia Branch (R NO. 30103 of 1994)**

Application for exemption under section 211 of the Industrial Relations Act 1988

I refer to your application dated 25 March 1994 on behalf of the Western Australia Branch seeking an exemption from the requirements of subsection 210(1) of the Industrial Relations Act 1988 (the Act) in relation to elections for the Branch. The application was lodged in the Industrial Registry on 8 April 1994.

In making an application under section 211 of the Act, your attention is drawn to the requirements of subsections 211(2) and (3) of the Act and regulation 55 of the Industrial Relations Regulations. In particular, I draw your attention to subsections 211(2) and (3) of the Act which I set out below:

- "(2) An application may not be made by a committee of management of an organisation or branch of an organisation unless the committee of management:
- (a) has resolved to make the application; and
 - (b) has notified the members of the organisation or branch, as prescribed, of the making of the resolution.
- (3) An application under subsection (1) shall be accompanied by a statutory declaration by a member of the committee of management concerned stating that subsection (2) has been complied with"

In your application of 25 March 1994 you state that, "The Statutory Declaration as required under Sub Section 3 of Section 211 is in your possession. ". In that Declaration you declare that a resolution was passed at a "General Meeting on 24 January 1994" and that members were notified by minutes "on 31st January 1994."

As the information contained in that Declaration clearly pertains to a previous application (R No. 30046 of 1994) reference to that Declaration does not satisfy the requirements of subsection 211 (3) of the Act. Accordingly, I would be pleased if you would forward a further Declaration referring to the resolution

of the Branch Committee of Management meeting of 18 March 1994 and the method of notification of members through the minutes of that meeting. It would be helpful if you would include the date those minutes were circulated.

If you wish to discuss this or related matters, please contact Mr Iain Stewart on (03) 6538349, Monday to Wednesday.

Yours sincerely,

Iain Stewart

Iain Stewart
for **INDUSTRIAL REGISTRAR**

18 April 1994

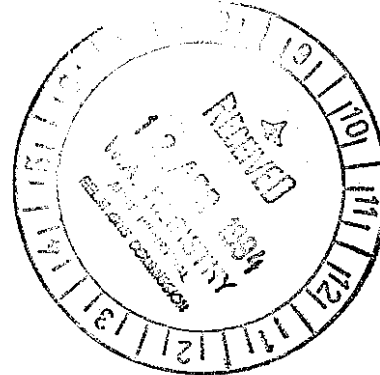


AUSTRALIAN EARTHMOVERS & ROAD CONTRACTORS FEDERATION

WESTERN AUSTRALIAN BRANCH
Suite 37,
328 Albany Highway,
Victoria Park W.A. 6100

P.O. BOX 875
Victoria Park 6100

Tel: (09) 470 3313
Fax: (09) 470 3320
Mobile: 018 093 729



25 March, 1994

Australian Industrial Registry
GPO Box 1994S
MELBOURNE VIC 3001

Dear Sir

The Committee of Management of the Australian Earthmovers and Road Contractors Federation, Western Australian Branch, passed a motion at a Committee of Management Meeting held on Friday 18 March 1994, instructing me to make application for our Branch to conduct its own elections as set out in Section 211(1) of the Industrial Relations Act 1988.

As required in Sub Section 2(b) of Section 211, the members of the WA Branch of Australian Earthmovers and Road Contractors Federation were notified of the Branch Committee of Management resolution to apply for exemption of Sub. Section 210(1). Notification was in the form of the Minutes of the Committee of Management Meeting held on Friday 18 March 1994.

Below is the resolution passed at the AERCF General Meeting on 24 January 1994.

Moved H. Versteeg

"The Executive Director, on behalf of the WA Branch of the Australian Earthmovers and Road Contractors Federation make application for exemption from Sub Section 210(1) in relation to election for offices in the Branch.

The Executive Director to ensure that the requirements of Section 211 Sub Section 2 (b) are fulfilled.

The President, Mr Lance Croker to be the member of the Committee of Management to Sign the Statutory Declaration as required under Sub Section 3 of Section 211."

Seconded J. Vincent. Carried unanimously.

The elected offices covered by this request are:

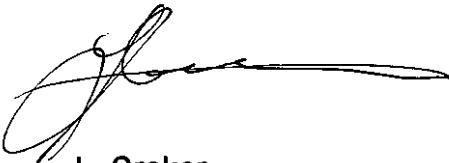
Branch President
Branch Vice President
Branch Honorary Treasurer
Branch Committee Members - 8 positions
National Councillors - 2 positions
Branch Executive Director

The grounds for which this application is made:

1. The rules of the Branch comply with the requirements of the Industrial Relations Act 1988 relating to the conduct of elections.
2. The elections for the Branch will be conducted:
 - (a) Under the rules of the Branch and the Industrial Relations Act 1988.
 - (b) In a manner that will afford members entitled to vote at such elections an adequate opportunity of voting without intimidation.
3. There has never been a Federal Court Inquiry into AERCF(WA) Branch elections.

The Statutory Declaration as required under Sub Section 3 of Section 211 is in your possession. You can contact me at this office if you have any problems with this application.

Yours faithfully



L. Croker
BRANCH PRESIDENT

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