

R No 60 of 1990



The Printing and Allied Trades Employers' Federation of Australia

27 February 1990

PNA/AN 0106

The Industrial Registrar
Australian Industrial Registrar
New South Wales Registry
80 William Street
East Sydney NSW 2011

Dear Sir

INDUSTRIAL RELATIONS ACT 1988 - DIVISION 4
CONDUCT OF ELECTIONS FOR OFFICE - APPLICATION FOR EXEMPTION

Pursuant to Subsection 211 (1) enclosed are applications by The Printing and Allied Trade Employers' Federation of Australia (PATEFA) and its branches to be exempted from Subsection 210 (1) in relation to elections for offices.

A resolution to that effect has been taken and members of this organisation and its branches have been notified, pursuant to Subsection 211 (2).

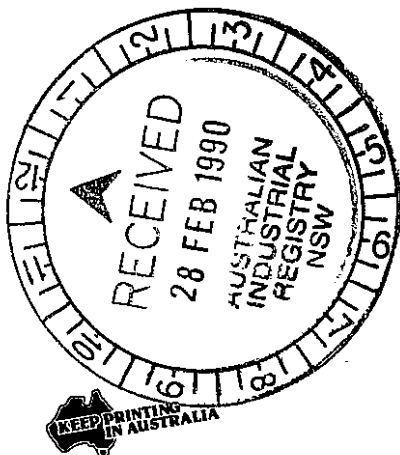
Pursuant to Subsection 211 (3) Statutory Declarations are enclosed in support of the application by PATEFA and its Regional Offices (branches).

The National Offices to which the application relates are:-

- . 19 National Councillors from whom are elected the following:
- . National President
- . National Senior Vice-President
- . National Junior Vice-President
- . National Honorary Secretary
- . National Honorary Treasurer

The Regional Offices which the applications relate are:-

- . Regional Executive Committees comprising
Queensland 15; New South Wales 14;
Victoria 15; Tasmania 8;
South Australia 9; Western Australia 14



from whom are elected the following in each Region:

- . Regional President
- . Regional Senior Vice-President
- . Regional Junior Vice-President
- . Regional Honorary Secretary/Treasurer

We enclose an extract from the monthly PATEFA News Bulletin, February 1990 issue, which has been mailed to all members in this regard.

It is respectfully requested that the necessary exemption be approved in accordance with Subsection 213 (1).

Yours Faithfully



T R CHAMBERS
Chief Executive

Encl.

STATUTORY DECLARATION

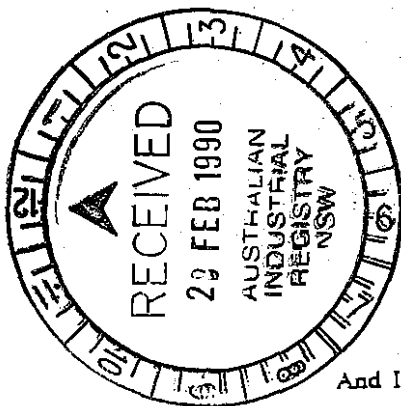
(1) Here insert name, address and occupation of person making the declaration.

I, (1) **NOEL ALEXANDER CRICHTON** care of
77 Lithgow Street, St Leonards, NSW
being the Secretary of
The Printing and Allied Trades Employers' Federation of Australia

(2) do solemnly and sincerely declare as follows:-

(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.

1. The Printing and Allied Trades Employers' Federation of Australia is a registered organisation of employers under the Industrial Relations Act 1988.
2. A comprehensive code for the conduct of all elections for offices in the Printing and Allied Trades Employers' Federation of Australia (herein after referred to as PATEFA) and each of its Regions is contained within the Rules of PATEFA.
3. PATEFA has in the past arranged the conduct of election for offices in accordance with the rules of PATEFA and the Act.
4. A Postal Vote of the National Council (Committee of Management) of PATEFA unanimously resolved to apply, pursuant to Subsection 211 (1), for an exemption from Subsection 210 (1) of the Act.
5. Subsequent to such application the members of PATEFA have been notified of this application in accordance with the Act and Regulation 55 (2) (b).
6. The requirements of Subsection 211 (2) have been complied with.
7. The rules of PATEFA for elections of office comply with the Act.
8. The necessary exemption is requested pursuant to Subsection 213 (1) and PATEFA will continue to comply with paragraph (b) thereof.



And I make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, 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.

(3)

Declared at **CHATSWOOD** the **Twenty Seventh**
day of **February** **1990**

Before me,

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

(4)

(5) Here insert title of person before whom the declaration is made.

(5) **JUSTICE OF THE PEACE**

INDUSTRIAL RELATIONS ACT 1988

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

APPLICATION PURSUANT TO SUBSECTION 211 (1)
FOR EXEMPTION FROM SUBSECTION 210 (1)

In the matter of

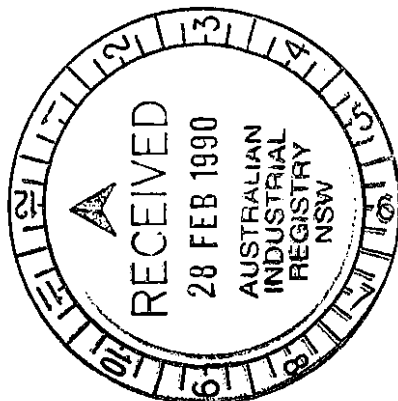
The Printing and Allied Trades Employers' Federation of Australia

No of 1990

Application is made by The Printing and Allied Trades Employers' Federation of Australia pursuant to Subsection 211 (1) of the above Act to be exempted from subsection 210 (1) of the above Act. The grounds on which this application is made are as follows:-

1. A comprehensive code for the conduct of all elections for offices in The Printing and Allied Trades Employers' Federation of Australia (herein after referred to as PATEFA) and each of its Regions is contained within the Rules of PATEFA.
2. The Rules of PATEFA (including those relative to Regions) comply in all ways with the above Act and provide a democratic and secure Electoral process.
3. PATEFA has been conducting its own elections for many years on an annual basis and has an efficient process in place for completing such elections.
4. The carrying out of elections for PATEFA by the Australian Electoral Office would involve an unnecessary public expense given the existing electoral process system developed by PATEFA, which is used and available for such elections.
5. The members of PATEFA are more than competent to assess the performance of PATEFA and its Regions conducting their own elections.

DATED this 27th day of February 1990




SECRETARY

The Printing and Allied Trades
Employers Federation of Australia



AUSTRALIAN INDUSTRIAL REGISTRY

PRINCIPAL REGISTRY

Our Ref.:

Your Ref.:

28 MAR 1990

Mr T.R. Chambers
Chief Executive
Printing and Allied Trades Employers'
Federation of Australia
PO Box 58
ST LEONARDS NSW 2065

Dear Mr Chambers

Re: Applications under section 211 of the Industrial Relations Act 1988
(R No. 60 of 1990)

I have received your letter of 27 February 1990 enclosing applications by the National Council of Printing and Allied Trades Employers' Federation of Australia (PATEFA) for an exemption from subsection 210(1) of the Act in relation to elections for offices in the organisation and its branches.

In order to meet the requirements of subsection 211(1) it is my view that an application which relates to Branch offices must be made on behalf of the relevant Branch Committee of Management following the passing by the Branch Committee of a resolution to make the application and the giving of the prescribed notification to the members of the Branch. (emphasis added)

Moreover, having regard to the rules and structure of the organisation, and in particular the powers and functions of regional executive committees in rules 60 and 61, I am of the opinion that a "region" of PATEFA is the same as a "branch" as referred to in section 211.

Accordingly, I am unable to treat the applications, in so far as they relate to Regional (ie. Branch) Offices, as valid applications.

I would also point out that elections for the 19 National Councillors are, by virtue of subsection 211(5), taken to be elections for a branch.

The application in respect of the offices of:

National President
National Senior Vice-President
National Junior Vice-President
National Honorary Secretary
National Honorary Treasurer

appears to be in order and arrangements are being made for publication of appropriate notices in newspapers under regulation 56. I shall advise you in due course of arrangements to be made for a hearing date.

Should any election arise for these National Offices before my decision whether to grant or refuse the exemption, your organisation may continue to conduct such an election, as the application was lodged prior to 1 March 1990 (see section 54 of the Industrial Relations (Consequential Provisions) Act 1988).

I would also remind you that any elections arising in each Region (including a Regional representative to National Council) will, under subsection 210(1), be required to be conducted by the Australian Electoral Commission, pending the granting of an exemption from any future application by any of the Regions of your organisation.

Should you have any enquiries in relation to this matter, please contact Mr A. O'Brien of this Registry (ph. 03 6538351)

Yours sincerely



J.P. O'Shea
INDUSTRIAL REGISTRAR

Our Ref.: HA:SM:29
Your Ref.:

Mr T.R. Chambers
Chief Executive
Printing and Allied Trades Employers'
Federation of Australia
P.O. Box 58
ST LEONARDS NSW 2065

Dear Mr Chambers,

Re: Application for exemption under section 211 of the Industrial
Relations Act 1988 (R No.60 of 1990)

I refer to the application lodged on behalf of the Printing and Allied Trades Employers' Federation of Australia for exemption from the provisions of subsection 210(1) of the Industrial Relations Act 1988.

In accordance with subsection 211(4) of the Act, details of the application were published, as prescribed, on 5 April 1990. No objections to the application have been lodged.

On 8 August 1990 similar applications under section 211 of the Act were lodged on behalf of the Tasmanian, Western Australian, South Australian, Victorian, New South Wales and Queensland Regions of the Federation. These applications will be processed in due course.

Under subsection 213(1) of the Act, after hearing the application, the Industrial Registrar may grant such an exemption if, amongst other things, he is satisfied that the rules of the organisation comply with the requirements of the Act relating to the conduct of elections. I would therefore draw your attention to the following matters relating to the rules which you may wish to consider prior to the date for a hearing being fixed following the advertising of the receipt of the regional applications and expiry of the 28 day period within which any objection thereto may be lodged.

1. Having regard to the provisions of rule 42 insofar as they relate to the positions of National Councillor elected for a two year term, a void could exist in the rules in situations where a position, which has been filled by appointment under the rule during the first year of the original term, becomes vacant again at the end of the period of twelve months specified by the rule. How is such a further vacancy intended to be filled?
2. Subrule 88(8) provides for the Chairman to submit nominations to a meeting, for approval, prior to a nominee being deemed to be elected. It would seem to me that such a requirement would offend subsection 196(c) of the Act by imposing unreasonable conditions on members.

The subrule further provides for the calling of verbal nominations by the Chairman at the meeting. In view of the requirements of paragraph 197(1)(b) of the Act relating to the conduct of elections by a Returning Officer, and also the decision of the Commonwealth Industrial Court in *Friend v Barnes and others* (15 FLR 184), the calling of nominations is a step in connection with the conduct of an election which must be taken by the Returning Officer.

3. Subrules 90(13) and 92(10) provide for a system where, in the event of a candidate being elected to more than one office, "he shall be deemed to have been elected to the most or more important office ... and the less important office shall not be filled by him but by the candidate who would have been elected if the election for such office had been conducted disregarding the nomination of or voting for the first abovementioned candidate". As the method of voting used is not one by which a voter may indicate preferences (see subrule 88(7)), the disregarding of any member's vote would effectively lead to that member being disenfranchised. It could be argued that such a provision imposes unreasonable conditions on members, contrary to paragraph 196(c) of the Act.
4. As subrule 92(6) provides that "Nominations may be made by members of the National Council who have been elected for the ensuing year and by National Councillors who are continuing in office for the second year", subrule 92(4) should require the National Returning Officer to forward nomination forms to both groups of Councillors rather than only to the Councillors elected for the ensuing year.
5. Subrule 92(8) requires the National Returning Officer to forward ballot papers "within seven (7) days after the closing date for nominations". As it would appear that the provisions of subsection 88(6) relating to defective nominations could not then be strictly complied with under those circumstances, it would be necessary, in order to comply with paragraph 197(1)(c) of the Act, to make some other provision to be applied in such circumstances.
6. No specific provision has been made for absent voting in the rules generally (or rule 88 in particular), as required by subparagraph 197(1)(e)(i) of the Act.

Should you wish to discuss these matters further, you may contact Mr H. Asher of this office (telephone (03) 653 8349).

Yours faithfully,



(T.G. TALBOT)
for INDUSTRIAL REGISTRAR

10 August 1990

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

Printing and Allied Trades Employers' Federation of Australia
(R Nos. 60, 306, 307, 308, 309, 310 and 311 of 1990)

J.P. O'SHEA
INDUSTRIAL REGISTRAR

MELBOURNE, 29 MAY 1991

DECISION

These matters concern applications by the committees of management of the Printing and Allied Trades Employers' Federation of Australia and of its Tasmanian, Western Australian, South Australian, Victorian, New South Wales and Queensland Regions for an exemption from the provisions of subsection 210(1) of the Industrial Relations Act 1988 (the Act).

Subsection 210(1) of the Act provides:

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

The Printing and Allied Trades Employers' Federation of Australia is an organisation registered under the Act.

Particulars of the application by the organisation were lodged in the Industrial Registry on 28 February 1990. Particulars of the applications by the Tasmanian, Western Australian, South Australian, Victorian, New South Wales, and Queensland Regions were lodged in the Industrial Registry on 8 August 1990.

The applications met the requirements of section 211 of the Act and regulation 55 of the Industrial Relations Regulations (the Regulations).

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

No objections to the applications were received from any member of the organisation.

As required by subsection 212(2) of the Act, I heard this application in Sydney on 3 May 1991.

Under subsection 213(1) of the Act, I may exempt an organisation or branch 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 organisation or branch is exempted from subsection 210(1), the elections for the organisation or branch will be conducted under the rules of the organisation or branch and the Act, and conducted in a manner that will afford members entitled to vote at the elections an adequate opportunity of voting without intimidation.

In proceedings on 3 May 1991, Mr T.R. Chambers, the Chief Executive of the Federation, represented the applicant.

Mr Chambers tendered a document - Exhibit C1 - wherein the requirements of the Act are compared with the contents of the rules of the Federation. Mr Chambers took me through that document and submitted that the rules of the Federation satisfy the relevant requirements of the Act in relation to all elections for office in the Association.

Having regard to Mr Chambers submissions, and my examination of the rules of the organisation I am satisfied that the rules of the organisation relating to the conduct of elections for the relevant officers in the organisation and its Regions comply with the Act.

I now turn to the other requirements of subsection 213(1) of the Act.

Mr Chambers submitted that;

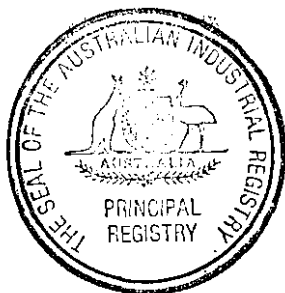
- . the persons normally appointed as returning officers are persons who have had long experience and involvement in the Federation and are well aware of the rules and electoral procedures of the Federation, and who understand the concept of, and the need for independence.
- . the returning officers are provided with administrative assistance from the organisation's staff, who are themselves competent and experienced in relation to the requirements for elections, in a manner which insures that they are not dependent on the honorary officers in order to obtain those facilities.
- . the organisation has conducted its own elections for the offices for which they now seek exemption, since 1925 (except in 1990 when the Regional elections were conducted by the Australian Electoral Commission) and during that period as far as research revealed, there have been no instances of allegations of irregularity or disputes over the outcome of elections or the procedure for elections.

On the basis of Mr Chamber's submissions, and other material before me, particularly that there have been no allegations of irregularity concerning any election, and in the absence of any objection to the application, I have no reason to form doubts that the organisation and its Regions will conduct

elections under the rules and the Act and in a manner that will afford members entitled to vote an adequate opportunity of voting without intimidation. Accordingly, I am satisfied if the exemptions sought are granted, the requirements of subsection 213(1)(b) will be met.

In view of the foregoing, I have decided to grant the exemptions as sought.

A certificate to this effect has been issued separately in relation to the abovenamed organisation and its Regions.



INDUSTRIAL REGISTRAR

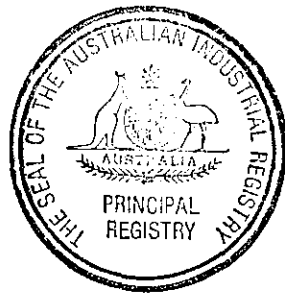
Industrial Relations Act 1988

s.211 application for an organisation to conduct its elections

Printing and Allied Trades Employers' Federation of Australia

(R Nos. 60, 306, 307, 308, 309, 310 and 311 of 1990)

I hereby certify that under subsection 213(1) of the Industrial Relations Act 1988, I have granted the Printing and Allied Trades Employers' Federation of Australia and its Tasmanian, Western Australian, South Australian, Victorian, New South Wales and Queensland Regions an exemption from the requirements of subsection 210(1) of the Act.



J.P. O'Shea

INDUSTRIAL REGISTRAR

29 May 1991