

INDUSTRIAL RELATIONS ACT 1988

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

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

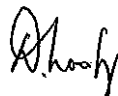
In the matter of
The Printing and Allied Trades Employers' Federation
of Australia (South Australian Region)

No of 1990

Application is made by The Printing and Allied Trades Employers' Federation of Australia (South Australian Region) pursuant to Subsection 211 (1) of the above Act for the branch 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 (South Australian Region) - (herein after referred to as PATEFA (South Australian Region) is contained within the Rules of PATEFA. There are no separate Rules for the Region. All Rules relating to Regions are contained in the Rules of PATEFA.
2. The Rules of PATEFA (including those relating to Regions) comply in all ways with the above Act and provide a democratic and secure Electoral process.
3. The South Australian Region of 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 the South Australian Region of 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 the South Australian Region of PATEFA are more than competent to assess the performance of PATEFA South Australian Region conducting their own elections.

DATED this *15th* day of *JUNE* 1990



SECRETARY/TREASURER of the
South Australian Region
The Printing and Allied Trades Employers'
Federation of Australia

STATUTORY DECLARATION

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

I, ⁽¹⁾ DESMOND LEONARD NOAH, care of 202-204 Halifax Street, Adelaide 5000 being the Regional Secretary/Treasurer of the Printing and Allied Trades Employers' Federation of Australia (South Australian Region) do solemnly and sincerely declare⁽²⁾

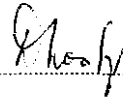
(2) Here insert matter declared to. Where the matter is long, add the words 'as follows:' and then set the matter out in numbered paragraphs.

- (2) 1. The Printing and Allied Trades Employers' Federation of Australia is a registered organisation of employers under the Industrial Relations Act 1988.
- 2. A vote of the Regional Executive Committee of PATEFA (South Australian Region) - (Committee of Management) at the 5 June 1990 meeting of the Committee unanimously resolved to apply, pursuant to Subsection 211 (1) for an exemption from Subsection 210 (1) of the Act.
- 3. Subsequent to such resolution the members of PATEFA (South Australian Region) have been notified in the PATEFA (South Australian Region) Information Bulletin dated 13 June 1990.

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.

(3)



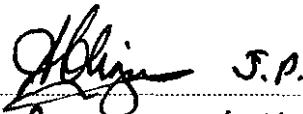
Declared at **Underrdale S.A.**

on **15th JUNE**, 19**90**,

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.

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.

NOTE 2.—A statutory declaration under the *Statutory Declarations Act 1959* as amended may be made only before a Chief, Police, Resident or Special Magistrate; Stipendiary Magistrate or any Magistrate in respect of whose office an annual salary is payable; a Justice of the Peace; a person authorised under any law in force in Australia or its Territories to take affidavits; a person appointed under the *Statutory Declarations Act 1959* as amended or under a State Act to be a Commissioner for Declarations; a person appointed as a Commissioner for Declarations under the *Statutory Declarations Act 1911*, or under that Act as amended, and holding office immediately before the commencement of the *Statutory Declarations Act 1959*; a Notary Public; a person before whom a statutory declaration may be made under the law of the State in which a declaration is made; or a person appointed to hold, or act in, the office in a country or place outside Australia of Australian Consul-General, Consul, Vice-Consul, Trade Commissioner, Consular Agent, Ambassador, High Commissioner, Minister, Head of Mission, Commissioner, Charge d'Affaires, or Counsellor, Secretary or Attache at an Embassy, High Commissioner's office, Legation or other post.

4

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;

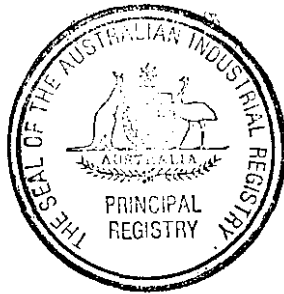
- . the persons normally appointed as returning officers are persons who have had long experience and involvement in the Federation and are well aware of the rules and electoral procedures of the Federation, and who understand the concept of, and the need for independence.
- . the returning officers 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

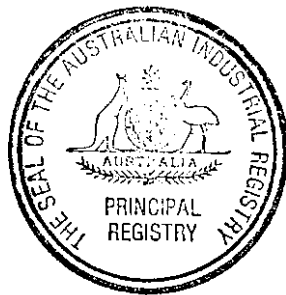
Industrial Relations Act 1988

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