



## DECISION

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

### **Accommodation Association of Australia** (E2020/230)

MR STEENSON

SYDNEY, 24 FEBRUARY 2021

*Arrangement for conduct of election.*

[1] On 24 December 2020 the Accommodation Association of Australia (**the organisation**) lodged prescribed information, and on 12 February 2021 lodged supplementary prescribed information, with the Registered Organisations Commission (**the Commission**) for an election to fill the following elected roles:

President	(1)
Vice-President	(1)
Treasurer	(1)
Members of Council	(9)
Executive Director	(1)

[2] Section 182 of the *Fair Work (Registered Organisations) Act 2009* (RO Act) requires that elections for registered organisations and their branches must be conducted by the Australian Electoral Commission (**AEC**), unless the organisation or branch holds an exemption issued by the Registered Organisations Commissioner for that purpose.

[3] The organisation, then known as Motor Inn Motel and Accommodation Association (**MIMAA**), held such an exemption<sup>1</sup>, until it was revoked in a decision issued by the Commissioner’s Delegate on 16 April 2018, **[2018] ROCD 72**, after an application by the organisation to relinquish its exemption (**R2018/79**).

[4] The application for revocation also followed the organisation requesting, despite its holding of an exemption, that the Fair Work Commission (**FWC**) arrange for the AEC to conduct its 2014 scheduled election (**E2014/83**),<sup>2</sup> and another election arising from that (**E2014/152**) following insufficient nominations being received in E2014/83.

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<sup>1</sup> Which was originally granted in 1991

<sup>2</sup> The prescribed information was lodged in accordance with directions issued by Deputy President Lawrence of the FWC in matter number D2013/107. The decision in E2014/83 noted, at para [4] that “It is apparent that the elections for the above offices are well overdue. The last confirmed election conducted [by the organisation] was in 2007 ... the rules of the organisation provide that the terms of offices are three years. No elections were conducted by MIMAA in 2010 or any subsequent year”.

[5] Following the transfer of the functions in relation to industrial elections to this Commission, and while the organisation still held its exemption from AEC-conducted elections, the organisation requested that the Commission arrange for the AEC to conduct its 2017 scheduled election (**E2017/194**) and the 2018 election (**E2017/168**) which was required because no nominations were received for any offices in the 2017 scheduled election.

[6] For organisations and branches not holding an exemption, Section 189(1) requires that they lodge prescribed information with the Commission if an election is required under their rules. Section 189(2) sets out the timeframe in which such information must be lodged, and section 189(3) requires the Commissioner or his Delegate, if satisfied that an election is required, to make arrangements for that election.

### **Effect of rule changes**

[7] Prior to the 24 December 2020 lodgement of prescribed information by the organisation, it had previously lodged prescribed information on 2 September 2020, seeking an election for its officers.

[8] At the time of the 2 September 2020 lodgement, the organisation – then still known as the MIMAA – advised the Commission that it had lodged an application with the FWC on 3 June 2020 seeking certification of rule changes. Those rule changes were for a change in the organisation’s name as well as a change in the composition of the organisation’s governing Council – reducing the number of councillors from 17 to 9.

[9] In its 2 September 2020 prescribed information, the organisation stated that:

In order to avoid the delay to the scheduled election, we have lodged the information under the existing name (MIMAA) and rules. However, if the changes are approved in sufficient time, our preference is to conduct the election in the proposed new name (Accommodation Association of Australia) and under the proposed new rules.

[10] It subsequently became apparent that the rule alterations were unlikely to be certified before an election decision was issued in relation to the 2 September 2020 prescribed information.

[11] Consequently, on 13 October 2020, the Commission wrote to the Executive Director of the organisation via email, inviting the organisation to consider withdrawing the prescribed information lodged on 2 September 2020. The email noted that

The proposed rule alterations would (among other things) reduce the number of National Councillors to be elected, and change the electorates from which National Councillors are to be elected. If certified, the ‘new’ rules will definitely require the lodgement of new PI seeking an election for the new structure.

As things currently stand [the 2 September 2020 prescribed information requesting the election of 17 councillors], the ROC would be required to issue a decision based on the information currently submitted, which runs the risk of conducting an election for offices that may soon not exist.

[12] The Commission’s email drew the organisation’s attention to a previous election matter in which another registered organisation had had to apply to the Federal Court for orders to stop

an earlier election process (commenced under rules that were then superseded), in order to then have an election under its new rules.<sup>3</sup>

[13] The Commission also drew the organisation's attention to another, more recent, matter in which a registered organisation with pending rule changes, that would fundamentally alter the structure and composition of its officers, had, with the Commission's agreement, withdrawn prescribed information lodged under its existing rules and undertaken to lodge new prescribed information upon certification of its new rules, to enable the conduct of elections under the newly certified rules.<sup>4</sup>

[14] In light of these matters, on 15 October 2020, the organisation withdrew the prescribed information lodged on 2 September 2020, and undertook to lodge new prescribed information once the rule alterations were certified.

[15] The rule alterations were certified by the FWC on 11 December 2020 and fresh prescribed information, reflecting the newly certified rule changes was lodged on 24 December 2020.

[16] I am satisfied that the reason for the lodgement of prescribed information on 24 December 2020, to the extent that it is regarded as late, is a sufficient ground to justify agreeing to allow a later date for lodgement.

[17] As indicated in the decision in the *Flight Attendants Association of Australia (FAAA)* matter, at paragraph 8:

In the circumstances of the substantial rule alterations effected by the organisation it was reasonable for the organisation, in consultation with the FWC and the Commission, to defer lodging prescribed information pending the outcome of rule alteration. Had those rule alterations been effected during the conduct of elections conducted under the [old] rules, it is likely that a situation similar to that in ASMOF would have arisen.

[18] As in the Delegate's decision in the FAAA matter, I consider that the circumstances are such that it is appropriate on this occasion to allow, under section 189 (2) of the RO Act, a later day for lodgement.

### **Status of Executive Director**

[19] I now turn to the other issue in this election decision, namely whether the Executive Director of the organisation may be regarded as an officer or as a non-office position. Section 9 of the RO Act deals with what is an 'office' for the purpose of the Act. Subsection 9(1) sets out, at (a) to (d), a number of elements that define whether a particular role is an office under the Act.

[20] Following a review of the prescribed information, with reference to the rules of the organisation, Commission staff contacted the organisation to request further information and to discuss the issue of the Executive Director's status. Among the concerns raised with the organisation was that the rules specifically excluded the Executive Director from being a voting

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<sup>3</sup> *Sara, in the matter of an inquiry into the election for offices in the Australian Salaried Medical Officers Federation* [2018] FCA 844, (the 'ASMOF' matter).

<sup>4</sup> *Flight Attendants Association of Australia* [2020] ROCD 104 in matter E2019/235 (the 'FAAA' matter)

member of the organisation's governing body, its Council,<sup>5</sup> and that "the Executive Director shall be responsible to the Council but shall act under the direction of the President, or in the absence of that officer then the Vice-President",<sup>6</sup> - both of which are indicative of a role:

"the holder of which participates only in accordance with directions given by a collective body or another person for the purpose of implementing: (i) existing policy of the organisation ...; or (ii) decisions concerning the organisation ...

that is, the exclusion set out in subsection 9(1)(a).

[21] On 19 February 2021, following a request from Commission staff on 5 February 2021, written submissions on behalf of the organisation were provided to the Commission in relation to the issue of whether the Executive Director was to be regarded as an officer. In those submissions on behalf of the organisation, it was acknowledged that there are a number of 'office' elements of subsection 9(1) that the role of Executive Director does not satisfy.

[22] However, the organisation submitted, among other things, that:

- the Executive Director does not participate in the affairs of the organisation only at the direction of others and that there exists a discretion to act in some matters;
- the election of the Executive Director, rather than its appointment, according to the submission, tends towards it being an office rather than a non-office position;<sup>7</sup>
- sub-rule 31(e) details the powers and duties attached to the role of Executive Director and that some of these, by their nature require independent exercise.<sup>8</sup>

[23] It further submitted on behalf of the organisation that a range of documents lodged with the Commission and the FWC, including annual returns, rule alterations and the prescribed information for the elections set out above were signed by the Executive Director. It is apparently to be inferred from this that no objection had been raised about the Executive Director possibly not being an officer. However, this is incorrect.

[24] The question of the Executive Director's status has been raised with the organisation over many years – for example, in relation to a number of financial reports since 2005,<sup>9</sup> as well as in June 2014 as part of the Commission's work on election matter E2014/152 and in June and September 2017 in relation to a notification of change of records in AR2017/4. Indeed, the Commission's records indicate that, in the 2014 election matter (E2014/152), the issue was raised with the author of the submissions provided to the Commission in this current matter.

[25] The organisation would appreciate, from previous matters, including its long-held but apparently unused exemption from AEC elections, and its apparent non-conduct of elections between 2007 and 2014,<sup>10</sup> that the mere existence of a situation does not amount to acquiescence to it or acceptance.

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<sup>5</sup> rule 31(a)

<sup>6</sup> rule 31(c)

<sup>7</sup> It is clear from s.187 of the RO Act, that the legislation contemplates and explicitly provides for the election of non-officer roles.

<sup>8</sup> Though others, such as sub-rules 31(f), 31(g) (if so directed), and 31(h) equally clearly require particular powers or functions to be exercised at direction of another officer or collective body.

<sup>9</sup> FR2005/321, FR2011/2567, FR2012/252, FR2013/156 and FR2014/97

<sup>10</sup> Resulting in the orders of DP Lawrence in D2013/107 referred to above.

[26] Nonetheless, in circumstances where it has apparently long been the practice for the organisation to regard the role of Executive Director as an office, and for the organisation to make that role the one responsible for statutory lodgements, it is proposed to proceed on the basis outlined below.

[27] The Commission notes that the organisation regards the role of Executive Director as an office for all relevant purposes under the RO Act. Given the issues outlined above, which have been raised with the organisation over several years, I strongly urge the organisation to conduct a review of its rules with a view to addressing this issue and making clearer that the Executive Director is an officer of the organisation.

[28] I note that the organisation's position is that the Executive Director is the prescribed officer for the purpose of various statutory lodgements. Such a role can only be performed by an officer, and therefore the organisation must also regard the Executive Director as an officer for all purposes. This brings with it other obligations, for example where an officer role has financial management responsibilities, the organisation must ensure that the officer completes approved financial management training in accordance with section 293K of the RO Act.

### **Election required**

[29] I am satisfied that an election for the abovenamed offices, including Executive Director, is required to be held under the rules of the organisation and, under subsection 189(3) of the RO Act, I am making arrangements for the conduct of the election by the AEC.



DELEGATE OF THE COMMISSIONER

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PRESCRIBED INFORMATION FOR ELECTIONS

I, Dean Long, being the Executive Director of the Accommodation Association of Australia (the "Association"), make the following statement:

1. I am authorised to sign this statement containing prescribed information for the Association.
2. Further to my statement (and Annexure) dated 24 December 2020 the following information is provided:

**(a) Nominations open and close**

*Members of Council (9)* - to be determined by the AEC Returning Officer having regard to the period available [in effect, at least 21 days] for lodging nominations under rule 45(1)(a).

*Executive Director* - to be determined by the AEC Returning Officer having regard to the period available [in effect, at least 21 days] for lodging nominations under rule 45(1)(a) – which is incorporated by reference under rule 31(b)(i).

*President, Vice-President and Treasurer* - to be determined by the AEC Returning Officer having regard to the date the Council meeting is to be convened as soon as practicable after the declaration of the election for Council Members for the ensuing term as per rule 46.

**(b) Roll of voters**

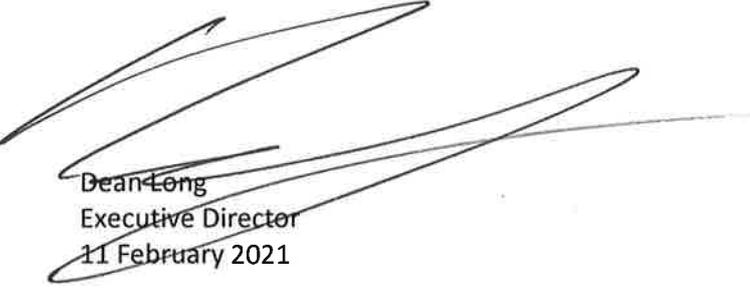
Rule 45(2)(a) provides:

*For the purpose of this sub-rule the roll of voters shall comprise each financial member of the Association as at the close of business 7 days prior to the date of opening of nominations.*

**(c) Pending Rule Alterations**

At the present time the Association has no outstanding rule alterations pending with the Fair Work Commission, however it should be noted that this prescribed information applies to the first elections to be conducted subsequent to rule alterations certified on 11 December 2020 (ref: R2020/74).

Signed:



Dean Long  
Executive Director  
11 February 2021

PRESCRIBED INFORMATION FOR ELECTIONS

I, Dean Long, being the Executive Director of the **Accommodation Association of Australia** (the "Association"), make the following statement:

1. I am authorised to sign this statement containing prescribed information for the Association.
2. The following information is lodged under subsection 189(1) of the *Fair Work (Registered Organisations) Act 2009* (the RO Act), and is to be substituted for the prescribed information lodged previously on 2 September 2020 under the Association's former name ("Motor Inn, Motel and Accommodation Association")
3. The reason for the substituted prescribed information is due to rule alterations (comprising a new set of rules) being certified under section 159 of the RO Act on 11 December 2020.
4. The offices for which elections are required under the rules of the Association are set out in the table in Annexure A.
5. In the first instance, please address enquiries in relation to this statement to:

Noel Teskey - [noel.teskey@aaoa.com.au](mailto:noel.teskey@aaoa.com.au) Ph: 02 8666 9015

Signed:



Dean Long  
Executive Director - AAoA  
24 December 2020

Office	Number	Voting system	Reason for election	Electorate
Members of Council	9	DVS	scheduled (expiration of term)	financial members of Association
Executive Director	1	DVS	as above	as above
President	1	Collegiate	as above	Members of Council
Vice President	1	Collegiate	as above	as above
Treasurer	1	Collegiate	as above	as above

Relevant Rules (Accommodation Association of Australia – Certified 11 December 2020 [R2020/74]).

#### **18 - ANNUAL GENERAL MEETING**

There shall be an Annual General Meeting of the Association held not later than 6 months after the end of the financial year (30 June) each calendar year. A minimum of 14 days' notice thereof shall be given to all members of the Association.

#### **27 - COUNCIL**

(1) On and from the completion of the terms of office of the members of Council in 2020, the governing body of the Association shall be the National Council of the Association (referred to in the Rules as "the Council") comprising nine (9) Council members elected directly by the membership of the Association in accordance with Rule 45 for a term of 3 years.

#### **29 - OFFICE-BEARERS OF COUNCIL**

(1) The office bearers of the Association shall be the President, Vice-President and Treasurer, who shall be elected by and from the Council every third year in accordance with rule 46.

(2) The office bearers shall hold office until their successors are elected and be eligible for re-election.

#### **31 - EXECUTIVE DIRECTOR**

(a) The Executive Director shall be elected every third year by a direct voting system election of the financial members of the Association.

(b) The election of the Executive Director shall be conducted in the following manner:

(i) The Returning Officer shall call for nominations from all financial members of the Association in accordance with Rule 45, with the necessary changes. A financial member of the Association may nominate a representative of any other financial member of the Association. In addition any member of the Council may nominate a person who is not a financial member of the Association to be a candidate and to hold office of Executive Director.

(ii) N/A

(iii) If more than one valid nomination is received by the closing date for nominations then a ballot shall be conducted in accordance with Rule 45, with the necessary changes.

#### **45 - ELECTION FOR COUNCIL MEMBERS**

(1) Elections for the Council Members shall be by a direct voting system conducted by the Returning Officer in the following manner.

a) Notice calling for nominations shall be sent to all members of the Association at least 8 weeks (56 days) prior to the Annual General Meeting of the Association, and shall also stipulate the closing date for receipt of nominations which shall be not less than 5 weeks (35 days) before the Annual General Meeting.

#### **46 - COLLEGIATE ELECTION FOR PRESIDENT, VICE-PRESIDENT and TREASURER**

(1) Upon the completion of the election for Council Members under Rule 45 in 2020, and in every third year thereafter, the Returning Officer shall proceed to conduct an election for the office of President, Vice-President and Treasurer of the Association, provided that no person shall be entitled to hold the dual offices of President, Vice President or Treasurer. Such election shall be conducted at a meeting of the Council to be convened as soon as practicable after the declaration of the election for Council Members for the ensuing term.

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