

115NSW:DPS

Mr H. Rose  
President  
The Motor Inn and Motel  
Association of Australia  
12th Floor  
309 Pitt Street  
SYDNEY NSW 2000

Dear Mr Rose,

Re: The Motor Inn and Motel Association of Australia - Application under section 211 of the Industrial Relations Act 1988 (R No. 142 of 1990)

I refer to the application lodged by you on behalf of the committee of management of the abovenamed organisation seeking an exemption from the provisions of subsection 210(1) of the Industrial Relations Act 1988 ('the Act').

You were advised in our letter of 22 May 1990 that the application insofar as it related to offices in its single branch, the Victorian Branch, did not appear to be valid as the requirements of subsections 211(1), (2) and (3) of the Act and regulation 55 had not been carried out by the committee of management of the Branch.

A notice setting out details of the application insofar as it related to offices in the organisation was published, as required by subsection 211(4) of the Act, in various newspapers circulating in each State, except Western Australia, and the Territories. No objection has been made to the application under subsection 212(1) of the Act.

The Industrial Registrar is now required under subsection 212(2) of the Act to hear the application. The purpose of the hearing is so that the Industrial Registrar may be satisfied in respect of the following requirements of subsection 213(1) of the Act, before he may exempt the organisation from subsection 210(1):-

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

In respect of the requirements of paragraph 213(1)(a) of the Act set out above, an examination of the rules of the organisation insofar as they relate to the conduct of elections for offices in the organisation has been made. Also, in anticipation of a valid application under section 211 of the Act from the Victorian Branch of the organisation, the examination of the rules has been extended to encompass the conduct of elections for offices in the Branch. An application from the Victorian Branch was lodged on 4 January 1991.

Arising from the examination of the rules, I draw to your attention the following matters:-

1. In relation to elections for the federal offices of President, Vice-President and Treasurer, there is no provision in the rules specifying that if the returning officer conducting an election finds a nomination to be defective, the returning officer shall, before rejecting the nomination, notify the person concerned of the defect and, where practicable, give the person the opportunity of remedying the defect within such period as is applicable under the rules, which shall, where practicable, be not less than 7 days after the person is notified. This omission contravenes paragraph 197(1)(c) of the Act.
2. In relation to elections for representatives to National Council:-
  - a. Rule 22(b) provides for the election of these offices in accordance with rule 48. Paragraphs (b) and (e) of subrule 48(5) together provide for the participation of "members entitled to vote" in any ballot. However, there is no provision in the rules specifying which members of the organisation are entitled to vote.

In these circumstances, it may be argued that the rules are vague and uncertain as to who may participate in a ballot in connection with elections for these offices, thereby contravening paragraph 196(c) of the Act. Also, the rules omit to provide for the election of the holders of these offices by an electoral system specified in paragraph 197(1)(a) of the Act.

The deficiencies may be overcome through appropriate alteration of rule 22(b) so that all financial members included in the Branch, State or Territory, as the case may be, are eligible to vote, such electoral system being a "direct voting system" - refer definition in subsection 4(1) of the Act.

- b. Rule 48(1)(a) provides, amongst other things, for the Returning Officer to invite "... nominations of persons, eligible for election for the office under the rules of the Association, to stand as candidates for election for the office ....." (underlining added).

As there is no provision in the rules specifying the eligibility requirements for representatives of States and/or Territories, it may be argued that the rules are vague and uncertain in that respect, thereby contravening paragraph 196(c) of the Act. Also, the omission may contravene subparagraph 197(1)(d)(i) of the Act.

3. Rule 25(i) provides, amongst other things, for the filling of a casual vacancy occurring in the office of Executive Director by "..... a ballot of the financial members of the Association ....." conducted by the National Returning Officer. However, the rules do not specify how nominations are to be called or how the election is to be conducted.

This difficulty may be overcome by appropriate alteration of rule 25(i) to invoke the provisions of rule 25(b) mutatis mutandis.

4. Rule 49 provides for the conduct of collegiate elections for the President, Vice-President and Treasurer of the Council as well as the President, Vice-President or other officer of the Branch.

Subrule (1) of rule 49 provides for the calling of nominations by the Returning Officer at a meeting of the Council or Branch Committee, as the case may be. Subrule (2) provides that if only one accepted nomination is received, the Returning Officer shall declare the person so nominated elected unopposed at the meeting referred to in subrule (1). In relation to any ballot, subrule (3) provides, amongst other things, that the ballot shall take place at the next meeting, "...which shall be no later than 6 months after the meeting referred to in sub-rule (1) of this rule ...."

The effect of subrules 49(2) and (3) is that persons who successfully contest a ballot may be prevented from assuming office for up to 6 months after other persons have been declared elected unopposed in the course of the same elections. Such a delay appears to be inordinately long and may impose on members conditions or restrictions that contravene the requirements of paragraph 196(c) of the Act. It is not apparent why any ballot should not be conducted at the meeting referred to subrule 49(1) and it is suggested that appropriate alterations to this effect are made.

5. Rule 6 provides, amongst other things, that "If an Honourary Member is not eligible to be an ordinary member in accordance with these Rules, he shall have all the rights and privileges of membership but shall not be entitled to vote." The construction of these provisions would seem to allow non-members to stand for and be elected to office, although this may not be the intention of the rules.

This difficulty may be overcome by insertion of the words and punctuation ", nominated or be elected to office" at the end of the rule.

6. In relation to the conduct of postal ballots for elections (rule 48), there is no provision in the rules for absent voting, contrary to subparagraph 197(1)(e)(i) of the Act.
7. In relation to scrutineers, rule 47 provides for their appointment "by writing". It is not clear as to whom such writing is directed. Also, there is no provision for the conduct of scrutineers. These omissions contravene subparagraph 197(1)(e)(iii) of the Act.
8. The following are apparently typographical, clerical or formal errors:-

- . in rules 7 and 57 - "Rule 26 (f)" should read "Rule 26(g)"; and
- . in rule 48(5)(c), line 2 - "role" should read "roll".

You may wish to consider initiating arrangements for making appropriate alterations of the rules of the organisation prior to the hearing of the application. Such alterations would not take effect until certified by a Registrar under subsection 205(1) of the Act.

Mr Damien Staunton of this office (telephone: (03) 6538 405) or Ms Helen Cargill of our New South Wales Registry (telephone: (02) 3320 641) are available to assist in advising on the acceptability of any proposed alterations.

I would be grateful if you would advise me, by Friday, 17 January 1991, as to whether or not it is proposed to address any of the matters outlined above by making appropriate alterations of the rules of the organisation, prior to the hearing of the application made under subsection 211(1) of the Act.

Should you wish to discuss this letter, please contact Mr Staunton on (03) 6538 405.

Yours sincerely,



T.G. Talbot  
for INDUSTRIAL REGISTRAR

9 JAN 1991

cc Mr Ron Eades  
Victorian Branch Secretary  
The Motor Inn and Motel Association  
of Australia  
P.O. Box 15  
HAMPTON VIC 3188

M2  
(4)

MOTOR INN, MOTEL AND ACCOMMODATION ASSOCIATION  
VICTORIAN BRANCH

R. NO. 19 OF 1991

RE: Exemption From Provisions of Sub-Section 210(1)

The Victorian Branch has the same rules as the Federal organisation therefore I wish to adopt the submissions made in matter R. No. 142 of 1990 with the following distinctions:

1. The positions for which the Victorian Branch seeks exemption are Branch Secretary, Members of a Branch Committee, President, Vice President and other officers deemed necessary by the Branch and Branch Representative on National Council.

The term of offices for three positions is two years. Which differs from the Federal offices but is still within the limit of four years set down in Section 197 of the Act. I believe this is the only material difference. The actual electoral provisions for these positions are set out in Rules 48 and 49, that is the process is the same as for Federal offices.

2. The Returning Officer for the Victorian Branch is a Mr. B. Wardrop who is not nor ever has been an employee of the organisation. Likewise Mr. Wardrop has never been an officer of the Association. Mr. Wardrop has been the Returning Officer of the Branch for the past 13 years. He is also the Branch's external auditor. He has a copy of the Registered Rules of the Association and is familiar with the operation and requirements of the Industrial Relations Act 1988.

The Branch was formed in 1972 and since that time it has held its own elections.

The Branch has never been subject to any proceedings in the Federal Court with respect to the conduct of elections. Nor has the Branch ever received a complaint in relation to the conduct of elections.

Therefore, adopting the submissions made in the earlier matter with the distinctions made, I submit that the Victorian Branch of the Motor Inn, Motel and Accommodation Association meets the requirements of sub-section 213(1) of The Act. I request that an exemption from sub-section 210(1) be granted.

THE MOTOR INN and MOTEL ASSOCIATION of AUSTRALIA

(VICTORIAN BRANCH)

P.O. BOX 15, HAMPTON, VIC., 3188

President: N. E. FERMANIS  
Tel.: (03)584-4222

Telephone: (03) 598-0969

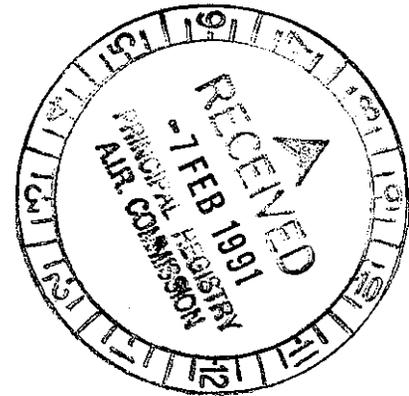
RN<sup>o</sup>19 of 1991

Don Eades

(1)

29th. January, 1991

Mr. J.P. O'Shea  
Industrial Registrar,  
Principal Registry,  
G.P.O. Box 1994S,  
Melbourne,  
Victoria 3001



Dear Sir,

This is a revised application made under sub-section 211(1) and Regulation 55 of the Industrial Relations Act 1988 for an exemption from subsection 210(1) of the Act in respect of future election of officers of this Branch.

The offices to which this Branch seeks the exemption are as follows:

Branch President	(One Position)
Branch Vice-President	(One Position)
Branch Committee	(Minimum of eight Positions)
Branch Secretary	(One Position)
Branch National Council Members	(Two Positions)

The reasons the exemption is sought in respect of these offices are:

(a) that the rules of the branch comply with the requirements of the Australian Industrial Relations Act 1988.

(b) that if the branch is exempted from subsection 210(1), the elections for the branch will be conducted:

(i) under the rules of the branch and as required by the Industrial Relations Act 1988.

(ii) in a manner that will afford members entitled to vote at such elections an adequate opportunity of voting without intimidation.

(c) as required by the Act all members of the Branch have been notified personally of this proposal by circulars as per the copies attached.

(d) No objection to our proposed application has been received from any member.

Attached is a duly completed Statutory Declaration as required by Section 211(3).

Yours faithfully,

*N. E. Fermanis*

N. Fermanis,  
Branch President

COMMONWEALTH OF AUSTRALIA

STATUTORY DECLARATION

I Nicholas Fermanis of 4 Gordon Crescent, Black Rock,  
Victoria, 3188

do solemnly and sincerely declare

(a) I am a member of the Committee of Management of the  
Motor Inn and Motel Association of Australia (Victorian  
Branch).

(b) that on 18th. September, 1990 the Committee of  
Management of the Motor Inn and Motel Association of  
Australia (Victorian Branch) resolved:

(i) that an application be made to the Industrial  
Registrar in accordance with Section 211 and  
Regulation 55 of the Industrial Relations Act 1988  
for the Victorian Branch to conduct its elections  
for office.

(ii) that all members of the Branch be notified of  
the resolution.

(c) that all members of the Branch were so notified through  
explanatory circulars individually posted to each member.

(d) that no objection to the application being made was  
subsequently received from any member of the Branch.

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.

Signature: *N.E. Fermanis*

Declared at *BLACK ROCK*  
day of *FEBRUARY* 1991

the *6th*

Before me,

*Davin  
Law Clerk  
Ballarat.*

COPY OF A CIRCULAR SENT TO ALL REGISTERED MEMBERS OF THE  
MOTOR INN AND MOTEL ASSOCIATION OF AUSTRALIA (VICTORIAN  
BRANCH)

INFORMATION REGARDING FUTURE BRANCH ELECTIONS.

In 1988 a new Act - The Australian Industrial Relations Act 1988 - came into operation and amongst its provisions was the new requirement that elections of Officers of all organisations must be conducted by the Australian Electoral Office.

However, providing the members of the organisation agree and an application for exemption from this provision is made to the Industrial Registrar in due form and the Registrar so officially agrees the alternative of allowing organisations to conduct their own elections as in previous years will be allowed.

It should be noted that it is a much simpler and less costly as well as less time consuming to conduct elections internally as in previous years.

No problems have occurred in the past and none are envisaged in the future if this were done.

If a member has any objection to the Committee making an application to allow internal elections as proposed please notify the Secretary.

If no objections are received then an application will be made accordingly.

R.M. Eades  
SECRETARY

30th. September, 1990

**THE MOTOR INN and MOTEL ASSOCIATION of AUSTRALIA**

(VICTORIAN BRANCH)

P.O. BOX 15, HAMPTON, VIC., 3188

President: N. E. FERMANIS  
Tel.: (03)584-4222

Telephone: (03) 598-0969

*2ND  
Memo to members*

22nd. January, 1991

Dear Member,

re: Proposed Future Elections of Branch Office Bearers

In a circular dated 30th. September, 1990 on the above matter I advised all members that it would be necessary to make application to the Industrial Registrar for exemption to allow the Branch to conduct its own elections in the future rather than have them conducted by the Australian Electoral Office.

The Industrial Registrar has now advised me that my notice to you advising of our intention to apply omitted the precise wording of the resolution authorising the application.

To meet this requirement I now advise that the following resolution appears in the Branch Minute Book dated 18/9/90.

RESOLVED:

(i) that the required application for exemption be lodged with the Registrar.

(ii) that all Branch members be notified of this fact by memorandum circulated to each when the Annual General Meeting notice is sent out.

(iii) that Mr. N.E. Fermanis being a member of the Committee of Management of the Branch be authorised to make a statutory declaration on behalf of the Committee to the effect that Section 211(2) of the Act has been complied with.

(iv) that the application for such exemption accompanied by the requisite documentation be lodged with the Registrar by Mr. Fermanis after the Annual General Meeting due to be held on 30th. October, 1990."

I further advise that no objections to the proposal were received from any member following the receipt of the original circular by all members.

With best regards,

R.M.Eades

Secretary

115NSW:DPS

Mr N. Fermanis  
Branch President  
The Motor Inn and Motel  
Association of Australia  
Victorian Branch  
P.O. Box 15  
HAMPTON VIC 3188

Dear Mr Fermanis,

**Re: The Motor Inn and Motel Association of Australia - Victorian Branch -  
Applications for an exemption from subsection 210(1) of the Industrial  
Relations Act 1988 (R Nos. 2 and 19 of 1991)**

I refer to your applications (2) lodged on 4 January and 7 February 1991 on behalf of the committee of management of the abovenamed Branch seeking an exemption from the provisions of subsection 210(1) of the Industrial Relations Act 1988 ('the Act').

I confirm telephone advice provided to you on 23 January 1991 by Mr Damien Staunton of this office that the Industrial Registrar is unable to treat the earlier application (R No. 2 of 1991) as a valid application under subsection 211(1) of the Act as the provisions of regulation 55 of the Industrial Relations Regulations had not been strictly complied with. Specifically, the circular dated 30 September 1990 notifying the members of the committee of management's resolution to make the application did not set out a copy of the resolution.

This difficulty has apparently been overcome through the Branch Secretary distributing a further circular to all members of the Branch on 22 January 1991. Therefore, arrangements have been made, in accordance with subsection 211(4) of the Act, to publish a notice setting out details of the latter application (R No. 19 of 1991) in the Melbourne Age and Herald-Sun. The notice is expected to appear on or about Wednesday, 13 March 1991.

Following expiration of the period during which members of the Branch may lodge objections to the application (that period being within 28 days after the publication of the notice), the Industrial Registrar is required under subsection 212(2) of the Act to hear the application and any objections duly made. The purpose of the hearing is so that the Industrial Registrar may be satisfied in respect of the following requirements of subsection 213(1) of the Act, before he may exempt the Branch from subsection 210(1):-

- "(a) that the rules of the organisation or branch comply with the requirements of this Act relating to the conduct of elections; and
- (b) that, if the organisation or branch is exempted from subsection 210(1), the elections for the organisation or branch, or the election for the particular office, as the case may be, will be conducted:

- (i) under the rules of the organisation or branch, as the case may be, and this Act; and
- (ii) in a manner that will afford members entitled to vote at such elections or election an adequate opportunity of voting without intimidation".

In respect of the requirements of paragraph 213(1)(a) of the Act set out above, an examination of the rules of the organisation insofar as they relate to the conduct of elections for offices in the Branch has been made. The organisation and the Branch were advised through our letter of 9 January 1991 of a number of perceived deficiencies in the rules of the organisation relating to elections for offices in both the organisation and the Victorian Branch.

We are advised that the organisation proposes to make alterations of its rules to meet the necessary requirements of the Act. In these circumstances, it is proposed not to list the matter for hearing until the organisation has had sufficient opportunity to make the alterations.

Should you wish to discuss this letter, please contact Mr Staunton on (03) 653 8405.

Yours faithfully,

H.J. Asher   
for INDUSTRIAL REGISTRAR

8 MAR 1991

**TRANSCRIPT  
OF PROCEEDINGS**



**AUSCRIPT**

*the Commonwealth Reporting Service*

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**INDUSTRIAL RELATIONS ACT 1988**

**M.D. KELLY, Deputy Industrial Registrar**

**R No 142 of 1990  
R No 19 of 1991**

**APPLICATION BY MOTOR INN MOTEL  
AND ACCOMMODATION ASSOCIATION  
FOR EXEMPTION**

**TRANSCRIPT OF PROCEEDINGS**

**SYDNEY**

**10.36 AM, THURSDAY, 10 OCTOBER 1991**

THE D.REGISTRAR: I will take appearances, please.

MR G FARRAR: I appear on behalf of the Motor Inn Motel and Accommodation Association, Victorian branch formerly the Motor Inn and Motel Association of Australia.

THE D.REGISTRAR: Thank you, Mr Farrar. Just to state on the record the matters that we are dealing with this morning. We have case R142 of 1990 and case R19 of 1991. Both applications were made by the then Motor Inn and Motel Association of Australia and the Motor Inn and Motel Association of Australia, Victorian branch. Since the making of the applications there has in fact been a consent to a change of name and the association as of 16 September this year is now known as the Motor Inn Motel and Accommodation Association and the second application will be by the Motor Inn Motel and Accommodation Association, Victorian branch.

Both application are in relation to seeking exemption under sub section 211(1) from the provisions of section sub section 210(1) relating to the conduct of election for officers. What I think I would like to do, Mr Farrar, is have you present material which will assist me in determining whether or not I can be satisfied as required under section 213 of the act.

MR FARRAR: Yes, Mr Registrar. I understand that a copy of my written submission has been forwarded to the registry and I would formally tender a copy of that.

THE D.REGISTRAR: Thank you, Mr Farrar. There are two exhibits and we will call the exhibit relating to matter R142 as exhibit M1 and the exhibit relating to matter R19 will be exhibit M2 and I have a copy of those, thank you.

MR FARRAR: As you can see, Mr Registrar, from exhibit M1, it sets out in detail the necessary procedure to meet the requirements of the act in regard to the exemption. It starts off with a brief history of the application as to when it was first lodged and you will note that there was in fact an earlier application that was subsequently withdrawn because of a technicality which then necessitated the second application which is now before you - - -

THE D.REGISTRAR: That's the one referring to the Victorian branch.

MR FARRAR: No, that was a national one but it was signed by myself which was defective in accordance with the act and that matter was in fact withdrawn and the subsequent application was then filed

signed by Mr Henry Rose, then president of the organisation. The document then sets out the objects of the application, the procedures that have been undertaken in regard to rule alterations and you would have on file correspondence both from the registry and my organisation identifying certain areas of the rules that were needing some attention to meet the requirements of the amended act. All of those requirements have been proceeded with and have been certified by the registry in relation to the changes necessary to meet those particular requirements.

THE D.REGISTRAR: Yes, I have actually got certified copies of those rules. I might also mention at this stage that the applications were advertised as required under the act and in fact, no objections were received.

MR FARRAR: Thank you, Mr Registrar. Then on page 2 the submission proceeds to address sub sections 197(1) in respect of paragraphs A, B, C, D(1), D(2), D(3) in regard to the compliance provisions and then proceeds on page 3 again dealing with further sections and sub sections of the act and regulations in regard to the method of complying with the requirements under the act as it now stands in respect to the rules.

THE D.REGISTRAR: Perhaps I could ask you, Mr Farrar, if you wouldn't mind just briefly taking me to each of the provisions from the exhibit for the record this morning which would also assist me to ensure I have a correct understanding of the material as presented.

MR FARRAR: Yes, dealing particularly on page 2 of exhibit M1, it first deals with the requirements of section 197(1) regarding the direct voting etcetera and position of executive director and state representatives which is covered by rule 48 and also refers to sub section 4 of the act in regard to the financial status of the membership. It then deals with the positions of president, vice president and treasurer which is in relation to rule 49 of the association's rules.

Paragraph B then relates to rule 45 and the function of the returning officer, again in conformity with the requirements of the act. In paragraph C we deal with sub section 197(1) which requires the notification of the nominees should the nomination be defective in any way in relation to specific rules 48, 48 sub rule 3, 49 and 49(2).

THE D.REGISTRAR: Yes, I have a copy of the rules with me as a matter of fact and I am aware that in the case of the issue of whether or not the nominations are effective that those provisions are in fact in your rules.

MR FARRAR: Yes, there is one minor point that is yet to be addressed and this may come up in respect of R19 of 1991 and that is the difference that may currently exist in the duration of the period of the election of the respective officers. Under the national rules the rules have been altered to provide a 3 year term whereas at present the Victorian council position is a 2 year term. That is an issue that will be subsequently addressed to bring in uniformity as the position was prior to the extension from 2 to 3 years.

THE D.REGISTRAR: That's still within conformity of the requirements of the act although they are not uniform. Is that what you are telling me?

MR FARRAR: That is so, Mr Registrar. It's most definitely in conformity with the act but there is that differential which will be addressed in due course to bring it into uniformity of the 3 year term in respect of both periods of election.

THE D.REGISTRAR: Thanks, Mr Farrar.

MR FARRAR: Then the exhibit proceeds to deal with the requirements in respect of candidates covered by rules 22(b) in relation to the financial status and eligibility for election to national council. Again reference is made to sub rule 25(b) requiring that nominations be from financial members. Then it proceeds to deal with rules 46, 48 and 49 which set out the requirements and duties of the returning officer in regard to an election and ballots if that is to take place.

Then in regard to rule 25(b) it sets out the requirements in regard to the election of executive director and reference to other rules that have implications on that type of election and/or ballot should that be necessary in the event of more than one candidate nominating for the position. It then proceeds to outline similar information in relation to president, vice president and treasurer of the national organisation. On page 3 provision is there set out in regard to secret ballots which are covered by rules 48 and 49.

Provision is also made for absentee voting which is covered by rule 49(4) and 48. Again those points there continue to deal with the requirements of a ballot should that be necessary. The appointment then of scrutineers to represent any person nominating for a position for which a ballot is liable to take place. Paragraph F then sets out the requirements in regard to irregularities and to ensure that they do not take place and to provide for all members to be provided with the necessary voting material should a ballot be required.

This then meets, I would suggest, Mr Registrar, the requirement of section 197 as regards to the act and the uniformity of the rules with that requirement. I would indicate that since the formation of the association there has never been a challenge to any election that has been conducted either in the Federal Court or elsewhere and in fact, I will indicate that has not been a ballot for either the positions of national council or the Victorian branch council or other offices as either the required number of nominations have been received or where there is a variance of numbers the nominations have not exceeded that variance provided for within the rules themselves.

That, I would believe, Mr Registrar, sets out the mandatory requirements that are provided for under section 197 and indicate that the rules of the association meet the requirements of the act. The exhibit then deals with the requirements of section 198 dealing with the direct voting provisions in respect of the position of executive director as well as state representatives to national council. Provision is also there for secret ballots and that is covered by the requirements of rule 48. The exhibit then proceeds to deal with the requirements of section 199 which provides that the election should not be for more than four years. As I indicated earlier, there is a slight discrepancy between the national and Victorian duration of the period of the election but that is still within the requirements of the act and will be an issue that will be looked at at a subsequent point, but for the purpose of this application both conform with the requirements of the act as they now are.

The exhibit then deals with section 200 of the act in relation to casual vacancies and I would indicate that rule 25 is in conformity and rule 22 with the requirements of the act with regard to the duration that must pass before casual vacancies may be filled by the council or for a fresh election to be held in the event of a vacancy occurring within a shorter period than is provided for by the act.

The exhibit then proceeds to deal with the requirements of section 213 and then proceeds to set out some of the history in regard to the returning officer, his background, his ability to be able to conduct the elections, his knowledge both of the rules and also of the requirements of the act. Then the exhibit deals with the conformity of the rules specifically with the requirements of the act in section 213 which I believe should satisfy you to the point of being able to grant the exemption so sought after having examined the exhibit and the submissions currently being put to you and as a consequence I would request that the association be granted the exemption from the provisions of section 210 of the act.

THE D.REGISTRAR: Thank you, Mr Farrar. Just in relation to the question of which I need to be satisfied concerning - I am just reading

section 213 - that the members would be afforded or entitled to vote at such elections an opportunity of voting without intimidation. I notice in your exhibit your refer to the returning officer having conducted the elections since 1977 and it does mention that there's been no action in the federal court and I also take it there's been no complaints to the association itself by its own members?

MR FARRAR: None at all.

THE D.REGISTRAR: None at all. If for any reason Mr Walker, who is currently the returning officer, were not able to do the task, how would you go about nominating another person to undertake the task for you?

MR FARRAR: Well, that obviously would be done (a) in accordance with the rules, but (b) and more particularly finding a person that is knowledgable in regard to both the requirement of the act and also the rules so as he could act or she, as the case may be, in accordance with the overall requirements of the act and the direction that the act so makes in regard to the independence of the returning officer from all those standing for election for any of the particular position.

THE D.REGISTRAR: All right, thanks, Mr Farrar. I think that's sufficient information on application 142 of 1990. If you'd like to turn your attention to the application in relation to the Victorian branch.

MR FARRAR: Yes, thank you, Mr Registrar. In regard to matter R Number 19 of 1991 as you would probably be aware, the rules of the Victorian branch are basically the same as those of the national and I would adopt the submission I have just put in regard to the earlier matter in respect of the Victorian branch but refer briefly to exhibit M2 which sets out information in regard to the positions that exist in relation to the Victorian branch and a history of the returning officer. Again he is a person who is knowledgable of the organisation's rules and also the requirements of the act and he has been conducting the elections for the past 13 years.

Again I would indicate that there has been no ballot or irregularity in regard to the elections that have taken place in respect of the branch nor any objections from any of the members within the state of Victoria resulting in objection to what had taken place or any form of application to the courts or the registry itself. I would also formally request that exemption be granted in respect of that application to enable the branch to conduct its own elections.

THE D.REGISTRAR: Thank you, Mr Farrar. If you have nothing further to add to your submissions, I'd like to thank you for the

thorough way in which the written material has been prepared for me. It's certainly assisted me in attempting to confirm that I can be satisfied that the requirements of the act have been met and what I would hope to do is to be able to provide you with a decision as quickly as possible. We will adjourn sine die.

MR FARRAR: If the commission pleases.

AT 10.55 AM THE MATTER WAS ADJOURNED  
INDEFINITELY

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

**THE MOTOR INN, MOTEL AND ACCOMMODATION ASSOCIATION**  
(R Nos 142 of 1990 and 19 of 1991)

M KELLY  
INDUSTRIAL REGISTRAR

MELBOURNE, 11 OCTOBER 1991

**DECISION**

These matters concern applications by the committees of management of The Motor Inn, Motel and Accommodation Association and its Victorian Branch 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 Motor Inn, Motel and Accommodation Association is an organisation registered under the Act.

Particulars of the application by the organisation were lodged in the Industrial Registry on 23 March 1990. Particulars of the application by the Victorian Branch were lodged in the Industrial Registry on 7 February 1991.

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 the Victorian Branch.

No objection to the applications was received from any member of the organisation.

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

As required by subsection 212(2) of the Act, I heard the applications in Sydney on 10 October 1991. In the proceedings Mr G E Farrar, the Executive Director of the Association, represented the applicants.

Mr Farrar tendered two documents - Exhibits M1 and M2 - wherein the requirements of the Act are compared with the contents of the rules of the Association. Mr Farrar took me through the documents and submitted that the rules of the Association satisfy the relevant requirements of the Act in relation to all elections for office in the Association and its Victorian Branch.

Having regard to Mr Farrar's submissions and my examination of the rules of the organisation, I am satisfied that the rules of the organisation relating to conduct of elections in the organisation and its Victorian Branch comply with the Act.

I turn now to the other requirements of subsection 213(1) of the Act. Mr Farrar submitted that:

- . the current Returning Officer for the organisation, Mr A J Walker, was first appointed in January 1977 and has since been re-appointed at each Annual General Meeting. Mr Walker understands the nature and duties of a Returning Officer under the Act and particularly the need to act totally independent of the organisation and its office bearers;

- . the current Returning Officer for the Victorian Branch, Mr B Wardrop has been the Branch Returning Officer for the past thirteen years. He has a copy of the registered rules of the Association and is familiar with the operation and requirements of the Act;
- . the organisation has never been subject to any proceedings in the Federal Court with respect to the conduct of elections required under the rules; and
- . the organisation has conducted its own elections since registration in 1971 and the Victorian Branch since 1972. During that period the organisation has never received a complaint from any of its members in relation to the manner in which those elections were run.

On the basis of Mr Farrar's written and oral submissions and other material before me, particularly that there have been no allegations of irregularity in the conduct of elections, and in the absence of any objection to the applications, I have no reason to form doubts that the organisation and its Victorian Branch will conduct elections under the rules and the Act in a manner that will afford members entitled to vote an adequate opportunity of voting without intimidation. Accordingly, I am satisfied if the exemption sought is granted, the requirements of subsection 213(1)(b) of the Act will be met.

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

Certificates to this effect have been issued separately in relation to the organisation and its Victorian Branch.

*Mike Kelly*  
M Kelly  
INDUSTRIAL REGISTRAR



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(R No. 19 of 1991)

I hereby certify that under subsection 213(1) of the Industrial Relations Act 1988, I have granted the Victorian Branch of the abovenamed organisation an exemption from the requirements of subsection 210(1) of the Act in relation to elections for the branch.

*Mike Kelly*

M Kelly  
INDUSTRIAL REGISTRAR

10 October 1991

