

AUSTRALIA / JUDGMENT

Cooper, E.S. v Penman, D. & Anor [1987] FCA 545

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IN _THE FEDERAL COURT OF ANSTRALTA

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JUDGMENT No. SAS 21.

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CATCHWORDS

INDUSTRIAL LAW - antepretation of rules of The Australian Journalists' Association - rejection of candidate for election pursuant to rules - application under s.171C Conciliation and Arbitration Act 1904 for declaration that rejection invalid and for consequential relief - whether rules required candidate for election to office of Assistant Federal Secretary to have been financial member of Association for preceding three years - whether appellant satisfied that requirement.

Conciliation and Arbitration Act 1904, 3.171C, reg.146AE

In re the Application of J. M. Walsh, unreported, 19 November 1981

ELIZABETH SUSAN COOPER v. DAVID PENMAN & ANOR.

NO. ACT 13 OF 1987

CORAM: FOX, LOCKHART AND BEAUMONT JJ.

15 OCTOBER 1987

SYDNEY

IN _THE FEDERAL COURT OF ANSTRALTA

AUSTRALIAN CAPITAL TERRITORY

DISTRICT REGISTRY

No. ACT 13 of 1987

GENERAL DIVISION

ON APPEAL from a single judge
of the Federal Court of

Australia

BETWEEN:

ELIZABETH SUSAN COOPER

Appellant

AND: DAVID PENMAN
First Respondent

AND: THE AUSTRALIAN JOURNALISTS '
ASSOCIATION
Second Respondent
MINUTE OF ORDER
JUDGES MAKING ORDER: Fox, Lockhart and Beaumont JJ.
DATE OF ORDER: 15 October 1987
WHERE MADE: Sydney

THE COURT ORDERS
THAT: 1. The appeal be dismissed.
Note: Settlement and entry of orders is dealt with in
Order 36 of the Federal Court Rules.
IN THE FEDERAL COURT OF AUSTRALIA
AUSTRALIAN CAPITAL TERRITORY No. ACT 13 of 1987
DISTRICT REGISTRY
GENERAL DIVISION
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BETWEEN: ELIZABETH SUSAN COOPER
Appellant

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First Respondent

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ASSOCIATION
Second Respondent,
CORAM: FOX, LOCKHART AND BEAUMONT JJ.
DATE: 15 OCTOBER 1987
REASONS FOR J
FOX J.
The facts and relevant rules of the respondent
Association are set out in the opinion of Beaumont J. and I shall
not repeat them.
The first question which arises is whether, in the case
of the nomination for election of an Assistant Secretary, rule
2.
10(w), or some other provision of the rules requires that the
proposer or the nominee (or both) shall have been a financial
member for "at least the preceding three years". I am not
satisfied that, applying the appropriate rules of construction,
the words used in para.(w) should be read as applying to a
nominee, but in the present case the appellant was both proposer
and nominee and therefore subject to the financiality
requirement on any view. The Returning Officer rejected the
appellant's nomination in reliance upon rule 10(s). If this were
the applicable rule, it is plain that as nominee, the appellant
would have to have been financial for at least the preceding

three years. Beaumont J. is of the view that the three years requirement is also to be found in s.43(b)(iii). by reading into that sub-paragraph the words "Assistant Secretary".

Whichever way the rules are read. one turns immediately to the question whether, at the relevant date the appellant satisfied the requirement of having been a financial member for "at least the preceding three years". The reference must be to financial years, commencing on 1 July in one year and expiring on 30 June of the next. On her return to Australia in January 1985 the appellant paid fees for the financial year then current (1984/5), making her financial until 30 June of that year. She paid her fees referable to the next year (1985/6) and the next year (1986/87) but nominations were called for in April 1987, and she lodged hers on 11 May 1987, some six or seven weeks before the expiry of the third financial year.

In these circumstances, it seems to me to be reasonably
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Plain that she had not been a financial member for "the preceding three years". When para.(w) is applied the period must be calculated backwards from the time of lodgment of the nomination, or, at the latest, the date upon which lodgment of nominations closed (see paras.110(w)(x)ly)). In both cases the date preceded the close of the year. If rule 43(b)(iii) alone was to be applied, the relevant date may be as late as the date of the election, but that question does not arise because the requirement in rule 43(b)(iii) does not supplant the requirement in para (w), the requirements must be read together. In making the calculation, it is all right to include the broken first year (cf Smithers J. In re the application of J.M. Walsh. unreported, 19 November 1981) but this would not matter because she was financial for that year. The difficulty is that there have to be three preceding years. This is a reference to the passage of time. Although she was financial for three years after her return, the last of those years, taken as a period of twelve months did not precede the date of lodgment of the nomination or the date upon which nominations closed. To put the matter another way, the current year (1986/7) is ignored. The three preceding financial years are 1983/4, 1984/5, 1985/6 and the appellant was certainly not a financial member for the first of those years.

A submission was put that earlier years, before she went to Fiii, (and thereupon became a reserve member, (rule 46)), could be taken into account, but in my view the requirement relates to the immediately preceding years, requiring a continuous, and not an aggregated period. This construction is
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said to be opposed to that which the Registrar stipulated when registering the rules, but we must take the rules as they appear. Counsel for the appellant also submitted that during her stay in Fiii whilst she was a reserve member, the appellant did not thereby cease to be a financial member. The submission relates

to a candidate's status during a period of reserve membership. During that period no fees are due. In that sense a reserve member satisfies the definition of a financial member in rule 43CaJCilJ, namely "A member who at September 30 of the current financial owed no dues to the Association...". However, it appears from the rules generally that what is intended is a person who is liable to pay fees and has paid them and in that sense owes no dues to the Association.

Although the Returning Officer rejected the appellant's nomination in reliance upon rule 10(s). as I understand, it is rule 10(w) which is now relied upon by the respondents. The rejection was however expressed to be on the footing that three years of financial membership was required, and I do not think any consequence flows from the fact that the wrong paragraph was relied upon. At all events, no submission has been made along those lines.

I am therefore of the opinion that the appeal should be dismissed.

I certify that this and the
three (3) preceding pages are
a true copy of the Reasons
for Judgment herein of his
Honour Mr. Justice Fox.

Associate: © Kevha_-

Dated: 15 October 1987

IN THE FEDERAL COURT OF AUSTRALIA

AUSTRALIAN CAPITAL TERRITORY No. ACT 13 of 1987

DISTRICT REGISTRY

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GENERAL DIVISION

ON APPEAL FROM A SINGLE JUDGE OF THE

FEDERAL COURT OF AUSTRALIA

BETWEEN: ELIZABETH SUSAN COOPER

Appellant

AND: DAVID PENMAN

First Respondent

THE AUSTRALIAN JOURNALISTS

ASSOCIATION

Second Respondent

CORAM: FOX, LOCKHART and BEAUMONT JJ.

DATE: 15 OCTOBER 1987

REASONS FOR JUDGMENT

LOCKHART J.

This case concerns the interpretation of the rules of The Australian Journalists Association (the "Association"), the second respondent, an organization registered under the Conciliation and Arbitration Act 1904 ("the Act"). Elizabeth Susan Cooper, the appellant, is a member of the Association. On 11 May 1987 she lodged

with David Penman, the first respondent, a nomination as a candidate

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for election to fill a vacancy in the office of Assistant Federal Secretary of the Association caused by the resignation of the former occupant of the office upon his election to the office of Federal Secretary. The first respondent is an officer of the Australian Electoral Commission who has been appointed by the Federal Executive of the Association to be the Returning Officer for the purpose of the election to fill the vacancy. The appellant's nomination was rejected by the first respondent on the ground of invalidity and she applied to this Court, pursuant to s. 171C of the Act, for orders declaring that the rejection was invalid and directing the first respondent to accept

the nomination and to conduct the election accordingly.

The circumstances which gave rise to the questions in this case may be briefly stated. The applicant has been a member of the Association for approximately seventeen years, having become a member in 1970. From that time until August 1981 the applicant paid all membership fees and other moneys due by her as a member of the Association. During that period she was an active member of the Association and served on various committees. In August 1981 she went to Fiji and was, in accordance with the relevant rules of the Association, transferred "from full membership to Reserve Membership" (rule 46[a]). She returned from Fiji in January 1985. Whilst the applicant was in Fiji she paid no dues to the Association, being under no obligation to do so. Upon her return to Australia she recommenced paying membership fees. On 14 January 1985 her name was transferred from the list of Reserve Members to the list of Full Members. At the date on which the appellant nominated for election to the position of Assistant Federal Secretary of the Association (11 May 1987) she was,

as she still is, a financial member of the Association.

Nominations closed on 15 May 1987. On 8 July 1987 an injunction was granted by a single Judge of this Court (Neaves J.), on

the application of the appellant, restraining the first respondent

from declaring a Miss Anne Giles the newly elected Assistant Federal

Secretary of the Association.

The learned trial Judge found that the circumstance gave rise to two questions, namely:-

(a) Do the rules of the Association, upon their proper construction, require that a candidate for election to the office of Assistant Federal Secretary shall have been a financial member of the Association for

the preceding three years?

(b) If so, does the appellant satisfy that requirement?

It is necessary to turn to the relevant rules of the Association. The rules provide for a Federal Council (rule 6), a Federal Executive (rule 15) and a Federal Management Committee (rule 16A). The Federal Council of the Association consists of a Federal President, two Federal Vice-Presidents, the Federal Secretary, the Assistant Federal Secretary, the President and Secretary of each Branch and additional delegates from each Branch (rule 6[b]). The Assistant Federal Secretary is entitled to speak, to move and second

motions and amendments and to vote on all matters before the Federal

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Council (rule 6[h]). The Assistant Federal Secretary shall, under the direction of the Federal Secretary, assist the Federal Secretary in carrying out his duties in all industrial, administrative, professional and research areas. He shall also attend all meetings of Federal Council, Federal Executive and Federal Management Committee (rule 14[a] and [b]).

Rule 10 is titled "Federal Officers". It provides that a Federal President, two Federal Vice-Presidents, a Federal Secretary and an Assistant Federal Secretary shall be the Federal Officers of the Association (rule 10[a]). The Federal President and the two Federal Vice-Presidents are to be elected every two years (rule

10[f]). The respective terms of office of the Federal Secretary and the Assistant Federal Secretary, being terms of not less than three and not more than four years, are to be fixed by the Federal Council (rule 10[b]). Provision is made for the periodic election of the Federal Secretary and the Assistant Federal Secretary by rules 10[s]

to [y] and they provide as follows:

"[s] Federal Executive or Federal Management Committee shall appoint a Returning Officer or receive nominations for the position of Federal Secretary and/or Assistant Federal Secretary. AS soon as practicable, the Returning Officer shall place an advertisement in 'The Journalist' calling for nominations of financial members of the Association [who shall have been financial members for the preceding three years]. He shall determine the validity of the nominations as provided by Clause [1] of this Rule and shall submit a report in writing to the first meeting of Federal Executive or Federal Management Committee to be held after the date fixed for the closing of nominations.

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The Returning Officer shall conduct an election for the position of Federal Secretary and for the position of Assistant Federal Secretary. The Provisions of Clause {g] shall apply for the election.

If more than one nomination is received for the positions the Returning Officer shall then conduct a ballot of the national financial membership in accordance with the procedure prescribed in these Rules for the election of Federal Officers.

A member elected shall assume the title and carry out the duties of Federal Secretary or Assistant Federal Secretary [as the case may be] on a date to be decided by Federal Council.

In the event of the Federal Secretary or Assistant Federal Secretary dying, resigning or being removed from office between meetings of Federal Council the Federal President shall convene a special meeting of the Federal Executive as early as practicable to fix the terms and conditions of employment of his successor. Federal Executive shall then appoint a Returning Officer to call for nominations' from financial members of the Association [who shall have been financial members of the Association for at least the preceding three years] and to receive and determine the validity of nominations and fix a date and time for the closing of nominations. Nominations shall be called by advertisement in 'The Journalist'. The relevant provisions of Clauses 10[g][2] and [1] of this Rule shall apply for the election.

The Returning Officer shall submit a report in writing to the first meeting of Federal Executive or Federal Management Committee to be held after the date fixed for the closing of nominations.

If more than one valid nomination is received Federal Executive or Federal Management Committee shall determine whether a ballot will be held in conjunction with Branch Annual Elections as prescribed in these Rules for the election of Federal Officers or conducted separately."

6.

Rule 37 provides for admission to membership which depends on a decision of the Federal Secretary endorsed by the Federal Executive or the Federal Management Committee. An applicant who is admitted to membership is deemed to be a member of the Association and attached to the Branch in which he resides or, if he does not reside within a Branch, to the Branch determined by the Federal Secretary. Provision is made in rule 47 for the transfer of a member from one Branch to

another.

A membership fee is payable in respect of each financial year commencing on 1 July and is due and payable at the commencement of the financial year (rule 39[a]). "Financial year" is defined by rule 2A[b] as meaning twelve months commencing on 1 July in one year. A reduced fee is payable if the member is admitted to membership after the first quarter of the financial year (rule 39[b]). Approval may be given for a member to pay his membership fee by instalments (rule 39[e]). A member may be granted exemption from payment of his membership fee (rule 41[a]). The rights of such members are provided for in rules 41[f][g], [h] and [i]. Termination and resignation of membership of the Association is dealt with in rule 48.

Rules, 43, 43A, 44, 45 and 46 provide for various classes of membership. These rules should be set out in full:

"43. FINANCIAL MEMBER

[a] A Financial member of the Association is a member who:

[1] A member who on September 30 of the current

financial year owed no dues to - the Association [except who has been exempted from payment of his membership fees in accordance with Rule 41];

[1i] A member who is paying current subscriptions by instalment in a manner approved by a Branch Committee pursuant to

Rule 39[3] [except a member who is paying subscriptions in accordance with Rule 43A(c)];

[11i] A member who has been admitted or readmitted to membership of the Association and has paid all dues in accordance with Rule 39[b].

{b} A financial member is entitled to all rights and privileges and benefits of membership of the Association but shall not be eligible for election:

{1} as member of a Branch Appeal Committee unless he/she has been a financial member of the Association for the preceding ten years.

{ii} as member of a Branch Judiciary Committee unless he/she has been a financial member of the Association for the preceding five years.

{1i1} as a Federal President, Federal Vice-President or Federal Secretary unless he/she has been a financial member of the Association for the preceding three years.

fiv] as President, Vice-President, Treasurer or

Secretary of a Branch unless he/she has been a financial member of the Association for the preceding three years.

{vJ} as a Branch Delegate to Federal Council unless he/she has been a financial member of the Association for the preceding three years.

[vi] as a member of a Branch Committee unless he/she has been a financial member of the Association for the preceding year.

[c] A member's membership of an organisation with which the Association has reciprocal rights shall count as membership of the Association for the purpose of sub-clause [b] of this Clause.

{d} A financial member is entitled to be issued with a card which identifies him during 1ts currency as a financial member of the Association.

[e] Notwithstanding anything to the contrary in these Rules, to be eligible to stand for election to any

office established by, or specified in, these Rules for which an election 1s required, a member, other

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than a member to whom Rule 43[a] [ii] applies, must at the close of nomination for such office, owe no dues to the Association. For the purposes of Rule 33[b] [2] a financial member nominating another financial member for election to an office in a Branch must, unless the member is a member to whom Rule 43[a] [ii] applies, owe no dues to the Association at the close of nominations for such office.

PAID UP MEMBERS

A paid-up member of the Association is a member who has paid all arrears to the Association, including his/her subscription for the current financial year

ending June 30th next.

A paid-up member is entitled to all privileges, benefits and responsibilities of financial membership as specified in Rule 43[a], [b] and [c].

A member who has paid all his/her arrears and has

entered into a contract in a payroll deduction scheme for the payments of the current year's subscription shall be deemed to be a Paid Up Member.

A paid-up member is entitled to be issued with a card which identifies him during its currency as a paid-up member of the Association.

UNFINANCIAL MEMBER

An unfinancial member of the Association is a member who:

[i] On September 30 of the current financial year owed no dues to the Association [except a member who has been exempted from payment of his membership fees in accordance with Rule 41].

[2.i] Has been admitted or re-admitted to the Association since June 30 of the next preceding financial year and has not paid his full membership fees in accordance with Rule 39[b].

An unfinancial member shall not be entitled to:

[1] any of the rights, privileges and benefits of the Association;

[2] hold any office in the Association;

[3] nominate for election to any office;

[4] nominate any candidate for election to any office;

[5] vote on any matter;

[6] receive notice of any meeting;

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(7) take part in any meeting or proceedings connected with the Association;

[8] receive copies of 'The Journalist' or any report or document issued by the Association.

An unfinancial member shall not be denied the right to have any personal complaint concerning the Association administration considered by Federal Council, Federal Executive or by his' Branch, sub-Branch or Division.

HONORARY MEMBERSHIP

The Committee of a Branch or a Division may create an Honorary Membership and by resolution may transfer to such membership any financial member or former member who has been a member of the Association for not less than 10 years and who has rendered valuable assistance in promoting the Objects of the Association and who is not employed on work defined in rule 2 and any foundation member of a Branch.

Honorary Members shall not pay any dues to the

Association and shall not exercise any voting power. They shall be entitled only to receive

notice of any General Meeting, to attend and speak at such meetings, to receive copies of 'The Journalist' and any report or document issued by the Association to the general membership.

Honorary Members on obtaining employment in work defined in Rule 2 may be re-admitted to membership without entrance fee on making application in accordance with Rule 37.

RESERVE MEMBERSHIP

Any member who is absent from Australia or who has not been employed for six months or more on work defined in Rule 2 and who desires to retain some

form of membership with the Association, may at the discretion of the Committee of the Branch or

Division be transferred from full membership to Reserve Membership.

Reserve Members shall not pay any dues to the Association and shall not exercise any voting power.

Reserve Members shall not be unclued in the membership of the Branch or Division, but a list of Reserved Members may be published in the annual report.

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[d] A Reserve Member on obtaining employment in Australia in work defined in Rule 2 and on payment of dues shall be transferred by the Committee to

financial membership and shall then be entitled to all rights, privileges and benefits of membership. {e] At the discretion of Federal Executive copies of

'The Journalist' shall be sent to retired A.J.A. members nominated by a Branch."

The word "dues" is defined in rule 2A to mean any money due and payable to the Association.

Rule 55 provides for the Federal Council to confer "Honorary Life Membership of the Association". Rule 55[e] provides that

Honorary Life Members are to have "all the rights and privileges of financial members of the Association".

The trial Judge considered first the question whether the rules of the Association, upon their proper construction, require that a person nominating for election to the office of Assistant Federal Secretary shall have been a financial member of the Association for the preceding three years. His Honour said that the answer to this question depended upon the resolution of the inconsistency or the

apparent inconsistency between rule 10[w] and rule 43[b].

The trial Judge held that the rules of the Association, in particular rule 10[w], on their proper construction require that a person nominating for election to the office of Assistant Federal Secretary shall have been a financial member of the Association for the preceding three years. His Honour then considered whether the appellant satisfied that requirement. His Honour answered that question by saying that the appellant did not, at the time of

nominating for election to the office of Assistant Federal Secretary,

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satisfy the requirements of rule 10[w] and that it followed that she had not demonstrated the occurrence of any irregularity on the part of the first respondent in rejecting her nomination. His Honour therefore dismissed the application, and, in accordance with s. 197A of the Act, made no order as to costs. It is from his Honour's

judgment that this appeal has been brought.

The case was conducted below on two assumptions: First, that rule 10[w] was the relevant rule pursuant to which the vacancy occurred in the office of Assistant Federal Secretary and is to be filled. The second assumption was that the requirement of rule 10[w] as to financial membership of the Association for at least the preceding three years is directed to the financial membership of the nominee or candidate for election, not of the nominator of a candidate.

It is apparent from the trial Judge's reasons for judgment that he approached the matter on the same basis. The written outline of argument of counsel for the appellant also proceeded on the same basis. The oral submissions of counsel for the appellant initially proceeded on this basis, but later in his argument counsel submitted that the requirement of rule 10[w] is directed to the financial

membership for at least the preceding three years of the nominator.

One thing that is plain in this case is that the first respondent, when determining the validity of the appellant's candidature for election to the office of Assistant Federal Secretary, proceeded on two bases: first, that the relevant rule governing the election is rule 10[s] and, second, that rule 10[s] is concerned with

the financial membership of the nominee or candidate for election.

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One further matter should be noted at this point, namely, that it was common ground before us that the appellant was not only the nominee for election but the nominator as well: she nominated herself. Whether this is permissible under the rules of the Association was not a ground argued before us so I shall say nothing about it. The question may arise in other proceedings which have been commenced in this Court's Industrial Division. The appellant has lodged an application under s. 159 of the Act for an inquiry by this Court into alleged irregularities in or in connexion with the election for the office of Assistant Federal Secretary. Counsel informed us that a third proceeding had also been commenced in the Industrial Division, namely, an application for an order under s. 140 of the Act that certain rules of the Association contravened sub-s. 140(1) in that they are said to impose upon members of the Association conditions, obligations or restrictions which are oppressive, unreasonable and unjust.

The Court's inquiry under s. 159 and the s. 140 proceedings range over wider issues than those with which this case is concerned. In these circumstances it is not appropriate to deal with any questions except those which necessarily arise for determination in this case. Hence, I do not propose to decide whether rule 10[s] or rule 10[w] governs this election. One or the other is the applicable rule; but it is a question which is more appropriate for resolution in the other proceedings. Also, I have reached the conclusion that both rules, 10[s] and 10[w] are directed to the financial membership of the nominee, not the nominator. If I had concluded otherwise it may have been necessary to consider which of those two rules govern this election.

13.

I now turn to the question whether the subject matter of rules 10[s] and 10[w] or either of them is the financial membership of the nominator or the nominee.

The trial Judge remarked on the difficulties of interpretation of the rules of the Association. They are indeed replete with numerous instances of ambiguity, obscurity, internal inconsistency, mistake and typographical error. This demonstrates the importance of interpreting a particular rule in the light of the rules as a whole and approaching the task sensibly, with common sense and in a practical fashion.

The rules of the Association plainly require that any person nominating any candidate for election to any office in the Association must be a financial member: rules 43[e] and 44[b][4]. Leaving aside rules 10[s] and [w] for the moment, nowhere do the rules require that the nominator of a candidate for any office in the Association shall have been a financial member for any specified number of years. It would, in my view, be anomalous if a member who seeks to nominate a member for office as the Federal Secretary or Assistant Federal Secretary must have been a financial member for the preceding three years, yet if he seeks to nominate a member for office as, for example, Federal President or Federal Vice-President or as the President, Vice-President, Treasurer or Secretary of a Branch or a member of a Branch Appeal Committee, no such requirement is imposed; indeed, there is no requirement for any fixed number of preceding years. It is sufficient if the nominator is a financial member.

14.

Rule 10[s], which I earlier set out, deals with the election of the Federal Secretary or Assistant Federal Secretary.

Rule 10[w], which is earlier set out, deals with the election of the Federal Secretary or Assistant Federal Secretary following the death, resignation or removal from office of the predecessor between

meetings of the Federal Council of the Association.

In one sense the election of the Federal Secretary or Assistant Federal Secretary under rule 10{w} is to fill a casual vacancy; but that expression has a well understood meaning with respect to meetings of companies and other bodies, and arguably, it is not a meaning apposite to rule 10{w}. Once elected pursuant to an election held under rule 10f{w} the successful candidate holds office as Federal Secretary or Assistant Federal Secretary, as the case may be, but the length of tenure of that office does not appear to be necessarily limited until some subsequent event e.g. a later election for that office or a meeting of the Federal Executive. Directors of companies who are appointed to fill casual vacancies generally only hold office until the next annual general meeting of the company, so some caution must be exercised before characterising the vacancy in the office of Federal Secretary or Assistant Federal Secretary under rule 10[w] as a casual vacancy. This point may have relevance when the question arises in the other proceedings whether the first respondent, in rejecting the nomination of the appellant, acted pursuant to rule 10[s] or rule 10[w]; but it is not necessary that I

express any view on the question here.

15.

The word "of" in rule 10[s] (as distinct from the word "from" in rule 10[w]) is used in the context of calling for nominations "of" financial members of the Association who shall have been Financial Members for at least the preceding three years. The ordinary and natural meaning of this part of rule 10[s] is that only financial members of the Association for at least the preceding three years are eligible to be candidates for the office of Federal Secretary or Assistant Federal Secretary. It would be an unduly strained interpretation of the language to say that it is the nominator, as distinct from the nominee, who is required to have been a financial

member for at least the preceding three years.

In rule 10[w] the word "from" is used, not the word "of". "From" is at first sight a curious word to use in the context in which it appears in rule 10[w]; but the difficulty is dispelled when the word is read in the sense that the Returning Officer calls for nominations for the vacant position of Federal Secretary or Assistant

Federal Secretary from the class of persons eligible to be candidates for that office, namely, financial members of the Association for at least the preceding three years. It is idle to conjecture why the rules should use "of" in rule 10[s] and "from" in rule 10[w] in substantially the same context; but, as has already been pointed out, the rules are deficient in many respects. I can discern no convincing reason, nor was any pointed to in argument, why rule 10[s] would be directed to a three year membership requirement for candidates for office, yet rule 10[w] directed to a three year requirement for persons nominating candidates for office. Indeed, it would be

anomalous, as I said eariler, if this were so because, although other rules require the nominators of candidates for any office shall be

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financial members of the association, nowhere 1s there a requirement that they be financial members for any fixed number of years.

There is another pointer to the correctness of the construction of rule 10[w] which appeals to me. Under the rules of the Association, eligibility for office 1s conditioned, not only upon financial membership of the Association, but upon tenure of that membership for specified numbers of preceding years. Rule 43[b] States that a financial member (an expresion defined by rule 43[a]) 1s entitled to all the rights, privileges and benefits of membership of the Association, but shall not be eligible for election to various specified offices unless he has been a financial member of the Association for a number of preceding years. For example, in the case of the Federal President, Federal Vice-President or Federal Secretary the period of eligibility of financial membership 1s the preceding three years (rule 43[{b}{1iil}); as to the President, Vice-President, Treasurer or Secretary of a Branch the period of eligibility for election is the preceding three years (rule 43[b] [1v]) and the preceding one year in the case of a member of a Branch committee (rule 43[b]{vi}). It is therefore consistent with this pattern that the Assistant Federal Secretary should be, not only a financial member, but a financial member for a period of years, and, 1n particular the same period of years (three) as is required for the office of Federal

Secretary.

It would be odd if a Branch Committee Member, for example, 1s required to have been a financial member for one preceding year, but there 1s no requirement of any periodicity of financial membership in the case of the Assistant Federal Secretary either for an election under rule 10[w] or an election under rule 10[s].

17.

It 1S perhaps strange that the three year requirement for the office of Federal Secretary is imposed by rule 43[b][111] as well as rule 10[s] and 10[w] and that rule 43[b] 1s the rule which prescribes the period of eligibility for all offices except Assistant Federal Secretary. But this circumstance does not assist the conclusion that rules 10{s] and [w] are or either of them is directed to a three year membership requirement for nominators rather than nominees. It simply means that the rules are not always logically arranged and that they sometimes overlap to a degree. What emerges with clarity in this case is that it is necessary to consider the rules of the Association as a

whole when interpreting a particular rule.

The next question is whether the appellant answers the description, for the purposes of rules 10[s] or [wl], of a person who has been a financial member of the Association "for at least the preceding three years".

It was argued that this expression connotes either any period of membership over three consecutive years or any period or periods of membership, whether consecutive years or not, which aggregate three years.

In my opinion it is plain that the expression "for at least the preceding three years" in rules 10[s] and [w] means at least the three immediately preceding financial years. If the language had been "three preceding years" it might have lent some support to the construction that one can search back into distant times to determine

an aggregate of some three years when the candidate was a financial

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member, but that is plainly not the intent of these rules. The intent which underlies the rules as a whole (including rules 10[s] and [w]) is that, before a person can be eligible for the election to any of the offices of the Association, he shall have shown an interest or stake in the Association by having been a financial member for the three immediately preceding financial years. The requirement is of membership for a continuous period of three years, not an aggregation of any three preceding years. Also, the reference to the preceding

three years must be to the preceding three financial, not calendar, years.

I recited earlier the history of the appellant's membership of the Association and shall not repeat it. Upon her return to Australia from Fiji in January 1985 the appellant recommenced paying membership fees (from 14 January 1985) and at the date on which she lodged her nomination for the position of Assistant Secretary with the second respondent (11 May 1987) she was a financial member of the Association. Nominations closed on 15 May 1987. On 18 May 1987 her nomination was rejected by the first respondent. A "Financial Year" for the purposes of the rules means the period of twelve months commencing on 1 July in one year and terminating on 30 June in the following year (rule 2A[b]). Whether the relevant date be the date of calling for nominations or of lodgement of nominations or of closing of nominations does not matter. All events occurred during the financial year commencing 1 July 1986. The three years which preceded it are the years ended 30 June 1986, 1985 and 1984. On no view of the facts was the appellant a financial member of the Association during

the financial year ended 30 June 1984.

19.

Whether the expression "financial member ... for at least the preceding three years" means financial member for the whole of each year is not, therefore, a question which arises. The word "for" in this context may be used in the sense of "in respect of", so that a person who is admitted as a member during a financial year and pays the requisite fees may answer the description of a member "for" that year, the question being determined at the end of that year. This was

the view of Smithers J. In re the Application of J.M. Walsh for an

inquiry into an election in the Australian Journalists Association, unreported, 19 November 1981. As this is not a question which arises

in this case I shall express no view on it.

It follows that the appellant was not qualified as a candidate for election to fill the vacancy for the office of Assistant Federal Secretary of the Association. I would therefore dismiss the appeal.

I certify that this and the

preceding eighteen (18) pages are a true copy of the reasons for judgment herein of the Honourable Mr. Justice Lockhart.

Associate AM

Dated: 15 October 1987

IN THE FEDERAL COURT OF AUSTRALIA

AUSTRALIAN CAPITAL TERRITORY No. ACT 13 of 1987

DISTRICT REGISTRY

GENERAL DIVISION

BETWEEN: ELIZABETH SUSAN COOPER Appellant AND: DAVID PENMAN

First Respondent

AND: THE AUSTRALIAN JOURNALISTS ASSOCIATION

Second Respondent

CORAM: Fox, Lockhart and Beaumont JJ.

DATE: 15 October 1987 REASONS FOR JUDGMENT

BEAUMONT J. The appellant, a member of the Australian Journalists Association ("the Association"), an organisation

registered under the Conciliation and Arbitration Act 1904 ("the Act") lodged a nomination as a candidate for election to fill a vacancy in the office of Assistant Federal Secretary of the Association. Her nomination was rejected on the ground that, under the rules of the Association, she was ineligible for nomination. It was said that the rules required that, in order to be nominated for that office, the appellant had to have been a financial member of the Association for the preceding three years. The appellant disputed that she was ineligible for election and applied to the Court pursuant to s.171C of the Act for a declaration that the rejection of her nomination was invalid and for consequential relief. Her application was dismissed and she now appeals.

2.

The appellant has been a member of the Association since 1970. From that time until August 1981, she paid all membership fees and other moneys due as a member of the Association. In August 1981, she went to Fiji and was, in accordance with the relevant rules of the Association, transferred from "full" membership to "reserve" membership (r.46f[a]). She returned to Australia in January 1985. During the period she was in Fiji, the appellant paid no dues to the Association, being under no obligation to do so. Upon her return to this country she recommenced paying membership fees and, at the time she lodged her nomination, she was a financial member of the Association.

The federal officers of the Association consist of a

Federal President, two Federal Vice-Presidents, a Federal Secretary and an Assistant Federal Secretary (r.11O[a]). The Federal President and the two Federal Vice-Presidents are to be elected every two years (r.10[f]). The respective terms of office of the Federal Secretary and the Assistant Federal Secretary, being terms of not less than three years and not more than four years, are to be fixed by the Federal Council (r.10[b]) and provision 1s made for their election (see r.10[s] - [v]).

Rules 10[s] and 10[w] are important for present purposes:

""[s] Federal Executive or Federal Management Committee shall appoint a Returning Officer or [sc. to] receive nominations for the position of Federal Secretary and/or Assistant Federal Secretary. As soon as practicable, the Returning Officer shall place an advertisement in "The Journalist" calling for nominations of financial members of the Association fwho shall have been financial members for the preceding three years]. He shall determine the validity of the nominations as provided by clause [1] of

3.

this Rule and shall submit a report in writing

to the first meeting of Federal Executive or Federal Management Committee to be held after the date fixed for the closing of nominations." (Emphasis added)

"[w] In the event of the Federal Secretary or Assistant Federal Secretary dying, resigning or being removed from office between meetings of Federal Council the Federal President shall convene a special meeting of Federal Executive as early as practicable to fix the terms and conditions of employment of his' successor. Federal Executive shall then appoint a Returning Officer to call for nominations from financial members of the Association [who shall have been financial members of the Association for at least the preceding three years] and to receive and determine the validity of nominations and fix a date and time for the closing of nominations. Nominations shall be called by advertisement in 'The Journalist'. The relevant provisions of Clauses 10[g][2] and [1] of this Rule shall apply for the election." (Emphasis added)

The Returning Officer, the first respondent, purported to reject the appellant's nomination on the ground that the rules require that a candidate for the position of Assistant Federal Secretary have been a financial member for the preceding three years. He mentioned in this connection r.10[s]. It will be recalled that r.10[s] deals with periodic elections, whereas r.10[w] deals with elections consequent upon casual vacancies. The primary Judge dealt with the matter on the footing that this was a casual vacancy. During the course of argument before us, the respondents sought to argue that this was a periodic election, in which event r.10[s], rather than r.10[w], applied.

It will be necessary to return to this later.

Sub-rule 43[a] defines a financial member of the

Association:

Rule

" [a]

A f1

4.

nancial member of the Association is a

member who:

[1]

fii]

[111]

43[b] is

A member who on September 30 of the current financial year owed no dues to- the Association [except who has been exempted from payment of his membership fees in accordance with Rule 41];

A member who is paying current subscriptions by instalment in a manner approved by a Branch Committee pursuant to Rule 39[3] [except a member who is paying subscriptions in accordance with Rule

43A[c]];

A member who has been admitted or readmitted to membership of the Association and has paid all dues in accordance with Rule 39[b]."

also of importance for our purposes:

A financial member is entitled to all rights and

priv

ileges and benefits of membership of the

Association but shall not be eligible for election:

{i}

(11)

{iii}

as member of a Branch Appeal Committee unless he/she has been a financial member of the Association for the preceding ten years.

as member of a Branch Judiciary Committee unless he/she has been a financial member of the Association for the preceding five years.

as a Federal President, Federal Vice-

President or Federal Secretary unless

he/she has been a financial member of the

Association for the preceding three years.

fiv]

[v]

[vi]

TEmpphasis added)

as President, Vice-President, Treasurer or Secretary of a Branch unless he/she has been a financial member of the Association for the preceding three years.

as a Branch Delegate to Federal Council unless he/she has been a financial member of the Association for the preceding three years.

as a member of a Branch Committee unless he/she has been a financial member of the

5.

Association for the preceding year."

By r.43[el]:

"fe] Notwithstanding anything to the contrary in these Rules, to be eligible to stand for election to any office established by, or specified in, these Rules for which an election is required, a member, other than a member to whom Rule 43[a])[11] applies, must at the close of nomination for such office, owe no dues to the Association. For the purposes of Rule 33[b]) [2] a financial member nominating another financial member for election to an office in a Branch must, unless the member is a member to whom Rule 43[a])[11] applies, owe [sic] no dues to the Association at the close of nominations for such office."

The position of unfinancial members is dealt with by

v.44:

"44, UNFINANCIAL MEMBER

[a] An unfinancial member of the Association is a member who:

[1] On September 30 of the current financial year owed no [sic] dues to the Association [except a member who has been exempted from payment of his membership fees in accordance with Rule 41].

[It is common ground that the insertion of the word "no" before "dues" was an obvious mistake which should be ignored].

[11] Has been admitted or re-admitted to the Association since June 30 of the next preceding financial year and has not paid his full membership fees in accordance with Rule 39[b].

[b] An unfinancial member shall not be entitled to:

[1] any of the' rights, privileges and benefits of the Association;

[2] hold any office in the Association;

[3] nominate for election to any office;

[4] nominate any candidate for election to any office;

6.

[5] vote on any matter;

[6] receive notice of any meeting;

[7] take part in any meeting or proceedings connected with the Association;

[8] receive copies of 'The Journalist' or any report or document issued by the Association..."

The learned Judge said that two questions arose which he expressed as follows:

"(a) Do the rules of the Association, on their proper

construction, require that a person nominating for election to the office of Assistant Federal Secretary shall have been a financial member of the Association for the preceding three years?

[It will be seen that his Honour assumed that the requirement of three years' financial membership applied to the candidate but, presumably, not to the nominator.]

(b) If so, does the [appellant] satisfy that requirement?" The primary Judge answered question (a) in the

affirmative and question (b) in the negative.

I turn first to question (a).

Before going to the rules, mention should be made of the statutory background. The rules of a registered organisation shall provide for the election of the holder of each office within the organisation (s.133(1)(a) of the Act), and = shall provide for the conduct of each such election, including the

acceptance or rejection of nominations, by a returning officer

(s.133(1)(b)); and shall provide that, if the returning officer

7. finds a nomination to be defective he shall, before rejecting the ° nomination, notify the person concerned of the defect and, where it is practicable to do so, give him the opportunity of remedying

the defect (s.133(1)(c)); and shall provide for, inter alia, the

manner in which persons may become candidates for election

(s.133(1)(d)(ii)).

By Part VAA of the Conciliation and Arbitration Act

Regulations, the Returning Officer shall determine the times and dates of the commencement and close of the period for lodging nominations of candidates for election for an office (reg.146AC(1)). The returning officer shall call for nominations by inviting nominations of persons, eligible for election for the office under the rules of the organisation, to stand as candidates for election for the office (reg. 146AD(1)). Reg.

146AE(1) deals with nominations:

"(1) A person is not eligible for election for an office -

(a) where the rules of the organization provide for the nomination of a candidate for election for that office to be made in writing ~- unless the

nomination is in accordance with the rules of the organization; or

(b) where those rules do not so provide - unless the nomination is in writing and is signed by the person and by the number of persons, qualified under those rules to nominate a candidate for that office, that is equal to the number of nominators (if any) that is required, under those rules, for a nomination for that office."

In considering the rules themselves, the provisions of r.43 ([b] [111]) are a convenient starting point: in the case of the

Federal President, Federal Vice-President or Federal Secretary,

8. only a financial member of the Association for the preceding three years is eligible for election. But, in terms, there is no

such restriction in the case of the Assistant Federal Secretary.

On the other hand, r.43[e] requires that to be eligible for election to any office, a member must at the close of nomination owe no dues to the Association, except in the case of a member to whom r.43[a] [ii] applies. It follows that, in order to be eligible for nomination to the office of Assistant Federal

Secretary, the candidate must owe no dues.

That, of course, is not the present question. It is whether a member is qualified for candidature for the office of Assistant Federal Secretary if, and only if, he or she has been a financial member of the Association for at least the preceding three years. The primary Judge was of the opinion that, in the event of a casual vacancy, as here, the provisions of r.10[w]

imposed such a condition of eligibility.

It will be remembered that r.10 [w] speaks of the calling "for nominations from financial members of the Association (who shall have been financial members of the Association for at least the preceding three years)..." If r.10[w] stood alone, there might be room for argument as to its meaning: It might be said that it is not clear whether it is referring to the candidate on the one hand or to those proposing

a candidate, the nominator, on the other.

The noun "nomination" can have a number of meanings,

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depending upon its context. According to Black's Law Dictionary

(5th ed.), "nomination" means:

"An appointment or designation of a person to fill an

office or discharge a duty. The act of suggesting or proposing a person by name as a candidate for an

office." The Oxford English Dictionary, includes, in the meanings of "nomination": "2(b) The action of proposing as a candidate,

or as a suitable person to be elected...3. The fact or position

of being nominated."

As has been seen, the distinction between the nominator on the one hand, and the candidate, on the other, is recognised in r.44(b) [3] and [4] and in Reg.146AE(1)). The difference is also referred to in a number of the authorities dealing with

nomination in an election context (see *Harford v. Linskey* [1899]

1 Q.B. 852 at 862; *Hopper v. Britt* 132 N.W.S. 730; *Fuiscella v.*

Nulton 92 A.2d 103 at p.106; *Fabre v. Ley* (1972) 127 C.L.R. 665

at p.668; *Re Australian Building Construction Employees and*

Builders Labourers Federation; *Ex parte Rix* 18 A.L.R. 43 at pp.

44, 45; *Lovell v. Federated Liquor and Allied Industries Employees' Union of Australia* (1978) 35 F.L.R. 72; *Re Federated*

Liquor and Allied Employees Union of Australia (Tasmanian

Branch); *Ex parte Huxtable* 30 A.L.R. 115 at pp. 119,120; *Municipal Officers' Association of Australia v. Lancaster* (1981)

54 F.L.Re 129 at pp.140-141, 156-157, 163,167; *Kelly v.*

Amalgamated Metal Workers' and Shipwrights' Union (1981) 56 F.L.R. 124 at p.144; *The Queen v. Gray*; *Ex parte Marsh* (1985)

157 C.L.R. 351 at p.365; *Halsbury's Laws of England*, 4th ed.,

vol. 15 at paras. 560-563.

10.

In my opinion, the meaning of r.10[s] and 10[w] is clear once the rules are read as a whole and in the light of the statutory background. Apart from the provisions of r.44[b] [4], which disqualify unfinancial members from nominating any candidate, there is no provision in the rules requiring any particular qualifications in order that a member may nominate a candidate for any office. Rule 10[s], it will be recalled, provides for the calling for "nominations of financial members (who shall have been financial members for the preceding three years)" in the case of the ordinary elections of Federal Secretary and Assistant Federal Secretary. The reference here to nominations "of" financial members of certain standing is an indication that "nomination" is intended to mean the state of being nominated rather than the act of nominating. It is only reasonable to suppose that r.10[w] was intended to introduce a similar requirement for candidature in the case of a casual vacancy: to require a three year financial standing as a qualification for the right to nominate a candidate for the office of Assistant Federal Secretary in the case of a casual vacancy when no such qualification is required of a nominator in the case of any other election would lead to an anomalous, and surely unintended, result. The preferable construction is to interpret r.10[w] as stipulating for three years' financial standing in the case of the candidate rather than his or her nominator.

It is true that the text of r.43[b][1ii] makes no reference to the Assistant Federal Secretary. But it is well

established that any instrument must be construed as a whole;

11. and that, by this method, inconsistencies of expression may be reconciled and, where appropriate, repugnant words may be rejected, words may be transposed and omitted words supplied (see *Fitzgerald v. Masters* (1956) 95 C.L.R. 420 at pp.426-7; 437). If the rules are read as a whole, it appears that a reference to the Assistant Federal Secretary was inadvertently omitted from the text of r.43[b] [1ii]. In the circumstances, it is appropriate that, as part of the ordinary process) of construction, the words "the Assistant Federal Secretary", so omitted, be supplied. That is to say, the rules should be read

as if those words appeared in that sub-rule.

As has been said, the primary Judge seems to have assumed that the requirement of three years' financial standing applied to the candidate rather than the nominator. For the reasons given, I am of the view that his Honour was justified in making this assumption. If I be wrong in this, the three year requirement must apply to the nominator. We were informed by senior counsel for the appellant that she nominated herself. That being so, whether the requirement applied to the candidate or the nominator, the returning officer was correct in rejecting the nomination, assuming for this purpose that the appellant lacked the requisite standing, that is to say, assuming that his

Honour correctly answered question (b) in the negative.

It will be recalled that the primary Judge dealt with the matter on the footing that, because a casual vacancy had occurred, r.100[w], rather than r.10[s], applied. There was

evidence that the election was necessary because of the

12. resignation of the Assistant Federal Secretary upon his election to the office of Federal Secretary. It seems likely, therefore, that his Honour correctly treated the matter as a casual, rather than a periodic, election. Although the first respondent mentioned r.110[s] in his reasons for rejecting the nomination, it would seem that nothing turns on this: although the language of r.10[s] and r.10[w] is slightly different, their substantial effect is the same; In any event, even if the first respondent were wrong in mentioning r.10[s] rather than r.10[w], this would be a *falsa demonstratio* which would be of no legal significance. Of course, all this assumes that the first respondent's stated process of reasoning could be significant for our purposes. The present question is one of law only, depending upon the proper construction of the rules. This legal question is one for the

Court to determine in the light of the known facts.

In the result, I would hold that, on the true construction of the rules read as a whole, in order to be eligible as a candidate, the appellant was required to have been a financial member for the preceding three years; if not, her

nomination was invalid.

I turn next to question (b).

In the case of r.100[w], the requirement is that the member concerned be a "financial" member "for at least the preceding three years". The provisions of r.10[s] are to similar effect. The appellant first contends that, during the period of

her "reserve" membership, she was a "financial" member. Her

13.

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alternative contention is that, for the purposes of these rules, it is open to a member to aggregate a number of periods of "financial" membership, even if those periods were not continuous.

I cannot accept either argument.

It will be remembered that Rule 43 [a] defines a

"financial" member as follows:

"43. FINANCIAL MEMBER

[a] A financial member of the Association is a member

who:

{1} A member who on September 30 of the current financial year owed no dues to the Association [except who has been exempted from payment of his membership fees in accordance with Rule 41];

[ii] A member who is paying current

subscriptions by instalment in a manner approved by a Branch Committee pursuant to

Rule 39[3] [except a member who is paying subscriptions in accordance with Rule

43A[c]];

[lii] A member who has' been admitted or readmitted to membership of the Association and has paid all dues in accordance with Rule 39[b]."

Rule 41 deals with exemptions from payment of membership fees. No member who has been granted such exemption shall be included in the lists of either financial or unfinancial members (r.41[h]). Such a member has only limited rights of membership

(r.41[i]). The rights of a "reserve" member are dealt with by

r.46:

"46. RESERVE MEMBERSHIP

14.

[a] Any member who is absent from Australia or who has not been employed for six months or more on work defined in Rule 2 and who desires to retain some form of membership with the Association, may at the discretion of the Committee of the Branch or Division be transferred from full Membership to Reserve Membership.

[b] Reserve Members shall not pay any dues to the Association and shall not exercise any voting power,

[ec] Reserve Members shall not be included in the

membership of the Branch or Division, but a list of Reserved Members may be published in the annual report.

{d} A Reserve Member on obtaining employment in Australia in work defined in Rule 2 and on payment of dues shall be transferred by the Committee to financial membership and shall then be entitled to all rights, privileges and benefits of membership..."

It is true that an apparent inconsistency may be perceived between the provisions of r.43[a][1] on the one hand and r.46 on the other. But, in my opinion, the provisions of r.46, dealing with the specific subject of "reserve" membership should prevail over the general words of r.43f[a]({iJ. That is to say, it is appropriate to interpret the rules as indicating that, during the period of her "reserve" membership, the appellant was not a "financial" member. Although the appellant was not an "unfinancial" member, it did not necessarily follow that she was

a "financial" member. Rather, she belonged to the special, intermediate category of "reserve" members who were exempted from their financial obligations to the Association.

Turning to the appellant's alternative contention, the question again is one of construction of the rules themselves.

In my opinion, the use of the definite article "the preceding

15.

three years" suggests that a continuous period was required. The appellant's construction suggests that any period of three years, even if discontinuous, would suffice. Such an inconvenient construction would call for the most explicit language. Prima facie, a reference to "the three preceding years" signifies a continuous period. There is nothing elsewhere in the rules which would justify a departure from this interpretation.

The appellant sought to rely upon the decisions and reasoning in Lovell's Case (1978) 35 F.L.R. 72 and Leveridge's

Case (1977) 31 F.L.R. 385 but, in my view, those cases may be distinguished. The present case raises the different and perhaps special, question of the effect of the transfer of a member from "financial" to "reserve" status.

The appellant sought to support her argument that r.10[w] was not intended to refer to a continuous period by tendering evidence in the proceedings that in 1979 Federal Council adopted her interpretation. But since the present question is one of construction and thus of law, the subsequent conduct of the parties is not, strictly speaking, admissible as an aid to construction (see D.W. Greig, J.L.R. Davis, *The Law of Contract* at p.432). This is not a case where, by reason of usage, a common understanding in the industry, a particular meaning has been attributed to the phrase now in question (cf. *The*

King v. Hickman; Ex parte Fox (1945) 70 C.L.R. 598 per Dixon J.

at p.613).

The appellant also relies upon the reasoning of

16. Smithers J. in an unreported decision on the rules of the Association (Re Australian Journalists Association; Ex parte Walsh, 19 November 1981). Smithers J. there decided that, reading r.43 and r.43A together, "the question whether a person has financiality for a particular year must really be determined at the end of that particular year" (transcript pp.46, 47). But this does not assist the appellant. The rules define a financial year to run from 1 July to 30 June next (r.2A[b]). Nominations closed on 15 May 1987. The three financial years which preceded that rule ended on 30 June 1984, 1985 and 1986. The appellant

was not a financial member for the year ended 30 June 1984.

I would propose that the appeal be dismissed.

I certify that this and the preceding #4 "Fé (->) pages are a true copy of the Reasons for Judgment herein of

his Honour Mr. Justjee Beaumont. "" Ay AL FRAME AT Associate

Dated: 15 October 1987

Counsel and Solicitors Mr. T.J. Higgins Q.C. with

for Appellant: Mr. R.C. Refshauge instructed by Messrs Macphillamy Cummins & Gibson.

Counsel and Solicitors Mr. C.M. Erskine instructed by

for First Respondent: Australian Government Solicitor

Counsel and Solicitors Mr. J.W. Nolan instructed by

for Second Respondent: Messrs Turner Freeman

Date of hearing: 17 September 1987

Date Judgment Delivered: 15 October 1987

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