Disputes Panel

Liberal Party of Australia (NSW Division)

Application to the Disputes Panel Concerning the Hills Young Liberals meetings on 24 and 30 September 2009

First Review

An application to the Disputes Panel for a First Review was submitted by Tim Abrams in relation to meetings of the Hills Young Liberals on 24 and 30 September 2009. Sarah Moore who is the president of the branch has also made an application for first review concerning the 24 September 2009 meeting.

Mr Abrams seeks rulings by the dispute panel that certain members were accepted and rejected at the meeting on the 24th of September 2009 and in the alternative, that the same members were accepted and rejected in a meeting of the branch on 30 September 2009. Ms More seeks a ruling to the contrary with respect to the 24th of September 2009 meeting based, as I read her challenge, on the narrow grounds that Messrs Charles and Dominic Perrottet were not entitled to vote and exercise branch rights at the meeting and therefore could not have voted on various motions (including a motion of dissent in the chair) at that meeting.

On 27 January 2010 the State Director wrote to Mr Abrahams with his ruling with regard to the meeting of 24 September 2009. The State Director found that Messrs Perrottet were entitled to vote at the meeting, that a motion of dissent had been passed in the chair and that the matter was adjourned for decision by the Disputes Panel under clause 4.7.1(2) of the Constitution. The State Director also appears to have ruled that because the motions with regard to new

members was not on the agenda circulated with the notice of meeting, that it was appropriate for the meeting to not consider those applications.

I am required under the Constitution to resolve matters referred to the Dispute Panel according to substantial justice and the merits of the case through a process which is fair, just, economical, informal and quick (clauses 17.13.1(2) and (3) of the Constitution). I treat the matter before me as both a dispute under clause 17.6.1 (1) (d) and also a referral under section 4.7.1(2) of the Constitution.

The branch had some history prior to the meeting of 24th September. There was a contentious meeting of the branch on 30 June 2009. I know little of that meeting other than it has been the subject of a separate decision of the disputes panel which I have not read.

The meeting of 24 September 2009 would appear to have been attended by two distinct groups within the branch. The majority group wanted to have 10 new members accepted into the branch and other applications for membership to the branch rejected. The minority group (supported by it would seem the president, Ms Moore) wanted the opposite result.

The basic facts would appear to be as follows and do not appear contentious. The question of new members was apparently not an agenda item on the minutes of the meeting. At a point in time in the meeting a motion was put with regard to the new membership applications for the branch after the secretary chose not to do so and the president ruled it inappropriate. The first motion was that Carmel Chigwidden, Mary Chigwidden, Patricia Chigwdden, Alex Abrams, Marion Hohnen, Norbert Neville, Francesaca Perrottet, Peter More, James More and Larissa Krienning be accepted as new members of the branch. A separate motion was put that James Dinning, Jordon Scott, Andrew Walker and Harry Palmer be rejected as new members of the branch.

Regardless of whether Messrs Perrottet were properly members of the branch (for the reasons raised by Ms Moore in the way in which she frames her dispute) the minutes produced on behalf of each side to the dispute record the same voting on the motion. Each of the motions with regard to new members were passed by a majority of the members of the branch present and entitled to vote. Even if any votes cast by Messrs Perrottet are not taken into account (i.e. subtracting two votes from either the affirmative or negative votes on the motion and putting them on the converse side) the motions were passed by a substantial majority of the branch present and entitled to vote.

The terms of clause 2.4.4 (2) of the Constitution are clear that new member applications *must* be brought by the branch secretary before the next general meeting of a local branch for a vote on whether to accept or reject the applications. The provision contains a clear mandatory requirement and it was quite deliberately drafted that way. The branch secretary has no discretion about the matter.

The Constitution does not provide that the acceptance or rejection of members must be an agenda item on the notice of meeting. Clause 2.4.4(1) speaks of "prompt" action by the State Director in notifying branches of new member applications. This suggests to me that there is a requirement that new applications should immediately be considered at the next general meeting of a local branch under clause 2.4.4 (2) as the plain words of that provision suggests. Further, the branch is given options of only accepting or rejecting the membership applications. There is no half way house to defer after further investigation. All of this speaks of promptness and not delay.

My interpretation as to the expedition required in bringing forward applications, is also consistent with the historical context in which clause 2.4.4 was inserted into the Constitution. Prior to it coming into the Constitution, there was no limit on the number of new members that could be put into a branch. Cases of 50 new

members or more being accepted into branches at the one meeting were reported to State Council prior to the Constitutional amendments being made. A restriction on 10 new members per month for branches with less than 100 members and 20 new members per month for branches with more than 100 members was part of the same anti branch stacking amendments as the introduction of clause 2.4.6 of the Constitution. The price of limiting the number of new members per month under clause 2.4.6 was an obligation on branches to consider membership applications expeditiously and at each meeting under clause 2.4.4. Branch office holders are not permitted to withhold putting new membership applications to the branch. If they do, members automatically come into a branch within 2 months without scrutiny under clause 2.4.10 of the Constitution.

In my opinion if a branch secretary did not fulfil their mandatory obligations under clause 2.4.4 (2) and bring to the meeting the new membership applications, then any branch member could do so in their place. A branch member in such circumstances by putting the new member applications before the branch would simply be upholding the Constitution of the party. The Constitution should not be interpreted to mean that only the branch secretary can bring forward the applications for new members. To read the Constitution in that way would be absurd. It would mean that a sick, busy or deliberately uncooperative branch secretary could hold up new membership applications by non attendance at branch meetings.

Clause 2.4.4 could have been drafted to require new membership applications to be presented to branch meetings on at least 7 days prior written notice to the membership. But it was not drafted in that way. As the Constitution presently stands, it was appropriate for the motions with regard to the new membership applications to be put before the branch and appropriate that the members were accepted into the branch (and rejected as the case may be) in accordance with the resolutions passed by the branch on 24 September 2009. To the extend that

the branch president may have tried to prevent the motions from being considered by the branch or the secretary did not bring the new membership applications to the meeting, I find that neither of them properly applied the Constitution.

In coming to this conclusion, I should add that branch presidents and secretaries must apply the Constitution in a neutral fashion. The branch president, as chair of branch meetings is merely the first among equals. The role of the president includes duties to conduct proceedings regularly and to ensure that the sense of the meeting is determined: see *Joske's Law and Procedure at Meetings in Australia* 10th Ed. at pages 35 - 38. It is not for the branch president to use his or her position as chair of the meeting to advance some aligned interests in the branch against others. It is not for the president to refuse to put motions for a vote by the members. A president should ensure that a vote is taken at branch meetings. This Dispute Panel can then determine any questions of interpretation of the Constitution in light of the votes that have been taken. In a voluntary organisation, it is very important that the office holders at all levels of the party, recognise the rights of all members to be involved in the decisions which members are allowed to participate in under the Constitution. Otherwise the party risks alienating its voluntary membership. If the rules are poor or need refinement, the party can avail itself of the many different processes in the party for their reconsideration.

The motion of dissent in the chair would appear to me to be a subsidiary question to the question that is sought to be determined by Mr Abrams with regard to the acceptance and rejection of new members into the branch. However, I shall deal with it shortly. It seems to be common ground that the motion of dissent in the chair required a two thirds majority of those present and entitled to vote and that the majority was only satisfied by counting the votes of the two Messrs Perrottet. I take a different view to the State Director on the question of whether Messrs Perrottet were entitled to vote at the branch meeting on 24 September 2009. I

agree with Ms Moore's contention that clause 3:3.3 has the effect that Mr Charles Perrottet was not a member of the Hills YL branch until 28 days after 16 September 2009 when he nominated that he was to enjoy rights of membership with that branch. I also agree that by reason of the same provision of the Constitution, Mr Dominic Perrottet was not a member of the Hills YL branch until 28 days after 21 September 2009 when he nominated that he was to enjoy rights of membership with that branch.

Contrary to the decision of the State Director, I do not see how either could have validly voted as branch members of the Hills YL branch on 23 September if they were not members of the branch under the Constitution until some many days after the date of the meeting. Their vote should not have been counted on any motion of dissent in the chair. However, their lack of any entitlement to vote, for the reasons give above, was irrelevant to the passing of the motions on 23 September 2009 with regard to the membership of the branch.

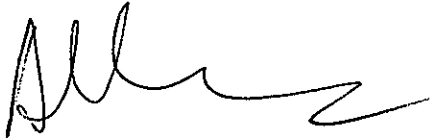
My findings with regard to the membership motions on 23 September 2009 make it unnecessary for me to determine the issues sought by Mr Abrahams with regard to the Hills YL Branch meeting on 30 September 2009. However, if I am wrong about the validity of motions on 23 September, then I would have upheld the same motions being passed on 30 September for the same reasons that I have given in relation to allied dispute I have decided in relation to the Baulkham Hills Young Liberal branch meeting on 30 September.

Decision

I find that on 23 September 2009 Carmel Chigwidden, Mary Chigwidden, Patricia Chigwdden, Alex Abrams, Marion Hohnen, Norbert Neville, Francesaca Perrottet, Peter More, James More and Larissa Krienning became members of the Hills YL branch. I also find that James Dinning, Jordon Scott, Andrew Walker and Harry Palmer were rejected as members of the branch on the same day.

I find that there was an insufficient special majority to pass a motion of dissent in the chair on 23 September 2009.

Dated 17 June 2010



....

Alister Henskens, Member