Disputes Panel
Liberal Party of Australia (NSW Division)

Application to the Disputes Panel Concerning Baulkham Hills Young Liberals meeting on 30 September 2009
First Review

An application to the Disputes Panel for a First Review was submitted by Tim Abrams in relation to a meeting of the Baulkham Hills Young Liberals on 30 September 2009.

Mr Abrams seeks rulings by the dispute panel that certain members were accepted and rejected at the Baulkham Hills Young Liberals Branch meeting on the 30th of September 2009.

By letter dated 27 January 2010 the State Director informed Mr Abrams of his findings with regard to this dispute. He found that the meeting had been shut down prior to any acceptance of new members and that the decisions accepting those new members are null and void.

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 a dispute under clause 17.6.1 (1) (d) of the Constitution.

Although I have been provided with numerous statements both in support and against Mr Abrams' position, the relevant facts clearly emerged in a manner

which permitted me to decide the dispute on the papers. The meeting in question involved a joint meeting of the Hills and Baulkham Hills Young Liberal Branches. At the beginning of 2009 the presidents of each of those branches, issued a joint notice of branch meetings on several different dates in 2009 including 30 September. The meetings were notified to commence at 6 30pm in the office of the local Liberal Federal Member of Parliament. Item 5 on the Agenda of the joint branch meetings included:

"5. Transfer and acceptance of new members."

On 30 September 2009 as party members attended the place of the meeting, they were required to sign a list before they could gain entry to the office. Persons other than members of the two branches were screening people entering the office and preventing them from an orderly entry into the meetings. That procedure was not in accordance with the Party's Constitution. Clause 4.6.1 specifies the correct manner to ascertain the identify of people attending a party meeting.

The unconstitutional screening of members outside of the meetings caused a long line to develop as party members were only permitted entry to the venue one by one. The meetings of the branches appear to have started to commence when a long line of party members were still lined up outside. It is regrettable that the presidents of the branches commenced the meetings in such circumstances. That was conduct which was likely to provoke disquiet in the party membership.

The branch meetings did not take place in the same room in the office as they usually did. The Baulkham Hills meeting took place in a conference room while the Hills Branch meeting took place within the room used by the Member of Parliament as his personal office. Apparently frustrated by the delay in entering the premises, resentment at the requirement to sign a roll before entry was

permitted and the fact that the meetings commenced prior to the advertised time of 6 30pm, there was some pushing in order to gain entry into the office. However, there is no suggestion in any of the material of punches being thrown or other violent behaviour. All that is suggested is some pushing to gain entry to joint branch meetings where members were being impeded from entering the venue when the meetings were commencing.

At about 6 30pm the Member of Parliament ordered all party members to leave his office. The police were also called. The meetings then came to an end before properly transacting their business.

According to the letter from the State Director to Mr Abrams dated 27 January 2010 there is a sound recording in which "a female voice is heard alleging she has been assaulted." I asked when first allocated this dispute to hear the recording and be provided with a transcript of it. There has been a long delay because of attempts to locate the tape. I have now been advised that the tape is unavailable. However, I have been provided with some eye witness accounts and other material which paints a reasonably clear picture of what occurred.

In a report to State Executive by the State Director dated 30 October 2009 (who I understand did hear the tape) the situation was described as being one where "a female voice is heard to allege she had been assaulted and pushed." From the material before me I am quite satisfied that the reference to an assault is a reference to some pushing and does not refer to anything else.

I have been provided with a link to a U tube website http://www.youtube.com/watch?v=BEdPdJO4ekI where there is a video of a group of people in a room at the venue of the meetings at what appears to be about the time when the police were called. The Member of Parliament appears visible in the background of the picture and he does not appear to be taking an active part in the discussion. That video consists of some Party members arguing over the

circumstances then prevailing. There is no violence in that video nor physically threatening conduct. What appears is a robust but not overly aggressive verbal exchange of views of a kind which is to be expected from time to time in a democratic political party.

The material supplied to me includes a quote from the Hills Police Commander about the meetings who said "...There were no allegations of assault or injuries, no charges and no move- on directions." Another quote from a police sergeant was that what occurred was a "storm in a teacup."

The State Director in his letter to Mr Abrams dated 27 January 2010 says that the calling of Police was consistent with Common Law procedure as noted in *Joske's Law and Procedure at Meetings in Australia* 10th Ed. I cannot entirely agree with the conclusion of the State Director on that matter. The Member of Parliament was wise to exercise his rights as the occupier of the premises and to attempt to ensure that a contentious and potentially rowdy meeting at his office was not capable of causing political embarrassment to the Party. However, the exercise of the Member's rights as occupier of the premises does not lead to a conclusion that the circumstances warranted the meeting to immediately end under proper principles of law.

Joske's Law and Procedure at Meetings in Australia 10th Ed at page 39, says this about disorder at a meeting (excluding the relevant cases footnoted):

> "...More licence may be allowed to some kinds of meetings than to others. A meeting of university students "should not be judged by reference to the more stately conduct of affairs at a meeting of a sedate men's club." Where real violence breaks out, the chairperson can use her or his authority to adjourn immediately, *but real violence is something more than pushing and jostling.* It cannot be said that disorder has frustrated a meeting so that it has ceased to be a meeting where it is still possible to

put a motion to the vote and to ascertain a clear division of those for and against the motion"(my emphasis added).

On the facts of this case, prior to or just after the beginning of the branch meetings a sole female voice complains about being pushed as she entered the venue. There is no suggestion of what I would call aggressively rowdy behaviour let alone violence. The Member of Parliament, no doubt in the proper interests of the perception of the Party in his electorate, determined it was inappropriate any longer to hold the meeting in his office and asked those present to leave. The members of the branch obeyed that direction and left the office and congregated outside it.

A little pushing while entering into a young liberal branch meeting, like in a meeting of university students, is hardly sufficient to cause an immediate adjournment of the meeting on proper common law principles. I agree with Mr Abrams that to allow meetings to be automatically adjourned or avoided for circumstances like the present dispute could lead to a great deal of mischief in the Party. Serious Constitutional business was to be conducted at the Branch meeting that night including consideration of 14 new membership applications under clause 2.4.4. That clause of the Constitution was introduced as part of important anti branch stacking Constitutional amendments as I explained in my accompanying decision in relation to the Hills Young Liberal Branch meeting on 24 September 2009.

A branch executive committed to allowing a Constitutionally valid branch meeting to proceed, in the circumstances of 30 September 2009, would have immediately considered alternative venues to facilitate a continuation of the meeting. But no attempt would appear to have been made by the branch executive to continue the meeting outside of the building or somewhere else close by.

I consider that an attempt to continue with the meeting was the appropriate conduct to expect from the branch executive. For example, assume a notice of a branch meeting is sent to the members of a branch nominating the venue as a hall but when the members arrive at the nominated time and place they find that the hall has been doubled booked. If the branch executive in good faith wished for their meeting to proceed, they would no doubt explore the immediate possibilities of an alternate venue near by so that the meeting could proceed. That was in reality the situation that occurred in the present dispute once the person entitled to evict visitors to his premises (the Local Member) asked all branch members to leave his office and the venue became unavailable. I have witnessed problems with an appointed venue for meetings over the years of my membership in the Party. In each instance those problems have been resolved practically so that the meeting could continue.

If the branch president fails to explore alternate venues in such circumstances, leaves the place of the meeting, or adjourns the meeting without the consent of the majority of the meeting, the meeting does not end but continues upon an appropriate person taking over the chair: *Joske's Law and Procedure at Meetings in Australia* 10th Ed at pages 44 and 76.

A quorum of the branch members clearly wished to continue to hold a proper branch meeting under the Constitution. After they were ejected, a group of the members of the branch waited outside of the office for 20 minutes. After the meeting had not been continued by the branch executive after 20 minutes, the branch members availed themselves of their rights set out in Appendix 2, Parl 1 line 4, subparagraph (6) of the Constitution and elected a chair of the meeting. The meeting then passed a number of resolutions recorded in minutes taken of the meeting including resolutions in relation to the acceptance of new members to the branch and the rejection of other members to the branch. Those resolutions were specifically that Mohammed Abdelhakam, John Abrams, Keiran Byrne, Tomas Robert, John Wall, Cameron McLean, Ignacio Gutierrez, Bernardo

Gutierrez, Maria Gutierrez and Carolina Gutierrez be accepted as new members of the Baulkham Hills Young Liberal branch and that Nicole Anderson, Ben Dolton, Timothy Dalton and Adam Guest were rejected as new members of the branch.

It seems to me that where a branch executive fails to continue on with a meeting where there is a problem with the venue, valid resolutions can be passed in their absence in a reasonable alternative venue if the procedures in the Constitution were followed as they were in this case.

I have consistently found in various different previous disputes and contexts that the Constitution should be interpreted in a manner which upholds the democratic rights of members granted by the Party's Constitution. In one of those decisions (where I rejected in 2007 applications in relation to the Cook selection), I included the following reasoning:

> "Finally, although the Liberal Party of Australia was founded by an outstanding barrister in Sir Robert Menzies QC, it is a party first and foremost of democracy not legal technicality. I note again that I am required under the Constitution to resolve matters referred to the Dispute Panel according to substantial justice and the merits of the case (clause 17.13.1(2) of the Constitution). Our Party was formed to advance *inter alia* the interests of democracy, freedom and the reasonable rights of the individual (see e.g. *Robert Menzies, A Life*, AW Martin, Melbourne University Press). Our Party today adheres to these values: see clause 1.1.3 and Appendix 1 of the Constitution: "Objectives of the Division". I think the submissions I have received have been right to identify that the contentions in the Application on the first issue have an anti-democratic consequence which is inconsistent with the objectives of the NSW Division which is an important guide to the manner in which its Constitution should be interpreted."

I accept that some may consider it unconventional to uphold branch resolutions held outside of the appointed place of the meeting. However, nothing that occurred at the branch meeting on 30 September 2009 appeared to be conventional. Party members who attended a branch meeting were made to line up and sign a sheet prior to entry being granted and then after a short period of time they were ejected from that venue. Meetings were started early and when members were lined up waiting to enter the venue. Police were called to the venue when no laws appeared to have been broken nor were there any complaints made to the police of illegal activity once they arrived. The branch executive appeared to abrogate their responsibility to try and transact the business that was notified to the members and required to be transacted at the meeting.

To find that the branch meeting did not properly continue outside of the appointed venue after the members were ejected from the venue would be to extinguish the democratic rights of members of the branch which are provided under the Constitution. Only up to 10 of the 14 applicants for membership to the branch could be accepted on that day. The branch members had the Constitutional authority to determine which of them could come into the branch. The deprivation of those rights can have various detrimental long term consequences including a failure to have sufficient party members to conduct effective election campaigns and the possibility of members coming into a branch without proper scrutiny under clause 2.4.10 of the Constitution (to name but a few possible consequences).

Decision

I find that there was not a basis in fact or law for automatically bringing the branch meeting to an end on 30 September 2009. The meeting should have properly been adjourned to outside of the office by the branch executive where it

was possible to continue the meeting. The effect of the meeting of members moving to the outside of the office after being asked to leave the venue appointed as the meeting place achieved that result.

Accordingly, I find that on 30 September 2009 Mohammed Abdelhakam, John Abrams, Keiran Byrne, Tomas Robert, John Wall, Cameron McLean, Ignacio Gutierrez, Bernardo Gutierrez, Maria Gutierrez and Carolina Gutierrez were accepted as new members of the Baulkham Hills Young Liberal branch. I also find that Nicole Anderson, Ben Dolton, Timothy Dalton and Adam Guest were rejected as new members of the Baulkham Hills Young Liberal branch.

Dated 17 June 2010

.....

Alister Henskens, Member