

Options to Improve the Integrity of ALP Elections and the Operation of Secret Ballots

This note is in response to an invitation to provide further thoughts on Secret Ballots and how the ALP may enlist support from the AEC/VEC or other external bodies to improve the integrity of party elections

SUMMARY

- The Secret Ballot is a matter of vital democratic importance. Its roots are deep in Australian history and in the history of the Labor Party. Moreover, the Secret Ballot is the required voting mechanism under ALP Party Rules and Commonwealth/Victorian election arrangements.
- The ALP Rules on Secret Ballots have been systemically breached over many years, often in plain sight, and typically without consequence, in order to ensure factional control over delegate voting. This breach violates the ALP's claim to be a democratic party and must not stand.
- The options to improve integrity include changing ALP Rules to be more explicit on the operation of Secret Ballots, additional processes for auditing and verification of voter lists, Audits/Assurance processes on the conduct of elections, and creating a policy to change electoral laws to extend misconduct offences to internal party elections
- A list of five detailed recommendations is set out in this note.
- A reformed and more effective Disputes Tribunal (based on Dreyfus Report, 1998) is also an appropriate and indeed necessary option to improve the integrity of party elections. The case for such reform is outlined in a further and related note from Fiona McLeod SC

Brief History of Secret Ballots

Secret Ballots have been an important element of local democratic arrangements since colonial times. Historical accounts cite the newly formed Victorian Parliament as the first in the world to legislate and operate an election under Secret Ballot rules in 1857. The Encyclopedia Britannica (1973, Edition) provides the following definition:

The secret ballot, also known as the "Australian Ballot", so-called because of its origin, is a form of official balloting that affords the voter the chance to vote secretly

The ALP Victorian Branch Rules requires the Secret Ballot in internal election mechanisms:

4.5 Definitions: "Election" means election by secret ballot ...

19.3 Secret ballot

19.3.1 To ensure voting secrecy all Returning Officers elected by any unit of the Party under these Rules shall ensure that a voting compartment or private place is set aside so as to screen voters from observation by any other person while they are marking their ballot papers and provide such voting compartment or area with a pencil for the use of voters.

Moreover, the ALP Rules assert the purpose of the mechanism of the Secret Ballot - ***to ensure secrecy voters must be provided with a private place, where they can mark their ballot papers without being observed.***

Note the similar language to Section 206 of the Commonwealth Electoral Act

Polling booths shall have separate voting compartments, constructed so as to screen the voters from observation while they are marking their ballot papers, and each voting compartment shall be furnished with a pencil for the use of voters.

The Commonwealth legislation – section 223 - is also explicit that ‘the voter upon receipt of the ballot paper (will) retire alone to (the booth) and there in private mark his or her ballot paper’.

I outline these provisions to highlight that the Secret Ballot is a matter of democratic importance, historical importance and the required voting mechanism under ALP Party Rules and Commonwealth and Victorian electoral laws. And to highlight that Secret Ballots seek to add integrity by requiring that voters vote personally and vote in private and vote beyond anyone’s observation.

ALP rules in relation to Secret Ballots have been the subject of systematic non-compliance.

Despite the importance to democracy of the Secret Ballot mechanism, and Victoria’s historic role in its adoption, the Victorian ALP has undertaken many elections without complying with the Rules.

From a colleague who has been a continuous State Conference delegate over recent decades:

Almost all State Conference delegates and POSC members give their ballot papers to factional organisers who fill them in and lodge them in bulk.. The Returning Officers and Deputies at State Conference do not stop voters from taking ballots outside the voting area and ignore blatant non-compliance with the secret ballot rule.

Contrary to the rules (there are) either no or inadequate places where voters can fill out their ballots in secret are provided either at Conference, POSC or FEA voting places.

The Disputes Tribunal has dismissed disputes seeking implementation of the secret ballot rules. In some FEAs factional organisers are allowed by the local returning officer go into the booths with voters and ‘help’ them fill in their ballots

According to the Race Mathews’ opinion piece in *The Age*:

The rorting of the secret ballot provisions (is) a familiar sight at the early stages of Victorian ALP conferences.... Factional operatives... routinely require delegates to ... disclose their completed ballot papers to ensure they have voted in accordance with factional directives. Alternatively, delegates are required to hand over their blank ballot papers to be completed by the operatives on their behalf ... The rorting of the secret ballot provisions enables the factional bosses to control pre-selections for party and public office and appointment of party employees. Such interference would not be tolerated in the conduct of an election for the federal or state parliament. Any federal or state returning officer who failed to prevent it would be sacked.” *Age Opinion, Somyurek scandal provides a chance to clean up the ALP*, June 18, 2020.

To be specific the misconduct of factions and sub-factions has included:

- Voters taking their ballot papers but not immediately marking them in private
- Ballot papers being handed by the voter to someone else to fill in
- Ballot papers being marked and then shown to someone else

- Factional operatives arranging to observe the marking of ballot papers
- Factional operatives taking and filling in ballot papers for the voters

This type of conduct would be considered an offence under State and Commonwealth laws if undertaken in during State or Federal Elections.

The *Shepherdson Inquiry* in Qld in 2001 described similar conduct in the ALP in Queensland in the late 1990s. In outlining “A Case for Supervision of Plebiscites by Electoral Commission Queensland” the Inquiry noted the following :

It may be thought that the evidence of Kaiser and Ehrmann concerning factions shows fairly clearly that when it came to matters of policy and choice of office bearers and members of committees, including the Disputes Tribunal, the vote of each person attending may not be independently cast — indeed may not be cast by the person at all. The above evidence was not challenged. If correct, it shows the hold that each faction has over its adherents. Any person entitled to a vote may surrender their ballot paper, unexercised, to those in control of the particular faction; the surrender occurs in the full knowledge that those in the seat of power in the faction will cast the vote in the manner they decide best suits the faction’s interests.

The argument that faction members are act outside of Secret Ballot rules simply as a matter of factional solidarity misses the point. ALP Returning Officers have no legitimate basis to ignore the Party Rules on Secret Ballots in favour of factional discipline. That factional members are OK with it, is irrelevant. The Secret Ballot is a system whereby each and every person should be confident that privacy and anonymity is not just a norm but the rule for all; and that each and every eligible voter fills in the ballot themselves, without delay and in private, and without showing the ballot to someone else. To do otherwise would be to undertake a process that couldn’t be called a ‘secret’ ballot.

Options to improve the Integrity of Elections and the Operation of Secret Ballots

The ongoing or systematic non-compliance of ALP Rules is indicative of a culture of acquiescence to lawless factionalism. Internal mechanisms of redress have proven to be inadequate. It suggests that additional and probably external oversight is called for. The options include:

- **Changing ALP Victorian Branch Rules** to be more explicit about the operation of Secret Ballots
- Improving the Integrity of **ALP Membership and Voter Rolls** through a multi-year Auditing Program and a regular Reconciliation Process with the VEC Register of Voters
- **Enlistment of AEC/VEC** and/or consultants to **conduct ALP internal elections** and/or provide Assurance/Compliance Reports
- Creating a policy to change electoral laws to **extend misconduct offences** to include internal elections for registered political parties

A reformed and more effective Disputes Tribunal (based on Dreyfus Report, 1998) is also an appropriate indeed necessary option. The case for such reform is outlined in a further and related note from Fiona McLeod SC.

1. Changing ALP Victorian Branch Rules to be more explicit about the operation of Secret Ballots

In case there is any doubt about what a Secret Ballot involves, the ALP Rules could be amended to be more explicit.

This approach would assist Returning Officers and enable third party observers to provide Compliance/Assurance Report against more detailed and explicit rules.

ALP Victorian Branch Rules currently define 'Election' in Rule 4.5 to mean "election by secret ballot" and Rule 19.3 then elaborates:

19.3. Secret ballot

19.3.1. To ensure voting secrecy all Returning Officers elected by any unit of the Party under these Rules shall ensure that a voting compartment or private place is set aside so as to screen voters from observation by any other person while they are marking their ballot papers and provide such voting compartment or area with a pencil for the use of voters.

A reform option would be to add additional detail to clarify the rules for Secret Ballots

PROPOSED Rule 19.3.1 A.

To address any uncertainty on the rules for the conduct of elections by secret ballot

- Voters must vote in person
- Voters must provide to the Returning Officer photo ID or other ID such as a union membership card to prove their eligibility to vote
- Voters cannot take their ballot papers out of the voting booth
- Voters must fill in their own ballot paper and personally lodge it in the ballot box
- Only people actually casting their vote can be in the area provided for completing ballots
- No other person may look at a voter's ballot paper, touch it or interact with the voter whilst they cast their ballot

2. Improving the Integrity of Membership and Voter Rolls through Auditing and Reconciliation

The ALP is currently undertaking, with the assistance of Deloitte, an audit of current membership lists. It is notable that Deloitte Forensic was called upon in a similar context in 2005 – according to *The Age* – "to conduct an audit of all entries made to the ALP membership database since January 2001".

An improved system of governance would put 'membership list' auditing on the same footing as financial auditing, that is, annually or at least as part of a multi-year auditing program overseen by an independently chaired Audit and Risk Management Committee.

Auditing of ALP Member and ALP Voter Rolls should also include reconciliation with the State/Commonwealth Electoral rolls. It is notable that national ALP rules provide that there must

be no difference between an ALP member's address and that person's address on the AEC rolls. Rule 40 (C) states:

To ensure the integrity of preselection ballots, no member shall receive a vote in any preselection unless that member is correctly enrolled with the Australian Electoral Commission to vote in a federal election. The member's address for the purposes of preselection will be their enrolled address

Under the current Victorian ALP rules, when a preselection is scheduled the State Secretary compiles a 'draft voters roll' which is then provided for testing to the Branch Secretaries. Any 'inaccuracies, errors and omissions' are then considered before the rolls are finalised – see Rules 9.3.8.5. As far as I understand it, the VEC/AEC rolls are not taken as determinative at the point at which ALP rolls are finalised or votes are cast. Limited rights of challenge/appeal to the Returning Officer are provided in Rule 9.3.8.13 after ballots are cast.

I would propose that before the State Secretary finalises any list of eligible voters, the party and the AEC or VEC be asked to collaborate in a reconciliation process of the party roll with that administered by the AEC/VEC.

Note that the VEC has a duty to maintain an updated register of electors in Victoria. It also has in place a joint enrolment process and information exchange with the AEC under section 20 of the Victorian Electoral Act. For this reason a formal arrangement between the ALP and the VEC may be sufficient.

3. Enlistment of AEC/VEC and/or consultants to conduct ALP internal elections and/or provide Assurance/Compliance Reports

The party might enlist third parties in order to bolster efforts to improve the integrity of its elections.

The VEC/AEC are options; although they both might seek explicit legislative change as a precondition of participating. Other organisations, such as Deloitte, EY and other branded consultancy/accounting firms also offer a range of relevant services to assure the integrity of contests and vote counting. A group of ex-AEC officials operate a commercial firm called the *Australian Election Company* that offers 'complete management and conduct of any size of elections and ballots.'

At the present time the AEC conducts not just Commonwealth Elections, but also elections for unions and employer groups under the Fair Work Act. The VEC conducts State and Local Council elections and referenda. The Victorian Electoral Act requires under section 8 (3) that the "the Commission must notify the Minister when the Commission has been engaged to conduct an election or poll for an organisation for which it has not previously conducted an election or poll."

It is worth noting that 'calling in' the AEC/VEC to conduct elections may have broader strategic implications. The fact that misconduct in internal preselection may trigger breaches of the electoral law in relation to false addresses etc was highlighted in the **Shepherdson Inquiry into Electoral Fraud in Queensland, 2001**. Where party rules are breached the evidence of misconduct may be put into the hands of an administrative agency whose Minister might be hostile to the ALP. Also reviews of its decisions could lead to lengthy and expensive litigation with detrimental consequences on the orderly conduct of internal ALP elections.

Further, it has been suggested that the AEC exercised very poor judgement in relation to the Chinese-language signs in Kooyong/Higgins during the last Federal election. This highlights the reality that the ALP needs at all times to be able to contest and litigate decisions of the VEC/AEC, with which it may disagree, including call out their capability gaps and bias. It suggests a cautious approach to 'bringing them in'.

My suggestion would be that the Victorian ALP in the first instance collaborate with the VEC on reconciliation of rolls and seek third party consultants to undertake a set of oversight activities and produce reports of an Assurance/Compliance nature.

The third-party reports would be provided to the Chief Returning Officer, State Secretary and Administrative Committee, and should be available to ALP members on request. The reports might be accepted as evidence in relation to disputed elections. The third-party would undertake observations and report on compliance with ALP Rules and the requirements for Secret Ballot voting; and provide commentary on any anomalous conduct witnessed as part of the election.

In the very near term, the Victorian ALP should seek an EOI of major consulting firms and the Australian Election Company for the services that they might have the capabilities to provide, and specifically Assurance/Compliance Reports for a set of ALP internal elections.

It should be noted that additional oversight from external parties comes at a cost, in the same manner as financial auditing of accounts comes at a cost. It should be also noted that since the amendment to the *Victorian Electoral Act 2002* came into operation in July 2018, the ALP receives public funding for 'Administrative Expenses' including compliance with auditing and reporting regimes under electoral laws. The funding cannot be spent on other matters such as political campaigning. In the current year the Victorian ALP is entitled to up to \$1.775 million for these types of expenses

4. Creating a policy to change electoral laws to extend misconduct offences to include internal elections for registered political parties

A further option to improve the integrity of internal party elections is to bring the conduct of such elections within the scope of the Commonwealth and State Electoral Acts for the purposes of criminalising fraudulent misconduct relating to the elections of a registered political party.

The ALP Justice and Democracy Policy Committee had given attention to substantive reform in relation to Secret Ballots within the party, and on the night the Committee operations were suspended (16 June 2020) it was scheduled to consider the following motion:

That this Committee calls for reform to improve the integrity of Secret Ballots, specifically it seeks change to include in the State and National Platforms a policy that would call for amendments to the Victorian and Commonwealth Electoral Acts to create a new offence with penalties for any abusive or obstructive conduct in relation to the operation of secret ballots, where such a vote is required in the rules of a registered political party.

RECOMMENDATIONS

That the Victorian ALP – through its Administrators

1. Confirm its commitment to the Secret Ballot and to the highest standards of integrity in the conduct of its internal elections
2. Amend ALP Victorian Branch Rule 19.3.1 to add additional detail to clarify the rules for Secret Ballots
3. Enter a collaborative arrangement with the VEC/AEC to enable a reconciliation of voting lists, to ensure that no person is eligible for voting in ALP pre-selections that is not at the same address on the VEC Register of Voters
4. Seek an Expression of Interest (EOI) from major consulting firms and the Australian Election Company to develop a set of Assurance/Compliance Reports for internal elections
5. Commit to a policy to change electoral laws to extend misconduct offences to include internal elections for registered political parties

Signed **Peter Fitzgerald**
3 August 2020

Note: This document has been compiled by Peter Fitzgerald with input and feedback from members of the Open Labor group.

Notes and Sources

1. <https://www.theage.com.au/national/victoria/somyurek-scandal-provides-a-chance-to-clean-up-the-alp-20200617-p553kv.html>
2. <https://amp.theage.com.au/national/alp-factions-in-war-over-corruption-claims-20050331-gdzvwk.html>
3. Shepherdson Inquiry: <https://www.ccc.qld.gov.au/sites/default/files/2020-01/The-Shepherdson-inquiry-Report-2001.pdf>
4. Victorian Electoral Commission funding for Administrative Expenses of registered political parties. <https://www.vec.vic.gov.au/files/Administrative%20Expenditure%20Funding%20-%20Application%20-%20registered%20political%20party%202018.pdf>