

Our reference: Mr Tucker

21 September 2007

Partners.  
David Tucker.  
Richard Cowen.

Your reference:

Associates.  
David Schwarz.  
Tyler Griffin.  
Anthony Reilly.  
Graham Dietz.  
Melanie Jones.  
David Hensler.  
Alexander Moriarty.

Hon Warwick Parer  
President  
Liberal Party of Australia (Qld Divn)

Dear Sir

## Mr Graham Young

We act for Mr Graham Young in respect of the disciplinary action currently being pursued on the initiative of the Liberal Party's State Council.

Our client was informed this week that at its meeting this weekend, the Party's State Council will consider a report of the Disciplinary Committee's investigation into Mr Young. On our instructions, the process leading to that report was flawed and unfair in a number of respects. As a consequence, our client requires that the State Council refrain from acting on the report.

Without being exhaustive, our client raises the following complaints with the process.

### Failure to properly particularise the charges

The complaint referred to the Committee was in the following words:

*"That on multiple occasions Mr. Young has given media comment denigrating the Liberal Party, its processes, its elected representatives and its professional operations in so much as that such conduct may reasonably be interpreted to have demonstrated gross disloyalty to the Liberal Party [21D(a)]; conduct bringing the Liberal Party into disrepute [21D(c)] and engaged in conduct severely harmful to the best interests of the party [21D(d)]."*

The complaint lacked any particularity. It failed to specify what comments of Mr Young were the subject of the complaint. The notice sent to Mr Young attached certain newspaper and magazine articles, but they are not mentioned in the complaint. The particular words which were said to be offensive were not specified.

Subsequent specification of particular passages in the articles by the Committee's chairman, Mr Miles, seems to have been an afterthought rather than something properly before the State Council at the time that it agreed on the terms of the complaint.

### Failure to present evidence

Mr Young is charged with having brought the Party into disrepute and to have severely harmed the Party's best interests. Mr Young has never been presented with any evidence to the effect that either of those things have occurred.

It seems clear enough from the words of clause 21D of the Party's Constitution that proof of those things is required to sustain the relevant charges. The drafters did not, for example, include a charge in respect of conduct *likely* to bring the Party into disrepute or conduct *likely* severely to harm the best interests of the Party.

### Failure of the Committee to observe the rules of natural justice

The Committee is obliged by the Constitution to proceed according to the rules of natural justice. It failed to do so in at least the following respects:

1. The Committee included Ms Elaine Bowers who, as our client complained at the time of the hearing, had, in the past, expressed very unfavourable views of our client. Our client, and Party members more generally, could have no confidence that Ms Bowers would act impartially yet, with the support of the Chairman of the Committee, Ms Bowers continued to sit on the Committee.
2. The Committee failed to require proof of the case against Mr Young in his presence so as to allow him to answer the case made against him. Instead, it told him that the onus was on him to prove that he had not breached the Constitution.
3. The Committee has failed to provide Mr Young a copy of its report.

#### **Failure of the Committee to proceed according to the Constitution**

Clause 21B of the Constitution requires the Committee to determine whether or not a complaint referred to it by State Council is proven.

At the hearing, the Chairman, Mr Miles, told Mr Young on several occasions that it was not the Committee's role to make findings, but rather to investigate. It seems that was the basis upon which Mr Miles concluded that it was up to Mr Young to disprove the allegations made against him rather than to require State Council to prove its complaint.

It seems to us that Mr Miles and his fellow committee members simply misunderstood the task assigned to them under the Constitution. In those circumstances, it is difficult to see how any report prepared by the Committee could be a constitutionally valid basis for action by the State Council.

#### **Inclusion of Ms Bowers as a member of the Committee**

As we understand it, Ms Bowers was appointed to the Committee as a result of a flying minute taken from members of State Council. The motion was not debated. There was no consideration of whether Ms Bowers met the qualifications set out in clause 21A of the Constitution.


The Party's Constitution makes no provision for such a flying minute. The fact that the rules regarding decisions of State Council provide for meetings via telephone and the like only underlines the invalidity of the flying minute procedure.

The method of appointment was invalid. Accordingly, the Committee was not properly constituted.

#### **Conclusion**

Our client requires an undertaking that State Council will not act on any report from the Committee other than to acknowledge its invalidity and dismiss it for that reason. If State Council, in reliance on the report, makes any decision against our client's interests, our client will seek review of any such decision in the Supreme Court.

Yours faithfully



David Tucker

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