



**AUSTRALIAN
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6 February 2017

Abe Williamson
Administrative Officer
Education and Employment Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Inquiry into Corporate Avoidance of the Fair Work Act

I refer to your email and attachment received pm 27 January 2017.

My name is Richard Kidd and I am a Director of and the Principal of Australian Election Company. Australian Election Company operates Australia-wide, but has its Registered Office in Queensland.

The attachment excerpt you referred to Australian Election Company was headed "BALLOTING".

The excerpt provided is scant on detail. Australian Election Company manages, conducts, delivers and reports a significant number of Enterprise /Certified Agreement Employee Ballot processes for Federal and State Government Agencies and for the private sector, by electronic, postal and or attendance voting methods; in fact, probably in excess of 200 Ballots annually are delivered; so it is not absolutely clear which specific ballot process is the subject of representation.

However, within the last year or two, there has been only one (1) contact made from any Union directly seeking information pertaining to any Enterprise Agreement Employee Ballot process we have managed (or were managing) and that contact was made by a specific union official. The official sought details of a Ballot Result for an Enterprise Agreement Employee Ballot process conducted on behalf of a client, in October 2016. So our presumption is that this specific Employee Ballot engendered the comments referred to the Committee.

"Employees had difficulty in logging on to vote and contacting the service"

As a standard practice and service, for every Enterprise/Certified Agreement Employee Ballot process managed, Australian Election Company provides an appropriate, comprehensive, FAQ document to the client, so that the client may place the FAQ on their intranet, on employee noticeboards or for direct internal distribution to eligible employees.

Also as a standard practice and service, Australian Election Company operates a staffed email and Telephone Help Desk service for each Ballot or Election process it manages, and that Help Desk operates normal business hours, throughout the Ballot/Election period, or also, out of hours and/or on public holidays, by prior special arrangement with a client.

Again, as is standard practice, each eligible employee is sent an Instruction Sheet/Password Advice, by email or by post, which provides the steps in the voting process (by Internet and/or by Telephone Voting), the employee's unique Password, as well as information to contact the Australian Election Company Help Desk, if any assistance is required. These Advices are essentially generic in text and format, but customized for each client's requirements. Our Voting Instructions/Password Advices are tested and proven and have been effectively applied in literally thousands of Enterprise Agreement Employee Ballots.

In the case of our client's Enterprise Agreement 2016 Employee Ballot, conducted by combined Internet & Telephone Voting, it transpired that the Ballot process (as frequently occurs) was re-scheduled by our client several times, prior to actual conduct of the Ballot; and the Ballot finally was conducted to open at 7:00am AEDT on 3 October, 2016 and to close at 10:00am AEDT on 6 October, 2016. When Australian Election Company learned that the final timetabling was to commence on 3 October, 2016, we alerted our client that 3 October 2016 was a public holiday in Queensland (Labor Day), and that the Help Desk would not be staffed without arrangement; however our client informed us "I will let the stakeholders know about the Help Desk".

The emailed Instructions/Password Advices procedurally are sent just prior to Ballot opening (in this case they were sent at 6:45 am on 3 October, 2016) and any hard-copy Instructions/Advices also are posted, if possible, usually about seven (7) calendar days out from Ballot opening, so as to be received by eligible employees by Ballot opening.

Although the Telephone Help Desk was not staffed on 3 October 2016, being the Labor Day public holiday within Queensland, the email blast of Voting Instructions to eligible employees, and any Help Desk emails received from eligible employees, indeed were monitored and following receipt of several enquiries by email in relation to Employee ID Number, it was found that a number of employees apparently were not aware of their Employee ID number, which was required to be entered, along with an employee's unique Password, to access either the Internet or Telephone Voting services. As a consequence, a second, special, email blast, advising employees of their Employee ID Number was prepared and sent at 9:51 am AEDT on 3 October, 2016.

So any difficulties experienced by employees attempting to login, revolved around the eligible employees' lack of knowledge of their Employee ID number, notwithstanding that our Voting Instructions/Password Advice alerted employees not knowing their Employee ID to contact their HR area or to access their pay-slip to obtain the Employee ID number. "...If not known, your Employee ID can be found on your pay advice or by contacting your HR/Payroll section".

There were absolutely no difficulties with our electronic voting system; and our system has proven compliance and application with mandated requirements under Clause 3.16A of the *Fair Work Regulations 2009*, for electronic voting in Protected Action Ballots. Australian Election Company has been appointed as Protected Action Ballot Agent on many occasions now, including also for the relevant Union. Further our Help Desk statistics, as recorded in our client Employee Ballot Report, categorized zero technical difficulties with system user operation; and 13 of the total 19 Help Desk calls/emails received, related to Employee ID Number problems; the remaining six (6) emails/telephone calls related to "Password lost/deleted/ not received or left at home".

"The Union was unable to access or receive results and detailed analysis of numbers. Unions were also unable to independently verify results or scrutinize the process."

In relation to the approval of proposed Enterprise Agreements, in their present form, neither the *Fair Work Act 2009* nor the *Fair Work Regulations 2009*, mandate or prescribe in regard to reporting requirements for Enterprise Agreement Employee Ballots. Quite simply they should. Any Employer (or Union,) should as a matter of process, and as soon as possible after receiving Ballot Results from any Ballot Provider; or the Employer (or Union) themselves, if they conduct the Ballot themselves, should provide detailed Results of the Ballot process to all the eligible employees. Perhaps provisions parallel to Section 457 of the *Fair Work Act 2009* (as they relate to Protected Action Ballots) could be applied.

As matters stand, any Ballot Provider, including the Australian Electoral Commission (where I was a senior manager for 20 years- also see accompanying CV), has no formal, legal authority to demand, that the reported Results of an Enterprise Agreement Employee Ballot process, be disseminated to the eligible employees, or other appropriate stakeholders. Also, as a private Ballot Provider, our legal and commercial duty has to be to our client, and although, as matters stand, we certainly would expect and recommend, in the interests of Ballot integrity and Ballot transparency, that the Results be disseminated as soon as possible after provision of the Result (and Ballot Report) to our client, we have no legal authority to enforce dissemination. In the event the Union had been our client, we would have provided the Ballot Results only to the Union.

Our understanding is the employer apparently subsequently exercised prerogative to provide the Union with percentage Employee Ballot Results information.

In a similar vein, unlike formal provisions for (the appointment and application of) Scrutineers in Protected Action Ballots (Clause.3.20 of the *Fair Work Regulations 2009* as it relates to Protected Action Ballots) and in elections for registered organisations (or for parliamentary, local council or even for most board elections), in relation to Enterprise Agreement Employee Ballot processes, there are no formal provisions to cover the appointment, responsibilities, rights or duties of Scrutineers. So in essence, any Provider, including the Australian Electoral Commission, has no formal, legal authority for applying “Scrutineer” or “Authorised Observer” processes in Enterprise Agreement Employee Ballot processes.

In the circumstances where we operate without formal legal authority and seek to apply “electoral best practices”, again Providers really can only presently recommend that “Authorised Observers” or “Scrutineers” be part of the Enterprise Agreement Employee Ballot process. Obviously, in the interests of transparency, integrity, professionalism and accuracy, we would always encourage such process supervision or intervention.

In some cases, clients and Unions have collaborated to participate in pre-Ballot controlled tests of the electronic voting systems, to prove the accuracy, validity and robustness of our electronic voting systems; and we have advocated the application of such tests. Some clients also provide the full copy of our comprehensive Ballot Report (or excerpts of the Report including Ballot Results and the accounting for the Ballot Results) to the relevant Union(s)/stakeholders. Our preference always would be for our Ballot Report (or at least the Results/accounting excerpts) to be copied to appropriate stakeholders; but again we, in company with the Australian Electoral Commission, or any other Ballot Provider, presently have no formal powers or legal authority to enforce the dissemination of Ballot Results (and/or Reports).

Incidentally, in the Enterprise Agreement 2016 Employee Ballot referred to, there were 431 employees eligible to vote. 85 employees voted YES i.e. to accept the proposed Agreement (19.72% of roll and 23.16% of voters; and 282 voted NO i.e. to reject the proposed Agreement (65.43% of roll and 76.84% of voters). 367 employees (85.15%) registered a vote in the Employee Ballot.

Average percentage turnout in Enterprise Agreement Employee Ballots is circa 65%. The Employee Ballot under discussion, demonstrated a very high voter turnout (85.15%). The voter turnout for this particular Employee Ballot also tends to mitigate against the negative claims made in the Union’s submission.

Yours sincerely,

Richard Kidd
Principal
Australian Election Company