

BETWEEN

KATHERINE JACKSON
TIM KENNEDY
BILL OLIVER
MICHAEL DONOVAN
KAZIM ATES

Plaintiffs

and

AUSTRALIAN LABOR PARTY
KARL BITAR
NICK MARTIN
NICHOLAS REECE

Defendants

AFFIDAVIT OF KATHERINE JACKSON

Date of document 27 January 2011

Filed on behalf of the Plaintiffs

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I, **KATHERINE JACKSON**, of 208-212 Park Street, South Melbourne in the State of Victoria, trade union official, make oath and say:

1. I am a member of the Victorian Branch of the Australian Labor Party (ALP), the Executive President of the HSU East Branch of the Health Services Union, a large trade union affiliated with the ALP, and a member of the Administrative Committee of the Victorian Branch of the ALP.
2. The secondnamed plaintiff is a member of the Victorian Branch of the ALP. He is also the Victorian Branch Secretary of the National Union of Workers, another large union affiliated with the ALP. The thirdnamed plaintiff is the State Secretary of the



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Construction, Forestry and Mining Employees Union, another trade union affiliated with the ALP. The fourth named defendant is a member of the Victorian Branch of the ALP and is the State Secretary of the Victorian Branch of the Shop Distributive and Allied Employees Association, a large union affiliated with the ALP. The fifth named plaintiff is a member of the ALP who resides in the electorate district of Broadmeadows.

3. The firstnamed defendant is an unincorporated association and a political party registered under the *Commonwealth Electoral Act 1918* (Cth). The second to fourthnamed defendants are the National Secretary, the Assistant National Secretary and the Victorian Branch Secretary of the ALP respectively.
4. Except where stated otherwise, I make this affidavit from my own knowledge.
5. On Tuesday 21 December 2010, the Honourable John Brumby resigned as the member for the State seat of Broadmeadows. As a result, it became necessary for a preselection process to take place under the Rules of the ALP to preselect a candidate for the by-election.
6. The process which is ordinarily followed in such circumstances is that a draft roll of voters is prepared to enable a plebiscite of local members of the seat concerned to take place. This is then followed by a meeting of the Public Office Selection Committee (POSC). The relevant Rule of the Victorian Branch Rules is Rule 18. Now produced and shown to me and marked 'KJ-1' is a copy of the Rules of the Australian Labor Party Victorian Branch as at November 2009. I believe these Rules to be current.
7. The officers of the Victorian Branch of the ALP are the President (Mr Trevor Dobbyn), the Senior Vice-President (Ms Elizabeth Blandthorn) and the Junior Vice President (Ms Kimberley Kitching) (*'party officers'*). The other officials to which I refer are the State Secretary (Mr Nicholas Reece) and the three Assistant State Secretaries (Mr Noah Carroll, Mr Nathan Lambert and Mr Kosmos Samaras).
8. I am informed by Nathan Lambert and believe that on 21 December 2010, following an initial phone hookup of the officers of the Victorian Branch, it was agreed that there would be a subsequent phone hookup if the Speaker of the Legislative Assembly issued the Writ setting out the timeframe for the election before 10 January 2011. I am informed by Nathan Lambert and believe that if the Speaker did not issue the Writ before 10 January, it was agreed by the party officers that there would be a meeting of the party officers on 10 January to determine a preselection timetable. The Writ was issued in fact

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on 20 January 2011. Nominations of endorsed candidates by political parties must be delivered to the Victorian Electoral Commission before 12 noon on Monday, 31 January 2011. The by-election will be held on 19 February 2011.

9. A party officers' meeting not having occurred on 10 January, on 11 January 2011, Mr Lambert informs me and I believe that he sent an email to Noah Carroll with a copy to Kosmos Samaras and Nicholas Reece saying the following:

'Noah,

Did you have any luck setting a party officer's date after the meetings yesterday?

I have had a couple of people ask when it will be.

Nathan'

10. On 12 January 2011, Mr Lambert informs me and I believe that he sent an email to Mr Trevor Dobbyn, the President of the Victorian Branch of the ALP at 2.05pm. Mr Lambert wrote the following in the email:

'Hi Trevor,

Happy new year.

I understand from Noah that you're responsible for calling party officers' meetings.

Do you have any plans to call one in the near future? There are a couple of matters, most obviously the Broadmeadows preselection timetable, that would be good to get moving on.

Regards,

Nathan'.

11. Mr Lambert informs me and I believe that he spoke with Mr Dobbyn on Wednesday 12 January and he referred Mr Lambert back to Noah Carroll.

12. Also on 12 January 2011, Mr Sigdem Aydin, a person I do not know but who described himself as a member of the ALP, wrote to Mr Dobbyn. He sent a copy of his letter to the

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members of the Administrative Committee. He wrote that he wished to participate in selecting the next candidate to represent the electors of Broadmeadows at the upcoming election. Among other things, Mr Aydin wrote the following:

'However I am concerned about the delay in announcing a timetable to open nominations and allow party members in Broadmeadows to have their say.

Given the Speaker of the Legislative Assembly has yet to issue the Writs for the seat, now would be an opportune time for the party to put in place a process by which party members in the electorate can have their say over who will represent our party in the future.

However, I understand that factional heavyweights are intentionally delaying this process, in order to force the matter to National Executive and deny local members their vote.'

Now produced, shown to me and marked 'KJ-2' is a true copy of the letter from Mr Aydin dated 12 January 2011.

Previous preselection processes

13. The preselection process within the Rules of the Victorian Branch involves a number of steps, which is appropriate bearing in mind that elections are held every three or four years depending on the office to be filled. Where there is a by-election caused by a resignation or death of a member, the processes necessarily may be truncated.
14. For example, 12 months ago, the seat of Altona became vacant as a consequence of the resignation from Parliament of the Honourable Lynne Kosky. The timeframe for the conduct of the preselection process was truncated as it needed to be and provided for a plebiscite of local members taking place between 9am and 6.30pm on Wednesday 27 January 2010 with a Public Office Selection Committee being convened to meet to vote later that night, at 7.30pm, on Wednesday 27 January. The candidate nominations closed at 12noon on Thursday 28 January 2010. Now produced and shown to me and marked 'KJ-3' is a copy of the decision of the Administrative Committee in January 2010.
15. A similar truncated process took place in June 2008 when the then member, the Honourable Andre Haermeyer, resigned. He resigned on 2 June. The Administrative Committee met on Thursday 5 June and endorsed Marlene Kairouz as the candidate for the seat. On 6 June, the National Executive Committee met and overturned the decision

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of the Administrative Committee and insisted on local members having a right to vote for a candidate. Until the intervention of the National Executive Committee on that occasion, the local members had not voted for a candidate. The local plebiscite and POSC meeting took place on Wednesday 11 June and the nominations with the electoral office closed at midday on Thursday 12 June on that occasion.

Rules of the party

16. Rule 18.1 provides that:

'Subject to any direction of State Conference, the Administrative Committee shall arrange for the selection of Party candidates throughout Victoria for the Senate, the House of Representatives, the Legislative Assembly, the Legislative Council, and for Municipal Office.'

17. Rule 18.4 relevant provides:

'The provisions of Rule 9.3.3(a), (c) and (d) (with any necessary adaptations) apply to selections for Public Office, ...'.

18. Rule 18.5 provides as follows:

'The selection of candidates for Public Offices shall be made by the following:

- (a) *for the House of Representatives, the Legislative Assembly, the Legislative Council and Municipal Electorates, members of the Public Office Selection Committee sitting and voting after a plebiscite of local voters residing in the electoral area concerned with a weighting of 1/100 of the total vote of the valid local votes cast.*
- (b) *...*
- (c) *...'*

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19. Rule 18.6 states as follows:

'Subject to the direction of the Administrative Committee, the Executive of the Public Office Selection Committee may determine a schedule for the times of meeting of the various Selection Panels and the dates and times of the plebiscites of local voters.'

20. Rule 18.8 states as follows:

'Where in any election in the opinion of the Administrative Committee the time between the calling of nominations for any by-election and the holding of such by-election makes it impossible to conduct a plebiscite of local members, then the members of the POSC and any local pre-selection voters present at the scheduled time for the pre-selection shall proceed to elect a candidate with their ballots weighted in accordance with these Rules.'

21. Rule 9.3.3(d)(i) states in part:

'The State Secretary must compile a draft voters roll from the Party's records, and send copies to the FEA Returning Officers and Branch Secretaries at least 14 days before the close of nominations. The FEA Returning Officers and Branch Secretaries must notify the State Secretary at least 7 days before the close of nominations of any inaccuracies in the draft voters roll. The State Secretary must consider the corrections submitted, and finalise the voters roll on the basis that, subject to proved errors or omissions notified within 3 days after closure of the roll, the roll closes at the close of nominations. The State Secretary must make the roll available at least 14 days before the election. The Administrative Committee by the affirmative vote of 22 members may abridge the time for preparation and distribution of the roll in special cases requiring urgent elections (for example, by-elections).'

22. The timetable under that paragraph (i) of Rule 9.3.3(d) cannot be met in the circumstances of the Broadmeadows preselection.
23. There is no provision in the Rules permitting departure from the pre-selection processes outlined in the Rules referred to above.

Richard Arlidge
Katherine Jackson

24. Now produced and shown to me and marked 'KJ-4' is a true copy of the National Constitution of the ALP. I believe this copy to be current.
25. Rule 7(d) of the National Constitution of the ALP states as follows:
- 'Subject only to National Conference, the National Executive may exercise all powers of the Party on its behalf without limitation, including in relation to the State Branches and other sections of the Party.'*
26. There is no Rule in the National Constitution which empowers the National Executive or National Conference to waive compliance with the Rules of the Victorian Branch in respect of pre-selections.
27. The ALP is a political party registered under the *Commonwealth Electoral Act 1918* (Cth) pursuant to which Act it receives public funding, including, in 2010, a sum in excess of \$20 million.

Correspondence with the Branch Secretary and the National Secretary

28. On 25 January 2011, I and others wrote a letter to Mr Nicholas Reece prior to the Administrative Committee meeting to be held that night, and a copy was sent to the National Secretary of the Australian Labor Party, Mr Karl Bitar. The letter said the following:

"Dear Nick,

As you know, a meeting of the Victorian Branch Administrative Committee is scheduled for this evening, 25 January 2011. The meeting should "arrange for the selection of (the) Party candidate" for the by-election as required by Rule 18.1 of the ALP Victorian Branch Rules. We are concerned that the meeting will not do this and will request the National Executive to resolve to not hold a preselection ballot, to waive the requirement under Rule 18.2 that a candidate must be a member of the party for one year, and appoint a candidate.

In our view, and in the view of others, such a decision would be unlawful.

First, if it failed to arrange for the selection of a candidate, the Administrative Committee would act contrary to Victorian Branch rule 18.1, and contrary to rule 18.5, which states that such pre-selections shall be made by the Public Office Selection Committee and a local plebiscite.

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Secondly, it would not be within the power of the National Executive to accede to the request of the Administrative Committee. Rule 7(d) of the National Rules empowers the National Executive to exercise all the powers of the Party. It is necessarily confined to the powers that the Party (and the Branches) have under the relevant Rules. Except perhaps in extremely urgent circumstances, which do not occur here, there is no power under either the National Rules or the Victorian Branch Rules to avoid the preselection processes of Rule 18 of the Victorian Branch and the Rules should not be read in such a way.

It is an important matter of principle that local members be given the chance to vote for a candidate. There is nothing unusual about this preselection which requires action other than normal process.

We ask that you take every possible step available to you to ensure that local plebiscite and POSC meetings occur on or before Sunday 30 January 2011. These steps include advice to all members of the Administrative Committee about the importance of the fundamental principle, and the taking of the necessary administrative steps today and tomorrow to ensure that the draft rolls of members of the branches in Broadmeadows are prepared and distributed, in order that the plebiscite of local voters can occur in good time – that is, prior to or on Sunday.

We further put you on notice that if the Administrative Committee does fail or refuse to comply with the Rules of the Victorian Branch, we and others will seek the enforcement of the rights of the members of the district of Broadmeadows to participate in either a local plebiscite under Rule 18.5 or in accordance with Rule 18.8, and the rights of the members of the POSC under those Rules. We will request that the Disputes Tribunal makes declarations that the Rules require either of the processes under Rules 18.5 or 18.8 must be complied with, and give directions either that:

- (a) A plebiscite of local members in Broadmeadows be held on Sunday 30th January 2011 and a meeting of the POSC be held on 30th January 2011 pursuant to Rule 18.5; or*
- (b) That a meeting of the POSC and local pre-selection voters be held on Sunday, 30th January 2011 pursuant to Rule 18.8.*

*Lesley Hallae
Katharine Jackson*

Accordingly if the Administrative Committee does not act in accordance with the Rules, we ask now that the Victorian Branch Disputes Tribunal convene a hearing at 12.30pm on 27th January 2011.

At the same time, and most regrettably, it may be necessary to seek orders from the Supreme Court if the Administrative Committee were to fail to act in accordance with the Rules. This action would be taken on Thursday and urgent relief would be sought.

Bearing in mind that the officers have been on notice about this issue since before Christmas, it is most regrettable that these steps are now necessary.

Yours sincerely

Kathy Jackson

Executive President, HSUA

Tim Kennedy

State Secretary, NUW

Kazim Ates

Michael Donovan

State Secretary, SDA

Bill Oliver

State Secretary, CFMEU

ALP Member in Broadmeadows

A copy of this letter will be sent to the National Secretary.

25 January 2011"

29. Now produced and shown to me and marked 'KJ-5' is a true copy of that letter.
30. I am informed by the fourth plaintiff Michael Donovan and believe that he emailed this letter to Nicholas Reece and Karl Bitar at 5.12 pm on 25 January 2011 and that he telephoned and advised him that he had emailed a copy of a letter to the National Secretary.
31. I am informed by Michael Donovan and believe that he received a reply to this letter by email from Nicholas Reece at 8.10 pm on 25 January 2011, after the meeting of the Administrative Committee, which said:

'Hi Michael,

I have received and note your correspondence.

Katherine Jackson

Katherine Jackson

Please keep me informed of developments.

Feel free to call if you have any queries.

Nick'

32. I was not present at the meeting of the Administrative Committee on 25 January 2011, but am informed by Mr Donovan and believe that the Administrative Committee failed to take any of the actions to arrange a pre-selection and instead resolved to call upon the National Executive to exercise powers to resolve to not hold the pre-selection ballot, to waive the requirement under Rule 18.2 that a candidate must be a member of the party for one year, and to appoint a candidate.

Now produced and shown to me and marked 'KJ-6' is a true copy of the resolution which was carried at the meeting on the evening of 25 January 2011.

33. Neither I nor any of the Plaintiffs in this matter has been informed that a meeting of the Disputes Committee has been or is being convened.
34. I am informed by Nathan Lambert and believe that he has prepared a draft roll of local members of the ALP in the Broadmeadows electorate, and that he sent a copy of that to Nicholas Reece on 25 January 2011.
35. I have been a member of the ALP for 20 years and have held office of many kinds including membership of the Administrative Committee and the POSC. On that basis, I believe that the draft roll prepared by Mr Lambert affords a workable basis for the invitation and attendance of local members at a meeting of the POSC to conduct a pre-selection in accordance with Rule 18.8.
36. The Broadmeadows Town Hall is available for hire this Sunday, and would accommodate such a meeting.
37. I have considerable experience of the Australian political environment and the effects of events, internal and external, on political parties' electoral prospects. On that basis, I believe that the public impression of the ALP and consequently its electoral prospects at the by-election would be diminished if the Rules are departed from in this pre-selection, in particular, if the National Executive is seen as having imposed its will on the local ALP members.
38. I respectfully request that this Honourable Court grant the orders sought in the Summons.

*Broadmeadows
Nicholas Reece*

SWORN at Melbourne
by KATHERINE JACKSON
on 27 January 2011

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Katherine Jackson
.....
Brendan James Avallone
.....

before me

BRENDAN JAMES AVALLONE
525 Collins Street, Melbourne
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004