



21st May 2021

Glenn Sterle
Shadow Assistant Minister for Road Safety
Chair, Senate Rural, Regional Affairs & Transport References Committee
Labour Senator for Western Australia

Via email: Michael.fisher@aph.gov.au

**Senate Estimates Committee
Information requested for May 2021 proceedings**

We refer to the letter from Senator Sterle requesting further information to be provided in relation to the upcoming senate estimates proceedings for May 2021.

1. Legal advice referred to in 23 July 2019 text

There is no written legal advice in relation to allowing a joint ticket or later disallowing it. Mr Story conferred verbally with external lawyers after Mr Olsson claimed that he had previously been permitted to run a joint ticket by having multiple candidates including on one nomination form. The external lawyers confirmed that the Rules and Procedures Governing the Election of Directors (“Rules”) did not specially deal with a circumstance of a candidate wanting to have multiple persons named on a nomination form. They also confirmed that the Rules have a general provision allowing the company to take such action and give such directions as it considers necessary in order to ensure that no irregularities occur in or in connection with an election or to remedy any inconsistency or inadequacy that arises.

This issue is explained in detail in Mr Story’s description of his account of events.

2. Mr Story’s account of events

Mr Story is responsible for administrative arrangements regarding director elections in his capacity as Company Secretary. He was contacted by Mr Olsson in July 2019 to discuss arrangements for Mr Olsson’s candidature as a director in the director election for 2019.

On about 18 July, Mr Olsson advised that he wished to have a nomination form with himself and two other candidates (George Falkiner and Paul Cocking) on it. He asserted that he had been permitted to do a similar thing in 2007 along with another

candidate, Roger Fletcher and that this was also permitted in 2008 for 3 candidates (Modiano; Shiel & Falkiner).

Mr Story had significant misgivings about this assertion. It would have the effect of 3 candidates for 2019 being only required to gather in excess of 99 supporting shareholder signatures between them, instead of each of them being required to gather 99 or more of supporting shareholder signatures for their nomination. This would create an uneven playing field for candidates which is patently unfair to other individual candidates.

Mr Story's initial action was to seek independent corroboration on Mr Olsson's assertion. In short, no evidence either for or against the proposition of a multiple candidate nomination form was found. There was nothing in AWI's records prior to 2010, and our share registry Link did not have physical records of nominations from that time either. It is noted that document retention requirements under law are 6 years for most purposes. Further, Mr Story spoke to various persons from that time including Roger Fletcher, Meredith Shiel and George Falkiner, but none of them had any recollection about a multiple candidate nomination form situation.

Mr Story also conferred verbally with our external lawyers. They confirmed that the Rules do not specifically deal with a circumstance of a multiple candidate nomination form. They also confirmed that there is a general power in the Rules for the company to deal with irregularities that may arise (Clause 8). This was known to Mr Story anyway, and so he did not seek formal advice from our external lawyers on this. This is the reason why no advice on this issue was sent to Senate Estimates on the issue of a "joint ticket".

The situation then was that an assertion regarding a multiple candidate nomination form had been made but there was at that point no supporting or contrary evidence about it. Mr Story's view was that the apparent precedent asserted should be honoured in these circumstances. However, his view was that this should be a once only circumstance, and that the Rules should be amended to clarify that a multiple candidate nomination form would not be permissible in future. The Rules have since been changed to clarify that a multiple candidate nomination form is not permissible.

This is the context in which Mr Story wrote to Mr Olsson with the text of 23rd July. The legal advice referred to was his own (he is a lawyer of long experience) and the conversation that he had with the external lawyers (Freehills).

There was a significant change in circumstances that arose several weeks later. Mr Story was given a contact for a previous company secretary who was in office at the

time between 2006 – 2010. This was Chris Chapman. Mr Chapman was very insistent that a multiple candidate nomination form had not been permitted during his time, and further that he would have prevented it occurring if he became aware of it being attempted.

Mr Story was quite perturbed about the implications of this evidence on his earlier advice to Mr Olsson in the text of 23rd July. It would mean that the facts relied on in that advice (the assertion by Mr Olsson) were almost certainly not correct. Mr Story decided to report to Chairman Colette Garnsey on what had occurred. In a conversation with her about that, the Chairman did not attempt to influence Mr Story in any way. She counselled him to arrive at a position in accordance with the Rules and be prepared to back it up.

There was an important step to take with Mr Olsson at this point. This was to extend natural justice to him by giving him the opportunity to put forward any corroborating evidence that he may have for his assertion about a multiple candidate nomination form. Mr Story had a conversation with Mr Olsson on 20th August on this matter. He advised Mr Olsson that some evidence had emerged that the gathering of 100 supporting signatures for a nomination of a director did not proceed in 2007 or 2008 with multiple candidates on the same form. Accordingly, it was possible that the earlier advice that Mr Story gave to him on this had proceeded on an incorrect premise. Mr Story invited Mr Olsson to educe any firm evidence that Mr Olsson may have that the nominations for Olsson & Fletcher in 2007, and the nominations for Modiano/Sheil/Falkiner in 2008 had proceeded with multiple candidates on the same nomination form. Mr Olsson declined to educe any such evidence and said he would proceed with gathering the 100 supporting signatures. During this conversation, Mr Story also advised Mr Olsson to avoid a “last minute” circumstance of submitting nomination signatures. This is not desirable in view of the possibility of a candidate not fulfilling the nomination formalities prior to the cut-off date, and so being not able to stand as a candidate for election.

Mr Story’s firm view is that the proper outcome in relation to the multiple candidate nomination form issue occurred in this instance in accordance with the intent of the Rules with Mr Olsson deciding to gather the requisite 100 supporting signatures of eligible shareholders. Further, it did not appear that Mr Olsson had suffered any significant detriment to his candidature with this eventual resolution of the matter. There was still a period of 5 weeks from the date of this conversation on 20th August to the cut off date for receipt of a valid nomination by a candidate on 24th September. There were a number of other candidates for election via the 100 signatures of eligible shareholders route in the 2019 election. As at 20th August, most were in the early stages of gathering those supporting signatures. One had not advised his candidature at that point, and so had not started with that process. All

of them except for Mr Olsson succeeded in gathering the signatures in an orderly manner prior to the cut-off date.

It is important to emphasise that there was no interference by the board of directors as a body, or any individual director, in the candidature process. The responsibility lies, in this case, with the Company Secretary, to ensure that no conflict of interest issues arise for directors or management. Mr Olsson's inferences about this do not come from a position of knowledge for him as he is an individual wool grower and not concerned in a management of AWI. His inferences are ill-founded and false. It is not clear whether Mr Story has been asked here to give an account of events in relation to Mr Olsson falling short of the required 100 supporting signatures of eligible shareholders. However, given that this is a second area where Mr Olsson has made inferences about interference by directors in the candidature process, it is proposed to report on that as well here.

Mr Olsson commenced with the gathering of signatures process after 20th August. On 3rd September, he wrote to Mr Story notifying that he was going overseas on the next day and would be away for 3 weeks. During that time, he would be uncontactable, and he advised that a staff member would continue with the task of gathering the signatures. It did not proceed speedily compared to other candidates. By the time of Mr Olsson's return on 22nd or 23rd September, he had only 41 valid eligible shareholder signatures. He decided to make an effort to get to the requisite 100 eligible shareholder signatures by the cut-off date which was 5pm on 24th September. Mr Story assisted him by arranging for expedited turn around times for validation of signatures as they were put forward. In the end, Mr Olsson fell short with 97 valid signatures of eligible shareholders by the cut-off time.

Mr Story wrote to Mr Olsson after the cut-off time and notified him that he would not be able to stand as a candidate in the 2019 election of directors on the basis that he had not submitted a valid completed nomination by the cut-off time. Mr Story then contacted the Chairman Colette Garnsey to advise her that one candidate had fallen short, and this was Mr Olsson. The Chairman requested Mr Story to convene a board meeting at short notice to review the circumstances of Mr Olsson's candidature, and to seek written advice from Freehills on the circumstances to be tabled at that meeting. That written advice has been given to Senate Estimates.

The board meeting of AWI at short notice was held on 27th September. It reviewed the circumstances of Mr Olsson's candidature and affirmed the process for external candidates to meet requirements for nomination as director candidates, and noted that the process had been correctly applied on this occasion. While all directors attended this meeting, those directors who were standing for re-election in 2019

removed themselves from voting on this matter due to conflict of interest considerations.

It is confirmed again that directors did not interfere in the process for candidature of prospective directors. In particular, no information on prospective candidates or how they are proceeding with gathering of signatures is given to directors or the board as a whole. This is to avoid any possible conflict of interest issues for directors. Mr Olsson's inferences on interference with consideration of his tally of signatures is firmly rebutted. Again, this is a matter on which he has no knowledge as a party who is external to the management of AWI. His inferences are ill founded and false.

Subsequently, the board requested further external advice on the procedures adopted by AWI in relation to Mr Olsson's director candidate nomination for the 2019 AWI annual general meeting, and a confirmation regarding the adequacy of the process that was followed. There was a 164 briefing document prepared on the matter and substantial extracts of this advice has also been sent to Senate Estimates. This advice has also been sent to Senate Estimates. It confirms the adequacy of the processes adopted and the demonstrative procedural fairness and assistance rendered to Mr Olsson.

3. Historical records of nomination forms

Details of nomination forms for candidates have been retained by AWI for recent elections. They are available for all candidates in the 2019 election.

4. List of signatures submitted by Mr Olsson

Lists of signatures submitted by Mr Olsson in relation to the 2019 election are retained by AWI. Attached is a summary of the final position reached for Mr Olsson after the cut-off time for receipt of a valid nomination on 24th September 2019.

Kind regards

Jim Story
Company Secretary

24/09/2019 5.10pm Chick Olsson

Code	Description	No.
V	Valid shareholder	97
I-NVS	Invalid - non voting shareholder	1
I-EL	Invalid - eligible levy payer	20
I-NVLP	Invalid - non voting levy payer	4
I	Invalid - details provided does not match the register	0
D	Duplicates	5
NF	Holding not found	10
	TOTAL equals nominations provided	137

Ref #	Name	Address
7	STEVEN MCGUIRE	
24	AJ MCBRIDE	
63	IAN ROB??	
85	D DUXSON	
89	KANE MCDONALD	
118	JADE FRENCH	
120	ERNIE APPS	
124	DAVE HEARN	
125	Ian Banks?*	
137	Dwain Duxson	