



DECISION

Fair Work Act 2009

s.468A - Application for an eligible protected ballot agent

Fair Vote Services Pty Ltd

(B2024/495)

DEPUTY PRESIDENT HAMPTON

ADELAIDE, 31 JULY 2024

Application for Fair Vote Services Pty Ltd to become an eligible protected action ballot agent.

1. What this decision is about

[1] Fair Vote Services Pty Ltd (**Fair Vote** or **FVS**) has applied under s.468A of the *Fair Work Act 2009* (**FW Act**) for approval as an eligible protected action ballot agent. This application, and the concept of approved eligible protected action ballot agents, takes place in the context of certain amendments to the FW Act that were introduced by virtue of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) FW Act 2022* (**Amending Act**). These changes commenced on 6 June 2023 and amongst other matters, impact upon the making of Protected Action Ballot Orders (**PABO**) and the approval of protected action ballot agents who might conduct the ballot should a PABO be made.

[2] The issuing of a PABO is a required step for an employee bargaining representative, such as a registered employee association (**Union**) or an individual employee bargaining representative, to be able to take protected industrial action (**PIA**) as part of bargaining with employers for an enterprise agreement. The ballot is, in effect, part of the democratic process in which the relevant employees who are represented by the bargaining representative have the opportunity to vote upon, and authorise, any industrial action that might subsequently be notified and taken.

[3] Amongst other requirements, for the PABO to authorise the subsequent notification and taking of PIA, a majority of the relevant employees must vote in the ballot and a majority of voters must approve the forms of industrial action that are proposed.

[4] To conduct a ballot, the ballot agent must be supplied by the employer with a list of the relevant cohort of employees who would be covered by the proposed agreement, and a list of those employees represented by the applicant for the PABO - by that bargaining representative. These lists are provided separately and, in effect, in confidence by the parties, and the ballot agent compares the 2 lists to create the voting roll. To ensure the validity of that roll, each party is directed to provide contact and other identifying information to the ballot agent to enable a proper comparison to be undertaken.

[5] It is self-evident that the above information contains details that are private in nature and potentially industrially sensitive between the parties. That is, it would not be normal for an employer to provide a full list of its employees to a Union or for a Union to provide a list of its members to an employer. This is particularly so in the context of bargaining where a PABO and PIA is contemplated.

[6] The results of the ballot are provided by the ballot agent to the relevant parties and to the Commission and are relied upon by the employee bargaining representative, the employer(s) and the Commission as confirming, or otherwise, the relevant statutory step for PIA to be taken.

[7] In general terms, where an applicant is approved by the Commission as an eligible protected action ballot agent, they will be authorised to conduct the ballots of employees required when a PABO is issued. Further, where named in the PABO application and proposed orders, the Commission will, subject to the FW Act, be obliged to appoint them to conduct the ballot concerned.

[8] The approval requirements for an eligible protected action ballot agent are, in effect, that the applicant is a fit and proper person to conduct protected action ballots.

[9] The above broadly stated scheme sets the context for the consideration and determination of applications of this kind.

[10] To date, 7 agents have been approved as eligible protected action ballot agents under these provisions. The Australian Electoral Commission (AEC) is also directly empowered under the FW Act to conduct PABO ballots.

[11] This application was lodged in late April 2024. Shortly thereafter, the Commission stated on its website that Fair Vote had made the application and that interested parties could make submissions before the closing date of 9 May 2024. Earlier, the President of the Commission issued a public Statement¹ advising that this would be the process for dealing with such applications and that the details would be available on the website. No submissions were received in response to the above notice.

[12] The application revealed that Fair Vote had not commenced to operate at the time of the application and that:

“In order to commence operations, FVS will receive a seed funding loan from the Australian Council of Trade Unions (the ACTU). The shareholders of FVS are the present Secretary and President of the ACTU. However, the ACTU and its officers will have no involvement in FVS’ performance of functions as a PAB agent.”²

[13] In light of this circumstance and given the nature of the role to be played by an eligible protected action ballot agent, I took the following additional steps³ to be better informed:

- I sought company extracts for Fair Vote from the Australian Securities and Investments Commission (ASIC);

- I sought and obtained from Fair Vote a copy of the internal policies referenced in the application and declaration;
- I provided a copy of the application, the internal policy documents and the company extracts to the Australian Chamber of Commerce and Industry (**ACCI**), the Australian Industry Group (**Ai Group**) and the Australian Council of Trade Unions (**ACTU**) and invited submissions on the application from each;
- I provided Fair Vote with an opportunity to respond to any submissions from these bodies; and
- I provided an opportunity for any party or organisation to seek that the Commission conduct a hearing in the matter with the indication that if no request was made⁴ I would determine the application based upon the materials that were ultimately before it.

[14] I also sought further information from Fair Vote as follows:

“(The Commission) observes the application and submissions emphasise, in effect, the intended separation of the proposed activities of FVS from the ACTU. The parties would be aware that similar considerations have been taken into account in other applications of this kind. Accordingly, in the reply submissions to be made by FVS, the following should be further addressed:

‘What legal and/or practical steps have been, or will be, taken by FVS to ensure the independence of itself as a ballot agent and the proper separation from the interests and influence of those whose members are being balloted and their employers.’⁵

[15] ACCI did not make a submission. Ai Group raised⁶ some concerns based upon the information then before the Commission and contended that caution should be exercised. It also proposed that if the application was approved, a review period of 18 months from the approval should be put in place by the Commission. The ACTU earlier advanced a submission⁷ supporting the application and providing further information about the funding of Fair Vote and the absence of involvement by the ACTU and its affiliates in the conduct of ballots by Fair Vote or the performance of any of its functions.

[16] Fair Vote subsequently provided⁸ further comprehensive submissions and evidence relevant to:

- The company details, ownership, constitution and seed funding/loan arrangements for FVS;
- Further details about how PABO ballots will be conducted including a commercial arrangement with BigPulse Voting Pty Ltd (**BigPulse**), which would provide the infrastructure and operating systems for the conduct of electronic voting and the security features against cyber intrusion and attack;

- The commercial services arrangement between FVS and another company, OGL Group Pty Ltd, that will lease a secure part of appropriate premises (not connected with the ACTU or its affiliates) and business administration services; and
- A Charter of independence (**Charter**) and other policies that have been formally adopted by FVS.

[17] It remains necessary for the Commission to consider whether Fair Vote has established that it is entitled to apply to be an eligible protected action ballot agent and is a fit and proper person for that purpose, and to ultimately determine whether it should be approved.

[18] For reasons that are set out below, I am satisfied that I should approve the application.

2. The statutory context and the nature of the applicant as an eligible protected action ballot agent

[19] The FW Act relevantly provides as follows:

“443 When the FWC must make a protected action ballot order

- (1) The FWC must make a protected action ballot order in relation to a proposed enterprise agreement if:
 - (a) an application has been made under section 437; and
 - (b) the FWC is satisfied that each applicant has been, and is, genuinely trying to reach an agreement with the employer of the employees who are to be balloted.
 - (2) The FWC must not make a protected action ballot order in relation to a proposed enterprise agreement except in the circumstances referred to in subsection (1).
 - (3) A protected action ballot order must specify the following:
 - (a) the name of each applicant for the order;
 - (b) the group or groups of employees who are to be balloted;
 - (c) the date by which voting in the protected action ballot closes;
 - (d) the question or questions to be put to the employees who are to be balloted, including the nature of the proposed industrial action;
 - (e) the person or entity that the FWC decides, under subsection 444(1A), is to be the protected action ballot agent for the protected action ballot;
 - (f) the person (if any) that the FWC decides, under subsection 444(3), is to be the independent advisor for the ballot.
- (3A) For the purposes of paragraph (3)(c), the FWC must specify a date that will enable the protected action ballot to be conducted as expeditiously as practicable.

- (5) If the FWC is satisfied, in relation to the proposed industrial action that is the subject of the protected action ballot, that there are exceptional circumstances justifying the period of written notice referred to in paragraph 414(2)(a) being longer than 3 working days or 120 hours (whichever is applicable), the protected action ballot order may specify a longer period of up to 7 working days.

Note Under subsection 414(1), before a person engages in employee claim action for a proposed enterprise agreement, a bargaining representative of an employee who will be covered by the agreement must give written notice of the action to the employer of the employee.

444 Ballot agent and independent advisor

- (1) This section applies if the FWC must make a protected action ballot order under subsection 443(1).

Protected action ballot agent

- (1A) The FWC must, in accordance with subsections (1B) to (1D) of this section, decide the person or entity that is to be the protected action ballot agent for the protected action ballot.
- (1B) The person or entity must be the person or entity specified in the application for the protected action ballot order as the person or entity the applicant wishes to be the protected action ballot agent, unless:
- (a) the person or entity specified in the application does not meet the requirements of subsection (1C) (unless subsection (1D) applies); or
 - (b) the FWC is satisfied that there are exceptional circumstances that justify another person or entity being the protected action ballot agent.
- (1C) The person or entity must be an eligible protected action ballot agent.
- (1D) Subsection (1C) does not apply in relation to a person if the FWC is satisfied that:
- (a) there are exceptional circumstances that justify the ballot not being conducted by an eligible protected action ballot agent; and
 - (b) the person is a fit and proper person to conduct the ballot; and
 - (c) any other requirements prescribed by the regulations are met.

Note: Other than the Australian Electoral Commission, an entity that is not a person cannot be the protected action ballot agent for a protected action ballot.

- (2) The regulations may prescribe:

- (a) conditions that a person must meet in order to satisfy the FWC, for the purposes of paragraph (1D)(b), that the person is a fit and proper person to conduct a protected action ballot; and
- (b) factors that the FWC must take into account in determining, for the purposes of paragraph (1D)(b), whether a person is a fit and proper person to conduct a protected action ballot.

Independent advisor

- (3) The FWC may decide that a person (the *other person*) is to be the independent advisor for a protected action ballot if:
 - (a) the FWC has decided that a person other than the Australian Electoral Commission is to be the protected action ballot agent for the ballot; and
 - (b) the FWC considers it appropriate that there be an independent advisor for the ballot; and
 - (c) the FWC is satisfied that:
 - (i) the other person is sufficiently independent of each applicant for the protected action ballot order; and
 - (ii) any other requirements prescribed by the regulations are met.”

[20] The approval requirements for eligible protected action ballot agents are set out in the following terms.

[21] Section 12 of the FW Act contains the following relevant definitions:

“eligible protected action ballot agent: see subsection 468A(1).

protected action ballot agent for a protected action ballot means the person or entity that conducts the protected action ballot.”

[22] Section 468A of the FW Act provides:

“468A Eligible protected action ballot agents

- (1) Each of the following is an eligible protected action ballot agent:
 - (a) the Australian Electoral Commission;
 - (b) a person approved by the FWC under subsection (2).
- (2) For the purposes of paragraph (1)(b), the FWC may, in writing, approve a person as an eligible protected action ballot agent if the FWC is satisfied that:
 - (a) the person is a fit and proper person to be an eligible protected action ballot agent; and
 - (b) any other requirements prescribed by the regulations are met.

- (3) The regulations may prescribe:
 - (a) conditions that a person must meet in order to satisfy the FWC that the person is a fit and proper person to be an eligible protected action ballot agent; and
 - (b) factors that the FWC must take into account in determining whether a person is a fit and proper person to be an eligible protected action ballot agent.
- (4) The FWC must, at least every 3 years after it approves a person as an eligible protected action ballot agent, consider whether the FWC remains satisfied that the person meets the requirements mentioned in subsection (2).
- (5) If, after considering the matter under subsection (4), the FWC is no longer satisfied that an eligible protected action ballot agent meets the requirements mentioned in subsection (2), the FWC must take:
 - (a) any action prescribed by the regulations; and
 - (b) any other action the FWC considers appropriate.”

[23] I observe that no regulations have been made for the purposes of s.468(2)(b) of the FW Act.⁹ This means that the Commission must consider whether the applicant, in this case Fair Vote, is a fit and proper person by reference to the general concept unaided by additional requirements or considerations. If satisfied, a discretion arises to approve the application.

[24] The Explanatory Memorandum associated with the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (Explanatory Memorandum)* helpfully provides an overview of the purpose of the changes to introduce the notion of an eligible protected action ballot agent as follows:

“841. These amendments remove the AEC as the default PAB agent and empower the FWC to ‘pre-approve’ a person as an ‘eligible PAB agent’. More than one person may be approved by the FWC. The AEC is defined as an ‘eligible PAB agent’ and does not need to be approved by the FWC. In effect, there may be a panel of alternative agents who can be appointed as an alternative to appointing the AEC. The amendments also set out the requirements when appointing a PAB agent that is not the AEC. These amendments would require the FWC to regularly review and consider whether it remains satisfied that the eligible PAB agent or agents meet the requirements at least every three years.

842. This item would amend section 12 of the FW Act by inserting a new signpost definition of ‘eligible PAB agent’. This new definition is particularly relevant to determining who is an eligible PAB agent for the purposes of Division 8 of Part 3-3 of the FW Act. The signpost definition is required due to the creation of a panel of PAB agents proposed by Item IA16.”

[25] For reasons set out in an earlier decision¹⁰ of the Commission, I find that a “person” in s.444, s.468A and related provisions includes a corporation. This means that an eligible protected action ballot agent may be an individual (natural person), a corporation, or the AEC,

which as explained earlier is, in effect, approved directly by the FW Act. A non-corporate or non-individual entity cannot be considered for approval as an eligible protected action ballot agent by the Commission.

[26] Fair Vote, as a corporation, is eligible to apply and be approved as an eligible protected action ballot agent.

3. Is Fair Vote a fit and proper person?

[27] I begin with the consideration of what is a fit and proper person for present purposes.

[28] Section 444 and associated provisions of the FW Act aim to protect the interests of the employees participating in the ballot and those of the employer(s) involved. Further, there is a statutory imperative arising from the scheme of the FW Act that any ballot that might authorise the taking of industrial action be conducted in a proper, democratic, prompt and robust manner by agents that are appropriate to undertake that task.

[29] The Commission has found¹¹ that the assessment of whether a proposed protected action ballot agent is a fit and proper person should take place in that context. The test is whether a person is fit and proper to conduct protected action ballots, not whether they are fit and proper in some abstract sense. Further, and without being definitive, considerations that might inform whether an applicant is a fit and proper person to be an eligible protected action ballot agent might include (where relevant):

- The qualifications and experience of the individuals that lead the organisations and/or those that are intended to conduct the ballots;
- The experience with conducting ballots and the absence of issues (non-conformances) evident from that experience;
- The systems that are in place to ensure that ballots are conducted fairly, democratically, and expeditiously by fit and proper individuals and which ensure the integrity and privacy of the information provided to them by the parties;
- General standing within the community including whether they have a record of non-compliance with workplace laws and the absence of criminal convictions; and
- Independence, or robust systems to ensure proper separation, from the interests and influence of those whose members are being balloted and their employers.¹²

[30] Reference to “systems” above would include both information processes (technology and security arrangements) and staffing systems. In addition, findings made by the Commission as to whether the applicant is a fit and proper person for some equivalent ballot role or related purpose would also be relevant.

[31] None of the parties in this matter took issue with the above approach that has been consistently adopted by the Commission to the assessment of the fit and proper person requirement established by the FW Act.

[32] As to the assessment in this case, I observe that unlike almost all of the eligible protected action ballot agents approved to date, the Commission has not previously been required to consider whether Fair Vote is a fit and proper person to conduct protected action ballots. That is, Fair Vote has not previously been requested or authorised to conduct PABO ballots under the FW Act. I make no adverse finding in that regard; however, this means that the assessment must be made unaided by previous directly relevant decisions of the Commission.

[33] The application was accompanied by a comprehensive Declaration from Gavin Ryan, Executive Director of Fair Vote. The other substantive material subsequently provided on its behalf has been outlined earlier in this Decision. Having regard to all of that material, the following findings are appropriate.

[34] FVS was registered as a company on 20 March 2024. Up until 10 April 2024, the President of the ACTU was a Director of FVS and the Secretary of the ACTU was a Director and Secretary of FVS. These appointments were transitional only. Since 10 April 2024, Mr Ryan has been the sole Director and Secretary of FVS.

[35] FVS is a proprietary company limited by shares. The company has two ordinary shareholders, Sally McManus (Secretary of the ACTU) and Michele O’Neil (President of the ACTU).

[36] FVS is governed by a constitution. FVS and its shareholders are also party to a shareholders agreement dated 3 July 2024 (**Shareholders Agreement**).

[37] The Shareholders Agreement imposes binding obligations on FVS and its shareholders to ensure FVS’ independence as a PAB agent as follows:

“3.1 Company’s conduct of Protected FW Action Ballots

The Company must conduct Protected FW Action Ballots independent of any influence, involvement or control of the Shareholders, any associated entity of the Shareholders within the meaning of the s 50AAA of the Corporations Act 2001 (Cth), the ACTU including its officers or employees, or any affiliate of the ACTU including their officers or employees.

The Shareholders must not, and must not attempt to, direct, influence, control, or be involved in the Company’s conduct of Protected FW Action Ballots.”

[38] FVS will receive a seed funding loan from ACTU Property Ptd Ltd as trustee for ACTU Property Trust to facilitate FVS commencing operations as a PAB agent, if approved. The loan will be governed by a loan agreement dated 3 July 2024 (**Loan Agreement**) between the above lender and FVS.

[39] The Loan Agreement expressly preserves the independence of FVS as a PAB agent and includes the following obligations:

- “(2) Upon receipt of the Loan and commencement of its operations, the Borrower will conduct protected action ballots independent of any influence, involvement or control of the Lender, the ACTU or any of the Lender or ACTU’s related entities, officers, agents, employees or affiliates.
- (3) Nothing in this Loan Agreement permits the Lender, the ACTU, or any of the Lender or ACTU’s related entities, officers, agents, employees or affiliates to direct the Borrower in connection with its conduct of protected action ballots.
- (4) The Lender will not, and will not attempt to, direct, influence, control, or be involved, the Borrower’s conduct of protected action ballots as an agent appointed under the Fair Work Act 2009 (Cth).”

[40] It is apparent that once fully established, FVS will be separate from its founders both financially and operationally.

[41] On 2 July 2024, FVS formally adopted the Charter. Mr Ryan has formally undertaken to comply with the Charter and all new employees will be obliged to comply with the Charter and the other polices outlined elsewhere in this Decision. The Charter provides:

- “1. FVS Personnel are required to agree to and at all times abide by the Charter. The purpose of the Charter is to ensure that any protected action ballot conducted by FVS is fair and democratic.
2. FVS must be, and at all times be seen to be, independent in the performance its functions as a protected action ballot agent. FVS will not be subject to direction in the performance of those functions other than by the Fair Work Commission in accordance with the FW Act. FVS will not be directed or influenced in the performance of its functions as a protected action ballot agent by any other party including the ACTU, ACTU affiliates, or any union, bargaining representative or employer participating in a protected action ballot.
3. FVS Personnel must maintain the highest level of professionalism and impartiality.
4. FVS Personnel must be independent and have no interest, whether financial or otherwise, in the outcome of any ballot the conduct of which they are directly or indirectly involved in.
5. FVS Personnel must at all times act in accordance with FVS policies, including the FVS Code of Conduct and the Declaration of Interests policy.
6. FVS Personnel must not engage in any behaviour that could compromise, or be seen to compromise, FVS’ independence in the performance of functions as a protected action ballot agent. This includes conduct outside of working hours and online conduct.

7. Where FVS is conducting a protected action ballot, FVS Personnel must not discuss or share any information in relation to that ballot with third parties, except for a proper purpose in respect of FVS' conduct of the ballot and also in accordance with FVS' policies and procedures.
8. FVS Personnel must immediately report to the FVS Managing Director any approach or attempt by a third party to improperly influence FVS Personnel or FVS in relation to FVS' functions as a protected action ballot agent.
9. FVS will take all necessary steps to implement and enforce this Charter and ensure the integrity and independence of each protected action ballot.”

[42] Although, FVS initially registered its business address as the ACTU's Melbourne office, it will operate from dedicated premises elsewhere in Melbourne. FVS will not be co-located with the ACTU or any of its affiliates and is presently taking steps to update its registered business address with ASIC.

[43] Under the commercial services arrangement between FVS and another company, OGL Group Pty Ltd, FVS will lease a secure part of appropriate premises and receive business administration services.

[44] Mr Ryan is the Executive Director of FVS and its sole Director and will be the person who will be primarily responsible for carrying out FVS's functions as a PABO agent. He has extensive expertise and experience in the design and implementation of many different election projects and governance events. This includes training in data security standards to meet ISO 9001 and ISO 27001 certifications and in developing election protocols, training and processes to ensure election integrity measures are best practice and exceed regulatory requirements at both State and Federal level. Mr Ryan also has acted as an international observer in national elections conducted in the Asia-Pacific region.

[45] As Managing Director of the OGL Group, Mr Ryan has also conducted or supervised many polls and elections which have adopted various voting models and systems including in-person, hybrid and fully electronic elections.

[46] Mr Ryan has never been disqualified from holding any directorship or other office, never been charged with or convicted of any criminal offence, or named as a defendant in a civil lawsuit or had any court make any adverse finding about or against him.

[47] Mr Ryan is a fit and proper individual.

[48] FVS will undertake a process to ensure that its employees working in the conduct of protected action ballots are also fit and proper persons. That process includes:

- Prospective employees will be required to undergo a National Police Check and make a declaration as to whether they have been the subject of any adverse court order or finding. Persons with a history of criminal convictions or adverse court findings that bear upon the person's good character and fitness to carry out ballots will not be employed.

- As part of the onboarding process, each new employee will be required to undergo mandatory training in relation to:
 - the protected action ballot order scheme under the FW Act, the requirements for ballots conducted to be fair, secret, and democratic;
 - cybersecurity awareness and fraud prevention;
 - confidentiality, privacy and the handling of sensitive information;
 - the operation of FVS's ballot process including data access and security measures in place; and
 - the FVS Staff Induction Policy and Code of Conduct including the requirements for employees to behave in a way that upholds FVS's independence and integrity, including declaring and managing any conflicts of interest.

- In addition, each employee will be provided with and where applicable, required to agree to comply with FVS's policies including:
 - Chater;
 - Staff Induction Policy and Code of Conduct;
 - Privacy Policy;
 - Cybersecurity, Data Security and Information Management Policy;
 - Notifiable Data Breach Policy and Procedure;
 - Security Incident Management Policy and Procedure; and
 - Declaration of Interests and Conflict of Interests Statement.¹³

- Employees of FVS will perform work under Mr Ryan's supervision and direction and will be subject to ongoing evaluation to ensure the integrity of each ballot.

[49] FVS will utilise an online balloting software system provided by BigPulse. BigPulse provides services to over 1,000 customers in Australia and abroad. These include not-for-profit organisations, homeowner associations, universities, unions, large companies and industry groups. BigPulse has various policies and guides detailing its security systems and protocols, including its Online Voting Technology Service Level Summary, its Security, Reliability, Performance, Risk Management policy, its Servicer Security Detailed Features guide, and its Election Vote Count Verification Protocol.

[50] FVS will utilise physical and online systems which comply with information security standards ISO 9001 and ISO 27001 certification. Ballot data will be securely held on BigPulse's dedicated secure servers. Server security is ensured by data encryption, firewalls, auditing, daily security scans, and regular server maintenance.

[51] FVS contend that a PABO ballot can be set up on under 24 hours' notice. The system would ensure that employees receive their ballot link via email and/or SMS immediately upon the opening of voting, and they can cast their ballot right up until the time voting closes. Votes are tallied immediately after the vote closes.

[52] FVS would email the results of the ballot to the employer, the applicant and FWC, shortly after the results are confirmed. The results can be expected to be declared within 24 hours of a vote closing.

[53] If approved by the Commission, FVS and only FVS will carry out statutory functions as an eligible PAB agent as set down in Division 8 of the FW Act and otherwise as directed by the Commission. FVS will not be permitted to delegate or assign those statutory functions to any other person or entity.

[54] As a result, the material now before the Commission includes confirmation of extensive independent voting and other professional experience of the present Fair Vote Director. Further, the Director of the business is a fit and proper person. That material also confirms the processes in place to ensure that all the individuals who would be involved in the conduct of the ballots are, and will be, fit and proper persons for that purpose. This includes evidence that all of the individuals who are or will be associated with its business, including those who would conduct PABO ballots, hold police clearances and undertake appropriate training and induction.

[55] The material before the Commission also confirms to my satisfaction, general consistency with all the other considerations set out earlier. This includes details about the nature of the information and other systems to be used for the ballots of various types, and steps that will be taken to ensure that the ballots are conducted fairly, democratically, and expeditiously by fit and proper individuals. This involves, amongst other matters, the nature of the data storage systems and associated practices, the proposed supervision and training of staff, and the independence of the organisation and those systems from the parties who are likely to be involved in future PABOs.

[56] In this later respect, the legal steps, including the Charter, Shareholders Agreement and Loan Agreement, and the administrative and policy arrangements that have been put in place for and within Fair Vote, provide appropriate independence and separation from the ACTU, its affiliates and the interests and influences of all those who would be subject to PABO ballots undertaken by it.

4. Conclusions and approval

[57] Fair Vote is entitled to apply, and I have found that it is a fit and proper person to be approved as an eligible protected action ballot agent. I also consider that in all of the circumstances, I should approve it to act in that capacity under the terms of the FW Act.

[58] The application is approved. Fair Vote Services Pty Ltd is approved as an eligible protected action ballot agent under s.468A of the FW Act.

[59] Under s.468A(2) the approval must be in writing and this Decision serves that purpose.

[60] This Decision will be published, and the identity of Fair Vote as an approved eligible protected action ballot agent set out on the Commission's website.

[61] I have considered Ai Group's proposal that the Commission conduct a review of this approval within 18 months. I observe that Fair Vote contended that no earlier review was

necessary; however, should the Commission so decide a review period of 2 years, involving the opportunity for the peak groups and other interested parties to make contributions, may be appropriate.

[62] Section 468A(4) of the FW Act requires that this approval, and any other eligible protected action ballot agent approvals, be reviewed by the Commission at least each 3 years to ensure that the Commission remains satisfied that the relevant agents continue to meet the requirements in s.468A(2). The 3-year period is a maximum, and earlier, and potentially multiple reviews, are possible. Given the recency of the FW Act amendments, there is not yet an established program for such reviews.

[63] I observe that there is also a robust scheme¹⁴ under the FW Act that permits complaints about the conduct of PABO ballots by eligible protected action ballot agents to be reported to the Commission. There are also statutory offences related to any person hindering, obstructing or interfering in a relevant ballot.¹⁵

[64] Fair Vote, unlike most other approved eligible protected action ballot agents, does not have a track record of undertaking PABO ballots. Further, it has been approved on the particular basis set out in this Decision. In that light, I consider that when the Commission establishes its program of reviews, the present approval should be an earlier priority. A time-period between 18 months and 2 years, with a public review, would appear to be appropriate.

The image shows a handwritten signature in black ink on the left, which overlaps with the official seal of the Fair Work Commission of Australia on the right. The seal is circular with a double border. The outer border contains the text 'THE SEAL OF THE FAIR WORK COMMISSION' at the top and 'AUSTRALIA' at the bottom. The inner circle features the Australian coat of arms, which includes a kangaroo and an emu flanking a shield, with a seven-pointed star above it.

DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR776755>

¹ Statement issued 5 June 2023.

² Confirmed in the declaration of Gavin Ryan, Executive Director of FVS.

³ Directions issued 23 May 2024.

⁴ No request was subsequently made.

⁵ Correspondence to all parties on 4 June 2024.

⁶ Submissions dated 20 June 2024.

⁷ Submission dated 31 May 2024.

⁸ Submissions dated 3 July 2024.

⁹ Regulations have been made for the approval of non-eligible protected action ballot agents under s.444(1D)(c) of the *FW Act – Fair Work Regulations* – reg.3.11; however these do not extend to the present form of application or approval.

¹⁰ *Democratic Outcomes Pty Ltd T/A CiVS* [\[2023\] FWC 1400](#).

¹¹ *Ibid* at [41].

¹² *Ibid* at [42].

¹³ All of these policies have been provided to the Commission and are fit for purpose.

¹⁴ Section 458 of the *FW Act* and *Fair Work Regulations* - reg. 3.13(4).

¹⁵ Section 462 of the *FW Act*.