

DISCUSSION PAPER RELATING TO NSW JEWISH BOARD OF DEPUTIES ELECTIONS

1 Definitions

1.1 In this Discussion Paper:

‘Board of Directors’ means the board of directors of the JBD,

‘Constitution’ means the constitution of the JBD,

‘Deputies Election’ means the election of Elected Deputies as provided in the Constitution,

‘2020 Deputies Election’ means the Deputies Election that took place in 2020,

Directors Election means the election of Directors of the JBD, as provided in the Constitution,

Election means a Deputies Election or a Directors Election or both,

‘Election Rules’ mean the election rules made pursuant to the Constitution,

‘JBD’ means the NSW Jewish Board of Deputies Limited, a public company limited by guarantee,

capitalized words or expressions which are defined in the Constitution, are used with that defined meaning, unless the context otherwise requires,

the singular includes the plural and vice versa, unless the context otherwise requires.

2 Introduction

2.1 I, Roger Selby, was the elected returning officer for the 2020 Deputies Election and this Discussion Paper has been prepared by me pursuant to the resolution of the Board of Directors referred to in Section 2.3 below.

2.2 The 2020 Deputies Election was the first Deputies Election that has taken place since JBD was incorporated, which took effect on 3 September 2019. This election commenced on 21 May, 2020 when nominations were called. The nomination period closed on 16 June and ballot papers were posted to Associates on 17 June with directions that they were to be returned to the JBD by 3 pm on 10 July. The votes were counted on 13 July by approximately 10 JBD staff members and overseen by me and as required by the Election Rules, the result was formally declared at the Plenum held on 21 July.

2.3 On 4 September I was advised that the Board of Directors had on 3 September passed a resolution in the following terms:

‘That the returning officer makes such recommendations as he thinks desirable for any improvements to the practice or procedures for all elections conducted by the Board having regard to its new corporate status, including any proposed amendments to the Rules.

The draft recommendations of the review will be referred to a plenum for community input and feedback.’

2.4 In the course of preparing these recommendations, I sought to ascertain how other similar communal organisations had conducted such elections. What I learnt was that neither the Board of Deputies of British Jews (BoDBJ) or any of the other JBD counterpart organizations in the Australian States have a body of Deputies that do not represent affiliated organisations. In other words, they only have what are in the JBD Constitution called Constituent Deputies. They do not have the JBD equivalent of Elected Deputies and so are not required to conduct this type of election. Their deputies are simply appointed by their own organizational constituents, although the constitution of the BodBJ requires this to be done by an election conducted by each individual organization.

2.5 I also noted that the special nature of the Constitution has produced a structure under which the persons who ultimately vote for the controllers of the corporation (ie the ‘Associates’) are not actually ‘members’ for the purposes of the Corporations Act and so the list of the Associates is not a register required by the Corporations Act and thus cannot be inspected using the rights given to company members under the Corporations Act. I do not make any criticism of this structure, but it does appear to have had the consequence that the usual statutory ability of members of a company limited by guarantee (as the JBD is) who are seeking to be elected to the company’s board, to obtain a list of voters (the other members) and canvass them, is not available in the case of the JBD.

2.6 This set of recommendations is not a review of or report on the 2020 Deputies Election. However in order to understand the purpose of the recommendations I make (or choose not to make) and what they are seeking to address, some context is necessary, namely:

- concerns that I had about the JBD’s election process,
- specific complaints that were made to me about the 2020 Deputies Election,
- perceptions of community members about the 2020 Deputies Election that came to my knowledge (irrespective of whether these perceptions were correct), and
- specific concerns that were raised by Deputies or Associates about the fact that there was no ensuing Directors Election, as no positions were contested.

These matters are set out below.

2.7 Although it hardly needs to be said, another contextual aspect of the recommendations I make, is the vital importance of maintaining the community’s confidence in the election process used by the JBD for the purposes of the Constitution.

3 My Concerns

3.1 As has been the case for many years, the process for conducting the 2020 Deputies Election was managed by experienced JBD staff under the oversight of the JBD Electoral Committee. The process was in accordance with long-standing practices and also (so I was informed) advice given to JBD staff by previous senior office holders. However some of the important decisions they made or were about to make, although very much bona fide, had no foundation in the Constitution or the Election Rules. For example, in the Election Rules there was no provision for:

- the imposition of a fee for the nomination as a candidate,
- the order that the candidate names appeared on the ballot paper,

- the decision as to the maximum and minimum number of candidates for which a voter had to vote,
- a determination of the time at which the ballot was to conclude,
- the process to be followed if there was an equality of votes, say for the last position to be elected. (This could also be important for subsequent positions, where unsuccessful candidates might be elevated because of an increase in the number of Constituent Deputies.)

Some of these deficiencies were remedied by changes to the Election Rules before the election got under way.

3.2 In addition to these matters about which the JBD staff traditionally made decisions, I noted other deficiencies in the rule framework, as follows:

- there was no provision for any appeals,
- if the returning officer had received a complaint that a candidate was ineligible to stand, there was no statement of his or her powers to deal with this, eg requiring proof of eligibility and making a ruling, Such a complaint would require investigation and could also perhaps involve the need for external rulings or advice. (I was informed by an experienced JBD staff member that there had been at least one occasion where a candidate's Jewish status had been called into question.) This issue could also arise without being initiated by a complaint,
- if the returning officer had received a complaint that a particular candidate's biographical information was wrong, defamatory or of excessive length, there was no power as to how to deal with this situation. (This issue could also arise without being initiated by a complaint.),
- the absence of a provision for the appointment of scrutineers to act on behalf of candidates in any Election and specification of their role,
- traditionally nomination forms bear a footnote that "Nominees are expected to be contributors to the JCA." However, appropriate as that might be, there is no provision in the Constitution or Election Rules authorizing this or any provision as to what should occur if a nominee is not a contributor.

3.3 I had a concern that JBD staff and also some members of the Electoral Committee had a mindset that the process was just a friendly business-as-usual election. They did not appear to have considered that elections are inherently combative, particularly where the organization is essentially political in nature, and that that competition can be fierce and indeed ruthless. This means that the rule framework and the procedures have to be legally robust and transparent and that those running the election have to be qualified and experienced and need to prepare for contentious and perhaps acrimonious situations and not assume the best.

3.4 I was not happy about the institutional resistance I encountered when seeking to have the Election Rules posted on the JBD website. (Ultimately they were not made public, although anyone who asked for them was provided with them.)

3.5 Apparently the Deputies Elections have always been conducted by sending voters a ballot paper and a postage-paid addressed envelope, into which they insert their completed ballot paper and return it to the JBD. I was concerned that the ballot paper was easily able to be forged, along with the stamp on the back that was applied by the office for verification. I was also concerned that the process did not enable the normal check to be made that each vote came from a specific person on a roll of voters and that that person only voted once. Because of the indication in Election Rule 1.1(a) that the conduct of elections and the conduct of ballots are

different and because Election Rule 6 (Conduct of postal or electronic ballots) does not refer to any of the specific matters that might be relevant to an election, it is not clear whether that Rule 6 with its procedural requirements, is actually intended to apply to Elections. However if it is, the procedure in it for each voter to receive two envelopes was not followed. Many of the requirements of Rule 6 should be applicable to elections.

3.6 I noted that the declaration of the result of Deputies Elections normally takes the form of an alphabetical list of the successful candidates and does not normally include a statement of the number of votes received by each candidate, perhaps because this disclosure may cause embarrassment. However it is normal to disclose the number of votes each candidate receives and this can be relevant to a candidate's decision whether or not to request a re-count.

4 Specific Complaints

4.1 Shortly after the declaration of the result of the 2020 Deputies Election, I received specific oral complaints as follows:

4.1.1 one or more JBD staff members had played an active role in the campaign and being on the inside, had had access to the list of Associates (ie the voters) and so could canvass them or pass that information to others who could then do so and that this had occurred.

4.1.2 between the time of the final count and the announcement of the result at the next Plenum (some 8 days later), the result was leaked. This had the effect of giving some candidates who had been unsuccessful the opportunity to seek to be appointed as Constituent Deputies, thus rendering them eligible to be candidates for the position of Elected Director under section 10.4(b) of the Constitution. (Section 6.7 below also deals with an aspect of this issue.)

In fact I was advised that it was normal practice that before the formal declaration of the result, JBD advises unsuccessful candidates of the result for them, in order to alleviate any shock or embarrassment at the plenum at which the result is to be declared.

These complaints were not put in writing, but were regarded by me as very serious. It was also clear at this point how inadequate the rule framework was to deal with complaints of this nature and indeed complaints which may require the invalidation of the election.

5 Expressions of General Dis-satisfaction with the Process and the Outcome

5.1 I appreciate that the enumeration of general expressions of dis-satisfaction by the community could be regarded as mere hearsay and of course not able to be verified. Nevertheless I think it is desirable to mention matters that were raised with me, either in the course of specific phone calls or emails to me after the 2020 Deputies Election or after the JBD AGM or in casual conversations. As I have been asked to make recommendations about how to improve the process for conducting JBD elections and as community confidence in the integrity of the process is critical, I do not think that these expressions of concern should not be recorded in this paper or should be dismissed, even though some of them may be inherently unresolvable, because of the very nature of elections.

5.2 I also consider that some of the issues are policy issues for the JBD and not within the scope of what I was asked to do.

5.3 I received the following expressions of concern:

5.3.1 Some community members were shocked at the radical nature of the result of the 2020 Deputies Election, under which community members with years of experience and devoted service to the JBD were not re-elected as Deputies.

(This being an inherent possibility in any election, I do not think it appropriate to make a recommendation on this.)

5.3.2 Others took this further and perceived that a radical change in the composition of Elected Deputies had occurred as a result of a well planned and executed election campaign organized by people with professional experience in politics on behalf of a sizable ticket of candidates, using social media and other relatively sophisticated methods to canvass and organize, while other candidates (some of whom were relatively unsophisticated in this area) were in complete ignorance of this coordinated campaign and so took no action to respond to it.

In this respect I and long-standing JBD staff who undertook the vote count noted that the pattern of voting showed that clearly a “ticket” had been organized comprising more than 60 candidates and that those voting for that ticket generally did so in a uniform and disciplined manner with very few, if any, votes being cast for candidates not on the ticket. The consistency of the voting pattern had never been seen by these staff members before and it was so pronounced that it could not have been coincidence.

In the absence of any unfair insider knowledge of the names of people on the voting roll, I do not think it is appropriate to make a recommendation on the nature of campaigns that candidates are able to run.

However I do think that the JBD should consider whether, as a policy matter, under the Election Rules public disclosure should be required if any group of candidates above a certain specified size is coordinating a campaign and running a ticket or agreeing to vote for each other. This would be useful and relevant information for voters and would eliminate the possibility of a repeat of the situation with the 2020 Deputies Election, in which of some members of the community felt that they were unfairly taken advantage of.

5.3.3 There were also concerns expressed that in view of the vital executive role the JBD plays on behalf of the community, a radical change in the composition of Elected Deputies should not automatically result in an equally radical change to the composition of the JBD Board of Directors and that it may be desirable that a newly elected Deputy (with no prior experience as a Deputy) should have to wait for a specified period before being eligible to be elected as a Director. One person expressing this concern also suggested that one half of the Deputies should be elected in one year and the other half in the next year.

I do not make any recommendations on this, as I consider this to be a policy issue for JBD.

5.3.4 Some people were annoyed about the secrecy and nature of the campaign conducted by some active campaigners.

I have made a recommendation above on the question of secrecy, and I do not feel that I should make a recommendation on the nature of campaigns that can be conducted.

However I do recommend that if during the course of a JBD election, a complaint is made by a candidate to the returning officer that another candidate or group of candidates is making false or defamatory comments about him or her, then express power should be given to the returning officer to investigate this and to disqualify a candidate who has clearly done this and also to disqualify any candidate who does not co-operate in the investigation.

This power could also be exercised after the conclusion of the ballot and perhaps even for some period after the declaration of the result.

Such a power would be rarely exercised, but its existence would at least make candidates aware that unfair conduct in the course of electioneering could lead to adverse consequences. I am also mindful of the fact that these elections are being conducted within a tight knit community and that misleading or defamatory comments could have corrosive effects.

I also recommend that similar express powers be given to the returning officer where a candidate makes a complaint to the returning officer that another candidate is ineligible to be elected. (See Section 3.2 above.)

5.3.5 There were concerns that the relatively low minimum number of votes that had to be cast (28 for 70 positions) acted to the disadvantage of some candidates. As mentioned above, there is no rule providing for this minimum and I was advised that it had simply come about by historic precedent. Also because those voting for the 'ticket' were not required to vote for other candidates and generally did not, voter support for candidates not on the ticket was diffused. It was subsequently suggested to me that voters should have to vote for that number of candidates equal to the number of vacant positions. Against this is the view that many Associates would then not know anything about a large number of the candidates for whom they were then forced to vote.

I recommend that the JBD should consider whether, as a policy matter voters should be required to vote for that number of candidates equal to the number being elected or at least a much larger proportion of them than the small minimum that applied in the 2020 Deputies Election.

5.3.6 Having regard to the relatively large number of votes cast in the 2020 Deputies Election compared with previous Deputies Elections, after this Election there were concerns about the possibility of so called 'branch stacking', ie people with no real interest in or commitment to the JBD being enrolled as Associates simply to affect the outcome of the 2020 Deputies Election. I was advised that to some extent, this was not unusual and that it was common for there to be a surge in new membership shortly before elections.

In this regard I note that JBD has an active policy of enrolling new Associates and that emphasizing this in the lead up to Deputies Elections is not an unreasonable thing to do. It is hard to object to a publicity campaign approved by the Board of Directors encouraging community members to join the JBD (as an Associate) and 'make your voice heard'.

I do not wish to make a recommendation on the question of 'branch stacking', although it would be open to the JBD to amend the Constitution to require a person to have been an Associate for a prescribed minimum period of time before being allowed to vote, if it wished to do so. The JBD could also require applicants to become Associates to certify that they or a family member had paid for their subscription (as one of the frequent indicators of branch stacking is the fact that the new members do not pay their own joining fee).

5.3.7 A concern was also expressed about the attendance record of Deputies and the suggestion was made that this should be made public, particularly prior to Deputies Elections.

In this regard I note the requirement in Section 6 of Schedule 2 to the Constitution, which provides that:

'Deputies are expected to attend the majority of the Plenums and the AGM each year. If a Deputy is absent from a Plenum more than 3 times in a year, the Deputy is required to

notify the Secretary of the reason, such as travel’.

Although I think that Deputies’ attendance records is relevant information for voters, I do not wish to make a recommendation on this question, as I consider this to be a policy matter for JBD.

6 Concerns about the Process for Electing Directors

6.1 I also received expressions of concern about the process of the JBD for Directors Elections.

6.2 These related largely to the fact that to outsiders, the process for electing the Directors was not transparent, in that despite the radical outcome of the 2020 Deputies Election, there was no subsequent contest for any of the Director positions.

6.3 In this regard concerns were expressed that over many years, some potential candidates had been actively discouraged from participating in Directors Elections and that that must have occurred on this occasion. Basically the concern was that back room deals to manage the result should not take the place of the elections envisaged by the Constitution. One person expressing this concern suggested that at the least, nominations for the positions of Director should remain confidential until the close of nominations and should then be immediately made public and that this would possibly reduce the likelihood of backroom deals, which persuaded willing candidates to withdraw from an election.

6.4 I consider that this is not an issue going to the integrity of the conduct of elections and is probably an inherent characteristic or culture of many organisations in and outside the Jewish community. In my opinion this is a policy issue for the JBD to decide and I do not make a recommendation. I also note that it is quite legitimate for a person considering running for an office in the Jewish community to decide for personal reasons not to run, if he or she is going to be running against another particular person.

6.5 Another concern expressed about Directors Elections was the difficulty of identifying and being able to communicate with the voters. Whereas there is a good argument that names of Associates and their contact addresses should remain confidential, this is not so compelling in the case of the Deputies themselves, who vote in Directors Elections. If a new Deputy wishes to be a candidate in a Directors Election but is unable to ascertain who other Deputies are, then as regards their ability to canvass for votes, he or she is at a disadvantage compared with long-standing Deputies who would probably have this information.

It was argued that if a person becomes a Deputy, then he or she should be prepared to have other Deputies seeking election, contact and canvass them. In other words candidates for the position of Deputy should consent in advance to having their names and contacts details shared with other Deputies. This includes Constituent Deputies, whose names are not publicized in the same way that the names of Elected Deputies are following a Deputies Election.

I consider that this is a policy issue for the JBD and do not wish to make a recommendation, although I can see merit in the suggestion.

6.6 A question raised with me was what the constitution provides if the position of Chair of a Committee falls vacant, say because of resignation. Should the new Committee Chair be elected by the Deputies or are the Directors able to exercise a power to nominate a new Chair? In this regard there is a clear provision in section 10.8 of the Constitution for the Board of Directors to fill a casual vacancy on the Board, but there does not appear to be a clear answer in the constitution to the situation of a casual vacancy of a Committee Chair (who may or may not be a Director).

This is a legal issue for the JBD and not one on which I wish to make a recommendation.

6.7 A concern was also raised about the eligibility of persons to stand for election to the Board where they were not qualified to stand as at the time nominations were called, but subsequently became qualified, say by being appointed as a Constituent Deputy by the time of their nomination or the close of nominations.

This concern was heightened by the perception that some unsuccessful candidates in the Deputies Elections, having been advised prematurely of the result, rushed out to have themselves appointed a Constituent Deputy by the earlier time, thus making themselves eligible for election to the Board. (See Section 4.1 above.)

The JBD appears to have traditionally taken the view that under section 10.4(b)¹ of the Constitution, in order to be eligible to be elected as a Director, a person, has to be a financial Deputy at the time nominations are called for, whether that person is an Elected Deputy or a Constituent Deputy. Before the 2020 Directors Election the argument was raised that this interpretation was not correct and that the section did not apply to Constituent Deputies and (so it was claimed) as long as a person was a Constituent Deputy at the time nominations closed, this was sufficient.

There is an argument that could be made against this construction of the Constitution, but either way, I think that this ambiguity should be rectified by an alteration to the Constitution. It would probably be logical to simply require that any candidate for Directors Elections meet the eligibility requirements as at the date of his or her nomination. That appears to be the situation under the Commonwealth Electoral Act, eg to be eligible to nominate to Federal Parliament, a person must be 18 years of age as at the date of their nomination, but not necessarily at the time the writs for the election are issued. (I note that this timing issue was also considered by the High Court in the recent dual citizenship cases on Section 44 of the Australian Constitution. See *Re Canavan* [2017] HCA 45.)

7 Recommendations for the Future

Having regard to the above complaints, perceptions and individual concerns, apart from the recommendations made above in the italicized sections, I also make the following recommendations.

7.1 Outsource the Conduct of the Elections

When a public company conducts an election, it is normal for it to be conducted by the company's auditors. It is not conducted by the company's officers or staff and their involvement is simply to give the company's auditors the information they need in order to conduct the election.

Apart from auditing firms, there are now several companies that specialize in conducting elections, particularly online elections. Some of these conduct elections for pre-selection of parliamentary candidates and of office bearers in industrial associations and clubs. Indeed the NSW Electoral Commission offers this service.

¹ Section 10.4 provides, "To be eligible for the office of an Elected Director, a person must be a financial Deputy at the date when nominations are called under Rules 4.1(a). Rule 4.1(a) provides that at least 28 days before every Annual General Meeting, the Secretary must call for nominations for the five (5) Office-bearers and for the five (5) Ordinary Directors (Nominations Notice), of whom one should be under 30 years of age.

As regards Sections 3.3 and 4.1 above, I recommend that Deputies Elections and Directors Elections be conducted by an external independent and qualified organization, such as the JBD's auditors or a specialist voting and election service provider and that Associates and staff members of the JBD should not be involved in their conduct.

7.2 Returning Officer

In Section 1.1 (Definitions) of the Constitution, 'Returning Officer' is defined as:

'an individual elected as returning officer of the Company under a Rule'.

Rule 2.4 provides for the Returning Officer to be elected by the Plenum and Rule 2.2 provides that among other requirements, he or she must be a financial Associate.

The returning officer for any election of an organization can play a critical role in making decisions that might be to the advantage or disadvantage of individual candidates and accordingly I think he or she should be a person completely unconnected to that organization and indeed in the case of the JBD, should probably come from outside the Jewish community.

Accordingly I recommend that the constitutional position of Returning Officer be abolished and that the returning officer for any JBD Election be a qualified, experienced, independent person who is not a member of the NSW Jewish community. This person could simply be appointed by the Board of Directors in the same way that it would appoint the organization to conduct the election. Alternatively the appointment could be made by the JBD Electoral Committee using the same criteria.

7.3 Accessibility of Constitution and Rules

In respect of Sections 2.7 and 3.4 above, I recommend that in the interests of transparency and the maintenance of confidence in the JBD standards of governance, the Constitution and the Election Rules created pursuant to the Constitution should be available to the public on the JBD website.

7.4 Ability to Canvass Voters

The issue raised in Section 4.1.1 above, ie the perception that one group of candidates had an ability to identify and canvass Associates due to the involvement of JBD staff, was of considerable concern. Presumably one of the reasons for the unusual structure of the JBD is to enable community members who wish to support the organisation by becoming Associates, to remain anonymous. If this is the case, it is difficult to see how the normal rule of equal access to the roll of voters could apply.

However if that is to be the case, consideration should be given as to how to stop insiders from using their ability to gain access to the list of Associates or part of it, or from exploiting that knowledge.

This is not simple because without even looking at the list of Associates, it could be expected that Directors would know who many of them are and indeed long-standing Deputies and other activists would also be more likely to know who Associates are than newcomers to the JBD.

I do not have a solution to this problem, but I do recommend that if it does not already do so, the JBD staff code of conduct should prohibit JBD staff from disclosing to non-staff, including

candidates for election, the identity of Associates (with the appropriate exception for compliance with legal requirements).

Perhaps JBD should also consider whether there is a technical solution that would enable candidates to post canvassing material or to have conversations that would be accessible by Associates without compromising the latter's privacy. I appreciate that there would be practical issues in managing this (say, to remove defamatory comments) and also that it would not fully address the problem of the inherent advantage that an insider has as regards their ability to canvass.

7.5 Confidentiality of the Result

As mentioned in section 4.1.2, one of the major complaints made about the 2020 Deputies Elections was that between the time of the final count and the announcement of the result at the next Plenum (some 8 days later), the result was leaked. This had the effect of giving certain unsuccessful candidates the opportunity expeditiously to seek to be appointed as Constituent Deputies, thus rendering them eligible to be candidates for the position of Elected Director under clause 10.4(b).

As well as recommendation 7.6 below, I recommend that the Election Rules provide that for future Deputies Elections, the result should be publicly announced as soon it has been determined.

7.6 Eligibility of Constituent Deputies to Stand for the Board

As mentioned in Section 6.7 above, apparently the Board has traditionally taken the view that under section 10.4(b)² of the Constitution, in order to eligible to be elected as a Director, a person, had to be a financial Deputy at the time nominations are called for, whether that person was an Elected Deputy or a Constituent Deputy. Before the 2020 Board Election the argument was raised that this interpretation was not correct and that the section did not apply to Constituent Deputies and (so it was claimed) as long as a person was a Constituent Deputy at the time nominations closed, this was sufficient.

In order to resolve the unclear position as to when a Constituent Deputy must meet the eligibility requirements in the Constitution in order to stand for election to the Board, I recommend that the Constitution be amended to make clear that a candidate for election as a Director (not being an Elected Deputy) is required to meet the eligibility requirements as at the date of his or her nomination as a Director.

7.7 Postal Ballots – Integrity Issues

The current single envelope procedure used by the JBD for returning ballot papers is not a satisfactory method of conducting a postal ballot.

Generally with a postal ballot, the requirements of Election Rule 6 (see Section 3.5 above) are followed, ie voters place their secret ballot paper into an unmarked envelope, which they seal and then place inside a second addressed envelope, which shows the name of that voter.

² Section 10.4 provides, "To be eligible for the office of an Elected Director, a person must be a financial Deputy at the date when nominations are called under Rules 4.1(a). Rule 4.1(a) provides that at least 28 days before every Annual General Meeting, the Secretary must call for nominations for the five (5) Office-bearers and for the five (5) Ordinary Directors (Nominations Notice), of whom one should be under 30 years of age.

This enables a check to be made that the vote is being cast by someone who is on the roll of voters, but does not compromise the anonymity of voters, as the returning officer supervises the opening of the first envelope, checking against the voting roll and the subsequent separation of the unopened inside envelope containing the ballot paper.

The ballot papers are removed from the inside envelope once all the outside envelopes have been opened and checked against the voting roll.

Also the authentication of ballot papers by means of a stamp that can be obtained anywhere is not satisfactory and is far too vulnerable to the production of bogus ballot forms.

I recommend that for any future postal ballot for Elections, normal procedures be used to mitigate against the possibility of ballot papers being copied or forged and that the two envelope method for return of ballot papers as provided for in Election Rule 6, be used.

7.8 Eligibility of Committee Members and Chairs

Not that this matter came up during the 2020 Deputies Election, but *I recommend that it would be desirable to amend section 10.4(b) of the Constitution so that it is clear about the eligibility criteria for people being elected to positions other than “Elected Directors” (ie Committee Members and Chairs of Committees). There is no express requirement that they actually be Deputies and this fundamental matter should not be left to implication or an inference from the Election Rules.*

7.9 Gaps in Rule Framework

I recommend that the Electoral Rules be amended to:

7.9.1 make clear whether Election Rule 6 applies to Elections as well as to other types of ballots (such as ordinary resolutions and special resolutions) and if it does not, then those provisions of that Rule which should apply to Elections be clearly made applicable to Elections in other relevant sections of the Rules. (See Section 3.5 above.)

7.9.2 provide that the order in which candidates will appear on an Election ballot paper will be determined by lot conducted by the returning officer (or some other acceptable method). (See Section 3.1 above.)

7.9.3 include a procedure (such as drawing lots) to deal with an equality of votes for the last candidate. (See Section 3.1 above)

7.9.4 provide whether the declaration of the result will or will not include details of the number of votes received by each candidate and for the order of the names of the successful candidates (See Section 3.6 above)

7.9.5 include provision for scrutineers (see Section 3.2 above.)

7.9.6 include a determination of the minimum number of votes a voter must cast in a Deputies Election or a method for determining that. (See Section 5.3.5 above.)

7.9.7 amplify the powers of the returning officer to deal with complaints and irregularities as mentioned in Section 3.2 above.

7.10 Recommendations about JBD Internal Procedures for Elections

7.10.1 Even if the Deputies Elections and the Directors Elections are in future conducted by an external party, the JBD needs formal procedures for matters which it must attend to as a precursor to these elections or perhaps as part of the process.

One obvious issue is the determination of the number of Elected Deputies to be elected. Under section 6.1(c) of the Constitution:

‘The number of Elected Deputies to be elected is equal to the total number of Constituent Deputies that all Constituent Organisations are entitled to appoint under Schedule 3 on the date that the Secretary calls for nominations under Rule 3.1(a).’

Schedule 3, which deals just with Constituent Deputies, provides that if a Constituent Organisation has 500 or less financial members, it can appoint 1 Constituent Deputy and if it has more than 500 financial members, it can appoint 2 Constituent Deputies.

There was no suggestion or complaint that the process for undertaking the determination of the number of Elected Deputies to be elected in the 2020 Deputies Election was not correctly undertaken and I understand that it was. However the process is critical to the Deputies Elections and is obviously susceptible of some uncertainty and indeed dispute.

I recommend that a clear procedure needs to be in place for JBD staff to follow in plenty of time before any Deputies Election, in order to enable the number of Deputies to be elected at that election to be determined in accordance with the Constitution and to enable Constituent Organisations to be warned well in advance of the determination, so that they can attend to their own related internal affairs.

7.10.2 There were several cases of Associates claiming not to have received a ballot paper and there were situations of ballot papers addressed to known people care of a particular organization being returned, as the person(s) concerned no longer wished to have their mail addressed in this way or were no longer connected to the organization. The JBD staff handled these cases efficaciously and I was not made aware of any complaints or problems.

I recommend that the procedure for these contingencies be put in writing and that the document that the relevant Associate is required to sign as a condition of a second ballot paper being issued, be settled prior to the commencement of any Deputies Election.

7.10.3 In media publicity the JBD arranged in respect of the 2020 Deputies Election, it took care not to do anything that expressly or by implication appeared to favour or promote any particular candidate and I did not receive any complaints or expressions of concern about this matter.

However I recommend that this requirement be included in the JBD’s own internal procedures for conducting the elections.

8 Electronic Elections

Many corporations, local councils, clubs and other associations now use electronic voting (including online voting) and indeed this became prevalent during the Covid period.

Although there are strong arguments against electronic and online voting for parliamentary elections, for organisations such as the JBD, the vulnerabilities of electronic voting, including internet voting, are much less than those of the JBD's current manual process where ballot papers could have easily been forged and where the manual count can result in human error. The results of an electronic election can be audited, so it is not necessarily a "black box" situation.

There can be issues of technology access, but these could be addressed by allowing a manual component to the election and allowing voters to choose which method they wish to use.

It had been planned that the 2020 Directors Election would have taken place electronically using internet voting and special rules for this were prepared by the JBD and can be made available.

In section 5.3.5 above, I have recommended that in Deputies Elections the minimum number of votes to be cast be significantly raised. Obviously this could increase the chances of voter error and hence informal votes, but an electronic election would reduce the scope for this, as voters would be unable to submit their electronic 'ballot paper' unless the requisite number of votes had been cast.

I recommend that Deputies be given the opportunity to express their views on whether in future Deputies Elections or Directors Elections or both should be conducted online by a specialist provider, noting that at this stage it is not known whether in future the JBD AGM will include an online facility as well as a physical presence of Deputies.



Signed by Roger Selby

Dated 11 April, 2021