

FEDERAL APPEALS PANEL

APPLICATION BY SIMON PIKE

DETERMINATION BY THE CASE MANAGER

David Graham
Case Manager
22 July 2022

1. Pursuant to rule 7.5 of the FAP's published procedures, I give the following ruling, which will become binding unless appealed within 14 days to a Case Panel.
2. I reject the Applicant's complaint that the Standing Orders for Federal Conference are incompatible with the Federal Party Constitution ('FPC') because they make no procedural provision for the exercise of the right in Article 6.5 for reports to be referred back with recommendations, and purport to allow for rejection 'in part' of a report, which is not expressly provided for in the FPC.

References back

3. The Federal Conference Committee has accepted that the Applicant has identified inconsistency between the Standing Orders for Federal Conference and article 6.5 of the Constitution. It is also said that the Standing Orders draw a distinction between agenda items for approval of 'reports' and 'business motions', such that the express provision for motions to be referred back cannot apply to reports.
4. The Standing Orders must be given an interpretation consistent with the Constitution unless that does violence to their language, because they can normally be taken to have been drafted with the Constitution in mind and should be given an interpretation rendering them effective rather than void. They must also be applied consistently with the Constitution, and disapplied if they are contradicted by the Constitution.
5. The fact that the Standing Orders are silent on how to exercise the article 6.5 right (providing only a procedure for members to move to reject a report at standing order 12.5) does not mean that they are *incompatible* with the Constitution.
6. Applying those principles, in my judgment it is wrong to find that the absence of express provision for reference-back of reports defeats the constitutional right concerned. In the absence of any express procedure to the contrary, a voting Party member may directly rely on Article 6.5 of the FPC to submit a request for the report to be referred back to the body concerned with recommendations, prior to any vote to approve or reject the report. I rule that for this right to be effective, the proposer

must communicate their reasons and the proposed recommendations to the chair. The chair must then ensure at the very least that Conference hears the proposal and proposed reasons, and votes whether to hear a debate on the proposed reference-back (and then proceed to vote whether to refer the report back), or to reject that proposed course of action.

7. It is nevertheless unsatisfactory for the Standing Orders to be silent as to the procedure for exercising a constitutional right pertaining to Conference collectively.
8. I recommend that Federal Conference Committee prepare and present amendments to the Standing Orders to Conference for approval in accordance with article 11.1, which adopt a reasonable procedure facilitating the exercise by Conference of its constitutional right to refer reports back to the body concerned with recommendations.

Rejection in part of reports

9. Article 6.5 of the FPC confers a right on Conference 'to approve or reject each such report'. The Standing Orders provide for proposals to reject part of a report. In my view, the undoubted express power of Conference to approve or reject the whole of a report may include a power to reject only part of the report. Article 6.4 provides for Conference to be the 'sovereign' representative body of the Party subject to the provisions of the FPC. Article 6.5 does not expressly confine the power of approval or rejection to a 'take it or leave it' vote on the whole of each report, and in my opinion there is no good reason to read article 6.5 so as to constrain Conference's sovereignty in that way (although it may bind itself to take-it or leave-it votes through Standing Orders).
10. I recommend that Federal Conference Committee consider the practical and timetabling consequences of allowing opportunities to pick out and debate parts of each report.