

Commission Meeting No. 252, 1 December 2014

Statement of Reasons

Item 12: Consideration of an application to review a delegate's decision to refuse to substitute Ulrich Mehnert for Rodney Evans as registered officer of One Nation

File reference: 13/690

The Australian Electoral Commission has affirmed a decision by its delegate to refuse to substitute Ulrich Mehnert for Rodney Evans as registered officer of One Nation, under the *Commonwealth Electoral Act 1918*.

Background

On 20 October 2014, a delegate of the Australian Electoral Commission (AEC) made a decision to refuse an application to substitute Ulrich Artur Mehnert for Rodney Andrew Evans as the registered officer of One Nation (the Party). The application was made by Mr Brian McRea, Mr Lyn Vickery and Mr Christopher Podlich (the applicants) and was lodged with the AEC on 13 May 2014. The application was made pursuant to section 134 of *Commonwealth Electoral Act 1918* (the Act), and would have effected a change to the Register of Political Parties that the AEC maintains in accordance with section 125 of the Act (the Register).

The application was made in writing, signed and set out the names and addresses of the applicants, as well as the capacity in which they made the application in accordance with subsection 134(2) of the Act. Mr Mehnert had signed the application, however, the incumbent registered officer, Mr Evans, had not. On 2 June 2014, Mr McRea provided the AEC with further information regarding the application.

Where an application to substitute the name of a registered officer is not signed by the current registered officer, the AEC must comply with subsection 134(5) of the Act. That provision requires the AEC to give the current registered officer written notice of the application, and to provide them with an opportunity to submit, in writing and within 7 days, any reasons for why the change should not be made to the Register. On 17 June 2014, the AEC wrote to Mr Evans pursuant to subsection 134(5). Mr Evans provided a response to the AEC on 19 June 2014.

On 12 August 2014, the relevant delegate of the AEC wrote to the applicants and invited them to address the matters raised by Mr Evans in his correspondence of 19 June 2014. On 18 August 2014, Mr McRea responded to the delegate's invitation; responses from the other applicants followed.

On 7 October 2014, the delegate wrote to the applicants seeking further clarification from them on three issues; Mr McRea responded to the delegate's request on 16 October 2014. Soon after, on 20 October 2014, the delegate wrote to the applicants and advised them that she had decided to refuse their application.

The application for review

On 13 November 2014, the AEC received a request for review of the delegate's decision. The request was submitted by Mr McRea and made pursuant to subsection 141(2) of the Act.

Relevant findings and issues

At a national level, the Party is governed by the 'National Constitution and Regulations' (National Constitution). In addition to this, however, each state division of the Party may adopt its own constitution. These constitutions supposedly operate in conjunction with the National Constitution to the extent that there is no conflict or inconsistency between them (discussed further below).

In the absence of what the applicants at one point described as a 'properly elected national committee' (able to take relevant action under the national constitution at the national level), it has, according to the applicants, fallen on the Western Australian division of the Party—separately incorporated under the *Associations Incorporation Act 1987* (WA)—to maintain administration of the Party on behalf of its members. The applicants, who are affiliated with the Western Australian division (otherwise known as 'One Nation WA'), claim that the Party has ceased to exist as a national body and that only One Nation WA, through the various legal obligations it has as an incorporated entity (e.g. to conduct meetings), can take action on matters such as the appointment of a registered officer.

However, there are a number of issues affecting the application that has been made to substitute Mr Mehnert for Mr Evans as registered officer.

Issue 1: Action taken by One Nation WA cannot be action taken on behalf of the Party

The National Constitution of the Party provides, at clause 6 (in part), that:

'The National Committee shall be established of; The President, the Secretary and the Director of each relevant State Executive as elected or appointed by the relevant State members, coming together to act *in the manner of a management body to maintain administration of the Federal body of the Party* in its best interests, their powers shall be derived from their relevant State Constitutions and this Constitution.' (Emphasis added)

Clause 12 then goes on to provide that:

'The National Committee shall be formed of each State Division's, President – Secretary – and State Director, meeting together from time to time subject to clause 6 of this constitution. At its first meeting following adoption of this constitution by the relevant State Divisions – The National Committee shall appoint from its members or otherwise another member to the positions of...National Registered officer...' (sic)

The applicants assert that the National Committee is no longer functional; Mr Evans, as the current registered officer, disagrees. However, even if the applicants' contention was accepted it would, in the AEC's view, be difficult to see how any action taken by One Nation WA, pursuant to its own state-based constitution, could supplant anything done (or not done) by the National Committee.

In support of their position, the applicants sought to rely on clause 14 of the National Constitution. That clause provides that

'Notwithstanding anything in this Constitution, at all times this constitution will be subservient to and will defer to any existing relevant State Constitution in any division where there may be a conflict in the writing hereof' (sic).

While Mr McRea claimed that '...the state constitution takes precedence over the national constitution where there may be any conflict, which is evident when that [national] committee cannot operate...', it is difficult to see how, on its face, clause 14 authorises One Nation WA to defer to its local constitution, and take specific action for the Party as a national entity. Further, while the applicants may assert that One Nation WA has relevant authority to act on behalf of all members of the Party, it is arguable that this could only extend to those individuals who are members of One Nation WA for the purposes of the *Associations Incorporation Act 1987 (WA)*—it could not necessarily extend to Party membership on a national scale.

The AEC otherwise notes that the Register currently contains a single listing for the Party; this is the national entity known as 'One Nation'. The Register does not recognise the existence of One Nation WA, and One Nation WA has no legal status that is separate from the Party under the Act. To have such a status, One Nation WA would need to meet certain requirements under the Act and be discretely registered pursuant to section 133 of the Act. However, the AEC notes that even then One Nation WA would still not be conferred, as a matter of course, with any authority to take action on behalf of the Party at a national level—this would still be subject to the terms of the National Constitution.

In light of the AEC's view that One Nation WA is unable to rely on its own constitution to act for the Party *nationally*, what clause 12 of the National Constitution says about the establishment of the National Committee and, furthermore, the insufficiency of evidence that a decision has been made by the National Committee to change the registered officer of the Party, there can be no finding by the AEC that Mr Mehnert has been validly appointed as registered officer of the Party in place of Mr Evans.

Issue 2: The Act does not provide an exclusive, alternative mechanism for replacing a political party's registered officer

By Mr McRea's own admission in his 16 October submission, '...the national constitution in itself provides no guidelines for the changing of the registered officer, the electoral Act does and we have made that application on those grounds'. It therefore appears that the applicants have purported to use the Act to formally appoint Mr Mehnert as the registered officer of the Party, in place of internal constitutional mechanisms (whether at a national or state level).

However, section 134 does not, in and of itself, provide a mechanism by which a registered political party can appoint a new registered officer—it simply provides the means by which the details of the Register can be updated to reflect any new appointment (for the discrete purposes of the Act). Mr McRea's comment in his 16 October submission therefore reinforces the AEC's finding that no relevant, internal decision has been made by the Party to replace Mr Evans as registered officer.

Decision

Having regard to the issues canvassed above, the AEC, on the authority conferred by subsection 141(4) of the Act, affirms the decision of the delegate to refuse the application to substitute Ulrich Mehnert for Rodney Evans as the registered officer of One Nation. In the AEC's view there is insufficient evidence that the Party has validly and effectively appointed Mr Mehnert to the position of registered officer, in accordance with its National Constitution. Consequently, there is no basis upon which to effect a change to the Register.

(signed)
The Hon Peter Heerey AM QC
Chairperson

18 December 2014

(signed)
Mr Tom Rogers
Acting Electoral Commissioner

16 December 2014