

## Commission Meeting No. 257, 1 March 2016

# Statement of Reasons

### Item 4: Consideration of an application for review of a delegate's decision to deregister the Australian Democrats.

File Reference: LS5304~15/371

**The Australian Electoral Commission has affirmed the decision of the delegate to deregister the Australian Democrats (the Democrats) as the Democrats do not meet the requirement to have at least 500 members.**

## Background

### Review of political party eligibility—section 138A of the Act

Political parties need to meet the requirements for registration under Part XI of the *Commonwealth Electoral Act 1918* (the Act) at all times to remain on the Register of Political Parties (the Register) and access the benefits of party registration conferred by the Act.

Section 138A of the Act provides the Commission (or its delegate) with the power to review the continued eligibility of registered political parties at any time, other than during the period commencing on the day when a writ for an election is issued and concluding on the day on which the writ is returned.

Specifically, section 138A empowers the Commission/delegate to:

1. review the Register to determine if one or more parties is an 'eligible political party'<sup>1</sup>; or

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<sup>1</sup> Defined by section 123 of the Act to be a political party that is either a Parliamentary party or a party that has at least 500 members, *and* is established on the basis of a written constitution (however described) that sets out the aims of the party. To be a member of a party a person needs to be an 'elector' under the Act—that is, a person whose name appears on an electoral roll. Importantly, subsection 126(2A) of the Act also provides

2. review the Register to determine if one or more parties should be deregistered under section 136 or section 137 of the Act.

The AEC's current policy is to review each registered political party once between general elections: that is, in the mid-term of each Parliament.

To help determine if a Parliamentary party remains an eligible political party, the Commission/delegate seeks a statutory declaration from the party's secretary<sup>2</sup> annexing an up-to-date copy of the party's constitution, and checks that there is at least one Senator or Member of the House of Representatives who is a member of the party.

To help determine if a political party—that is not a Parliamentary party—remains eligible, the Commission/delegate seeks a statutory declaration from the party's secretary annexing an up-to-date copy of the party's constitution, together with a list of at least 500 party members whose names appear on the Electoral Roll (the Roll). AEC staff then conduct membership testing to determine if the party remains an eligible political party, to the extent that it still has at least 500 members, none of whom are members of any other party.

### **Membership testing**

To determine if a political party (not being a Parliamentary party) has at least 500 members, the AEC contacts a random sample of the party's nominated members to verify their membership status.

After verifying that each member is enrolled and is not a member of another political party, the AEC prepares a random sample for further testing. The sample size is based on a methodology developed by the Australian Bureau of Statistics (ABS).

This method is used in all circumstances where membership testing is required to determine if a party may be registered for the first time or to review its entitlement to remain registered.

### **Review of the Democrats' eligibility**

By way of a letter dated 9 October 2014, the AEC issued a written notice to Mr John Charles Bell, the registered officer of the Democrats, under subsection 138A(3) of the Act.

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that two or more parties cannot rely on the same member for the purpose of qualifying, or continuing to qualify, as an eligible political party.

<sup>2</sup> Defined by section 123 of the Act to be the person who holds the office (however described) the duties of which involve responsibility for carrying out the administration, and for conducting of the correspondence, of a political party.

Attached to the notice was a schedule specifying the information required by the AEC to conduct its eligibility review. The notice required the registered officer to provide the AEC with the statutory declaration by the secretary of the Democrats which stated:

1. that they were the secretary of the Democrats;
2. annexed a copy of the current Democrats constitution; and
3. annexed a list of at least 500 (but not more than 550) members of the Democrats, whose names appeared on the Roll.

In response to the subsection 138A(3) notice, Mr Roger Howe, in his capacity as the Acting National Secretary of the Democrats, supplied the Commission with the specified information by way of email dated 12 December 2014.

Following receipt of the above information, AEC staff proceeded to conduct the membership testing.

### **Deregistration action—section 137**

On 3 March 2015, the Commission's delegate issued the Democrats with a 137 notice. The notice was issued on the ground that the delegate was satisfied that the Democrats had ceased to have at least 500 members. The delegate gave the Democrats until 3 April 2015 to respond to the notice.

On 3 April 2015, the Democrats provided the AEC with an updated membership list in response to the 137 notice.

After the results of the further membership testing were provided to the delegate, on 16 April 2015 the Commission's delegate determined that the Democrats should be deregistered for lack of the requisite 500 (or more) members. Following this, the Commission's delegate gave a written notice to Mr Bell as the last registered officer of the Democrats.

## **The application for review**

Subsection 141(2) of the Act provides that:

Where a delegate of the Electoral Commission makes a reviewable decision, a person affected by the decision who is dissatisfied with the decision may, within the period of 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Commission (either before or after the expiration of that period) allows, make a written application to the Commission for the review of the decision by the Commission, specifying in the application an address of the applicant.

Subsections 141 (3) and (4) then provide:

- (3) There shall be set out in the application under subsection (2) the reasons for making the application.
- (4) Upon the receipt of an application under subsection (2) for the review of a reviewable decision, the Electoral Commission shall review that decision and shall make a decision:
  - (a) affirming the decision under review;
  - (b) varying the decision under review; or
  - (c) setting aside the decision under review and making a decision in substitution for the decision so set aside.

On 14 May 2015, an application for review was made by Mr Howe and Mr Darren Churchill, as National Secretary and National President, respectively. A new list of members was also provided. A revised list was provided on 17 February 2016 by Mr Howe which included additional information so that the AEC could contact members.

## Response to issues raised in the review applications

### Membership numbers

The principal issue under review was if the Democrats did or did not have at least 500 members as required by paragraph 137(1)(b) of the Act. Upon receipt of the revised membership list, the AEC conducted further membership testing using the same methodology as that used for all membership testing.

The AEC contacted 34 members out of a list of 526 enrolled and unique members provided. Of the 34 individuals contacted, 29 confirmed membership with the Democrats while 5 denied membership. According to the sampling methodology, as applied to a list of 526 names, if four or more people denied membership then the AEC could conclude that the party did not have 500 members.<sup>3</sup>

Given the results of the sampling, the Commission is satisfied, on reasonable grounds, that the Democrats do not have at least 500 members. On the basis of information compiled by ABS, the Commission is satisfied that the statistical risk in erroneously concluding that the Democrats did not have at least 500 members is acceptably, or reasonably, low.

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<sup>3</sup> According to the ABS, testing a sample of 34 from a list of 526 carried with it a 2.30% risk that the AEC could end up accepting a party that had only 400 members, and a 8.53% risk that the AEC could end up rejecting a party that had 500 members.

## Other Issues

In their application for review, Mr Howe and Mr Churchill raised two issues. These are that:

1. membership lists vary over time (due to memberships expiring, new members joining and so on);
2. they disagree with the techniques currently used by the Commission to verify the number of members belonging to a party;
3. the party maintains registration with the NSW Electoral Commission, eligibility for which requires them to maintain a membership base of 750;
4. that the Democrats' ability to validate its membership records against the Roll was curtailed when the rules relating to roll access were 'tightened'<sup>4</sup>; and
5. the Democrats have participated in a number of recent federal and state elections, and that the party runs national, state- and territory-based campaigns between electoral events.

The Commission noted these grounds however the arguments were either unsubstantiated or not relevant to determining if the Democrats has at least 500 members as required by paragraph 137(1)(b) of the Act.

## Decision

Having regard to the fact that the Commission is satisfied on reasonable grounds that the Democrats does not have at least 500 members, the Commission decided to affirm the decision under review.

**The Hon Dennis Cowdroy OAM QC**  
Chairperson

**Mr Tom Rogers**  
Electoral Commissioner

**Mr David Kalisch**  
Australian Statistician  
(non-judicial member)

4 May 2016

4 May 2016

4 May 2016

<sup>4</sup> This is a reference to the policy previously applied by the AEC to roll access by the public which, notably, did not apply to membership testing. The AEC abandoned that policy in late March of this year. Discussion of the previous policy can be found at paragraphs 4.44 to 4.72 of the final report of the Joint Standing Committee on Electoral Matters following its inquiry into the conduct of the 2013 federal election.