

## Commission Meeting No. 259, 24 August 2016

# Statement of Reasons

### Item 4: Review of delegate's decision to deregister the Australian Independents.

File Reference: LS5538~13/323

**The Australian Electoral Commission has affirmed the decision of the delegate to deregister the Australian Independents (AI) on the grounds that the AI does 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.

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 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, 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.<sup>3</sup>

### 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 AI's eligibility

By way of a letter dated 23 April 2015, the AEC issued a written notice to Dr Patricia Petersen, the registered officer of the AI, under subsection 138A(3) of the Act. 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, by 24 June 2015, a statutory declaration by the secretary of the AI which contained:

1. a statement that he or she was the secretary of the AI;
2. an annexed copy of the current AI constitution; and
3. an annexed list of at least 500 (but not more than 550) members of the AI, whose names appeared on the Roll.

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<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.

<sup>3</sup> Subsection 126(2A) of the Act states 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.

On 5 June 2015, Mr Steven Wood, the Secretary of the AI sought an extension of time from the AEC to provide the information requested. The AEC agreed to a 2 week extension of time until 8 July 2015. The AI did not provide the information requested in the subsection 138A(3) notice by 8 July 2015.

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

On 24 July 2015, the Commission's delegate issued the AI with a section 137 notice. The notice was issued on the grounds that the AI had failed to comply with the notice issued under subsection 138A(3). The delegate gave the AI until the close of business on 24 August 2015 to respond to the notice.

On 24 August 2015, the AEC received a section 137 statement from the AI that attached a membership list and indicated that other documents had been posted to the AEC. On 25 August 2015 the AEC received a letter from Mr Wood, along with his signed statutory declaration and an annexed copy of the AI's constitution. In his letter Mr Wood outlined that the AI had failed to comply with the original request in the subsection 138A(3) notice due to internal miscommunication and ill health of party officials.

On 4 January 2016 the AEC contacted Mr Wood and afforded him the opportunity to submit an updated membership list (by 8 January 2016) as approximately 100 names on the original list submitted by AI did not have contact details. Mr Wood did not respond.

In February 2016 AEC staff proceeded to conduct membership testing on the original list provided by the AI. On 4 February 2016 the Commission's delegate determined that the AI should be deregistered, in accordance with subsection 137(5) of the Act, for lack of the requisite 500 (or more) members.

### **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 26 February 2016, an application for review was made by Mr Wood. Mr Wood's review application sought a 28 day extension of time for providing an updated membership list for the purposes of the review. The AEC advised Mr Wood that if additional information was provided after the cut-off date for seeking a review, it would be a matter for the Commission to consider and no new deadline would be provided. Mr Wood supplemented his application with an additional updated membership list on 21 April 2016.

## Response to issues raised in the review applications

### Membership numbers

The principal issue under review was whether the AI 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 30 members out of a list of 516 enrolled and unique members provided. Of the 30 individuals contacted, 27 confirmed membership with the AI while 3 denied membership. According to the sampling methodology, as applied to a list of 516 names, if two or more people denied membership then the AEC could conclude that the party did not have 500 members.<sup>4</sup>

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

### Other Issues

In his application for review, Mr Wood raised three other issues. These may be summarised as:

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<sup>4</sup> According to the ABS, testing a sample of 30 from a list of 516 carried with it a 2.23% risk that the AEC could end up accepting a party that had only 400 members, and a 6.5% risk that the AEC could end up rejecting a party that had 500 members.

1. the membership list submitted in August 2015 was sent in error and was an “older corrupted version of the enrolment spreadsheet”;
2. technical issues with his laptop (possibly a virus) has meant that he no longer has the complete membership list and he has been forced to write to every member using a manual form (causing delay in providing the AEC with membership information); and
3. he is unwell (as is the registered officer, Dr Petersen) and he can only work short periods of time so has required extra time to submit information to the AEC.

The Commission noted these grounds however was of the view that these issues were not relevant to determining whether the AI has at least 500 members. Membership testing was conducted on the updated membership list provided by the AI, and the requirement under paragraph 137(1)(b) of the Act, for the Party to have at least 500 members was not met.

## Decision

Having regard to all of the above matters, pursuant to subsection 141(4) of the Act, the Commission decided to affirm the decision under review.

\_\_\_\_(signed)\_\_\_\_

**The Hon Dennis Cowdroy OAM QC**  
Chairperson

13 September 2016

\_\_\_\_(signed)\_\_\_\_

**Mr Tom Rogers**  
Electoral Commissioner

6 September 2016

\_\_\_\_(signed)\_\_\_\_

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

September 2016