

Commission Meeting No. 259, 24 August 2016

Statement of Reasons

Item 3: Review of delegate's decision to deregister the Republican Party of Australia

File Reference: LS5539~07/623

The Australian Electoral Commission has affirmed the decision of the delegate to deregister the Republican Party of Australia (RPA) on the grounds that the RPA 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'¹; or

¹ 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 secretary² 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.³

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 RPA's eligibility

By way of a letter dated 6 July 2015, the AEC issued a written notice to Mr Peter Consandine, the registered officer of the RPA, 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 7 September 2015, a statutory declaration by the secretary of the RPA which contained:

1. a statement that he or she was the secretary of the RPA;
2. an annexed copy of the current RPA constitution; and

² 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.

³ 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.

3. an annexed list of at least 500 (but not more than 550) members of the RPA, whose names appeared on the Roll.

The RPA did not provide the information requested in the subsection 138A(3) notice by 7 September 2015.

Deregistration action—section 137

On 7 October 2015, the Commission's delegate issued the RPA with a section 137 notice. The notice was issued on the grounds that the RPA had failed to comply with the notice issued under subsection 138A(3). The delegate gave the RPA until the close of business on 5 November 2015 to respond to the notice.

On 5 November 2015, the AEC received a section 137 statement from the RPA that attached a membership list. On 10 November 2015 Mr Consandine provided a signed statutory declaration stating he was the registered officer of the RPA and annexing a copy of the RPA's constitution. On 11 January 2016 Mr Consandine provided a further updated membership list.

Following the receipt of the above information, AEC staff proceeded to conduct the membership testing. On 15 February 2016 the Commission's delegate determined that the RPA 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 2 March 2016, an application for review was made by Mr Consandine. Mr Consandine's review application argued that the RPA had met, or had substantially met the membership requirements under the Act and that the AEC had demonstrated bias towards the RPA. He supplemented his application with an additional updated membership list on 4 April 2016.

Response to issues raised in the review applications

Membership numbers

The principal issue under review was whether the RPA 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 38 members out of a list of 530 enrolled and unique members provided. Of the 38 individuals contacted, 25 confirmed membership with the RPA while 13 denied membership. According to the sampling methodology, as applied to a list of 530 names, if four or more people denied membership then the AEC could conclude that the party did not have 500 members.⁴

Given the results of the sampling, the Commission is satisfied, on reasonable grounds, that the RPA 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 RPA does not have at least 500 members is acceptably, or reasonably, low.

Other Issues

In his application for review, Mr Consandine raised four specific issues. These may be summarised as:

1. the AEC was prejudiced against the RPA;
2. in the original membership testing, 74% of the sample group confirmed their membership to the RPA which showed that the RPA had "done pretty well" in meeting the membership requirements;
3. the RPA could prove that the 10 individuals who denied that they were members in the original membership testing were actually signed up to the RPA; and

⁴ According to the ABS, testing a sample of 38 from a list of 530 carried with it a 2.72% risk that the AEC could end up accepting a party that had only 400 members, and a 6.17% risk that the AEC could end up rejecting a party that had 500 members.

4. 532 individuals from the RPA's membership list were enrolled on the Roll and this illustrates the RPA's authenticity and its eligibility for registration.

The Commission noted these grounds however was of the view that either the arguments were not substantiated or that these issues were not relevant to determining if the RPA has at least 500 members, which is a mandatory requirement under paragraph 137(1)(b) of the Act.

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)

6 September 2016