

File reference LS7799

Mr Anthony [REDACTED]
Registered Officer
Free West Papua Party Australia

[REDACTED]
[REDACTED]
By email: [REDACTED]

Dear Mr [REDACTED]

Notice of decision under subsection 141(7) of the *Commonwealth Electoral Act 1918* and
Statement of Reasons

1. I refer to your written application under subsection 141(2) of the *Commonwealth Electoral Act 1918* ('the Electoral Act') to the Electoral Commission ('the Commission') dated 12 September 2019 ('the Application for Review').
2. In the Application for Review, you requested review of the decision by the delegate of the Commission dated 4 September 2019 to refuse the application to register the Free West Papua Party Australia ('the Party') as a non-Parliamentary party in the *Register of Political Parties* ('the Register').
3. This letter is to notify you that, in accordance with subsection 141(7) of the Electoral Act, on 26 November 2019 the Commission reviewed the decision of the delegate of the Commission and **affirmed** the decision under review.

Application for Review

4. On 5 September 2019, a delegate of the Commission issued a notice (dated 4 September 2019) in accordance with subsection 133(3) of the Electoral Act notifying you, as Registered Officer of the Party, of the decision to refuse the application to enter the Party as a non-Parliamentary Party in the Register.
5. On 12 September 2019, the Commission received by email the Application for Review.
6. On 12 September 2019, the Commission informed you by email that the Application for Review had been accepted as a valid application.

7. On 10 October 2019, the Commission received by post further information in support of the Application for Review.
8. On 11 October 2019, the Commission informed you by email that the Commission had received the further information of 10 October 2019.
9. On 28 October 2019, the Commission received by email further information in support of the Application for Review.
10. On 29 October 2019, the Commission informed you by email that the Commission had received the further information of 28 October 2019.
11. The following reasons, in summary, were provided by you for making the Application for Review:
 - (a) the Commission denied the Party natural justice and procedural fairness by refusing to allow the Party to submit copies of the 663 signed membership forms that were received by the Commission on 10 October 2019 ('the Signed Membership Forms');
 - (b) the Signed Membership Forms;
 - (c) the Commission's methodology of testing membership by "spreadsheet and phone audit" is inconsistent with the Electoral Act;
 - (d) denials made by listed members via telephone are unreliable because some people are reluctant to give out personal details or confirm anything via telephone; and
 - (e) the Commission denied the Party's right to obtain the following information that would assist the Party in meeting the requirements of the Electoral Act:
 - i. details of the listed members who are "alleged" duplicates within the Party;
 - ii. details of the listed members who declined to confirm membership of the Party when contacted by the Commission via telephone; and
 - iii. details of the listed members are members of other political parties.

Decision

12. The Commission has reviewed the delegate's decision of 4 September 2019 to refuse the application to register the Party, and the additional information you have provided, and has **affirmed** that decision under subsection 141(4) of the Electoral Act.

Reasons for Decision

13. Based on the materials before the Commission, the Commission has determined that the Party's application for registration failed to meet the legislative requirement set out at paragraph 126(2)(ca) of the Electoral Act of having at least 500 members.
14. The reasons for the Commission's decision are set out below.

Material taken into account

15. In making this decision, the Commission had regard to:
 - (a) the Party's initial application to register the Party as a non-Parliamentary party, received in part by the Commission on 2 January 2019 and in full on 13 February 2019;
 - (b) the Party's varied application of 24 July 2019 made under subsection 131(3) of the Electoral Act;
 - (c) the delegate's decision of 4 September 2019 to refuse the application to register the Party under Part XI of the Electoral Act;
 - (d) the notice of decision and statement of reasons given under subsection 133(3) of the Electoral Act, dated 4 September 2019 and provided to the Party on 5 September 2019;
 - (e) the Application for Review received by the Commission on 12 September 2019, including the reasons for review set out by you in that application;
 - (f) the further material in support of the Application for Review received by the Commission on 10 October 2019 and 28 October 2019;
 - (g) correspondence between the Commission and the Party;
 - (h) section 4 and Part XI (in particular sections 123, 126, 129, 131, 133 and 141) of the Electoral Act;
 - (i) the Register of Political Parties of each Australian state and territory; and
 - (j) the Commission's *Party Registration Guide* ('the Registration Guide').

Findings of Fact

16. On the material before the Commission, the Commission makes the following findings:

Procedural application requirements

17. The initial application for registration:
- (a) was in writing, signed by the applicants and the person who is to be the registered officer of the Party;
 - (b) set out the name of the Party;
 - (c) set out the abbreviation of the name of the Party;
 - (d) set out the name and address of the person who is to be the registered officer of the Party for the purposes of the Electoral Act;
 - (e) stated whether the Party wishes to receive moneys under Division 3 of Part XX of the Electoral Act;
 - (f) set out the names and addresses of the applicants and particulars of the capacity in which each applicant makes the application;
 - (g) was accompanied by a copy of the constitution of the Party; and
 - (h) was accompanied by a fee of \$500.
18. Accordingly, the Commission is satisfied that the initial application for party registration meets the requirements of paragraphs 126(2)(a), 126(2)(b), 126(2)(c), 126(2)(d), 126(2)(e), 126(2)(f) and 126(2)(g) of the Electoral Act.

Party name and abbreviation

19. The Party name 'Free West Papua Party Australia' and abbreviation 'FWPPA':
- (a) do not comprise more than 6 words;
 - (b) are not obscene;
 - (c) are not the name, or an abbreviation or acronym of the name, of another political party (not being a political party that is related to the Party) that is a recognised political party;
 - (d) do not so nearly resemble the name, or an abbreviation or acronym of the name, of another political party (not being a political party that is related to the Party) that is a recognised political party that is likely to be confused with or mistaken for that name or that abbreviation or acronym;
 - (e) are not a name or abbreviation that a reasonable person would think suggests that a connection or relationship exists between the Party and a registered party if that connection or relationship does not in fact exist;
 - (f) do not comprise the words "Independent Party";
 - (g) do not comprise or contain the word "Independent" and:

- the name, or an abbreviation or acronym of the name, of a recognised political party; or
 - matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a recognised political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym.
20. Accordingly, the Commission is satisfied that the proposed name and abbreviation of the Party meet the requirements of section 129 of the Electoral Act.

Party constitution

21. The Commission is satisfied that the Party's constitution meets the requirements of having a written constitution set out in the definition of an *eligible political party* in subsection 123(1) of the Electoral Act and in accordance with the definition of *political party* at section 4 of the Electoral Act.

Membership list

22. On 24 July 2019, the Party submitted a list of 538 members to be relied upon for the purposes of registration.
23. The Commission cross-checked this membership list with the Commonwealth electoral Roll ('the Roll'), as required by subsection 123(3) of the Electoral Act. These searches identified that:
- (a) 11 of the members could not be matched to the Roll;
 - (b) six of the members were identified as duplicates within the Party's membership list; and
 - (c) one of the members was identified as supporting the registration of another political party.
24. Accordingly, the Commission then proceeded to test a sample of the remaining 520 members.
25. In accordance with the methodology devised by the Australian Bureau of Statistics ('the ABS'), a list of 520 members requires a random sample of 37 contactable members to confirm they are members of the Party, with up to three denials of membership allowed, in order for the Commission to have statistical confidence that the total number of members of the Party is at least 500.
26. The Commission attempted to contact 54 individuals on the list of members, as some of those listed were unable to be contacted. Of the 37 responses received, 30

individuals confirmed membership of the Party, while seven denied membership of the Party.

27. As the number of denials exceeded the three permitted for a sample of this size in accordance with the sampling methodology developed by the ABS, the Commission is **not satisfied** that the Party meets the minimum membership requirements of paragraph 126(2)(ca) of the Electoral Act.

Comments on the Application for Review

28. In the Application for Review, the following reasons (in summary) were given by you for making the Application for Review:
- (a) the Commission denied the Party natural justice and procedural fairness by refusing to allow the Party to submit copies of the 663 signed membership forms that were received by the Commission on 10 October 2019 ('the Signed Membership Forms');
 - (b) the Signed Membership Forms confirm that the Party has the minimum 500 members;
 - (c) the Commission's methodology of testing membership by "spreadsheet and phone audit" is inconsistent with the Electoral Act;
 - (d) denials made by listed members via telephone are unreliable because some people are reluctant to give out personal details or confirm anything via telephone; and
 - (e) the Commission denied the Party's right to obtain the following information that would assist the Party in meeting the requirements of the Electoral Act:
 - i. details of the listed members who are "alleged" duplicates within the Party;
 - ii. details of the listed members who declined to confirm membership of the Party when contacted by the Commission via telephone; and
 - iii. details of the listed members are members of other political parties.
29. The Commission is of the view that:
- (a) to meet the requirements of the Electoral Act:
 - i. in accordance with paragraph 126(2)(ca) of the Electoral Act, an application to register a political party must include a list of at least 500 members of the party;
 - ii. the Commission uses a party's membership list provided in support of a registration to confirm membership of the party by contacting a random sample under a formula provided by the ABS;

- iii. an individual whose name is included on a party's membership list must formally acknowledge membership of the party when contacted by the Commission;
 - iv. an individual who remains uncontactable after the Commission has made three attempts to contact the individual is deemed a 'non-response' and not a denial; and
 - v. the 500 listed members of the Party to be relied upon for registration purposes must be listed on the Roll and cannot be relied upon by another party for registration purposes.
- (b) the Electoral Act does not contemplate the attribution of membership of a party to individuals who deny (or fail to confirm) membership when contacted by the Commission, even where the individuals have previously signed written forms that suggest that the individuals intended to be members of the party at a prior point in time;
- (c) the confirmations and denials of membership made by individuals contacted by the Commission in the process of membership testing are the formal acknowledgment required to test party membership to satisfy the definition of an eligible political party;
- (d) the processing and testing by the Commission of the Signed Membership Forms as an updated membership list would be contrary to the principles of procedural fairness and an inappropriate diversion of the Commission's resources;
- (e) the Registration Guide and Part XI of the Electoral Act do not prescribe or contemplate the Commission giving a party the names of the individuals who the Commission found to be duplicated within the party's membership list; and
- (f) the Commission is prohibited by the *Privacy Act 1988* ('the Privacy Act') from disclosing to the Party information about the political opinions and membership of political associations of those listed members who declined to confirm membership of the Party or who are members of other political parties, as the Commission has not obtained the ongoing implied or express consent from those individuals that would enable the Commission to disclose such information to any third party.
30. The Commission is of the view that the membership testing results of the Party's membership list of 24 July 2019 were in accordance with the Electoral Act and are sufficient to show that there cannot be statistical confidence that the Party has the minimum 500 eligible members required by subsection 126(2) of the Electoral Act.
31. The Commission is of the view that there has been no denial of natural justice or procedural fairness to the Party in the Commission adhering to the Commission's

membership testing methodology, the provisions of the Electoral Act, and the provisions of the Privacy Act.

Summary of Decision

32. The Commission has **affirmed** the decision of the delegate to refuse the application to register the Party in the Register, on the basis that the Party's application for registration failed to meet the legislative requirement of having at least 500 members.

33. A statement of review rights in respect of this decision is enclosed.

Yours sincerely

<signed>

The Hon Dennis Cowdroy AO QC

Chairperson

28 November 2019

<signed>

Mr Tom Rogers

Electoral Commissioner

27 November 2019

<signed>

Mr David Kalisch

Australian Statistician
(non-judicial member)

28 November 2019

Under subsection 141(5) of the Electoral Act, a person (including an organisation) affected by the decision who is dissatisfied with the decision may make an application to the Administrative Appeals Tribunal ('the AAT') for review of the decision.

How do I make an application to the AAT for a review of a decision?

In accordance with section 29 of the *Administrative Appeals Tribunal Act 1975*, the application must:

- (a) be made in writing;
- (b) be accompanied by any prescribed fee;
- (c) contain a statement of reasons for making the application; and
- (d) be made within the prescribed time.

Your application should also:

- (e) specify the name of the applicant; and
- (f) include an address at which documents may be given.

More information on how to apply to the AAT can be found on the AAT website:

www.aat.gov.au/applying-for-a-review/how-to-apply.

Prescribed fee

The standard application fee is \$932. You may be entitled to pay a reduced fee of \$100 in certain circumstances.

If you pay the standard application fee, and the case is resolved in your favour, the difference between the fee you paid and \$100 will be refunded. There is no refund if you paid the reduced fee of \$100.

Further information about fees is available on the AAT website:

<http://www.aat.gov.au/applying-for-a-review/fees>.

Prescribed time for making an application

You may apply for review from the period commencing on the day on which the decision is made, being 26 November 2019 and ending on the twenty-eighth day after this letter was given to you.

The AAT may extend the time for making an application to the AAT for a review of a decision if, an application is made in writing to the AAT and the AAT is satisfied that it is reasonable in all the circumstances to do so.

Conduct of a review by the AAT

The AAT can exercise the same powers and discretions as the Commission to make a decision on an application to register a party in the Register afresh and make a decision to either:

- affirm the decision under review;
- vary the decision under review; or
- set aside the decision under review and:
 - make a decision in substitution for the decision set aside; or
 - remit the matter for reconsideration in accordance with any directions or recommendations of the AAT.

Further information about the review process can be found on the AAT website:

<http://www.aat.gov.au/steps-in-a-review/overview-of-the-review-process>.

Freedom of Information

Under the *Freedom of Information Act 1982* ('the FOI Act') any person has the right to request access to documents held by the Commission. For more information about access to documents under the FOI Act, please visit the Commission's "Access to AEC information" webpage at: www.aec.gov.au/information-access/index.htm.

Should you have any further queries regarding this decision, please contact the Commission Secretariat by emailing commission.secretariat@aec.gov.au.