

**NOTICE OF PARTY REGISTRATION DECISION
APPLICATION TO REGISTER A NON-PARLIAMENTARY PARTY IN
THE REGISTER OF POLITICAL PARTIES APPROVED
THE SMALL BUSINESS PARTY**

Notice of decision under subsection 133(1A) of the *Commonwealth Electoral Act 1918* (the Electoral Act) and Statement of Reasons

I am writing in accordance with subsection 133(1A) of the Electoral Act to notify you of the determination of the application to register The Small Business Party (the Party) as a non-Parliamentary party in the *Register of Political Parties* (the Register).

I am authorised to determine this application for party registration under Part XI of the Electoral Act as a delegate of the Electoral Commission.

Decision

I have decided to approve the application for registration. Consequently, I have entered the following Party in the Register.

Name of party:	The Small Business Party
Abbreviation of name:	SBP

Logo:	 SBP
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Registered Officer:	Angela Vitoulkas
Registered Officer's address:	Unit 204/2 York Street SYDNEY NSW 2000

Does party seek election funding:	YES
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Materials I have taken into account

In making this decision, I had regard to:

- the application to register as a non-Parliamentary party received by the Australian Electoral Commission (AEC) on 7 August 2018;
- the results of the testing of the Party's membership list conducted by the AEC in accordance with the sampling methodology developed by the Australian Bureau of Statistics (ABS);
- Part XI of the Electoral Act;
- the *Commonwealth Electoral (Logo Requirements) Determination 2016*;
- internet searches of trademarked and licenced logos undertaken by a service provider engaged by the AEC;
- the Register of Political Parties of each Australian state and territory;
- Written particulars received by the AEC in response to the subsection 132(1) notice from "Robert" and "Cam";

- The reply to the written particulars of Robert and Cam submitted to the AEC by the Party under subsection 132(5) of the Electoral Act on 14 January 2019; and
- the AEC's *Party Registration Guide*.

Findings of Fact

On the material before me, I make the following findings:

Membership list

The membership list submitted by the Party contained 548 members. AEC staff 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:

- 548 submitted members were able to be matched to the Roll,
- No members were duplicated within the membership list; and
- No members were also members of other political parties.

Accordingly, all 548 members on the list supplied by the Party were able to be matched to the Roll.

In accordance with the random sampling formula provided by the ABS, a list of 548 members requires a random sample of 50 contactable members to confirm they are members of the Party, with up to seven denials of membership, in order for the delegate to have statistical confidence that the Party has 500 members.

The AEC attempted to contact 61 members, as some were unable to be contacted or provided a neutral response. Of the responses received, 46 members confirmed their membership, while four denied membership of the Party.

Accordingly, I am satisfied that the Party had 500 members, as required by paragraph 126(2)(ca) of the Electoral Act.

Party constitution

A copy of the constitution of the Party accompanied the application as required by subsection 126(2)(f) of the Electoral Act. The constitution provided in the application for registration:

- is in writing; and
- sets out the aims of the Party, at least one of which being promoting the election of its candidates to the Senate and/or House of Representatives.

Accordingly, I am satisfied that the Party's constitution meets the requirements of having a written constitution set out in the definition of *eligible political party* at subsection 123(1) of the Electoral Act, and in accordance with the definition of *political party* at section 4 of the Electoral Act.

Party logo

The logo set out in the application for registration:

- is not obscene;
- is not the logo of any other person;
- does not so nearly resemble the logo of any other person that it is likely to be confused with or mistaken for that logo;
- is not one that a reasonable person would think suggests that a connection or relationship exists between the applicant and a registered political party if that connection or relationship does not in fact exist;
- does not comprise the words “Independent Party”;
- does not contain the word “Independent” and the:
 - name, or 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 a recognised political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym;
- is in black and white;
- is a vector graphic in electronic format;
- is 100% black in a CMYK colour space;
- is contained within a frame of 10 mm by 10 mm;
- is able to be reproduced correctly within a frame of 7 mm by 7 mm;
- does not include live text, transparency or overprinting and custom halftone, transfer curve or colour profile settings; and
- is in a PDF file, of less than 5 megabytes, that complies with International Standard ISO 32000-1:2008 as in force at the time this instrument commences.

On the basis of the materials before me, I am satisfied that there is no basis to refuse to enter in the Register the logo of the Party, set out in the Party’s application for registration, under section 129A of the Electoral Act. I am also satisfied that the proposed logo meets the requirements of subsection 126(2AA) of the Electoral Act and the specifications described in *Commonwealth Electoral (Logo Requirements) Determination 2016*.

Party name and abbreviation

The Party name “The Small Business Party”, and the abbreviation “SBP”;

- does not comprise more than 6 words;
- is not obscene;
- is 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;
- does not so nearly resemble the name, 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 it is likely to be confused with or mistaken for that name or that abbreviation or acronym;
- is not one that a reasonable person would think suggests a connection or relationship exists between the Party and a registered party;
- does not comprise the words “Independent Party”;
- does not contain the word “Independent” and the:

- name, or 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 a recognised political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym.

Matters raised in written particulars

Robert's objection states that a party registered by the WAEC, named the "Small Business Party", was initially registered in Western Australia as the "Micro Business Party", and its application for a change of party name was approved by the Western Australia Electoral Commission (WAEC). The objection states that the applicant Party approached the WAEC-registered Small Business Party requesting "permission to use a name very much alike the Small Business Party" and that the request was "categorically rejected" by the WAEC-registered Small Business Party.

Robert's objection states that, as the WAEC-registered Small Business Party intends to apply for registration with the AEC, "there would be a high level of confusion to the public" should the Electoral Commission approve the application by the Party. Further, that the WAEC-registered Small Business Party is "recognisable and registered" through its online and public presence.

Robert additionally states that the WAEC-registered Small Business Party has a trademark application.

Cam's objection states:

"the name The Small Business Party is a cynical attempt by the promoters of the new party to choose a name that may be technically different from the Small Business Party but that difference will be lost on the voting public and even the media" "The confusion the name The Small Business Party will create is obvious and will severley [sic] impact on our operations in the future and will detract from the political work we have done in the past. The proposers should choose an entirely new party name so that they are not confusing the public unnecessarily".

Cam submits that the WAEC-registered Small Business Party nominated candidates to contest both the 2017 Western Australian State General Election, and the 2018 Cottesloe by-election, under the party name "Micro Business Party". Further, that the Micro Business Party formally changed its name to the Small Business Party at its annual general meeting in March 2018.

The objection also raises, along with Mr Ellis' objection, that the WAEC-registered Small Business Party is "recognisable and registered" through its online and public presence.

Response to matters raised in written particulars

The Party submitted in its response that subsection 129(1)(c)-(da) of the Electoral Act do not provide a basis for the Electoral Commission to refuse the application by the Party.

The Party states that the WAEC-registered Small Business Party is not a “recognised party” for the purposes of subsection 129(1) of the Electoral Act, which would preclude the operation of subsection 129(1):

“A precondition of s 129(c)-(da)...is that the applicant party’s name must infringe upon the name of a ‘recognised political party’, being a party that is either:

- (a) an existing Parliamentary Party; or
- (b) a registered party; or
- (c) a registered or recognised State or Territory party which has stood candidates under the party’s current name at a State or Territory election in the preceding 5 years.

The WA Party cannot be defined as any of the aforementioned categories of recognised political parties as defined by the Act”.

The Party’s response also states that the WAEC-registered Small Business Party is not a ‘registered party’ for the purposes of subsection 129(1) of the Electoral Act, as it is “evidently not a political party that is registered under Part XI of the Act”.

In addition, the Party states that “the Act does not contemplate that a political party should be refused on the basis that a different political party...has a pending trademark application in the same or similar name as that of the applicant party”.

AEC Consideration

Subsection 129(2) of the Electoral Act defines “recognised political party” as a political party that is:

- (a) a Parliamentary party; or
- (b) a registered party; or
- (c) registered or recognised for the purposes of the law of a State or a Territory relating to elections and that has endorsed a candidate, under the party’s current name, in an election for the Parliament of the State or Assembly of the Territory in the previous 5 years. Subsection 123(1) of the Electoral Act defines “Parliamentary party” as “a political party at least one member of which is a member of the Parliament of the Commonwealth”.

Subsection 4(1) of the Electoral Act defines “registered political party” as “a political party that is registered under Part XI.”

As the WAEC-registered Small Business Party does not have a current Member of the Parliament of the Commonwealth, it is not a Parliamentary party for the purposes of Part XI of the Electoral Act.

Further, as the WAEC-registered Small Business Party is not federally registered in the federal *Register of Political Parties*, it is not a “registered party” for the purposes of Part XI of the Electoral Act.

Subsection 129(2)(c) of the Electoral Act provides that certain parties registered or recognised by a state or territory are a “recognised political party”. The Micro Business Party was registered by the WAEC and changed its name to the “Small Business Party” in the WAEC’s register of political parties on 17 October 2018.

The WAEC-registered Small Business Party has not endorsed a candidate in a Western Australian election under the name “Small Business Party”. This was noted in the objection submitted by Cam, who states that:

“The Small Business Party ran in the Western Australian State Election held on Saturday 11th March 2017 under the name Micro Business Party...The party also ran in the Cottesloe by-election held on Saturday 17th March 2018 also under the name Micro Business Party”.

The AEC considers the WAEC-registered Small Business Party is not a “recognised political party” for the purposes of subsection 129(1)-(2) of the Electoral Act.

Accordingly, I am satisfied on the materials before me that there is no basis to refuse the application for registration from The Small Business Party under section 129 of the Electoral Act.

Other procedural application requirements

I am satisfied that the application for party registration meets the requirements of paragraphs 126(2)(c), 126(2)(d), 126(2)(e) and 126(2)(g) of the Electoral Act. The application for registration as a political party:

- was in writing, signed by the secretary of the Party and by the registered officer of the party;
- 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;
- advised whether the Party wishes to receive moneys under Division 3 of Part XX of the Electoral Act;
- set out the name and address of the applicant and particulars of the capacity in which each applicant makes the application; and
- was accompanied by a fee of \$500.

On 26 November 2018, I determined that the application had passed the initial assessment and approved the advertisement of the application under subsection 132(1)(c) of the Electoral Act. A notice of the application was advertised on the AEC website and in 10 major newspapers on 3 December 2018. The closing date for objections was 3 January 2019. Two objections to the application were received on 20 December and 21 December 2018 and published on the AEC website. On 14 January 2019, the Party responded to these objections and this response was published on the AEC website.

For the reasons outlined above, I approve the application from The Small Business Party for registration as a non-Parliamentary party in the Register, as a delegate for the purposes of Part XI of the Electoral Act.

Your review rights

Under subsection 141(2) of the Electoral Act, a person (including an organisation) affected by the decision who is dissatisfied with the decision, may make a written application to the Electoral Commission for internal review of this decision within 28 days after the day on which the decision first comes to the notice of that person. There is no fee payable for requesting an internal review.

Requests for review of this decision should be addressed to Mr Tom Rogers, Australian Electoral Commissioner, and emailed to commission.secretariat@aec.gov.au or by post to Locked Bag 4007, Canberra City ACT 2601.

How do I request an internal review?

In accordance with subsections 141(2) and 141(3) of the Electoral Act, an application for review must:

- be in writing;
- specify the name of the applicant; and
- set out the reasons for making the application.

If you wish to apply for additional time beyond the 28 days to make an application for review of the delegate's decision, please also include the reasons for the application for additional time.

Who conducts an internal review?

The Electoral Commission, which is comprised of three members, the Australian Electoral Commissioner, a judicial member and a non-judicial member, conducts internal reviews. Under subsection 141(4) of the Electoral Act, the Electoral Commission shall review an application 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.

What can I do if I disagree with the outcome of an internal review?

If an internal review decision has been made by the Electoral Commission a person whose interests are affected, and who is dissatisfied with the decision made by the Electoral Commission, may apply to the Administrative Appeals Tribunal (AAT) for an external merits review of the decision. More information on how to apply to the AAT and any applicable fees can be found on its website: www.aat.gov.au/applying-for-a-review/how-to-apply.

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 AEC. For more information about access to documents under the FOI Act please visit the AEC's "Access to AEC information" webpage at: www.aec.gov.au/information-access/index.htm.

Should you have any queries regarding party registration, please contact the AEC on 02 6271 4552, visit www.aec.gov.au or email fad@aec.gov.au.

(signed)

Gabrielle Paten
Assistant Commissioner
Delegate of the Electoral Commission

20 February 2019