

AEC reference: LEX976

Dear [REDACTED]

Review of decision under s 141(4) of the *Commonwealth Electoral Act 1918* – notice of decision under s 141(7)

1. The Australian Electoral Commission (the Commission) refers to the written application, which you made on 21 November 2021, for review of the delegate's decision dated 11 August 2021 to grant, under s 134(6) of the *Commonwealth Electoral Act 1918* (Electoral Act), the application by Clive Palmer's United Australia Party under s 134(1) to change the party name and abbreviation from 'Clive Palmer's United Australia Party' and 'Clive Palmer's UAP' to the 'United Australia Party' and 'UAP' respectively.
2. The Commission is writing to you to give you notice of the decision made by the Commission on review, as required by s 141(7) of the Electoral Act.

Section 141 of the Electoral Act

3. Subsection 141(2) of the Electoral Act provides for making an application to the Commission for review of a 'reviewable decision'.
4. A subsection 141(2) application can only:
 - be made by a person affected by the decision who is dissatisfied with the decision; and
 - be made 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.
5. Subsections 141(2) and 141(3) of the Electoral Act require the application to:
 - be in writing; and

- be made to the Commission; and
 - specify an address of the applicant; and
 - include reasons for making the application.
6. The Commission considered that each of these requirements was satisfied.
7. In relation to you being a 'person affected' by the decision, the Commission noted that you objected under s 132(2) to the name and abbreviation change by letter dated 7 June 2021.
8. In relation to the timing of your application for review, your application was dated 21 November 2021. The Commission understands that the notice of decision dated 11 August 2021 may not have been sent to you in a timely manner due to delays to AEC mail services flowing from the COVID-19 restrictions in place at the time.
9. The Commission therefore considered that your request may have been made within 28 days of the decision first coming to your notice. For the avoidance of doubt and to the extent necessary, the Commission has decided to allow a further period up to the date of receipt of your 21 November 2021 application for you to make your application.

Notice of decision – s 141(7)

10. The Commission has reviewed the delegate's decision of 11 August 2021 to grant the application from Clive Palmer's United Australia Party under s 134(1) of the Electoral Act, to change the party name and abbreviation to the 'United Australia Party' and 'UAP' respectively.
11. The Commission has **affirmed** the decision under review pursuant to section 141(4)(a) of the Electoral Act.

Reasons for making this decision

12. In making its decision, the Commission had regard to:
- (a) the application made by Clive Palmer's United Australia Party in May 2021 to change the Register of Political Parties;
 - (b) your objection letter dated 7 June 2021, objecting to the application of Clive Palmer's United Australia Party to change their name and abbreviation to the 'United Australia Party' (UAP);

- (c) the delegate's decision of 11 August 2021 approving the name and abbreviation change of 'Clive Palmer's United Australia Party' (Clive Palmer's UAP) to the 'United Australia Party' (UAP);
- (d) the notice published pursuant to s 134(6A)(a) of the Electoral Act of Clive Palmer's United Australia Party name and abbreviation change of 11 August 2021;
- (e) the letter dated 11 August 2021 sent by the delegate to you containing the notice of decision under s 134(6) of the Electoral Act, a statement of reasons and your review rights;
- (f) your letter dated 21 November 2021 objecting to the delegate's decision;
- (g) your email dated 6 December 2021, confirming that your letter dated 21 November 2021 was an application for review of the delegate's decision under s 141(2) of the Electoral Act;
- (h) information from AEC staff regarding the delay in delivering you the letter dated 11 August 2021 containing the notice of decision; and
- (i) the Federal, State and Territory Registers of Political Parties.

The objection

13. In support of your objection to the name and abbreviation change under s 132(2) you made submissions which were summarised by the delegate as follows:

"I wish to lodge an objection to the naming of a political party as the 'United Australia Party.'

"I do so under section 129 of the Electoral Act sub sections c and d."

"My objection is that it is the same name as an Australian political party that functioned from 1931 to 1945 and included two terms in Government in this period the second of which from 1939-1945, when Robert Gordon Menzies was Prime Minister. The successor of the United Australia Party known as the UAP is the Liberal Party of Australia."

"The UAP of the period mentioned is unrelated to the party claiming the name today. It is misleading to voters who hold Robert Menzies in high regard to use this party name today.

"If the prefix of Palmer is used before the name UAP is used as it makes clear what the party is. To be simply UAP is confusing and misleading and is a distortion of history."

14. In your application for review you repeat your objections and state that:

"That the Palmer UAP was claiming such a link became plain when they featured photos and reference to Lyons and Menzies in their advertisements.

The Palmer UAP has no link nor is it a party which has held Government which the old UAP has.”

Consideration

15. The Commission considered that your objection was made under s 132(2)(b)(iii) of the Electoral Act and concerned the requirements in s129(c), (d) and (da) of the Electoral Act.
16. Section 129(1)(c), (d) and (da) of the Electoral Act provide that the Commission shall refuse an application for the registration of a political party if, in its opinion, the name of the party or abbreviation:
 - ‘(c) is the name, or is an abbreviation or acronym of the name, of another political party (not being a political party that is related to the party to which the application relates) that is a recognised political party; or
 - (d) so nearly resembles 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 to which the application relates) that is a recognised political party that it is likely to be confused with or mistaken for that name or that abbreviation or acronym, as the case may be; or
 - (da) is one 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’.
17. Section 129(2) of the Electoral Act defines a ‘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.
18. The Commission was satisfied that the Party’s proposed name is not the name, abbreviation or acronym of the name of a recognised party that is not a related party. The Commission was also satisfied that the Party’s proposed name and abbreviation do not so nearly resemble the name or abbreviation or acronym of another recognised political party that it is likely to be confused with or mistaken for that name or abbreviation or acronym. Further, the Commission considered that the Party’s proposed name and abbreviation was not one that a reasonable person would think suggests a connection or relationship with a registered party that does not exist. .
19. Section 129(1)(c) and (d) are concerned with whether a proposed name or abbreviation is, or so closely resembles (so as to give rise to a likelihood of confusion) the name or abbreviation or acronym of a ‘recognised political party’, as defined in s 129(2): see [17] above.

20. Section 129(1)(da) is concerned with a proposed name or abbreviation that a reasonable person would think suggestive of a connection or relationship to a 'registered political party' where that connection or relationship does not exist.
21. On a review by the Commission of the Register of Political Parties maintained under s 125 of the Electoral Act, no other unrelated party was identified as having the same or a similar name, abbreviation or acronym as the Party's proposed name and abbreviation. Apart from the Party, the Commission identified only one name of an unrelated party on the Register of Political Parties containing the word 'United'. This was the 'Seniors United Party of Australia (SUPA)'. This was not the Party's proposed name and abbreviation; and, in the Commission's opinion, the proposed name and abbreviation was not sufficiently similar to be likely to give rise to any confusion or mistake. Nor, in the Commission's opinion, was the proposed name and abbreviation one that a reasonable person would think suggestive of a connection or relationship with the registered party.
22. On a review by the Commission of the registers for each State and Territory, the Commission identified no other unrelated party as having the same or a similar name, abbreviation or acronym as the Party's proposed name and abbreviation. No name on these registers contained the word 'United'.
23. The only restrictions on the registration of a proposed name and abbreviation in s 129(1)(c),(d) and(da) are referable to the name, abbreviation or acronym of a 'registered party' and/or a 'recognised political party'. These provisions do not prevent the Party's registration of its proposed name and abbreviation on the basis that they are the same as a previous party, which prior to its dissolution in 1945, had contested a number of federal elections. This is because the historical party is neither a 'registered party' nor a 'recognised political party' for the purposes of the Electoral Act and, in particular, s 129(1) (c), (d) and (da). The possibility that the proposed name and abbreviation may be confused with or mistaken for the earlier party of the same name does not therefore provide a sound basis for the objection to registration of the Party's proposed new name and abbreviation.

Conclusion and review rights

24. The Commission decided to **affirm** the decision under review pursuant to s 141(4) of the Electoral Act.
25. A statement of review rights in respect of this decision is enclosed.

Yours sincerely

[SIGNED]

The Hon Justice Susan Kenny AM

Chairperson

4 February 2022

[SIGNED]

Mr Tom Rogers

Electoral Commissioner

4 February 2022

[SIGNED]

Dr David Gruen

Australian Statistician
(non-judicial member)

9 February 2022

Your review rights

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

How is an application made to the AAT for a review of a Commission decision?

In accordance with s 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 the application; and
- (d) be made within the prescribed time.

The application should also:

- (a) specify the name of the applicant; and
- (b) include an address at which documents in relation to the AAT proceedings may be given.

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

<https://www.aat.gov.au/apply-for-a-review>.

Prescribed fee

The AAT's standard application fee is \$962. In certain circumstances, an applicant may be entitled to pay a reduced fee of \$100.

If an applicant pays the standard application fee and the AAT review is resolved in the applicant's favour, the AAT will refund the difference between the standard application fee and \$100. There is no refund if the applicant paid the reduced fee of \$100.

Further information about fees is available on the AAT website:

<https://www.aat.gov.au/apply-for-a-review/other-decisions/fees>.

Prescribed time

You may apply to the AAT for review of the Commission's decision during the period commencing on the day on which the Commission's decision was made 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 for extension is made in writing to the AAT and the AAT is satisfied that it is reasonable in all the circumstances to do so.

Further information about time limits is available on the AAT website:
<https://www.aat.gov.au/apply-for-a-review/other-decisions/time-limits>.

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:
<https://www.aat.gov.au/steps-in-a-review/other-decisions>.

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 the Commission's decision, please contact the Commission Secretariat by emailing commission.secretariat@aec.gov.au.