

AEC reference: LEX1033

Mr Robert Andrew McCathie
Registered Officer
Liberal Democratic Party

By email

Dear Mr McCathie

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 20 December 2021 on behalf of the Liberal Democratic Party, for review of the delegate's decision dated 23 November 2021 to uphold the objection, under s 134A(1)(d) of the *Commonwealth Electoral Act 1918* (Electoral Act), to the party's continued use of the name 'Liberal Democratic Party' and the abbreviation 'Liberal Democrats'.
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.

Notice of decision – s 141(7)

3. As a preliminary matter, the Commission notes that your letter of 20 December 2021 raised other issues, some of which were considered by the Administrative Appeals Tribunal in *Liberal Democratic Party and Australian Electoral Commission* [2021] AATA 4884 and others of which are before the High Court in *Ruddick v Commonwealth* (S151/2021). This review of the Commission is limited to review of the delegate's decision under s 134A(1)(d) of the Electoral Act: see s 141(1)(ca) of the Electoral Act.
4. The Commission has reviewed the delegate's decision of 23 November 2021 to uphold the objection to the party's continued use of the name 'Liberal Democratic Party' and the abbreviation 'Liberal Democrats'.

5. The Commission has **affirmed** the decision under review pursuant to s 141(4)(a) of the Electoral Act.

Reasons for making this decision

6. In making its decision, the Commission had regard to:
- (a) the objection of 9 November 2021 made under s 134A(1) of the Electoral Act by Mr Andrew Hirst, registered officer of the Liberal Party of Australia (Liberal Party);
 - (b) the delegate's decision of 23 November 2021 made under s 134A(1)(d) of the Electoral Act to uphold the objection, with notice of the reasons for the decision under s 134A(2A) of the Electoral Act;
 - (c) the letter sent by the delegate to the Liberal Democratic Party on 23 November 2021 regarding the delegate's decision and the processes under ss 134A and 137 of the Electoral Act;
 - (d) the application for review made by the Liberal Democratic Party dated 20 December 2021; and
 - (e) the Register of Political Parties, which is maintained under s 125 of the Electoral Act.

The objection

7. In support of its objection made under s 134A(1)(b), the registered officer of the Liberal Party submitted in substance that:
- (a) the Liberal Party is 'the parent party' registered under s 126 before the Liberal Democratic Party, 'the second party' (see s 134A(1)(aa)); and
 - (b) the name and abbreviation of the second party contains a word that is in the name of the parent party, namely 'Liberal' (see s 134A(1)(a)(iii)).

Section 134A(1)

8. Section 134A(1)(d) requires the Commission to uphold a written objection by the registered officer of a political party (which is the 'parent party') to the continued use of the name or logo by another registered party (which is the 'second party') where the Commission is satisfied, relevantly, that 'the name or logo of the second party contains a word that is in the name, or abbreviation of the name, of the parent party': see s 134A(1)(a)(iii). Under s 134A(1)(aa) the 'parent party' is a registered political

party registered under s 126 before another registered party, being the 'second party'.

9. The Liberal Party was registered as a political party under s 126 of the Electoral Act on 22 June 1984. The Liberal Democratic Party was first registered under s 126 as the Liberty and Democracy Party on 7 December 2007 and changed its name to the Liberal Democratic Party on 17 December 2008. The Liberal Party therefore meets the description of the 'parent party' in s 134A(1)(aa), because it was registered before the Liberal Democratic Party, which is therefore the 'second party' for the purposes of s 134A.
10. The registered officer of the parent party submitted an objection in writing to the continued use of the name 'Liberal Democratic Party' and the registered abbreviation 'Liberal Democrats' by the second party as required by s 134A(1)(b). The Commission noted that s 134A(3) defines the word 'name' in this context as including the abbreviation entered in the Register.
11. The Commission is satisfied that the name of the second party, including the registered abbreviation, contains a word that is in the name of the parent party because the word 'Liberal' is in the name of the parent party ('Liberal Party of Australia') and the name of the second party ('Liberal Democratic Party' and 'Liberal Democrats'). The Commission must therefore uphold the objection made by the registered officer of the parent party under s 134A, as required by s 134A(1)(d).
12. The Commission notes that in your letter dated 20 December 2021 you maintain that the Commission has a 'discretion as to the timeline involved in s 134A' and that 'the AEC should have used its evident discretion to withhold judgement and notification of parties concerned until the constitutional validity of the underlying legislation is known'. Having regard to the terms of s 134A (referred to above) the Commission does not accept that it has a discretion of the kind to which you refer.

Conclusion and review rights

13. The Commission decided to **affirm** the decision under review pursuant to section 141(4)(a) of the Electoral Act.
14. 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.