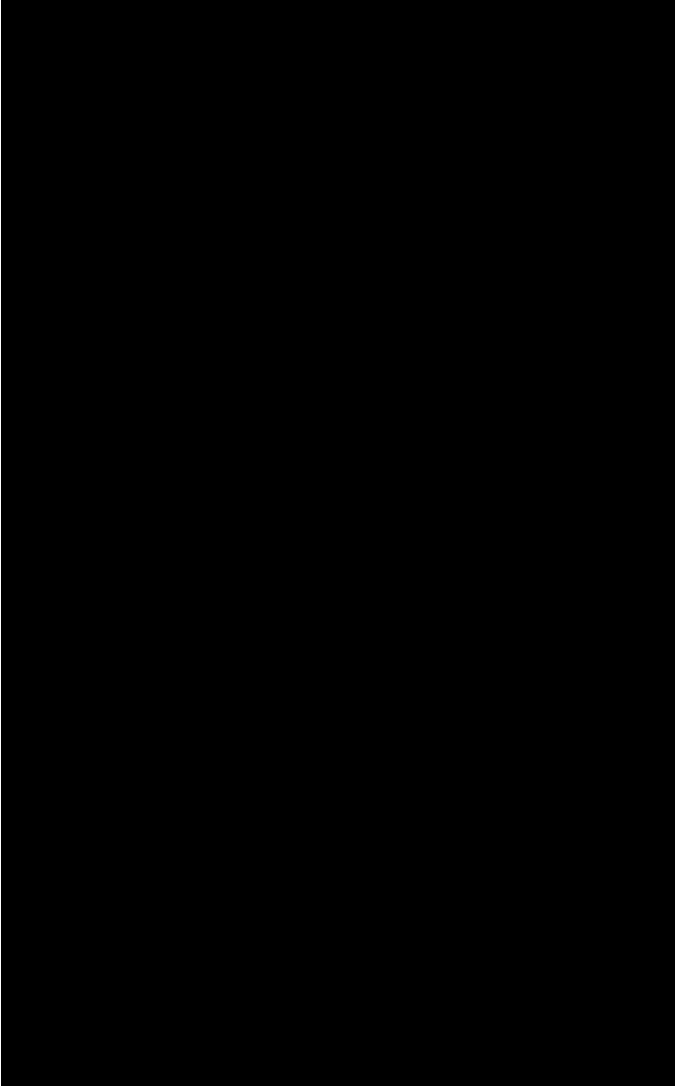


AEC reference: LEX5875



Dear 

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

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1. The Australian Electoral Commission (“the Commission”) refers to the written application received by the Commission on 9 February 2024, for review of the delegate’s decision to enter the Libertarian Party’s logo in the Register of Political Parties (“the Register”) under s 133(1)(ia) of the *Commonwealth Electoral Act 1918* (“Electoral Act”).

2. The Commission notes that, due to certain by-elections and the operation of ss 127 and 138A of the Electoral Act, no action could lawfully be taken regarding the review application from its receipt on 9 February 2024 until 22 April 2024.
3. The application for review is made under s 141(2) of the Electoral Act by you on behalf of the Liberal Party of Australia, the National Party of Australia, and the Liberal National Party of Queensland (“the Applicants”). The application satisfies the statutory requirements in s 141 of the Electoral Act. The Commission notes that an unsuccessful objection to the entry in the Register of the Libertarian Party’s logo (“the Party’s Logo”) was previously lodged on behalf of the Applicants under cover of an email dated 20 November 2023.

#### Notice of decision – s 141(7)

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4. The Commission has reviewed the delegate’s decision of 12 January 2024 to enter the Party’s Logo in the Register.
5. The Commission has **affirmed** the decision under review pursuant to s 141(4)(a) of the Electoral Act.

#### Reasons for making this decision

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6. In making its decision, the Commission has had regard to:
  - a. your application for review and submissions dated 9 February 2024 (under cover of an email dated 9 February 2024) and related correspondence with the Commission Secretariat;
  - b. the Libertarian Party’s submissions dated 20 May 2024 (under cover of an email dated 20 May 2024);
  - c. the delegate’s letter dated 12 January 2024 containing the delegate’s decision under s 133(1)(iia) of the Electoral Act to approve the Libertarian Party’s application to register the Party’s Logo in the Register, with the notice of registration under s 133(1)(b) and reasons under s 133(1)(c) dated 12 January 2024;
  - d. the material before the delegate, including:
    - i. the application for registration of the Libertarian Party and registration of the Party’s Logo;
    - ii. correspondence between the Libertarian Party and the Commission and the Applicants and the Commission;
    - iii. the Party’s Logo;

- iv. the logo of the Liberal National Party of Queensland (“the LNP Logo”);
- v. the objection to the entry in the Register of the Party’s Logo lodged by Stephen [REDACTED] and received by the Commission on 26 October 2023, and the Libertarian Party’s response dated 1 November 2023;
- vi. the objection to the entry in the Register of the Party’s Logo lodged on behalf of the Applicants (under cover of an email dated 20 November 2023) and the Libertarian Party’s response dated 27 November 2023; and
- vii. the Register.

#### Principal issues for determination on review

7. Under s 129A(1) of the Electoral Act, the Commission may refuse to enter in the Register a logo of a political party if, in its opinion, the logo:
  - so nearly resembles the logo of any other person that it is likely to be confused with or mistaken for that logo (s 129A(1)(c)); or
  - is 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 (s 129A(1)(d)).
8. The Applicants contend that the Party’s Logo is a logo of the kind described in s 129A(1)(c) and/or s 129A(1)(d) of the Electoral Act and that the Commission should for this reason refuse the Libertarian Party’s application for its registration. The Libertarian Party contends that the Commission should approve the registration of the Party’s Logo as it does not fall within either provision.

#### The Applicants’ submissions

9. In support of your application for review, you submitted that the Commission should reject the application to register the Party’s Logo because it so nearly resembles the LNP Logo that it is likely to be confused with or mistaken for the LNP Logo (s 129A(1)(c)).
10. You submitted that with respect to s 129A(1)(c):

The statutory question is whether it is *likely* that some electors might be confused or make a mistake about the two logos, having regard to the ‘*fact that not all electors are equally knowledgeable of political parties, nor equally intelligent in discriminating between different terms [and logos] used on a ballot paper, nor equally literate in appreciating that terms [and logos] do differ*’, and having regard to the LP and LNP Logos **in colour**. When account is taken of these relevant factors when considering the two logos ... the inevitable conclusion is that there would be a proportion of the voting population likely to be confused or mistaken about the two logos.

The presence or absence of the letter 'N', and the graphical differences, are matters which would not be easily detected by some electors in circumstances in which the colour scheme is similar, the font is the same, the indentation is the same, and the letters 'LP' are an acronym which some may (naturally) assume stand for Liberal Party.

11. In support of this submission, you contended that the delegate erroneously: (1) excluded from her consideration the use of the Party's Logo in colour; (2) proceeded upon an assessment of what all electors might think; (3) conflated the test in s 129A(1)(c) with the test in s 129A(1)(d); and (4) failed to consider whether there was a real chance of mistake or confusion in the case of 'spot the difference' type distinctions such as the absence of a letter, or a graphic that is different but displayed in a logo using the same colour, font and common letters.
12. In the alternative, you also submitted that the Party's Logo is one that a reasonable person would think suggests that a connection or relationship exists between the Libertarian Party and the Liberal Party of Australia and/or through it, the Liberal National Party of Queensland ("LNP") or the Nationals, where such a connection or relationship does not exist (s 129A(1)(d)).
13. In support of this submission, you contended that the delegate made various errors in her consideration of s 129A(1)(d). First, you submitted that the delegate erroneously excluded from her consideration of this issue "the coloured version" of the Party's Logo "in forming an assessment of what a reasonable person might think under s 126A(1)(d)". You also submitted that the delegate erroneously excluded "from the mind of the hypothetical reasonable person the use of the acronym 'LP' in the AEC Tally Room and Parliament". You submitted that "[a] reasonable voter must surely inform itself from the very type of public and logical resources excluded by the Delegate from consideration in the assessment of the test".
14. Second, you submitted that the delegate erroneously limited "consideration of the letters 'LP' to their supposed use in the 'common vernacular'". You contended that:

Familiarity with the use of the acronym LNP as meaning 'Liberal National Party' invites the natural assumption that the absence of the letter 'N' in the acronym 'LP' means a reference to 'Liberal Party'.

Indeed if the LP Logo appeared before the Liberal Party or the Liberal National Party on a ballot paper, to the left of the voting square, a reasonable person casting a vote would not assume that LP was an acronym for Libertarian Party, but would rather think that the letters 'LP' stood for Liberal Party. This would be consistent with the official references to the very same acronym in the AEC Tally Room and Australian Parliament.

... The statutory purpose of the provisions is to minimise confusion on the part of electors as to the party affiliation of candidates for election: *Ruddick [v Commonwealth]* [2022] HCA 9] at [87]-[88] per Gageler J. History has demonstrated the capacity for such voter confusion with the Liberal Democrats obtaining an aberrant result in the 2013 Federal Election which was clearly inconsistent with voter intent: see *Ruddick* at [116]-[120] per Gordon, Edelman and Gleeson JJ.

15. In your 20 November 2023 objection to the entry of the Party's Logo in the Register (also relied on in your submissions of 9 February 2024), you submitted:

At the 2013 federal election, the Liberal Democrats were more than 20 positions to the left of the Liberal Party on the NSW, SA and WA Senate ballot papers. On a ballot paper that was over a metre wide in NSW, this meant that it would have been impossible to view both the Liberal Party and Liberal Democrats on the ballot paper at the same time.

In the result, the Liberal Democrats polled 9.3% in NSW which was a 7.19% swing towards them and was enough to secure their first Senate seat (David Leyonhjelm). The strong Liberal Democrat result clearly impacted the Coalition's NSW first preference vote in the Senate, which was the lowest it had been since the Party's inception (34.20%). This was despite the Coalition's landslide election victory and the high NSW first preference vote in the lower house (47.34%). This discrepancy of around 13% between the upper and lower houses had not been something that had been seen at previous elections, indicating that voters were clearly confused by the similar names. In an article entitled 'Piggybacking on the Labor and Liberal brands' Antony Green is on record as saying that it was "clear that confusion played a part in the NSW Senate result".

(Footnotes omitted)

16. Also in your 20 November 2023 objection, you recorded that the LNP had commissioned "Andrew Fyffe, Co-Founder of advertising and design agency Khemistry, to conduct a comparative analysis of the LNP Registered Logo and the Proposed Registered Logo". You continued:

There are many common features which result in the Proposed Registered Logo bearing a close resemblance to the LNP Registered Logo:

- a. they both use acronyms and they are nearly identical. Both logos use acronyms – "LNP" and "LP" – the only difference being that an "N" does not appear in the Proposed Registered Logo;
- b. the font is the same. Both logos use a sans serif font, are in capital letters, and are bolded. This feature is also shared with the Liberal Party Logo;
- c. the inclination is the same. They are both type set with an approximate 10 degree angle of inclination (that degree of inclination is derived from the Liberal Party Logo and the "Liberal" brand identity);
- d. the colours are the same. They are both white on a dark background (in this instance blue) with a yellow highlight colour scheme. The Liberal Party Logo also uses blue and white; and
- e. the graphic device is similar. They both use a curvilinear element, (in each case, in yellow), placed to or substantially to, the left.

17. You contended that: "[t]he disqualification in s 129A(1)(d) is not founded on the *similarity* between the logos of the proposed and existing party. Rather, s 129A(1)(d) is

engaged where a proposed logo suggests a connection or relationship with an existing party. You added that: “[t]he scope of s 129A(1)(d) is wider than the more limited operation of s 129A(1)(c)” and that “the prohibition in s 129A(1)(d) requires the Commission to consider factors which may overlap, but which differ to those factors applicable to s 129A(1)(c) ...”.

### The Libertarian Party’s submissions

18. In its submissions of 20 May 2024, the Libertarian Party argued that the Party’s Logo did not fall within either s 129A(1)(c) or s 129A(1)(d).
19. The Libertarian Party contended that the colour of the Party’s Logo was irrelevant since the Commission was required to consider only the logo as set out in the relevant registration application, “that is, the black and white logo in accordance with s 126(2AA)”.
20. In relation to s 129A(1)(c), the Libertarian Party submitted that there are “substantial and critical differences” between the Party’s Logo and “the LNP Logo that render any possibility of confusion or mistake virtually non-existent”; and in the only relevant context of electors preparing to vote by marking the ballot paper, there was no reasonable prospect of electors being confused or mistaken. The Libertarian Party submitted that the similarities between the Party’s Logo and the LNP Logo were so “high level that they cannot be seen to give rise to any risk of confusion or mistake”.
21. In relation to s 129A(1)(d), the Libertarian Party submitted that “a reasonable person would not infer any immediate or instinctive association with the Liberal Party of Australia (or any of its affiliates) from a logo’s use of the acronym ‘LP’, which is not commonly used as a shorthand for those parties”. This was because:
  - a. the Party’s Logo is “visually and graphically distinct” from the Applicants’ logos; and there are “no similarities significant enough to engender any suggestion of connection or relationship between the parties in the mind of a reasonable voter”;
  - b. ‘LP’ is not widely used to refer to the Liberal Party of Australia. Only two public uses have been identified. In the Parliament of Australia website, ‘LP’ is used as an abbreviation for the Liberal Party in a specific context where two individual PDFs set out a schedule of contact details for parliamentarians. In the AEC’s Tally Room website, ‘LP’ is used as code for the Liberal Party in detailed statistical spreadsheets that must be individually downloaded from nested pages on the website;
  - c. the delegate was correct “to rely on common vernacular in preference to arcane statistical codes to determine what terms and abbreviations a reasonable person is most likely to associate with the Liberal Party”; and

- d. the only natural assumption that a reasonable person would make, when viewing the Party's Logo next to its registered party name on a federal ballot paper, is that the acronym 'LP' refers to the Libertarian Party.
22. Further, in its response to your objection of 20 November 2023, the Libertarian Party also submitted, amongst other things, that:
- a. the use of the Party's Logo in the "let women speak" promotion referenced in the Khemistry report was in fact a reference to a transparent logo set against the colouring of the advertisement for the event. When used in a wide range of other contexts in colour, the logo of the Libertarian Party is gold lettering on a black field, or black lettering on a white field; and
  - b. the Applicants' submissions "amount to no more than statements that the LNP exists, that it is connected to the Liberal Party, and that the acronym LP could stand for either Liberal Party, or Libertarian Party". If the AEC accepted this, then "the effect of s129A(d) is that the Liberal Party can exclude any political party whose name, logo notwithstanding, can be abbreviated to the letters LP. Such a position ... goes well beyond both the mischief the legislation seeks to solve, and the level of potential confusion contemplated by the Courts".

### **Statutory regime – Section 129A(1)(c)**

23. In this review, the fundamental question for the Commission is whether, as the Applicants contend, the Party's Logo falls within either s 129A(1)(c) or (d) of the Electoral Act.
24. Section 129A(1) of the Electoral Act confers a discretion on the Commission to refuse to enter a logo in the Register in the circumstances identified in s 129A(1)(a)-(e). This and related provisions were introduced into the Electoral Act by the *Electoral Act Amendment Act 2016* (Cth) ("the Amendment Act 2016"). It is clear enough that the Party's Logo does not fall within s 129A(1)(a), (b) or (e) of the Electoral Act.
25. Under s 129A(1)(c) of the Electoral Act, the Commission may refuse to enter a logo in the Register if, in its opinion, the logo:
- (c) so nearly resembles the logo of any other person that it is likely to be confused with or mistaken for that logo.
26. In the Commission's opinion, the Party's Logo does not meet the description in s 129A(1)(c).

### **Analysis**

27. Registration of a logo entitles a registered political party to have the logo placed next to that party's name on ballot papers for both Houses of the Federal Parliament, as required by s 214A of the Electoral Act. The Revised Explanatory Memorandum to the Amendment Act 2016 ('EM') stated that the purpose of enabling the registration of party

logos and allowing them to be printed on ballot papers in this way is to “provide confidence to voters that they can easily identify the party of their preference” and to “reduce the confusion that may arise with political parties with similar names, by allowing party logos to be printed on ballot papers for both the House of Representatives and the Senate.” This purpose clearly informs s 129(1)(c) (and (d), discussed below).

28. Section 129A(1)(c) requires the Commission to compare the Party’s Logo with the logo it is said to resemble to determine whether, in its opinion, there is in fact a resemblance. If the Commission forms this opinion, then the Commission must consider the likelihood of confusion or mistake (that is, that the elector would not know or would be uncertain about which logo is which or mistake one logo for the other) in the context of preparing to vote by marking the ballot paper. Thus, in *Watson v Australian Electoral Commission* [2018] AATA 4914 (*‘Watson’*) at [73], the Administrative Appeals Tribunal (‘the Tribunal’) stated that s 129A(1)(c) required it:

*“... to form an opinion as to whether the logo of the applicant for registration so nearly resembles the logo of any other person that it is likely to be confused with or mistaken for the logo of any other person in the context, as suggested by Woollard and Australian Electoral Commission, of electors preparing to vote by marking the ballot paper.”*

29. Section 129A is not intended to address the likelihood of mistake or confusion outside this context. This is left to other provisions of the Electoral Act: see, for example, s 329. Of course, as the Tribunal has noted, “although it is the judgment of the elector preparing to vote by marking the ballot paper that is to be protected, that judgment does not take place in isolation from what is said and published prior to polling day ...”: see *Watson* at [52].
30. Further, as the Tribunal explained in *Woollard and the Australian Electoral Commission* [2001] AATA 166 (*‘Woollard’*) at [23] and [38], “the electors who are to be protected from the likelihood of confusion or mistake are the full range of electors”, being “all electors or ... a proportion of that population”; and “[t]he likelihood of confusion or mistake is to be assessed with respect to all adults, involving a range of age, linguistic ability, literacy, intelligence, commitment and other factors”. With this in mind, the Commission must assess the risk that registration of the Party’s Logo will have the consequences to which s 129A(1)(c) refers. A relevant risk is one that is neither fanciful nor remote but is “relevant to the integrity of the voting process”: see *Ruddick v Commonwealth* (2022) 275 CLR 333 (*‘Ruddick’*) at [43], citing *Woollard* at [38]. This test calls for a practical judgment.

#### Comparison of logos in ‘black and white’

31. The Commission considers that the Electoral Act requires it to compare the LNP Logo with the Party’s Logo in the form in which these logos would appear on the ballot paper. This is because the Commission is required to consider the likelihood of confusion or mistake in the context of an elector preparing to vote by marking the ballot paper. Logos on a ballot paper appear only in black and white. Therefore, in making the

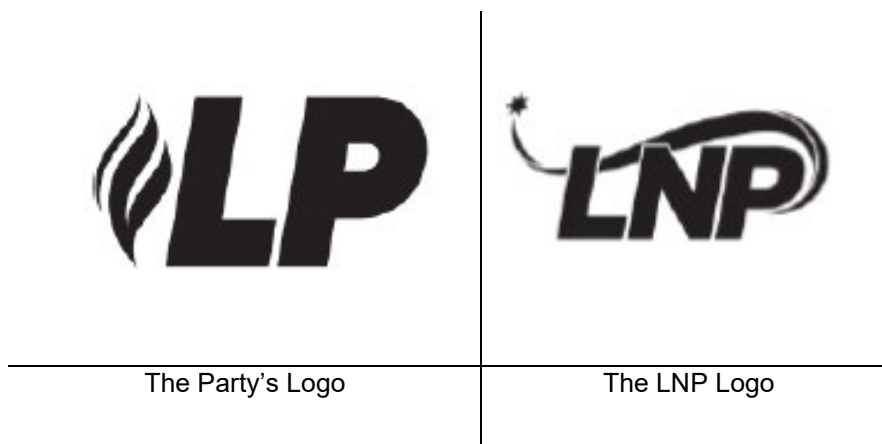


assessment required by s 129A(1)(c), the Commission must compare and consider the logos in question in their black and white form. Further, and consistently with this, a logo in the Register is entered in black and white only. This follows from s 126(2AA)(a), which requires that in any application for registration under s 126 that includes an application for registration of a party's logo, the application must include a copy of the logo (s 126(2)(ba)), and that copy must be in "black and white" (s 126(2AA)). Thus, if the application is approved, the logo is entered in the Register in black and white and appears on a ballot paper in this form.

32. As explained above, the Commission does not consider that the assessment required by s 129A(1)(c) is to be made by considering other "in colour" versions of the Party's Logo or any other logo.

Does the Party's Logo resemble the LNP Logo?

33. The Party's Logo and the LNP Logo are set out below in black and white. The Commission notes that the Applicants have not contended that the Party's Logo resembles the logo of the Liberal Party of Australia. Rather, the Applicants' submissions regarding s 129A(1)(c) focus on the similarity between the Party's Logo and the LNP Logo.



34. The Commission accepts that the Party's Logo resembles the LNP Logo in some respects. Both logos contain an acronym. The Party's Logo uses the letters 'LP' and the LNP Logo uses the letters 'LNP'. In both cases, the letters are in similar font and indented in a similar way. Both logos have an image to the left of the text.
35. There are, however, significant differences between the Party's Logo and the LNP Logo. The Party's Logo consists of the letters 'LP' while the LNP Logo has an additional letter 'N'. To the left of the letters 'LP', the Party's Logo has an image of a flame. The LNP Logo has a curvilinear feature that runs from the middle of the letter 'P' across the top of the 'LN' to end in a star image above and to the left of the letters 'LNP'. These differences, when considered with reference to a ballot paper on which the Party's Logo and the LNP Logo could be used, tend against the likelihood that the Party's Logo will be confused with or mistaken for the LNP Logo.

36. Specifically, in this context, the Commission notes that the statutory question, whether the Party's Logo "so nearly resembles" the LNP's Logo "that it is likely to be confused with or mistaken for that logo" can only arise with respect to marking a ballot paper to cast a vote for a candidate standing for election in Queensland. This is because the LNP is the outcome of the merger in Queensland of the Queensland divisions of the Liberal Party and the National Party; the LNP is registered only in Queensland; and stands candidates only in that State. Only an elector preparing to vote by marking their ballot paper for a candidate in Queensland would see the Party's Logo and the LNP Logo on a ballot paper.
37. As discussed at [28]-[29], in applying s 129A(1)(c), the Commission's task is to consider the likelihood of confusion or mistake on the part of the Queensland elector preparing to vote by marking their ballot paper, bearing in mind the elector's judgment is not made in isolation from what is said and published prior to polling day. In the latter regard, the Commission notes that the LNP has been contesting Queensland state elections since 2009. The LNP has used the LNP Logo since at least 6 May 2016 when that Logo was entered on the Register, including in Queensland in three federal general elections and a number of by-elections. The LNP Logo has also been used in or on the LNP's promotional, advertising and branding material throughout the state not only in federal elections but also at state government and local council elections. The Commission considers that, as a practical matter, most Queensland electors are familiar with the LNP Logo. Further, one specific problem, which s 129A(1) was specifically intended to address does not arise because the names of the Libertarian Party and the LNP are not alike: compare [27] above.
38. The Commission notes that, pursuant to s 321D of the Electoral Act, political parties such as the LNP and the Libertarian Party are required to authorise electoral matter by stating the name and address of the political party and the person responsible for giving effect to the authorisation in that matter. The Commission notes further that, for some years now, political parties have undertaken extensive advertising campaigns. Such campaigns and the political parties' obligations under s 321D have tended to reinforce in the minds of electors the differences between the political parties with candidates standing for election.
39. Furthermore, in considering the likelihood of confusion or mistake between the Party's Logo and the LNP Logo, as indicated above, the Commission has also taken account of the context in which an elector will see the Party's Logo on the ballot paper. The Commission notes that the Party's Logo would appear on the ballot paper adjacent to the Libertarian Party name, as required by s 214A of the Electoral Act. The Commission considers that the proximity of the Party's Logo to the Libertarian Party name would preclude or significantly diminish the possibility of confusion or mistake on the part of electors since they would associate the Party's Logo with the Party name nearest to it and to which it most naturally relates.

40. Bearing in mind the differences between the Party's Logo and the LNP Logo and the circumstances set out at [36]-[39] above, the Commission is of the opinion that the Party's Logo does not "so nearly resemble" the LNP Logo that it is likely to be confused with or mistaken for the LNP Logo by electors, or such proportion of them as would be "relevant to the integrity of the voting process", to adopt the language of the Tribunal in *Woollard*, approved in *Ruddick*. As a practical matter, in the Commission's opinion, the risk that similarities between the Party's Logo and the LNP Logo will confuse electors or a proportion of them preparing to vote by marking their ballot papers or lead them to mistake the Libertarian Party for the LNP is so low as to be irrelevant to the integrity of the voting process.
41. Section 129A must be construed and applied in the context of the Electoral Act as a whole. As already noted, the statutory purpose of enabling a registered party logo to appear adjacent to the party's name on a ballot paper is to assist electors in identifying the candidates of their choice on the ballot paper when they come to cast their vote. The Commission notes that there are other provisions also directed to assisting electors to cast their votes as they intend. For example, s 234 of the Electoral Act allows electors whose impaired sight, physical incapacity or illiteracy prevents them from voting without assistance to choose a person to mark their vote on the ballot paper and to deposit it in a ballot-box.
42. Finally, the Commission notes that you have referred to and relied on the results of the 2013 Federal Election, in support of the proposition that the Liberal Democrats received a higher number of votes than the Liberal Party of Australia due to the parties' similar names and respective positions on the ballot paper. The Commission derived limited, if any, assistance from this discussion, given that the provisions concerning logos were introduced into the Electoral Act in 2016, well after the 2013 Election.

#### **Statutory regime – Section 129A(1)(d)**

43. Under s 129A(1)(d) of the Electoral Act, the Commission may refuse to enter in the Register a logo if, in its opinion, the logo:
  - (d) is 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.
44. In the Commission's opinion, the Party's Logo does not meet the description in s 129A(1)(d).

#### Analysis

45. As indicated above, registration of the Party's Logo will entitle the Libertarian Party to have the Party's Logo placed next to its name on ballot papers for the House of Representatives and the Senate. Broadly speaking, the statutory purpose of this and the other 'logo provisions' introduced by the Amendment Act 2016 is to assist electors to identify "the party of their preference" on the ballot paper when they come to mark their ballot papers to cast their vote. Like s 129A(1)(c), this provision is protective of the "judgment" of the elector at this moment: compare *Watson* at [73].

46. Section 129A(1)(d) requires the Commission to examine the Party's Logo to determine whether "a reasonable person" would "think" that there was "a connection or relationship" between it and another registered party – here the Liberal Party of Australia and/or through it, its affiliates – where that connection or relationship does not exist.

Examination of 'black and white' logo

47. Having regard to the overarching purpose of these provisions, the Commission is required to consider the statutory question presented by s 129A(1)(d) in the same context as that presented by s 129A(1)(c). Whether a reasonable person would think the Party's Logo is suggestive of a connection or relationship between it and another registered political party must therefore be considered in the context of an elector preparing to vote by marking their ballot paper. For the reasons set out at [31] above, this means that, in determining whether the Party's Logo falls within s 129A(1)(d), the Commission must examine the Party's Logo in black and white.

What is said to be the suggested connection or relationship?

48. The Libertarian Party and the Applicants concur that there is no "connection or relationship" between them. Thus, whatever connection or relationship might be thought to exist does not exist.
49. In ordinary usage, a 'connection' exists where there is a "relation between things, one of which is bound up with, or involved in, another"; and a 'relationship' connotes a connection or correspondence between things or people: see *The Shorter Oxford English Dictionary* and the *Macquarie Dictionary*. In substance, the Applicants' contention is that a reasonable person would think that the Party's Logo suggests that the Libertarian Party is the Liberal Party of Australia, in the sense that the Libertarian Party corresponds with the Liberal Party of Australia. For present purposes, the Commission accepts that this kind of apparent (but non-existent) connection or relationship falls within s 129A(1)(d).

Who is the reasonable person?

50. The Commission notes that s 129A(1)(c) and s 129A(1)(d) differ in the nature of the assessment to be made. While s 129A(1)(c) involves an assessment of the likelihood of confusion or mistake referable to the "full range of electors", s 129A(1)(d) requires an assessment referable to the "reasonable person".
51. Reference to the "reasonable person" in s 129A(1)(d) creates an objective standard for the assessment required by the provision. A reasonable person is not attributed with specialist knowledge about electoral matters. In the context of s 129A(1) of the Electoral Act, the Commission is of the view that a reasonable person is a person of ordinary intelligence and education, with the common knowledge and experience of most electors. Such a person would know that voting is compulsory (save in certain limited circumstances) and preferential. That is, in a House of Representative election voters are required to express their preferences for all candidates by marking their ballot

papers to give effect to a judgment about each candidate: see the Electoral Act, s 240. In a Senate election, voters are required to express their preference for at least 6 parties or groups if voting above the line, or at least 12 candidates if voting below the line (provided there are at least 12 candidates): see the Electoral Act, s 239. Such a person would know that many, if not most, candidates are nominated by the political parties to which they belong.

52. The reasonable person is also taken to conform to contemporary standards: compare *Monis v The Queen* [2013] HCA 4, at [44], [336]. Hence, a reasonable person would understand that it is the elector's responsibility to mark a ballot paper to give effect to their own judgment about the candidates. When preparing to vote by marking a ballot paper, a reasonable person would therefore identify in their own mind their preferences and would seek to mark their ballot paper to give effect to their judgment.

Would the reasonable person think the Party's Logo suggests that the Libertarian Party is the Liberal Party of Australia?

53. When preparing to vote by marking their ballot paper, the reasonable person would not, in the Commission's view, think that the Libertarian Party's black and white logo next to its name suggests that it is the Liberal Party of Australia. A reasonable person would know that, in marking a ballot paper to cast a vote in the House of Representatives, the elector is required to indicate their preferences for all candidates, commencing with the number 1 and continuing until all candidates are sequentially numbered. To discharge this obligation, this person would need to examine the whole of the ballot paper in marking their preferences.
54. So far as the Senate is concerned, a reasonable person would know that if an elector chooses to vote 'above the line', the elector must number at least six boxes, indicating the party or group of the elector's first to sixth preference. Such a person would know that the process is much the same if the elector chooses to vote 'below the line' save that the elector must number at least 12 boxes if there are at least 12 candidates; and if there are less, then the elector must number each box in order of their preference. With this knowledge, the reasonable person would look at the whole ballot paper and if the relevant parties were contesting the election, the reasonable person would see the respective black and white logos of the Libertarian Party and the Liberal Party of Australia or in Queensland, the LNP, adjacent to the name of the party to which it relates: see the Electoral Act, s 214A. The Commission is of the opinion that in this circumstance, whenever the Libertarian Party contests an election, a reasonable person would see that the Party's Logo was proximate to the 'Libertarian Party' and would think that the 'LP' on the Party's Logo was an acronym for the 'Libertarian Party'. In preparing to vote by marking the ballot paper, a reasonable person would not think that the Party's Logo suggested a connection or relationship between the Libertarian Party and the Liberal Party of Australia or any other political party to which the Applicants have referred.
55. The fact that a ballot paper in Queensland might display the Party's Logo beside the Libertarian Party's name and the LNP Logo beside the name of the Liberal National

Party of Queensland would not lead a reasonable person to think that the Party's Logo suggested a connection or relationship between the Libertarian Party and the Liberal Party of Australia. This is because, first, each party's logo is adjacent to the party name (see paragraph [39] above). Second, it is common knowledge in Queensland that the Liberal National Party of Queensland is in fact the outcome of the merger in that State of the Queensland divisions of the Liberal Party and the National Party, and that the Liberal Party does not stand separately in Queensland. A reasonable person would have this common knowledge. Third, a reasonable person marking their ballot paper in Queensland would be familiar with the LNP Logo and would know that it is the logo of the LNP, bearing in mind that it has been registered for many years, that is since 6 May 2016. Furthermore, as already indicated, over this time, the LNP Logo has been used in Queensland by the LNP in three federal general elections and a number of by-elections. Also, as already stated, the LNP Logo has also been used in or on the LNP's promotional, advertising and branding material throughout the state including at state government and local council elections.

56. The Commission accepts that the acronym 'LP' is used to signify the Liberal Party of Australia on the AEC Tally Room website and on the Parliamentary website. The Commission does not accept that these very limited uses of the acronym to signify the Liberal Party of Australia would lead a reasonable person to think that the Party's Logo on the ballot paper was suggestive of any party other than the Libertarian Party. This is because the proximity of the logo to the Party's name would mean that a reasonable person would associate the Party's Logo with the Libertarian Party name, which is the name nearest to it and to which it most naturally relates.

### Conclusion

57. For the above reasons, the Commission does not consider that a reasonable person preparing to vote by marking their ballot paper would think that the Party's Logo suggests a connection or relationship with the Liberal Party of Australia or any other party, which does not exist. Nor, for the reasons set out earlier, is the Commission of the opinion that the Party's Logo so nearly resembles the LNP Logo that it is likely to be confused with or mistaken for that logo.

### Conclusion and review rights

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58. The Commission has affirmed the decision under review pursuant to s 141(4)(a) of the Electoral Act.
59. A statement of review rights in respect of this decision is enclosed.

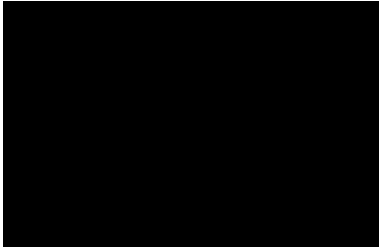
Yours sincerely,



**The Hon Susan Kenny AM KC**

Chairperson

19 July 2024



**Mr Jeff Pope APM**

A/g Electoral Commissioner

19 July 2024

## Your review rights

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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 has a standard application fee. In certain circumstances, an applicant may be entitled to pay a reduced fee.

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 the reduced fee. There is no refund if the applicant paid the reduced fee.

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](http://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](mailto:commission.secretariat@aec.gov.au).