

## Australian Electoral Commission - Meeting Number 264

### Statement of Reasons

#### Review of delegate's decision to refuse party registration to The Communists

The Australian Electoral Commission has affirmed the decision of the delegate to refuse party registration to The Communists for failing to meet the legislative requirement of 500 members.

### Background

#### 1. Application requirements – section 126

- 1.1. Under section 126 of the *Commonwealth Electoral Act 1918* (the Electoral Act), an application for registration of a new non-Parliamentary party must:
- 1.1.1. be made by 10 members of the party, one of whom is the secretary of the party; and
  - 1.1.2. be in writing (which involves submission of a completed application form containing relevant details, including for example, the name of the party, any abbreviation of the name of the party, and the name and address of the person who is to be the registered officer of the party for the purposes of the Electoral Act); and
  - 1.1.3. include a copy of a logo if the party wishes a logo of the party to be entered in the Register; and
  - 1.1.4. include a list of the names of the 500 members of the party to be relied on for the purpose of registration<sup>1</sup>; and
  - 1.1.5. state whether or not the party wishes to receive moneys under Division 3 of Part XX; and
  - 1.1.6. set out the name and address of the applicant or the names and addresses of the applicants and particulars of the capacity in which the applicant or each application makes the application; and
  - 1.1.7. be accompanied by a copy of the constitution of the party; and

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<sup>1</sup> This requires that the Party has at least 500 members who are on the Commonwealth electoral Roll and who are not also relied upon by another party for registration purposes (section 126(2A) of the Electoral Act).

- 1.1.8. be accompanied by a fee of \$500.
- 1.2. The Australian Electoral Commission (AEC) requests that the membership list lodged as part of the application for registration include a list of at least 500-550 party members and include each member's full name, residential address and date of birth. To allow the processing of a party's application to proceed quickly, the AEC also requests email and telephone contacts for each member to be provided.
- 1.3. On 20 April 2016, the AEC received an application for registration of a non-Parliamentary party named 'The Communists' (the **Party**) under paragraph 126(1)(b) of the Electoral Act with Mr Robert Martin Briton as the proposed registered officer and secretary of the Party. The Party also sought registration of a logo.
- 1.4. On 20 April 2016, the requisite application fee was received to complete the application.
- 1.5. On 16 May 2016, the processing of the application was suspended under section 127 of the Electoral Act, due to the issue of the writs for the 2016 federal election.

## 2. Initial assessment of application

- 2.1. On 12 October 2016, a delegate of the Electoral Commission determined that the Party's application did not meet the requirements of the Electoral Act because the Party's membership list **did not contain** the required 500 members as required by paragraph 126(2)(ca) of the Electoral Act. The delegate approved a notice under subsection 131(1) be issued to the Party.

## 3. Notice to vary application – subsection 131(1) of the Electoral Act

- 3.1. A subsection 131(1) notice was issued to the Party by letter dated 13 October 2016 setting out the reasons as to why the application would be refused. The notice allowed the Party to:
  - 3.1.1. vary their application with an alternative membership list; or
  - 3.1.2. request that the application be proceeded with as originally lodged.
- 3.2. On 2 November 2016, the Party lodged a written request, via email, under subsection 131(3) of the Electoral Act to vary the application. On 4 November 2016, the Party provided the AEC with a revised membership list, via email.
- 3.3. Under subsection 131(4) of the Electoral Act, if a request to vary is made, the application as varied is to be treated as if it were a new application. A delegate of the Electoral Commission then proceeded to consider anew the application as varied.

#### 4. Determination of application as varied

- 4.1. The AEC conducted fresh membership testing, in accordance with the AEC Party Registration Guide (the Guide) using the list provided on 4 November 2016, between November 2016 and March 2017.
- 4.2. AEC staff contacted 59 listed members and asked them if they were current members of the Party to obtain 34 responses (as some were not contactable). Of the 34 responses, 24 confirmed membership and 10 denied. The ten denials out of the 34 responses meant there could not be sufficient statistical confidence that at least 500 of the listed members would confirm membership.
- 4.3. On 26 April 2017, the delegate determined that the application as varied still did not meet the requirements of the Electoral Act, as the AEC's membership testing process demonstrated insufficient statistical confidence that the Party had the minimum 500 members required under paragraph 126(2)(ca) of the Electoral Act to allow registration.
- 4.4. The delegate decided to:
  - 4.4.1. refuse the Party's application for registration subsection 133(3) of the Electoral Act; and
  - 4.4.2. issue a notice under subsection 133(3) of the Electoral Act to the Party giving reasons for the refusal decision via a statement of reasons. The notice was issued to the Party by a letter dated 16 April 2017.

### The application for review

5. On 23 May 2017, the AEC received an email from Mr Briton attaching a letter requesting review by the Electoral Commission. Mr Briton sought review for the following reasons:
  - a) the Party was disadvantaged by the delay in the AEC's processing of the application; and
  - b) the methods used by the AEC to conduct membership testing confused Party members.

### Response to issues raised in the review applications

#### 6. Was the Party disadvantaged by the delay in conducting membership testing

- 6.1. Mr Briton contended that the Party was disadvantaged by the delay in the AEC's processing of the application for Party Registration, claiming "the long period

involved led to some individuals tested for their membership to lose track of their original commitment.”

- 6.2. It was noted by the Electoral Commission that the Electoral Act does not specify a fixed time period for the processing of applications for Party Registration.

#### *The issuing of writs for the 2016 federal election*

- 6.3. The AEC commenced the process of matching members to the Commonwealth Electoral Roll the day after receiving the initial application for party registration, being 21 April 2016.
- 6.4. On 16 May 2016, his Excellency General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia issued writs for the 2016 federal election, suspending any further action by the AEC in processing the Party's application.
- 6.5. Membership testing on all applications for Party Registration, including the Party's application, resumed after the return of writs on 8 August 2016.
- 6.6. The Electoral Commission noted that some of the delay that was claimed by Mr Briton was caused by the issuing of writs. As this suspension to processing is a statutory requirement this was unavoidable.

#### *Membership testing*

- 6.7. The Party's initial application contained less than the required 500 members. On 2 November, the Party requested that the AEC vary the application for registration and provided a revised membership list on 4 November 2016. The Electoral Commission noted the processing time was further lengthened by the fact that the Party's revised membership list, lodged on 4 November 2016, and only provided postal address details for the majority of the members, despite the Guide recommending the provisions of email and phone contact details to facilitate faster processing times.
- 6.8. As a result of the Party failing to provide email and phone contact details for many of the members, the AEC was required to contact a number of the members by post. Post is a slower method of communication than that of phone and email and thus receiving responses as part of the membership testing was slower than it could have been had other methods of communication been available.
- 6.9. Where an email address or phone number was provided the AEC sought to contact the listed member using one of those methods rather than post.

- 6.10. In accordance with the Guide there were up to three attempts by the AEC to contact the listed members where a response had not been received within the required time. Where the AEC was unable to contact a listed member, this was not regarded as either a confirmation of membership or a refusal of membership. Accordingly, it did not impact on the membership testing results.
- 6.11. The Electoral Commission considered that there was no undue delay on the part of the delegate in conducting the membership testing as part of the Party's application for party registration.
- 6.12. In his request for Review, Mr Briton claimed "...the long period involved led to some individuals tested for their membership of the party to lose track of their original commitment."
- 6.13. This assertion was rejected by the Electoral Commission. It is not the role of the AEC to promote or encourage commitment to being members of a particular party. Further, to do so would be contrary to the political neutrality of the AEC.

#### **7. Did the method used by the AEC to conduct membership testing disadvantage the Party by confusing members?**

- 7.1. Mr Briton claimed that the methods used by the AEC to conduct membership testing confused Party members. Mr Briton stated in his letter dated 23 May 2017 that "we are concerned that these actions [referring to his own examples] would have been considered failures to respond prompting the AEC to sample others." Mr Briton then provided two examples:
  - 7.1.1. Member 1 – contact by mail "informed me that she received one letter requesting a "yes" or "no" reply regarding membership very close to Christmas and without sufficient time to return the response by the due date shown. She said she then received another letter mid-January, this time she rang the phone number given but only got a machine on which she left a message indicating she was a member."
  - 7.1.2. Member 2 – "also received a letter and completed and returned the form as required. He received a further two such letters, and having completed the first letter, did not think it was necessary to return the subsequent once."

#### *Membership testing procedure*

- 7.2. Appendix 3 of the Guide sets out the 'membership testing process.' Relevantly paragraph 8 provides:

"Party members are contacted starting from the top of the randomised list. In the first instances emails are sent to those members with an email address. If no response

is received after 24-48 hours the member will be contacted via phone.” (emphasis added).

- 7.3. The Electoral Commission noted that the membership list provided by the Party only contained a postal address for the majority of members. As a consequence the AEC was unable to conduct the membership testing process as set out above where the AEC only had a postal address for those members that were randomly selected as part of the membership testing process. That is, the AEC had to reasonably depart from this common practice due to the limitation of contact details. For those persons the AEC had an email address for, the Electoral Commission noted that the AEC contacted them by email.

#### *Claim regarding Member 1*

- 7.4. The AEC was only provided a postal address for this elector and therefore in order to conduct membership testing this elector could only be communicated with by post.
- 7.5. Member 1 was sent three letters and the AEC received a return written response to one of these letters in which she advised that she was a member.
- 7.6. The Electoral Commission noted the electors concerns but found that this elector responded and was counted as part of the membership testing.

#### *Claim regarding Member 2*

- 7.7. The AEC was only provided a postal address for this elector and therefore in order to conduct membership testing this elector could only be communicated with by post.
- 7.8. AEC records confirm that Member 2 was sent three letters seeking confirmation as to his membership status. This is in accordance with Appendix 3 of the Guide.
- 7.9. While Mr Briton claimed that Member 2 “...received a letter and completed and returned the form as required” the AEC has no record of receiving a response from Member 2. As such, Member 2 was not recorded as a denial or a confirmation, and another member was randomly selected for testing.
- 7.10. The Electoral Commission considered whether the outcome of the overall membership testing would be affected by the inclusion of this one elector. The Electoral Commission found that the response of one individual would not alter the end result.

## Decision



8. Having regard to all of the above matters, pursuant to subsection 141(4) of the Electoral Act, the Electoral Commission affirmed the decision under review to refuse the Party's application for registration based on failing to meet the legislative requirement of 500 members. Membership testing at the delegate stage found ten denials of 34 responses meant there could not be sufficient statistical confidence that at least 500 of the listed members would confirm membership.

## Statement of Review Rights

9. If you disagree with the Electoral Commission's decision in you can appeal to the Administrative Appeals Tribunal (AAT). You must make your application to the AAT in writing.
10. You have 28 days after receiving the Electoral Commission's decision to apply for AAT review. The AAT will review the decision "on the merits". This means it will take a fresh look at the facts, law and policy relating to the decision and arrive at its own decision. The AAT will decide if the Electoral Commission's decision should stay the same or be changed.
11. A fee is required to apply to the AAT, although it can be waived in some circumstances. More information about the AAT review process and applicable fees is available on the AAT website: [www.aat.gov.au](http://www.aat.gov.au)

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~~The Hon~~ **Dennis Cowdroy OAM QC**  
Chairperson

**Mr Tom Rogers**  
Electoral Commissioner

**Mr David Kalisch**  
Australian Statistician  
(non-judicial member)

9 August 2017

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