

File reference LS6997

Mr Jeffrey Hodges
Secretary

Dear Mr Hodges

Notice of decision under subsection 141(7) of the *Commonwealth Electoral Act 1918* and Statement of Reasons

1. I refer to the written application to the Electoral Commission (the Commission) for review of the decision of the Australian Electoral Commission (AEC) delegate to deregister the Consumer Rights & No-Tolls party (the Party), received by the AEC on 15 June 2018.
2. This letter is to notify you, in accordance with subsection 141(7) of the *Commonwealth Electoral Act 1918* (the Electoral Act), that on 21 August 2018, the Commission reviewed the decision of the AEC delegate, and affirmed the decision under review.

Application for review

3. On 24 July 2017, a notice under subsection 138A(3) of the Electoral Act was sent to you as the Registered Officer of the Party, notifying you that the AEC was conducting a review of the Party to determine whether the Party should remain on the *Register of Political Parties* and was therefore still eligible for federal registration under Part XI of the Electoral Act.
4. On 7 February 2018, a delegate of the Commission issued a notice in accordance with paragraph 137(1)(b) of the Electoral Act notifying you as the Party Agent, of her intention to deregister the Party as she was satisfied on reasonable grounds that the Party ceased to have at least 500 members. The delegate's intention to deregister the Party was based on a statutory declaration (with Party constitution and list of members annexed) which were provided to the AEC on 13 October 2017, as well as subsequent amended membership lists provided by the Party on 24 October 2017, 10 January 2018 and 11 January 2018.
5. The delegate invited the Party to lodge a statement under subsection 137(2) of the Electoral Act by 8 March 2018 setting out the reasons why the Party should not be

deregistered. In response, on 5 March 2018, a member of the Party, in coordination with you, sent an email containing a further revised membership list attached on the Party's behalf to the AEC.

6. The delegate then proceeded to consider the Party's response to the subsection 137(2) notice and the results of the AEC's testing of the revised membership list provided by the Party on 5 March 2018. On 8 May 2018, the delegate determined that the Party should be deregistered under subsection 137(6) of the Electoral Act on the basis that it did not have the minimum 500 members required under paragraph 137(1)(b) and the definition of *eligible political party* at subsection 123(1) of the Electoral Act to continue to be registered as a political party. A notice was sent to you as Registered Officer of the Party.
7. On 15 June 2018, the AEC received from you, as Party Secretary, and by email, the written application for review by the Commission of the delegate's decision of 8 May 2018 to deregister the Party. The application for review included a spreadsheet containing a list of 5826 names, addresses, phone numbers, email addresses, IP addresses and joining date details of purported members of the Party. The following issues were identified as the reasons for making the application:
 - that the Party has more than the 550 members previously supplied for the review, and the AEC should contact all members of the Party;
 - that the statistical methodology used by the AEC does not definitively show that the Party does not meet the 500 members required for continued registration;
 - that the four denials from the membership testing of April 2018 were incorrect and that those who were contacted may not have given true answers;
 - that the Party's constitution states that foundation membership is for life and that members can only withdraw from membership by providing written notification to the Party by email or post – therefore, any denials in the membership testing should be counted as Party members; and
 - that the Party's current registration with the Electoral Commission of Queensland should be considered for registration at the federal level.

Section 127 of the Electoral Act

8. On Friday 15 June 2018, the Speaker issued writs for the election of Members of the House of Representatives for the Divisions of Braddon, Fremantle, Longman, Mayo and Perth. As a result of the issue of the writs, section 127 of the Electoral Act came into effect suspending the consideration of the application for the review of the decision by the Commission until after all five writs were returned. The last of these writs were returned on Monday 13 August 2018. Consequently, consideration of your application for review recommenced on Tuesday 14 August 2018.

Decision

9. The Commission has reviewed the delegate's decision of 8 May 2018 to deregister the Party, and **affirmed** that decision under subsection 141(4) of the Electoral Act.

Reasons for Decision

10. Based on the materials before the Commission, the Commission has determined that the Party does not meet the legislative requirement, set out at paragraph 137(1)(b) and the definition of *eligible political party* at subsection 123(1) of the Electoral Act, of having at least 500 members. The reasons for the Commission's decision are set out below.

Material taken into account

11. In making this decision, the Commission had regard to:

- the statutory declaration and copy of the Party's constitution provided to the AEC on 13 October 2017 in response to the AEC's section 138A notice of 24 July 2017;
- the membership list provided to the AEC on behalf of the Party on 5 March 2018;
- the results of the testing of the list of the Party's membership list provided on 5 March 2018, and to be relied on for the purposes of registration, conducted by the AEC in accordance with the sampling methodology developed by the Australian Bureau of Statistics (ABS);
- the delegate's decision to deregister the Party of 8 May 2018, made under Part XI of the Electoral Act;
- the notice of decision and statement of reasons dated 8 May 2018, given under subsection 137(6) of the Electoral Act;
- the reasons set out in the application to the Commission for review of the decision to deregister the Party, received by the AEC on 15 June 2018;
- Part XI of the Electoral Act, in particular, sections 126, 127, 137, 138A and 141; and
- the AEC *Party Registration Guide*.

Findings of Fact

12. On the material before the Commission, the Commission makes the following findings:

Membership list

13. In consideration of paragraph 137(1)(b) of the Electoral Act, the Commission considered whether it was satisfied on reasonable grounds that the Party had ceased to have at least 500 members.

14. On 5 March 2018, the Party submitted a list of the names of the 550 members to be relied on for the purposes of continued registration as a political party.

15. AEC staff cross-checked this membership with the Commonwealth electoral Roll (the Roll), as required by subsection 123(3) of the Electoral Act. These searches identified that:

- 16 of the 550 submitted members could not be matched to the Roll;

- on request of the Party, one name was removed from the list of submitted members to be relied on for the purposes of registration, as the person was no longer considered a member of the Party;
 - two listed members were identified as duplicates; and
 - 25 listed members were identified as members of other registered political parties.
16. Accordingly, the AEC then proceeded to test a sample of the remaining 506 members.
17. In accordance with the methodology devised by the ABS, a list of 506 members requires a random sample of 26 contactable members to confirm they are members of the Party, with up to one denial of membership allowed, in order for the Commission to have statistical confidence that the Party has at least 500 members.
18. The AEC attempted to contact 31 persons on the list, as some of those listed were unable to be contacted. Of the 26 persons contacted, 22 persons confirmed their membership, while four denied membership of the Party.
19. As the number of denials exceeded the one permitted for a sample of this size in accordance with the sampling methodology developed by the ABS, the Commission is **not satisfied** that the Party meets the minimum membership requirements of paragraph 137(1)(b) and the definition of *eligible political party* at subsection 123(1) of the Electoral Act.

Comments on the application for review

20. In respect of the assertion in the application for review around the suitability of the membership sampling methodology used by the AEC, the Commission is satisfied that the methodology, developed by the ABS, was correctly applied in this case, that the methodology is consistent with the Electoral Act and that the methodology provides the AEC with a statistical degree of certainty about a party's number of members.
21. In respect of the assertion in the application for review that the AEC should contact all members of the Party, the Commission notes that the *AEC Party Registration Guide* requests that parties provide a list of between 500 to 550 members. This is considered to be to a party's advantage, by minimising the work required of the party in confirming the enrolment status and contact details of additional other members.
22. The sampling methodology forms part of a testing process used by the AEC, the aim of which is to give the AEC a statistical degree of certainty about a party's number of members. Depending on the sample size used, the sampling methodology allows for a certain number of nominated members to deny membership when contacted by the AEC before the Commission (or its delegate) determines that the party does not have the minimum 500 members.
23. The recommendations from the ABS regarding sample sizes, the relative number of allowable membership denials and the risk/certainty levels associated with these, are set out in a table to which the Commission or delegate refers on each occasion that membership testing has been conducted either for a new party application pursuant to section 126 of the Electoral Act or review of eligibility pursuant to 138A of the Electoral Act.

24. In respect of the assertion in the application for review around persons contacted by the AEC denying Party membership, while the Constitution for your Party does create the concept of life membership, it is clear from the AEC *Party Registration Guide* that party members must be on the electoral Roll and the list provided will be used for testing in accordance with the AEC *Party Registration Guide*. As such, there needs to be a formal acknowledgment by the member when asked by the AEC. Otherwise it would be open to a party to deem persons or classes of persons to be members of the party. Section 123 of the Electoral Act does not contemplate the foisting of membership of a political party upon unwilling individuals so as to satisfy the definition of 'eligible political party'. The Commission considers the confirmations and denials made to AEC officers in the process of membership testing as the formal acknowledgment required to test party membership when assessing the eligibility of a party for registration.
25. In respect of the assertion in the application for review around the Party's registration with the Electoral Commission of Queensland, the Electoral Commission of Queensland is governed by Part 6 of the *Electoral Act 1992* (Qld) which is different to the processes set out in the Electoral Act in relation to the registration of political parties. The process undertaken for registration as a political party with the Electoral Commission in Queensland in 2014 is not applicable to the processes which the Party underwent in 2017-2018 with the AEC for federal registration of a political party.

Summary of Decision

26. The Commission has **affirmed** the decision of the delegate to deregister the Party on the basis that the Party does not meet the legislative requirement of having at least 500 members.
27. A statement of review rights in respect of this decision is enclosed.

Yours sincerely

<signed>

The Hon. Dennis Cowdroy OAM QC
30 August 2018

<signed>

Mr David Kalisch
30 August 2018

<signed>

Mr Tom Rogers
30 August 2018

Your review rights

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

How do I make an application to the AAT for a review of a decision?

In accordance with section 29 of the *Administrative Appeals Tribunal Act 1975*, the application must be made:

- in writing;
- be accompanied by any prescribed fee;
- contain a statement of reasons for making the application;
- a copy of this notice of decision and statement of reasons; and
- made within the prescribed time.

Your application should also:

- specify the name of the applicant; and
- include an address at which documents may sent to.

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

www.aat.gov.au/applying-for-a-review/how-to-apply.

Prescribed fee

The standard application fee is \$920. You may be entitled to pay a reduced fee of \$100 in certain circumstances.

If you pay the standard application fee, and the case is resolved in your favour, the difference between the fee you paid and \$100 will be refunded. There is no refund if you paid the reduced fee of \$100.

Further information about fees is available on the AAT website:

<http://www.aat.gov.au/applying-for-a-review/fees>.

Prescribed time for making an application

You may apply for review from the period commencing on the day on which the decision is made, being 21 August 2018 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 is made in writing to the AAT and the AAT is satisfied that it is reasonable in all the circumstances to do so.

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 of Political Parties* afresh and made a decisions 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:

<http://www.aat.gov.au/steps-in-a-review/overview-of-the-review-process>

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 further queries regarding this decision, please contact the Commission Secretariat by emailing commission.secretariat@aec.gov.au.