NOTICE OF DECISION ON PARTY REGISTRATION DEREGISTERING A POLITICAL PARTY AND REMOVAL FROM THE REGISTER OF POLITICAL PARTIES VOTEFLUX.ORG | UPGRADE DEMOCRACY!

Notice of decision under s 137(6) of the *Commonwealth Electoral Act 1918* (Electoral Act) and Statement of Reasons

1. I am writing in accordance with s 137(6)(b) of the Electoral Act to notify you of the review conducted under s 138A(1) of the Electoral Act and the determination to deregister VOTEFLUX.ORG | Upgrade Democracy! (the Party) and cancel the Party's particulars from the *Register of Political Parties* (the Register).

2. As a delegate of the Electoral Commission, I am authorised to deregister the Party under s 137(6)(a) of the Electoral Act, and to cancel the particulars of the Party on the Register under s 138 of the Electoral Act.

3. On 8 October 2021, the Electoral Commission issued a Notice to the Registered Officer of the Party, Mr Nathan Spataro, under s 138A(3) of the Electoral Act (s 138A Notice). This Notice requested the Party provide the Australian Electoral Commission (AEC) with an electronic membership list of between 1,500 and 1,650 members in order for the AEC to determine the eligibility of the Party to remain registered. The due date for responding was 8 December 2021.

4. On 26 November 2021, I sent a reminder to the Party outlining the requirements of the s 138A Notice.

5. On 7 December 2021, the Party responded to the s 138A Notice providing a list of 1,649 individuals the Party considers to be members of the Party.

6. On 13 January 2022, the Party was issued with a notice under s 137(1) of the Electoral Act (the s 137 Notice), that I, as the delegate of the Electoral Commission, was satisfied on reasonable grounds that the Party does not have at least 1,500 members. Pursuant to s 137(2) of the Electoral Act, the Party was provided with one month to respond to the s 137 Notice (being 13 February 2022).

7. On 13 February 2022, the Registered Officer of the Party, Mr Spataro, provided a statement in accordance with s 137(2) of the Electoral Act, and an additional list of 4,680 individuals the Party considers to be members.

8. Section 137(5) of the Electoral Act prescribes that:

> *Where, in response to a notice given under s 137(1) in relation to a political party, a statement is lodged under s 137(2), the Electoral Commission shall consider that statement and determine whether the political party should be deregistered for the reason set out in that notice.*

Decision

9. As a delegate of the Electoral Commission, I am satisfied on reasonable grounds that the Party does not have at least 1,500 members, and the Party should be deregistered.

10. I have determined that VOTEFLUX.ORG | Upgrade Democracy! be deregistered under s 137(1)(b) of the Electoral Act, for the reasons set out in this Notice, and that the particulars of the Party be cancelled from the Register under s 138 of the Electoral Act.

Materials I have taken into account

11. In making my decision, I have had regard to:
    - the s 138A Notice;
    - the reminder letter sent to the Party on 26 November 2021;
    - the response to the s 138A notice, being a list of individuals the Party considers to be members of the Party, lodged on 7 December 2021;
    - the s 137 Notice;
    - the statement provided by the Party in response to the s 137 Notice on 13 February 2022, including a list of individuals the Party considers to be members of the Party;
    - the membership testing methodology and formula provided by the Australian Bureau of Statistics (ABS)
    - Part XI of the Electoral Act; and
    - the AEC *Guide for maintaining party registration.*

Findings of Fact

12. On the material before me, I make the following findings.

13. No member of the Party is a member of the Parliament of the Commonwealth.

14. The membership list lodged on 7 December 2021 contained the details of 1,649 individuals.

15. The membership list lodged on 13 February 2022 contained the details of 4,680 individuals.

Membership list of 7 December 2021

16. The membership list submitted by the Party on 7 December 2021, contained 1,649 names of individuals that the Party considers to be current members (referred to as 'members' below). The following results were found after membership testing against the Commonwealth Electoral Roll (the electoral roll).

Submitted membership list	**1,649**
Automatically matched to the electoral roll	1,614
Manually matched to the electoral roll	22
Unable to match or not enrolled on the electoral roll	(11)
Deceased	(2)
Total	**1,636**

17. Of the 1,636 members matched to the electoral roll the following results identified duplicates within the membership list or duplicate members who have previously supported the registration of a registered political party (or parties):

Total matched to the electoral roll	**1,636**
Under 18 year-old members	(0)
Duplicates identified in the membership list provided by the Party	0
Members identified as also supporting the registration of another party	(11)
Total	**1,625**

18. In accordance with the random sampling formula provided by the ABS, a list of 1,625 members requires a random sample of 53 contactable members to confirm they are members of the Party, with up to seven denials of membership permitted. The Electoral Commission's view is that, absent of any relevant factors to the contrary, a failure to satisfy the test provided by the ABS constitutes reasonable grounds upon which a delegate of the Electoral Commission can be satisfied that a non-Parliamentary political party does not have at least 1,500 members.

The relevant numbers for this membership test were:	**Members**
The random sample size	53
Maximum number of denials permitted	7
Contact attempts made*	78
Responses received	
- Confirmed Membership	44
- Denied Membership	9
PASS/FAIL	**FAIL**

*as some members were uncontactable, or provided a neutral response.

19. Accordingly, there were reasonable grounds on which I, as a delegate of the Electoral Commission, was satisfied that the Party did not have at least 1,500 members (s 137(1)(b) of the Electoral Act).

20. As such, the Party was issued with a s 137 Notice on 13 January 2022.

21. On 13 February 2022, in response to the s 137 Notice, and in accordance with s 137(2) of the Electoral Act, the Party lodged a statement with the Electoral Commission setting out reasons why the Party should not be deregistered, and provided a list of 4,680 individuals the Party considers to be members.

Membership list of 13 February 2022

22. The membership list submitted by the Party on 13 February 2022 contained 4,680 names of individuals that the Party considers to be current members (referred to as 'members' below). As a delegate of the Electoral Commission, I instructed that the top 1,650 names be tested to conform with the AEC's membership testing parameters. The following results were found after initial membership testing against the electoral roll.

Submitted membership list	**1,650**
Automatically matched to the electoral roll	1,575
Manually matched to the electoral roll	45
Not currently enrolled or unable to match on the electoral roll	(18)
Deceased	(12)
Total	**1,620**

23. Of the 1,620 members matched to the electoral roll the following results identified duplicates within the membership list or duplicate members who have previously supported the registration of a registered political party (or parties):

Total matched to the electoral roll	**1,620**
Under 18-year-old members	(0)
Duplicates identified in the membership list provided by the Party	(0)
Members identified as also supporting the registration of another party	(34)
Total	**1,586**

24. In accordance with the random sampling formula provided by the ABS, a list of 1,586 members requires a random sample of 46 contactable members to confirm they are members of the Party, with up to five denials of membership permitted. The Electoral Commission's view is that, absent of any relevant factors to the contrary, a failure to satisfy the test provided by the ABS constitutes reasonable grounds upon which a delegate of the Electoral Commission can be satisfied that a non-Parliamentary political party does not have at least 1,500 members.

The relevant numbers for this membership test were:	**Members**
The random sample size	46
Maximum number of denials permitted	5
Contact attempts made*	75
Responses received	
- Confirmed Membership	29
- Denied Membership	17
PASS/FAIL	**FAILED**

*as some members were uncontactable, or provided a neutral response.

Supporting statement

25. I have considered the statement lodged by the Party on 13 February 2022, setting out reasons why the Party should not be deregistered.

a) "In your January 13 correspondence, you said:

I am notifying you under s 137(1)(b) of the Electoral Act that the Electoral Commission is considering deregistering the Party, as the Electoral Commission is satisfied on reasonable grounds that the Party does not have at least 1,500 members."

b) "We do not believe that such a decision would be based on reasonable grounds. This is because the AEC's methodology is flawed. Below, we will detail why we believe that this is the case and provide reasoning and evidence to back this up."

c) "We have 3 arguments supporting our case. Each argument is individually sufficient to show that a decision (by the AEC) to deregister the Party would not be based on reasonable grounds; each argument is a decisive criticism of the current methodology.

● The statistical method used fails ~10% of the time for borderline cases.

● The statistical method uses an artificially limited sample size and thus does not estimate party membership, though does (roughly) measure membership attrition.

● We have sufficient membership and provide evidence. Attached is a list of 4680 members. Each entry was, at some point, verified against the electoral roll."

d) "Unless each of these criticisms can be addressed, we do not believe that a decision by the AEC to deregister the Party would be based in reality."

e) "Please find attached a list of 4,680 members of the Party. *Note that these are the subset of members for whom we have been able to pre-validate their electoral roll details at some point.*"

f) "Based on the observation that 4,680 is a lot more than 1,500, we reject any decision to deregister the Party on the grounds that it is in **conflict with reality**."

26. I reject the reasons outlined by the Party in its statement provided on 13 February 2022 for the following reasons.

27. The Party failed membership testing for exceeding the maximum number of permitted denials according to the ABS methodology used by the AEC. It did not fail membership testing due to having an insufficient number of members being identified on the electoral roll.

28. The Electoral Act defines an elector as someone that is on the Commonwealth Electoral Roll. Section 123 of the Electoral Act prescribes that an eligible political party, not being a Parliamentary party, has 'at least 1,500 members'. The requirement is not to be solely 'an elector' but to be a member of the party.

29. The Party challenges the validity of the AEC's membership testing process. This process has been developed by the AEC to support the delegate's consideration of whether a party has sufficient members. It is based on sampling methodology designed in consultation with the ABS and provides a valid methodology to satisfy a delegate of a party's membership. The Electoral Commission has previously concluded that the methodology 'was appropriate for membership testing, including because it was rational, fair and practical in all the circumstances.'[1]

30. I consider that the membership testing results outlined above provide a more robust method for ascertaining whether a party has satisfied the requirements of the Electoral Act than a statement provided by the party.

31. In summary, I remain satisfied that the Party does not have at least 1,500 members based on the outcomes from membership testing both membership lists of 7 December 2021 and 13 February 2022.

32. Accordingly, in my capacity as a delegate of the Electoral Commission, I have deregistered VOTEFLUX.ORG | Upgrade Democracy! under s 137(6) of the Electoral Act and the particulars of the Party have been cancelled from the Register under s 138 of the Electoral Act.

Review rights

33. Under s 141(2) of the Electoral Act, a person (including an organisation) affected by the decision who is dissatisfied with the decision may make a written application to the Electoral Commission for internal review of this decision within 28 days after the day on which the decision first comes to the notice of that person. There is no fee payable for requesting an internal review.

34. Requests for review of this decision should be addressed to Mr Tom Rogers, Australian Electoral Commissioner, and emailed to commission.secretariat@aec.gov.au or posted to Locked Bag 4007, Canberra City ACT 2601.

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1 https://www.aec.gov.au/Parties_and_Representatives/Party_Registration/Registration_Decisions/2021/notice-of-decision-with-reasons-SUPA.pdf

How do I request an internal review?

35. In accordance with ss 141(2) and 141(3) of the Electoral Act, an application for review must:
    - be in writing;
    - specify the name of the applicant;
    - specify an address of the applicant; and
    - set out the reasons for making the application.

36. If you wish to apply for additional time beyond the 28 days to make an application for review of the delegate's decision, please also include the reasons for the application for additional time.

Who conducts an internal review?

37. The Electoral Commission, which is comprised of three members, the Australian Electoral Commissioner, a judicial member and a non-judicial member, conducts internal reviews. Under s 141(4) of the Electoral Act, the Electoral Commission shall review an application 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.

What can I do if I disagree with the outcome of an internal review?

38. If an internal review decision has been made by the Electoral Commission a person whose interests are affected, and who is dissatisfied with the decision made by the Electoral Commission, may apply to the AAT for an external merits review of the decision. More information on how to apply to the AAT and any applicable fees can be found on its website: www.aat.gov.au/applying-for-a-review/how-to-apply.

Freedom of Information

39. 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.

40. Should you have any queries regarding party registration, please contact the AEC on 02 6271 4552, visit www.aec.gov.au or email fad@aec.gov.au.

Yours sincerely

(signed)

Joanne Reid
Assistant Commissioner
Delegate of the Electoral Commission

24 March 2022