

Commission Meeting No. 262, 20 March 2017

Statement of Reasons

Item 3: Review of delegate's decision to refuse to enter the Democratic Labour Party abbreviation (Labour DLP) into the Register

File Reference: LS5759

The Australian Electoral Commission has set aside the decision of the delegate. The Australian Electoral Commission has agreed to a substituted decision to enter the Democratic Labour Party abbreviation (Labour DLP) into the Register.

Background

1. Changes to the Register – section 134 of the Electoral Act

- 1.1. Parties on the Register of Political Parties (the Register) may make an application to the Electoral Commission to change certain party details contained in the Register, including the party's name¹ and/or abbreviation.²
- 1.2. When dealing with an application to change a party's name and/or abbreviation in the Register, the Electoral Commission must refuse the application under section 129 of the *Commonwealth Electoral Act 1918* (Electoral Act) if the name or abbreviation:
 - a. comprises more than 6 words;
 - b. is obscene;
 - c. is the name, or is an abbreviation or acronym of the name, of another political party (not being a political party that is related to the party to which the application relates) that is a **recognised political party**;
 - d. so nearly resembles the name, or an abbreviation or acronym of the name, of another political party (not being a political party that is related to the party to which the application relates) that is a **recognised political party** that it is likely to be

¹ Paragraph 134(1)(c) of the Electoral Act.

² Paragraph 134(1)(d) of the Electoral Act.

- confused with or mistaken for that name or that abbreviation or acronym, as the case may be;
- da. is one that a reasonable person would think suggests that a connection or relationship exists between the party and a registered party if that connection or relationship does not in fact exist; or
 - e. comprises the words 'Independent Party' or contains the word 'Independent' and:
 - i. the name, or an abbreviation or acronym of the name, of a **recognised political party**³; or
 - ii. matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a **recognised political party** that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym, as the case may be.

Democratic Labour Party Name & Abbreviation Application

2. Democratic Labour Party (DLP) Application

- 2.1. On 16 March 2016, the Electoral Commission received an application under subsection 134(1) of the Electoral Act from Mr Stephen Campbell, the Federal Secretary of DLP, to change the party name from 'Democratic Labour Party (DLP)' to 'Democratic Labour Party', and to change the party's abbreviation to 'Labour DLP', from 'DLP Democratic Labour'.
- 2.2. For the purposes of considering the application, the delegate construed the application to change the party name and the application to change the party abbreviation as two separate applications.⁴
- 2.3. On 13 September 2016, the Electoral Commission's delegate approved the DLP's application to change the party name in the Register and that the Register was duly updated and Mr Campbell was notified of the delegate's decision.

3. Application for Abbreviation Change

- 3.1. An initial assessment of the proposed new party abbreviation for the DLP was undertaken by AEC staff in March 2016, and included a review of the federal, state and territory registers for parties with similar abbreviations. This review identified the Australian Labor Party NSW Branch (registered both federally and in NSW), with the registered abbreviation 'Labor', as being potentially relevant due to its similarity.

³ **Recognised political party** is defined in subsection 129(2) of the Electoral Act as a political party that is:

- (a) A Parliamentary party; or
- (b) A registered party; or
- (c) Registered or recognised for the purposes of the law of a State or Territory relating to elections and that has endorsed a candidate, under the party's current name, in an election for the Parliament of the State or Assembly of the Territory in the previous 5 years.

⁴ As provided for under section 33 of the *Acts Interpretation Act 1901*.

- Other less relevant registered abbreviations were, 'WA Labor', 'Country Labor' and 'ACT Labor'.
- 3.2. On 2 April 2016, the Electoral Commission's delegate made an initial assessment that the application for the change of the DLP's abbreviation should be refused under paragraphs 129(1)(d) and (da) of the Electoral Act, as the proposed abbreviation was one that so nearly resembled that of 'Labor' that it could be mistaken or confused with it, and further, a reasonable person would think that there was a connection or relationship between the DLP and the Australian Labor Party (ALP) NSW Branch. The Electoral Commission's delegate issued a notice under section 131 of the Electoral Act on 5 April 2016, advising Mr Campbell of the intention to refuse the DLP's application to change the party's abbreviation, and inviting Mr Campbell to either vary the application or advise whether the DLP wanted to proceed with the existing application.
- 3.3. The Electoral Commission's delegate determined on 21 April 2016, that the proposed abbreviation should be refused under paragraphs 129(1)(d) and (da) of the Electoral Act. The delegate signed a letter to Mr Campbell enclosing a statement of reasons for the decision,⁵ and a statement of Mr Campbell's review rights.⁶ The AEC did not take any steps to publicise the reasons for the delegate's decision.⁷

The Application for Review

4. On 20 May 2016, the Electoral Commissioner received a letter from Mr Campbell requesting a review of the delegate's decision to refuse the DLP's application to change the party's abbreviation on the basis that:
- the delegate's decision was inconsistent with other decisions of the Electoral Commission;
 - the delegate's decision was inconsistent with the decision of the Administrative Appeals Tribunal (AAT) in *Woollard*;
 - the delegate's decision was inconsistent with a decision of the Victorian Electoral Commission; and
 - the proposed DLP abbreviation is different to that of 'Labor'.

Response to issues raised in the review application

- 5. The delegate's decision was inconsistent with other decisions of the Electoral Commission**

⁵ As required by subsection 134(8) of the Electoral Act.

⁶ As required by subsection 141(8) of the Electoral Act.

⁷ As provided for under paragraph 134(8)(b) of the Electoral Act.

- 5.1. Mr Campbell asserted that the delegate's decision to refuse the DLP's abbreviation application was inconsistent with other decisions of the Electoral Commission. In particular, Mr Campbell compared the DLP's application to that of the Liberal Democratic Party, who successfully registered an abbreviation and party name using the word 'Liberal'. Mr Campbell noted that in those cases, both parties used identical spelling of the word 'Liberal', with one party simply adding 'Democrats' to distinguish itself. By contrast, the proposed DLP abbreviation uses different spelling of 'Labour' from that of the ALP and includes the acronym 'DLP' to distinguish itself.
 - 5.2. The delegate did not interpret paragraphs 129(1)(d) and (da) of the Electoral Act in the same manner as the Electoral Commission did when it considered applications from the Liberal Democratic Party to change its party name and abbreviation in 2010 and 2013. While non-binding, such decisions of the Electoral Commission are highly persuasive and should inform the delegate's decision.
 - 5.3. The Electoral Commission has accepted general political terms are commonly used by different political parties without causing confusion, mistake, or the wrongful suggestion that a link exists between two different parties.
 - 5.4. It appears from these decisions that for the Electoral Commission to refuse an application for a change in a party name and/or abbreviation under paragraphs 129(1)(d) and (da) of the Electoral Act, there must be additional similarities between the party names and/or abbreviation (as the case may be) than just the mere use of a common generic political term.
 - 5.5. Accordingly, the Electoral Commission concluded that Mr Campbell's submissions should be accepted.
- 6. The delegate's decision was inconsistent with the AAT decision of *Woollard***
- 6.1. Mr Campbell asserted that the delegate's decision is not consistent with the decision of the AAT in *Woollard*.⁸
 - 6.2. In *Woollard* the AAT considered the Electoral Commission's decision to refuse to enter on the Register the party name, "Liberals for Forests" and the abbreviation "L 4 F". In setting aside the Commission's decision and ordering the Electoral Commission to enter, "Liberals for Forests" and "L 4 F" into the Register, the AAT discussed the construction of paragraph 129(1)(d) and the key elements of "resemble", "likely to be," "confused with", or "mistaken for". The AAT also noted that section 129 is a disqualifying provision and should not be construed so as to 'lock up' generic words (such as 'Australia', 'Liberal' and 'Labour') as the property of any one organisation.⁹

⁸ *Woollard and the Australian Electoral Commission* [2001] AATA 166.

⁹ *Woollard and the Australian Electoral Commission* [2001] AATA 166 at [40].

- 6.3. According to Mr Campbell, the combined effect of the AEC's approval of the ALP's abbreviation of 'Labor' in 2007, and the current decision of the delegate, is that the ALP has been "*allowed . . . to 'lock up' a generic word, 'Labor' as their exclusive property*" (in direct contradiction to the AAT's decision in *Woollard*).
- 6.4. The DLP's proposed abbreviation should not be refused under either paragraph 129(1)(d) or (da) of the Electoral Act. This is because the term 'Labour' is a generic word and should not be 'locked up' as the property of the ALP. The addition to this generic word of other distinguishing features, such as the different spelling of 'Labour' and the use of the acronym 'DLP', make it more unlikely that the proposed abbreviation would be confused for 'Labor' or would lead to the mistaken suggestion that a connection exists between the two parties.
- 6.5. As such, Mr Campbell's submission that the delegate's decision was inconsistent with the decision of *Woollard* was accepted by the Electoral Commission.

7. The delegate's decision was inconsistent with a decision of the Victorian Electoral Commission

- 7.1. Mr Campbell submitted that the delegate's decision was inconsistent with the 2010 decision of the Victorian Electoral Commission (VEC), which determined that, for the purposes of the Victorian electoral system, neither the DLP nor the ALP could use the abbreviation 'Labor' by itself as the parties could be confused. The VEC concluded that the use of the term 'Labor' was permitted only if it was used in conjunction with another term to clearly identify the party.
- 7.2. The Electoral Commission considered that Mr Campbell's submissions should be noted, but rejected as irrelevant.
- 7.3. The delegate was required to consider the DLP's abbreviation application under Part XI of the Electoral Act. By contrast, the separate application to the VEC in 2010 was considered by the VEC under different state-based legislation, namely, the *Electoral Act 2002* (Vic). Although the *Electoral Act 2002* (Vic) contains a similar provision to paragraph 129(1)(d) of the Electoral Act,¹⁰ the Electoral Commission agreed that the delegate was under no legal obligation to consider the VEC's decision in her assessment. While it may have been permissible for the delegate to review the VEC's decision for background information, it was irrelevant for the purposes of her assessment of the DLP's application under the Electoral Act.

8. The DLP's proposed abbreviation is different to that of 'Labor'

- 8.1. Mr Campbell highlighted the clear differences between the DLP's proposed abbreviation and that of 'Labor'. These differences can be summarised as:

¹⁰ See section 47 of the *Electoral Act 2002* (Vic).

- The different spelling of ‘Labour’
 - In 2013 the DLP altered the spelling of its party name to include a ‘u’ in ‘Labour’. The party has advertised this point of difference by using the slogan, “Puts You back into Labour”, in an attempt to educate the public of the change.
 - The altered spelling means the first word of the DLP’s proposed abbreviation is different to the word ‘Labor’ used by the ALP NSW Branch.
 - The use of the acronym ‘DLP’
 - The proposed abbreviation contains the acronym ‘DLP’, “*which is one of the oldest and most widely recognised acronyms of any party in Australia and cannot be confused with the ALP*”.
 - The DLP acronym also demonstrates that the DLP has not sought to exclusively use the generic term “Labour”, but instead has coupled it with ‘DLP’ to clearly identify the party.
- 8.2. The Electoral Commission accepted these submissions. As previously noted, the delegate’s decision failed to consider these clear differences between the proposed DLP abbreviation and ‘Labor’. The delegate’s decision did not discuss any of the distinguishable features of the DLP’s proposed abbreviation. When considered in light of the guidance provided by the AAT,¹¹ it is evident that the DLP’s proposed abbreviation can be sufficiently differentiated from that of ‘Labor’, and accordingly, the application for the abbreviation should not have been refused under paragraphs 129(1)(d) and (da) of the Electoral Act.

Decision

9. Having regard to all of the above matters, pursuant to subsection 141(4) of the Electoral Act, the Electoral Commission decided to set aside the decision of the delegate to refuse the DLP’s abbreviation application, and substitute a new decision, that the DLP’s abbreviation of “Labor DLP” should be accepted.

Statement of Review Rights

10. 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.

11. 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

¹¹ *Woollard and the Australian Electoral Commission* [2001] AATA 166.

decision. The AAT will decide if the Electoral Commission's decision should stay the same or be changed.

12. 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

(signed)
The Hon Dennis Cowdroy OAM QC
Chairperson

April 2017

(signed)
Mr Tom Rogers
Electoral Commissioner

April 2017

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

April 2017