

**NOTICE OF PARTY REGISTRATION DECISION
APPLICATION TO REGISTER A NON-PARLIAMENTARY PARTY IN
THE REGISTER OF POLITICAL PARTIES - APPROVED
INDEPENDENTS FOR CLIMATE ACTION NOW**


Notice of decision under subsection 133(1A) of the *Commonwealth Electoral Act 1918* (the Electoral Act) and Statement of Reasons

I am writing in accordance with subsection 133(1A) of the Electoral Act to notify you of the determination of the application to register Independents For Climate Action Now (the Party) as a non-Parliamentary party in the *Register of Political Parties* (the Register).

I am authorised to determine this application for party registration under Part XI of the Electoral Act as a delegate of the Electoral Commission.

Decision

I have decided to approve the application for registration. Consequently, I have entered the following Party in the Register.

Name of party:	Independents For Climate Action Now
Logo:	
Registered Officer:	James Thomas Peter Tait
Registered Officer's address:	1/53 Stuart Street MULLUMBIMBY NSW 2482
Does party seek election funding:	YES

Materials I have taken into account

In making this decision, I had regard to:

- the application to register as a non-Parliamentary party received by the AEC on 9 January 2019;
- the results of the testing of the Party's membership list conducted by the AEC in accordance with the sampling methodology developed by the Australian Bureau of Statistics;
- Part XI of the Electoral Act;
- the *Commonwealth Electoral (Logo Requirements) Determination 2016*;
- internet searches of trademarked and licenced logos undertaken by a service provider engaged by the AEC;
- written particulars received by the AEC in response to the subsection 132(1) notice from Max (on 6 and 25 March 2019) and Margaret and Ruth (on 20 March 2019);
- the responses submitted to the AEC by the Party under subsection 132(5) of the Electoral Act to the written particulars of Max and Margaret and Ruth;

- the Register of Political Parties of each Australian state and territory; and
- the *AEC Party Registration Guide*.

Findings of Fact

On the material before me, I make the following findings:

Membership list

The membership list submitted by the Party contained 550 members. AEC staff cross-checked this membership list with the Commonwealth Electoral Roll (the Roll), as required by subsection 123(3) of the Electoral Act.

These searches identified that:

- 41 of the 550 submitted members was unable to be matched to the Roll;
- one member was duplicated within the membership list; and
- one member supported the registration of other political parties.

Accordingly, 507 of the 550 members on the list supplied by the Party were able to be matched to the Roll.

In accordance with the random sampling formula provided by the Australian Bureau of Statistics, a list of 507 members requires a random sample of 26 contactable members to confirm they are members of the Party, with up to one denial of membership, in order for me to have statistical confidence that the Party has 500 members.

The AEC attempted to contact 33 members, as some were unable to be contacted or provided a neutral response. Of the responses received, 26 members confirmed their membership, while no members denied membership of the Party.

Accordingly, I am satisfied the Party meets the requirements of paragraph 126(2)(ca) of the Electoral Act.

Party constitution

A copy of the constitution of the Party accompanied the application as required by paragraph 126(2)(f) of the Electoral Act. The constitution provided in the application for registration:

- is in writing; and
- sets out the aims of the Party, at least one of which being promoting the election of its candidates to the Senate and/or House of Representatives.

Accordingly, I am satisfied that the Party's constitution meets the requirements of having a written constitution set out in the definition of *eligible political party* at subsection 123(1) of the Electoral Act, and in accordance with the definition of *political party* at section 4 of the Electoral Act.

Party name

The Party name Independents For Climate Action Now:

- does not comprise more than 6 words;
- is not obscene;
- is not 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) that is a recognised political party;
- does not so nearly resemble the name, abbreviation or acronym of the name of another political party (not being a political party that is related to the Party) that is a recognised political party that it is likely to be confused with or mistaken for that name or that abbreviation or acronym;
- is not one that a reasonable person would think suggests a connection or relationship exists between the Party and a registered party;
- does not comprise the words “Independent Party”;
- does not contain the word “Independent” and the:
 - name, or abbreviation or acronym of the name of a recognised political party;
 - or
 - matter that so nearly resembles the name or an abbreviation or acronym of a recognised political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym.

Accordingly, I am satisfied on the materials before me that there is no basis to refuse the application for registration from the Independents For Climate Action Now under section 129 of the Electoral Act.

Party logo

The logo set out in the application for registration:

- is not obscene;
- does not so nearly resemble the logo of any other person that it is likely to be confused with or mistaken for that logo;
- is not 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;
- does not comprise the words “Independent Party”;
- does not contain the word “Independent” and the:
 - name, or abbreviation or acronym of the name of a recognised political party;
 - or
 - matter that so nearly resembles the name or an abbreviation or acronym of a recognised political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym;
- is in black and white;
- is in a vector graphic in electronic format;
- is 100% black in a CMYK colour space;
- is contained within a frame of 10 mm by 10 mm;
- is able to be reproduced correctly within a frame of 7 mm by 7 mm;
- does not include live text, transparency or overprinting and custom halftone, transfer curve or colour profile settings; and

- is in a PDF file, of less than 5 megabytes, that complies with International Standard ISO 32000-1:2008 as in force at the time this instrument commences.

Accordingly, on the basis of the materials before me, I am satisfied that the proposed logo submitted with the Party's application meets the requirements of subsection 126(2AA) and section 129A of the Electoral Act and the specifications described in *Commonwealth Electoral (Logo Requirements) Determination 2016*.

Other procedural application requirements

I am satisfied that the application for party registration meets the requirements of paragraphs 126(2)(c), 126(2)(d), 126(2)(e) and 126(2)(g) of the Electoral Act. The application for registration as a political party:

- was in writing, signed by the secretary of the Party and by the registered officer of the Party;
- set out the name and address of the person who is to be the registered officer of the Party for the purposes of the Electoral Act;
- advised whether the Party wishes to receive moneys under Division 3 of Part XX of the Electoral Act;
- set out the name and address of the applicant and particulars of the capacity in which each applicant makes the application; and
- was accompanied by a fee of \$500.

On 27 February 2019, I determined that the application had passed the initial assessment and approved the advertisement of the application under paragraph 132(1)(c) of the Electoral Act. A notice of the application was advertised on the AEC website and in 10 major newspapers 5 March 2019. The closing date for objections was 5 April 2019.

Written particulars received objecting to the Party's application

Legislative framework – written particulars

Subsection 132(7) of the Electoral Act provides that the Electoral Commission shall not register a political party unless it has considered any particulars submitted objecting to a party's registration, and any reply to particulars that may have been submitted. Section 132 of the Electoral Act also outlines the requirements for submitting and processing objections to an application.

Paragraph 132(2)(b) of the Electoral Act provides that a person can only submit written particulars objecting to an application (or a logo in the case of point (iv)) on the following grounds:

- (i) the application does not relate to an eligible political party; or
- (ii) the application is not in accordance with section 126 of the Electoral Act; or
- (iii) the application should be refused under section 129 of the Electoral Act; or
- (iv) the Electoral Commission should refuse to enter a logo of the Party in the Register under section 129A of the Electoral Act.

A delegate of the Electoral Commission made a decision that the written particulars received from Max addressed the requirements of paragraph 132(2)(b) of the Electoral Act.

The AEC published the written particulars received by Max and Margaret and Ruth on the AEC website and provided the written particulars, including a notice inviting a reply to the Registered Officer of the Party. The Party submitted responses to the written particulars which were published on the AEC website in accordance with subsection 132(6) of the Electoral Act.

Matters raised in written particulars – Max - 6 March 2019

Max's written particulars of 6 March 2019 included that:

- "I object to the application to register "Independents For Climate Action Now" into the party register on the grounds that it contains the word Independent which is prohibited under S129(e) of the Commonwealth Electoral Act 1918".

Response to matters raised in written particulars

The Party responded to the objection submitted by Max. The Party's response to the objection submits that:

- "Our party's name Independents for Climate Action Now in its full or acronym form ICAN has no reference or inclusion of the name in full or acronym form bearing any resemblance to the name of any recognised political party"; and
- "It is also noted that the prohibition as described under the Act refers to the word Independent (singular) and that our Party's name includes the word Independents (plural).

Matters raised in written particulars – Max - 25 March 2019

Max's written particulars of 25 March 2019 included that:

- "Mr Tait has perhaps forgotten about the recognised political party Climate Action! Immigration Action! Accountable Politicians! I contend that the phrase *climate action*, being a dominant phrase in both the proposed party name and the name of a recognised political party, means Mr Tait's response is invalid under s129(e)(ii), especially considering the use of the word *Independent* as prohibited under s192(e)";
- "Furthermore, the inclusion of *Accountable Politicians* in the aforementioned recognised political party's name adds to this argument, as it maybe be confused (particularly in a colloquial sense) with some meanings of the word *Independent*, and each are used in similar contexts in the *common sense political philosophy* of the layman"; and
- "Additionally, Mr Tait continues in his original response: It is also noted that the prohibition as described under the Act refers to the word Independent (singular) and that our Party's name includes the word Independents (plural). Firstly, this argument against the spirit of the law. Secondly, it refers to a *number* of independents (that being greater than 1). I would like to draw Mr Tait's attention to the *Acts Interpretation Act 1901, Part 5, s23 Rules as to gender and number*, which states: In any Act: (b) words in the singular number include the plural and words in the plural number include the singular. This refutes Mr Tait's linguistic response".

On 4 April 2019, the Party advised the AEC it had elected not to respond to Max's written particulars of 25 March 2019.

My consideration – written particulars submitted by Max

The initial assessment of the Party's application to register as a Parliamentary party took into account the following legal advice:

- "Section 129(1)(e) requires that the application comprise the words 'Independent Party' or comprise the word 'Independent' and one or other of the features listed in paragraphs (i) and (ii) of section 129(1)(e)"; and
- accordingly, the mere inclusion of the words 'Independent' or 'Independent Party' are not grounds to refuse to register a name of a political party."

Although the Party's proposed name includes the word 'Independent' it is not:

- the name, or an abbreviation or acronym of the name, of a recognised political party (within the meaning of subsection 129(2)) – as described in subparagraph 129(1)(e)(i); and
- does not contain matter that so nearly resembles the name, or an abbreviation or acronym of the name, of a recognised political party (within the meaning of subsection 129(2)) that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym, as the case may be – as described in subparagraph 129(1)(e)(ii).

Also, in determining that the proposed Party name and proposed abbreviation should not be refused under section 129 of the Electoral Act the federal Register has been checked and that of each state and territory for parties with a similar name or abbreviation. The following recognised parties were identified that contained the word 'Independent', 'Climate' or 'Action'.

- Tim Storer Independent SA Party (federal Register).
- Climate Action! Immigration Action! Accountable Politicians! (federal Register).

The above parties share either the word Independent or Independents, Climate or Action but share no further similarities with the proposed Party's name. There is enough of a difference in the names that a reasonable person would not think that these parties are connected or related and that the proposed name would not be confused with or mistaken for these names.

I do not support Max's view that the word in the proposed party name 'Independents' could also be confused or mistaken for 'Accountable Politicians'.

Accordingly, I am satisfied on the materials before me that there is no basis to refuse the application for registration from the Independents For Climate Action Now under section 129A of the Electoral Act.

Matters raised in written particulars – Margaret and Ruth - 20 March 2019

Written particulars were lodged by Margaret and Ruth on 20 March 2019, which were assessed as addressing the requirements of section 132 of the Electoral Act and were published on the AEC website.

Margaret and Ruth's written particulars of 20 March 2019 included that:

- "In several places in the Sections 129 and 129A of the Commonwealth Electoral Act (1918) the Act expresses concern about the possibility of confusion between existing entities and a political party proposed for registration";
- "ICAN Australia strongly objects to the incorporation of the phrase "ICAN" into the proposed registered logo of Independents for Climate Action;"
- "ICAN Australia is an extremely well-known organisation, established in legal form for many years, and particularly well-known in the media as the founding part of the global organisation that won the Nobel Peace Prize in 2017;"
- "While not a political party within the strict meaning of the Act, there is a strong possibility of confusion in the context of the upcoming federal election if a political party is allowed to be register the abbreviation 'ICAN'"; and.
- "To avoid any risk of confusion between the two organisations in the context of an election, ICAN Australia calls on the AEC to refuse registration of the abbreviation "ICAN" for Independents for Climate Action".

Margaret and Ruth also submitted an image of the Party's proposed logo and ICAN Australia's logo in support of their objection.

Response to matters raised in written particulars from Margaret and Ruth

The Party responded to the objection submitted by Margaret and Ruth. The Party's response to the objection submits that:

- "The International Campaign to Abolish Nuclear Weapons (ICAN) is not a 'recognised political party' so sections 129 (1) c, d and da of the Act provide no basis for their objection to our party's application for registration";
- "Independents for Climate Action Now submit that there is very little in common between both logos other than the common use of the acronym ICAN and that even with this point the logos are distinguished by the use of upper-case letters by Independents for Climate Action Now and by lower case letters by the International Campaign to Abolish Nuclear Weapons. Therefore, there is a low probability that the logos of one would be confused for the other"; and
- Furthermore, Independents for Climate Action Now submit that the International Campaign to Abolish Nuclear Weapons have no sole propriety to the use of the acronym ICAN. A small search of existing Australian and international organisations finds that there are numerous that utilise the acronym ICAN including others that deal with the Australian Government, a point cited by the International Campaign to Abolish Nuclear Weapons as being a basis for potential confusion. It is also noted that some of these organisations have been in existence as long or longer than the International Campaign to Abolish Nuclear Weapons".

My consideration – written particulars raised by Margaret and Ruth

Margaret and Ruth do not identify a recognised political party name or abbreviation with which the proposed Party name or abbreviation is likely to cause confusion or mistake. As such, I do not consider this submission by Margaret and Ruth sufficient to require the Electoral Commission to refuse the application by the Party to change its name under s 129 of the Electoral Act.

Margaret and Ruth state that the Party's proposed logo:

- "so nearly resembles the logo of any other person that it is likely to be confused with or mistaken for that logo" (paragraph 129A(c) of the Electoral Act).

In the Administrative Appeals Tribunal's (AAT's) decision of *Watson v AEC and Anor* (Watson) of 20 December 2018, the AAT stepped out the process for interpreting and applying paragraph 129A(c) of the Electoral Act. The Tribunal described this as a three step test:

1. Identify the party logo;
2. Does the party logo resemble the logo of "any other person"; and
3. If the answer to question (2) is yes, does the logo so nearly resemble the logo of any other person that it is likely to be confused with or mistaken for that logo.

In applying the three step test described in *Watson* to the evidence submitted by Margaret and Ruth in support of their objection to the Party's logo, I consider that:

1. Margaret and Ruth have identified the logo set out in the Party's application;
2. The Party's proposed logo does resemble the logo of "any other person" (for the reasons detailed below); and
3. The Party's proposed logo does not so nearly resemble the logo of any other person that it is likely to be confused with or mistaken for that logo (for the reasons detailed below).

The Party's proposed logo **does resemble** the logo of "any other person"

The Party's proposed logo includes the acronym 'ICAN' and the logo identified by Margaret and Ruth, that being the logo for ICAN Australia, includes the acronym 'ican'.

The Party's proposed logo **does not so nearly resemble** the logo of any other person that it is likely to be confused with or mistaken for that logo

The only similarity the Party's proposed logo shares with ICAN Australia's logo is the acronym ICAN, these are also presented differently as capitalised (the Party's proposed logo) or non-capitalised text (ICAN Australia's logo). ICAN Australia's logo also includes additional text that further differentiates it from the Party's proposed logo.

Additionally, ICAN Australia's logo can be differentiated from the Party's proposed logo by variations in the styled images of the symbols, the different designs and colour in addition to the additional text.

For these reasons I do not accept that the Party's proposed logo "does so nearly resemble the logo of any other person that it is likely to be confused with or mistaken for that logo".

Accordingly, I am satisfied on the materials before me that there is no basis to refuse the application for registration from the Independents For Climate Action Now under section 129A of the Electoral Act.

Your review rights

Under subsection 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.

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 by post to Locked Bag 4007, Canberra City ACT 2601.

How do I request an internal review?

In accordance with subsections 141(2) and 141(3) of the Electoral Act, an application for review must:

- be in writing;
- specify the name of the applicant; and
- set out the reasons for making the application.

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?

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 subsection 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?

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 Administrative Appeals Tribunal (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

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

Gabrielle Paten
Assistant Commissioner
Delegate of the Electoral Commission

10 April 2019