


NOTICE OF PARTY REGISTRATION DECISION
APPLICATION TO REGISTER A PARTY IN THE REGISTER OF
POLITICAL PARTIES APPROVED
DAVID POCOCK

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

1. I am writing in accordance with s 133(1) of the Electoral Act to notify you of the determination of the application to register David Pocock ('the Party'), a non-Parliamentary party, in the *Register of Political Parties* ('the Register').
2. I am authorised to determine this application for party registration ('the Application') under Part XI of the Electoral Act as a delegate of the Electoral Commission.

Decision

3. I have decided to approve the Application. Consequently, I have entered the following Party in the Register:

Name of party:	David Pocock
Registered Officer:	Mr Glenn Cummings
Registered Officer's address:	24 Tralee Street HUME ACT 2620
Party logo	
Does party seek election funding:	YES

Materials I have taken into account

4. In making this decision, I had regard to:
 - the Application received by the Australian Electoral Commission ('the AEC') on 24 December 2021 (and revised membership list supplied on 5 January 2022);
 - 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 ('the ABS');
 - Parts I and XI of the Electoral Act;
 - written particulars objecting to the Application (referred to as 'objections') received from persons named 'Ernst', 'Neil' and 'Lis';
 - the responses to the objections from the Party ('the Response');
 - the Register and the Register of Political Parties of each Australian State and Territory;
 - the *Commonwealth Electoral (Logo Requirements) Determination 2016*;
 - internet searches of trademarked and licenced logos undertaken by a service provider engaged by the AEC;
 - the AEC's *Guide for registering a party*.

Findings of Fact and Consideration

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

Procedural application requirements

6. I am satisfied that the Application meets the requirements of ss 126(2)(a)–(g) of the Electoral Act. The Application:

- was in writing, signed by the applicants (s 126(2));
- set out the name of the Party (s 126(2)(a));
- set out a logo of the Party (s 126(2)(ba));
- 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 (s 126(2)(c));
- included a list of the names of the 1,500 members of the Party to be relied on for the purposes of registration (s 126(2)(ca));
- stated that the Party wishes to receive moneys under Division 3 of Part XX of the Electoral Act (s 126(2)(d));
- set out the names and addresses of the applicants and particulars of the capacity in which each applicant makes the Application (s 126(2)(e));
- was accompanied by a copy of the constitution of the Party (s 126(2)(f)); and
- was accompanied by a fee of \$500 (s 126(2)(g)).

Membership list

7. The membership list submitted for the Application supplied on 5 January 2022, contained 1,579 names of people that the Party considers to be current members (referred to as 'members' below). AEC staff cross-checked this membership list with the Commonwealth Electoral Roll ('electoral roll'), as required by the meaning of 'member of a political party' in s 123(3) of the Electoral Act.

Submitted membership list	1,579
Automatically matched to the electoral roll	1,519
Manually matched to the electoral roll	59
Unable to match or not enrolled on the electoral roll	(1)
Deceased	0
Total	1,578

8. Of the 1,578 members matched to the electoral roll the following were identified as duplicates within the membership list or as duplicate members who have previously supported the registration of a registered political party (or parties):

Total matched to the electoral roll	1,578
Under 18 years old	0
Duplicates identified in the membership list provided by the Party	0
Members identified as also supporting the registration of another party	(13)
Total	1,565

9. In accordance with the random sampling formula provided by the ABS, a list of 1,565 members requires a random sample of 42 contactable members to confirm they are members of the Party, with up to four denials of membership are 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 the delegate of the

Electoral Commission can be satisfied that a non-Parliamentary political party does not have the required 1,500 members.

The relevant numbers for this membership test were:	Members
The random sample size	42
Denials Permitted	4
Contact attempts made*	55
The responses were:	
- Confirmed Membership	42
- Denied Membership	0
PASS/FAIL	PASS

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

10. Accordingly, I am satisfied that the Party has at least 1,500 members and the Application meets the requirements of s 126(2)(ca) of the Electoral Act.

Party constitution

11. A copy of the constitution of the Party accompanied the Application as required by s 126(2)(f) of the Electoral Act. The constitution provided in the Application:
- is in writing; and
 - sets out the aims of the Party, at least one of which being the promotion of the election of its candidates to the Senate and/or House of Representatives.

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

Party name

13. When undertaking an initial assessment of the Application, I considered the Party’s proposed name against the requirements of s 129 of the Electoral Act, and reviewed the Register and the registers for each State and Territory for parties with a similar name, abbreviation or acronym.

14. The Party name, David Pocock:
- does not comprise more than 6 words;
 - is not obscene, frivolous or vexatious;
 - 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, 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 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 comprise or 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 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.
- does not contain a word that is in the name, or the abbreviation of the name, of a registered political party and therefore does not require consent from an existing registered political party;

15. Accordingly, I am satisfied on the materials before me that there is no basis to refuse the Application under s 129 of the Electoral Act.

Party logo

16. The logo set out in the Application:

- is not obscene;
- is not the logo of any other person;
- 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 Party and a registered political party if that connection or relationship does not in fact exist;
- does not comprise the words “Independent Party”;
- does not comprise or 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 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;
- does not contain a word that is in the name, or the abbreviation of the name, of a registered political party and therefore does not require consent from an existing registered political party;
- 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, overprinting, 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 of the commencement of the *Commonwealth Electoral (Logo Requirements) Determination 2016*.

17. Accordingly, on the basis of the materials before me, I am satisfied that the proposed logo submitted with the Application meets the requirements of s 126(2AA) of the Electoral Act and the specifications described in *Commonwealth Electoral (Logo Requirements) Determination 2016* and that there is no basis to refuse to enter the Party’s logo in the Register under s 129A of the Electoral Act.

Written particulars

18. Section 132(2)(b) of the Electoral Act provides that a person can only submit written particulars objecting to an application to register a party (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 s 126 of the Electoral Act; or
 - (iii) the application should be refused under s 129 of the Electoral Act; or
 - (iv) the Electoral Commission should refuse to enter a logo of the party in the Register under s 129A of the Electoral Act.
19. Section 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.
20. On 11 February 2022, the application was advertised in 10 major newspapers circulating in each State and Territory of Australia and published on the AEC website. The advertised closing date for objections was 11 March 2022.

Objections to the Application

21. The Electoral Commission received four objections:

Written particulars from	Date received	Administrative requirements met	Grounds for objection under the Electoral Act
'Ernst'	10 March 2022	Yes	ss 123, 126 or 129
'Ernst'	10 March 2022	Yes	ss 123, 126 or 129
'Neil'	10 March 2022	Yes	ss 123, 126 or 129
'Lis'	10 March 2022	Yes	ss 123, 126 or 129

22. Summary of Objection one from Ernst:

'At the time the application for registration as a political party was lodged it was clear from interviews published in the media including the Canberra Times that Mr David Pocock was a citizen of a foreign country, Zimbabwe, and therefore ineligible for the Senate.'

'The AEC should not accept registration of a party named in relation to a person who is ineligible for the Senate.'

'To name a party with the name of a person who at the time of application for registration of the party is ineligible for election is surely inappropriate.'

'Election of a number of persons to the Parliament was overturned by the High Court. Amongst other things the High Court held the critical issue was eligibility at the time of nomination.'

'The AEC should reject this registration application. Mr Pocock should be invited to resubmit the application if and when he has become eligible for election to the Senate.'

23. Summary of Objection two from Ernst:

'I submit this proposed name must be rejected because the proposed name is not consistent with the concept of a party.'

'Simply put, a party is a body of persons united in some sort of cause or opinion or otherwise engaged together.'

'A single person or the name of a single person cannot constitute a party. Accordingly I submit the registration must be rejected.'

'This can be compared or contrasted with the proposed registered party logo, David Pocock for the ACT. That represents a cause. So an application to register the name of a party along the lines David Pocock for the ACT may well be valid. So would a name along the lines David Pocock for the environment. Names along these lines indicate a cause or opinion or some sort of engagement beyond a mere name.'

'The AEC will appreciate that an invalid registration could have serious consequences. For example if this 'party' was registered and placed above the line and the candidate was successful another candidate could challenge the validity of the election.'

The AEC should not countenance such obvious uncertainty which can so easily be corrected by a fresh application with a name that satisfies the concept of 'party'.'

24. Summary of Objection from Neil:

'I object to acceptance of the proposed party name as simply "David Pocock".'

'Such a title is a person's name only and not indicative of a political party and social cause. If the applicant wishes only to be referred to by name, as a candidate he can appear in that way below the line on the ballot paper. If this application is successful. The same words would be printed on the ballot paper above and below the line which would surely be confusing.'

'Secondly, if media reports and suggestions are correct in that, at the time of submission of the application for registration of a political party, Mr Pocock was a citizen of another country, surely this renders him ineligible to submit such an application until such time as he has surrendered citizenship of that other country.'

25. Summary of Objection from Lis:

'A single person or the name of a single person cannot constitute a party. The reason being: a party is a body of persons united in some sort of cause or opinion or otherwise engaged together.'

This can be compared or contrasted with the proposed registered party logo, David Pocock for the ACT. That represents a cause. So an application to register the name of a party along the lines David Pocock for the ACT may well be valid. So would a name along the lines David Pocock for the environment. Names along these lines indicate a cause or opinion or some sort of engagement beyond a mere name.'

'However, a single name on its own obviously does not constitute a party in accordance with the ordinary meaning of party, hence I submit the registration must be rejected.'

'The AEC will appreciate that an invalid registration could have serious consequences. If this 'party' was registered and placed above the line and the

candidate were to be successful, then another candidate could challenge the validity of the election.'

'The AEC should not countenance such obvious uncertainty which can so easily be corrected by a fresh application with a name that satisfies the concept of a 'party'.'

26. On 16 March 2022, the Party responded to the objections and the response was published on the AEC website in accordance with s 132(6) of the Electoral Act.
27. The Registered Officer of the Party, Mr Glenn Cummings, responded to the objections. In summary: 'there has been nothing raised in the Objections which, under the Act, would either (i) prevent the Electoral Commissioner from registering the Party or (ii) respectfully, permit the Electoral Commissioner to decline to register the Party, as a non-Parliamentary party under Part XI of the Act.'
28. Further to this, the Party addressed each Objector, and the 'grounds' they raised.

In relation to Objections from Ernst (2), Neil (3) and Lis (4) the Party responded that:

- none of the particulars of the Objections refer to a provision of the Act which would prevent the registration of the Party with its proposed name;
- there is no requirement in the Act that a name of a party be 'consistent with the concept of a party';
- the ground invites a qualitative evaluation of what a party should be or how it should operate which goes far beyond the requirements in the Act and in doing so asks the Commissioner to perform a task which it is not empowered by the Act to do;
- in any event, the objects and operation of the Party meet the requirements of the Act as set out at 6(a) such that it is entirely consistent with the concept of a party. The name is simply the means by which that party is identified and there is no requirement that the name include a specific reference to it being a 'party', 'group' or some other 'cause based entity' as is argued in the Objections.

In relation to the second Objection from Ernst the Party responded that:

- it is a speculative allegation that the outcome of the election could be challenged on the basis that the Party is placed above the line and the Objections are silent as to which provision of the Act could properly found such a challenge or declaration of invalidity under s 362 of the Act;
- again, it invites a qualitative evaluation of the effect of the name of a party, where that name does not contain any of the prohibited features in s 129 of the Act.

In relation to Objections from Ernst (1) and Neil (3) (the Section 44 reference) the Party responded that:

- the question of eligibility of a proposed endorsed candidate of a party for election is separate to the eligibility of a party to be registered as a non-Parliamentary Party;
- the Party meets the requirements for registration as a non-Parliamentary Party and the eligibility of any proposed endorsed candidates is not permitted by the Act to be undertaken in the assessment of a party registration application;
- even if it were relevant to consider the eligibility for election of a proposed candidate, the point at which a candidate must be eligible is the point at which they nominate for election, not the point at which the party is registered.

In summary the Party stated that 'Based on the above, the Party submits that the Electoral Commissioner should reject the particulars in the Objections and not decline to register the Party on the basis of such particulars.'

Consideration of objections and the response

29. I am of the view that the objections have been made on the alleged basis that the name, David Pocock, is prohibited under s 129 of the Electoral Act; that the logo of the Party should be refused under s 129A of the Electoral Act; and that Mr David Pocock would be in breach of s 44 of the Constitution.
30. I have considered, and reject the objections from 'Ernst', 'Neil' and 'Lis', for the following reasons.
31. Section 44 of the Constitution does not provide grounds that can be considered under the Electoral Act, and as such is not relevant to this Application for registration. The issue in question is not the qualification of candidates but rather if the Application accords with Part XI of the Electoral Act.
32. All three objections, in my opinion, consider the application not to be in accordance with ss 126 or 129 of the Electoral Act.
33. Although the objections infer to ss 132(2)(b)(i) or 132(2)(b)(iii) of the Electoral Act, the grounds for objecting are based on the opinion that:
- *'a party is a body of persons united in some sort of cause or opinion or otherwise engaged together. A single person or the name of a single person cannot constitute a party.'*
 - *'Such a title is a person's name only and not indicative of a political party'*
 - *'A single person or the name of a single person cannot constitute a party. The reason being: a party is a body of persons united in some sort of cause or opinion or otherwise engaged together.'*
34. I reject the objections as the requirements of s 129 of the Electoral Act do not impose the use of certain words to indicate a political party is a party. There is no prohibition on using a person's name as the name of a political party, subject to it meeting the other requirements of s 129 of the Electoral Act.

Sections 123, 126, 129 and 129A of the Electoral Act

35. Under s 123(1) of the Electoral Act, an eligible political party means a political party that:
- (a) either:
 - (i) *is a Parliamentary party; or*
 - (ii) *has at least 1,500 members; and*
 - (b) *is established on the basis of a written constitution (however described) that sets out the aims of the party.*
36. Section 126(2)(ca) of the Electoral Act prescribes that:
- (1) *An application for the registration of an eligible political party may be made to the Electoral Commission by:*
 - (b) *in the case of a political party other than a Parliamentary party—10 members of the party, of whom one is the secretary of the party.*
37. Section 129(1) of the Electoral Act provides:
- The Electoral Commission shall refuse an application for the registration of a political party if, in its opinion, the name of the party or the abbreviation of its name that it wishes to be able to use for the purposes of this Act (if any):*

- (a) *comprises more than 6 words;*
- (b) *is obscene, frivolous or vexatious;*
- (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 confused with or mistaken for that name or that abbreviation or acronym, as the case may be; or*
- (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 comprises or contains the word "Independent" and:*
 - (i) *the name, or an abbreviation or acronym of the name, of a recognised political party; 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.*

38. Section 129(3) of the Electoral Act (*Names to be registered only with consent*) prescribes that:

The Electoral Commission must refuse an application for the registration of a political party if:

- (a) *either of the following apply:*
 - (i) *the applicant party's name contains a word that is in the name, or the abbreviation of the name, of a registered political party;*
 - (ii) *the proposed abbreviation of the applicant party's name contains a word that is in the name, or abbreviation of the name, of a registered political party and*
- (b) *the application is not accompanied by the written consent, to the use by the applicant party of the word in its name or abbreviation, of:*
 - (i) *if there is only one registered political party to which paragraph (a) applies—the registered political party's registered officer; or*
 - (ii) *otherwise—the registered officer of the first such political party to be registered.*

39. Section 129A of the Electoral Act provides:

The Electoral Commission may refuse to enter a logo in the Register if, in its opinion, the applicant's logo:

- *is obscene; or*
- *is the logo of any other person; or*
- *so nearly resembles the logo of any other person that it is likely to be confused with or mistaken for that logo; or*
- *is 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; or*
- *comprises the words "Independent Party" or comprises or contains the word "Independent" and:*

- *the name, or an abbreviation or acronym of the name, of a recognised political party (within the meaning of subsection 129(2)); or*
- *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.*
- *contains a word that is in the name, or the abbreviation of the name, of a registered political party; and*
- *the application is not accompanied by the written consent, to the use by the applicant of the word in its logo for the purposes of registration under this Part, of:*
 - *if there is only one registered political party to which paragraph (a) applies—the registered political party’s registered officer; or*
 - *otherwise—the registered officer of the first such political party to be registered.*

40. I considered the Application against ss 123, 126, 129 and 129A of the Electoral Act when undertaking the initial assessment which I approved, as a delegate of the Electoral Commission and AEC authorised officer for advertising under s 132(1) of the Electoral Act.
41. I reject the objections on the basis that the Party name, David Pocock, is not the name, or 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.
42. I am satisfied that the Party logo is not the logo of any other person. Nor does it so nearly resemble the logo of any other person that is likely to be confused with or mistaken for that logo. Furthermore, it does not contain a word that is in the name, or the abbreviation of the name, of a registered political party.
43. None of the objections are supported by evidence that the Party’s Application has failed to satisfy any of the requirements under ss 123, 126, 129 or 129A of the Electoral Act.

Conclusion

44. Accordingly, I am satisfied on the materials before me that there is no basis to refuse the Application.
45. For the reasons outlined above, I approve the application from David Pocock for registration in the Register, as a delegate of the Electoral Commission for the purposes of ss 126(3) and 133(1) of the Electoral Act.

Your Review rights

46. 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.
47. 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.

How do I request an internal review?

48. 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.
49. 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?

50. The Electoral Commission, which is comprised of three members, the Electoral Commissioner, a judicial member and a non-judicial member, conducts internal reviews.
51. 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?

52. 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

53. 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.
54. 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.

(signed)

Joanne Reid
Assistant Commissioner
Delegate of the Electoral Commission
18 March 2022