

File reference LS6407

Steve Wickenden
Registered Officer

Dear Mr Wickenden

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 refuse the application to register the Commonwealth of Australia Constitution Party (the Party) as a non-Parliamentary party in the *Register of Political Parties*, received by the AEC on 1 February 2018.
2. This letter is to notify you, in accordance with subsection 141(7) of the *Commonwealth Electoral Act 1918* (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 4 January 2018, a delegate of the Commission issued a notice in accordance with subsection 133(3) of the Electoral Act notifying you as the Registered Officer, of the decision to refuse the application to register the Party in the *Register of Political Parties*.
4. On 1 February 2018, the AEC received by email from the Party, a written application for review by the Commission of the delegate's decision to refuse to register the Party. The following reasons were provided for making the application:
 - the results of the membership testing, which found the list of the 547 names submitted by the Party to be relied on for the purposes of registration, only contained the names of 362 members was a "false and misleading statement [a lie]".
 - the AEC failed to test the membership lists provided by the Party on 12 June 2017 (which contained 650 members) and 20 August 2017 (which contained 739 members); and
 - the Party's membership is still growing.

5. On 7 February 2018, the AEC informed the Party by email that the application for review had been accepted, and invited the Party to provide further material to be considered in the review within 28 days. The AEC did not receive any further material to be considered in the review within that timeframe.

Section 127 of the Electoral Act

6. On 7 February 2018, the Speaker of the House of Representatives (the Speaker) issued a writ for an election of a Member of the House of Representatives for the Division of Batman. As a result of the issue of the writ, 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 the writ was returned. The writ was returned on Thursday, 22 March 2018. Consequently consideration of this application recommenced on Friday, 23 March 2018.
7. On 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 again came into effect, suspending 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 this application recommenced on Tuesday, 14 August 2018.

Decision

8. The Commission has reviewed the delegate's decision of 4 January 2018 to refuse the application to register the Party in the *Register of Political Parties* and **affirmed** that decision under subsection 141(4) of the Electoral Act.

Reasons for Decision

9. Based on the material before the Commission, the Commission has determined that:
 - the application for registration did not include a list of the names of 500 members of the party, as required by paragraph 126(2)(ca) of the Electoral Act; and
 - the constitution submitted with the application for registration did not include aims that establish that the object or activity of the organisation is the promotion of the election to the Senate or the House of Representatives of a candidate or candidates endorsed by the Party, as required by subsection 4(1) and section 123 of the Electoral Act, and therefore is not a valid constitution for the purposes of paragraph 126(2)(f) of the Electoral Act.
10. 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 application to register the Party as a non-Parliamentary party received by the AEC on 20 August 2017;

- the revised list of the names of the 547 members to be relied on for the purposes of registration submitted by the Party on 18 September 2017;
- the notice issued to the Party under subsection 131(1) of the Electoral Act dated 27 October 2017;
- the results of the testing of the list of the names of the 500 members of the Party 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 of 4 January 2018 to refuse to register the Party in the Register of Political Parties under Part XI of the Electoral Act;
- the notice of decision and statement of reasons dated 5 January 2018, given under subsection 133(3) of the Electoral Act;
- the reasons set out in the application to the Commission for review of the decision to refuse to register the Party in the Register of Political Parties under Part XI of the Electoral Act, received by the AEC on 1 February 2018;
- the revised copy of the Party's constitution provided with the application to the Commission for review of the delegate's decision, received by the AEC on 1 February 2018;
- Part XI of the Electoral Act, in particular, sections 4, 123, 126, 129 and 141;
- the Register of Political Parties of each Australian state and territory; and
- the AEC *Party Registration Guide*.

Findings of Fact

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

Procedural application requirements

13. The further application for registration of 20 August 2017:

- was in writing, signed by the ten applicants, of whom one is the party secretary, and the person who is to be 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 names and addresses of the applicants and particulars of the capacity in which each applicant makes the application; and
- was accompanied by a fee of \$500.

14. Accordingly, the Commission is 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.

Party name and abbreviation

15. The Party name, Commonwealth of Australia Constitution Party, and the abbreviation CofACP:

- 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 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 that 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.

16. Accordingly, the Commission is satisfied that the proposed name and abbreviation meet the requirements of section 129 of the Electoral Act.

Party constitution

17. The Commission is satisfied that the constitution submitted by the Party on 1 February 2018 meets the requirements of having a written constitution set out in the definition of eligible political party in subsection 123(1) of the Electoral Act.
18. However, the Commission is not satisfied that the aims of the Party establish that the Party is an organisation the object or activity of which is the promotion of the election of its candidates to the Senate and/or House of Representatives, in accordance with the definition of *political party* at section 4 of the Electoral Act.
19. Therefore, the Commission has determined that the Party’s constitution did not include as one or more of its aims the matters necessary to establish that it is an organisation the object or activity of which is the promotion of the election to the Senate or the House of Representatives of a candidate or candidates endorsed by the Party, and is not a valid constitution for the purposes of paragraph 126(2)(f) of the Electoral Act.

Membership list

20. On 18 September 2017, the Party submitted a list of the names of the 547 members to be relied on for the purposes of registration.
21. 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:
- 67 of the 547 submitted members could not be matched to the Roll;
 - 84 members were duplicated within the membership list; and
 - 34 members were members of other registered political parties.

22. Accordingly, the list of names provided by the party only contained the names of 362 members.
23. This is below the required 500 members and therefore does not meet the requirements of paragraph 126(2)(ca) of the Electoral Act.

Comments on the application for review

24. In respect of the assertion in the application for review that the results of the membership testing conducted by the AEC was a "false and misleading statement [a lie]", the Commission is satisfied that the methodology developed by the ABS, which was correctly applied in this case, is consistent with the Electoral Act and provides the AEC with a statistical degree of certainty about a party's number of members.
25. Accordingly, the Commission rejects the assertion that the membership testing conducted by the AEC was a "false and misleading statement [a lie]",
26. In respect of the assertion in the application for review that the AEC failed to test the lists provided by the Party on 12 June 2017 (which contained 650 members) and on 20 August 2017 (which contained 739 members), the Commission notes that the '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.
27. Further, the Commission notes that on 12 July 2017, the AEC advised the Party that it had rejected the application provided as not meeting requirements.
28. On 6 September 2017, the AEC advised the Party that the list of the 739 names submitted with the further application of 20 August 2017 did not meet requirements, and invited the Party to provide a list of the names of 500-550 members.
29. On 18 September 2017, the AEC advised the Party that the further list of 552 names submitted on 11 September 2017 did not meet requirements, and invited the Party to provide a list of the names of 500-550 members.
30. Later on 18 September 2018, the Party submitted a list of the names of the 547 members to be relied upon for registration.
31. Between 19 September 2017 and 4 October 2017, the AEC conducted membership testing of the list of the 547 names provided, in accordance with the methodology developed by the ABS.
32. These searches identified that the list of the names submitted by the Party only contained the names of 362 members, as set out in paragraph 21 above.
33. As this is below the required 500 members, the list of names did not meet the requirements of paragraph 126(2)(ca) of the Electoral Act.
34. The Party was issued a notice under subsection 131(1) of the Electoral Act. The notice set out the reasons as to why the delegate was of the opinion that she was required to refuse the application, and allowed the Party to lodge a written request with the Electoral Commission, signed by all ten original applicants before 27 November 2017 to:
 - vary their application with an alternative membership list, and constitution; or
 - proceed with the application in the form in which it was lodged.

35. The AEC did not receive a response to the notice within the timeframe prescribed. On 4 January 2018, the delegate determined that the Party's application for registration should be refused, and gave the Party notice of that decision under subsection 133(3) of the Electoral Act.
36. Accordingly, the Commission is satisfied that the membership testing methodology was correctly applied in this case, and that the list of names tested by the AEC was the list of the 547 names submitted by the Party to be relied on for the purposes of registration on 18 September 2017.

Summary of Decision

37. The Commission has **affirmed** the decision of the delegate to refuse the application to register the Party in the *Register of Political Parties*, on the basis that:
- the Party's application for registration was not accompanied by a list of the names of 500 members, and;
 - the Party's constitution did not include as one or more of its aims the matters necessary to establish that it is an organisation the object or activity of which is the promotion of the election to the Senate or the House of Representatives of a candidate or candidates endorsed by the Party.

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 Electoral 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 Commission made its decision, being 21 August 2018 and ending on the twenty-eighth day after this notice 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.