

17 November 2021

# Australian Electoral Commission Meeting

**Item 2: Review of the delegate's decision to  
deregister the Seniors United Party of Australia**

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## 1. Authority

- 1.1. Section 141 of the *Commonwealth Electoral Act 1918* (**the Electoral Act**).

## 2. Decision under review

- 2.1. The decision for review by the Electoral Commission is the decision of the delegate to deregister the Seniors United Party of Australia (**the Party**) dated 9 March 2021 (**the Delegate's Decision**) [**Attachment A**].

## 3. Relevant law and the continued 500-member threshold

- 3.1. Unless otherwise indicated, all references to legislative provisions in this Commission Paper are references to the Electoral Act.
- 3.2. On 3 September 2021, after the Delegate's Decision, the *Electoral Legislation Amendment (Party Registration Integrity) Act 2021* (**the 2021 Amendment Act**) amended ss 123, 126, and 137 and replaced s 126 with new s 123A. Amongst other things, the 2021 Amendment Act increased the membership threshold for being registered as a non-Parliamentary party from 'at least 500 members' to 'at least 1,500 members'.
- 3.3. Under s 20(3) of the 2021 Amendment Act, that Act's amendment to the provision in the Electoral Act upon which the Delegate's Decision was based (being s 137(1)(b)) do not come into effect until 3 December 2021.
- 3.4. Accordingly, this review must be conducted on the basis as to whether the Electoral Commission is satisfied on reasonable grounds that the Party 'has ceased to have at least **500** members' (emphasis added).

### Register review — s 138A

- 3.5. Under s 138A(1), the Electoral Commission may review the Register of Political Parties established and maintained under s 125 (**the Register**) to determine whether one or more of the parties included in the Register:
- (a) is an eligible political party (s 138A(1)(a)); or
  - (b) should be deregistered under ss 136 or 137 (s 138A(1)(b)).
- 3.6. A review under s 138A(1) can be conducted at any time except during an election writ period (s 138A(2)).
- 3.7. For the purposes of a review under s 138A(1), the Electoral Commission may request that the registered officer of a party provide specified information regarding the party's eligibility to be registered (s 138A(3)).

### Definitions relevant to eligibility to be registered — ss 123, 123A and 126

- 3.8. Immediately prior to amendments made on 3 September 2021, s 123(1) provided that:
- (a) an 'eligible political party' means a political party that:
    - (a) either:
      - (i) is a Parliamentary party; or
      - (ii) has at least 500 members; and
    - (b) is established on the basis of a written constitution (however described) that sets out the aims of the party; and



- (b) a 'Parliamentary party' means a political party at least one member of which is a member of the Parliament of the Commonwealth.

3.9. Under ss 123(3) and 126(2A), and under the succeeding ss 123(3) and 123A that came into effect on 3 September 2021, members relied on by a party to satisfy the membership requirement must be on the Commonwealth electoral Roll (**the Roll**) and cannot be relied on by another non-Parliamentary party for the purpose of qualifying or continuing to qualify as an eligible political party.

### **Deregistration due to insufficient membership — s 137**

- 3.10. Under s 137(1)(b) as has been in effect at all relevant times and is still in effect, if the Electoral Commission is satisfied on reasonable grounds that a registered non-Parliamentary party has ceased to have at least 500 members, it must give the registered officer of the party notice, in writing, that it is considering deregistering the party under that section (with reasons and other specified information).
- 3.11. Where a notice is given under s 137(1), the registered officer of the party may, within 1 month after the date on which the notice was given, lodge with the Electoral Commission a written and signed statement that sets out reasons why the party should not be deregistered (s 137(2)).
- 3.12. Where 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 the s 137(1) notice (s 137(5)).
- 3.13. Where, under s 137(5), the Electoral Commission determines that a political party should be deregistered, it shall:
- (a) deregister the party (s 137(6)(a)); and
  - (b) give the person who was the last registered officer of the party written notice of the deregistration, setting out its reasons for rejecting the reasons set out in the statement lodged under s 137(2) (s 137(6)(b)).
- 3.14. The methodology and formula employed by the AEC to test membership lists of 500 individuals was first supplied to the AEC by the Australian Bureau of Statistics (**the ABS**) in 2010 (with modifications in 2011 and 2017). It was re-endorsed by the Electoral Commission in 2017 [**Attachment B**]. The Electoral Commission has consistently found that, absent any relevant factors to the contrary, a failure to satisfy this test alone will constitute reasonable grounds on which it can be satisfied that a political party does not have, or has ceased to have, at least 500 members.

### **Delegation of relevant powers**

- 3.15. Under s 16, the Electoral Commission may by resolution delegate to an appointed Commissioner, an electoral officer or a member of the staff of the Electoral Commission all or any of its powers under the Electoral Act (other than its powers under Part IV).
- 3.16. Under an Instrument of Delegation executed on 29 March 2019, the relevant powers of the Electoral Commission set out in ss 137, 138 and 138A have been delegated to the Assistant Commissioner, Disclosure, Assurance and Engagement Branch.

### **Internal review of a delegate's deregistration decision**

- 3.17. Under s 141(1), a decision of a delegate of the Electoral Commission to deregister a political party under s 137(6) is a 'reviewable decision'.
- 3.18. Under s 141(2), a person affected by a reviewable decision of a delegate who is dissatisfied with the decision may make an application for review of that decision by the Electoral Commission.
- 3.19. An application under s 141(2):
- must be made within the period of 28 days after the day on which the decision first comes

to the notice of the person, or within such further period as the Electoral Commission (either before or after the expiration of that period) allows;

- must be made in writing to the Electoral Commission;
- must specify an address of the applicant; and
- must include reasons for making the application (s 141(3)).

3.20. Under s 141(4), upon receipt of an application for review, the Electoral Commission must review the delegate's decision and either:

- (a) affirm the decision;
- (b) vary the decision; or
- (c) set aside the decision and make a decision in substitution.

3.21. In *Shi v Migration Agents Registration Authority* [2008] HCA 31 (**Shi**), the High Court of Australia held that, when reviewing a decision to cancel a migration agent's registration, the Administrative Appeals Tribunal (**the AAT**) was entitled to consider all evidence available to the AAT as at the time of the AAT's review, including relevant actions taken by an agent after the decision under review.

3.22. In *John Mulholland and Australian Electoral Commission and Anthony Zegenhagen* [2011] AATA 717, the AAT considered *Shi* and accepted that the review should be based on the latest material (and made as at the latest point of time available) unless there is a contrary requirement in the legislation under which the decision is being made.

3.23. Like the AAT in *Shi*, the Electoral Commission can consider all evidence available to the Electoral Commission as at the time of the Electoral Commission's review. It is therefore submitted that the Electoral Commission should consider the reasoning applied in *Shi* to be highly persuasive in a review under s141(2), and consider itself empowered to request and consider information that has been provided by the applicant subsequent to the Delegate's Decision.

## 4. Review of Register

### Request for membership list

- 4.1. On 20 August 2020, pursuant to a review of the Register under s 138A(1), the AEC issued a notice to the registered officer of the Party, **Out of scope**, under s 138A(3) of the Electoral Act (**the Notice**) [**Attachment C**]. The Notice requested that the Party provide the AEC with a membership list of between 500 and 550 members, in electronic format, in order for the AEC to determine the Party's eligibility to remain registered.
- 4.2. On 8 October 2020, the registered officer responded to the Notice, providing with it the requested documentation, including a membership list (**the October 2020 List**) [**Attachment D**].

### Suspension of processing

- 4.3. On 26 October 2020, a writ for a by-election for the federal electoral division of Groom (**the Groom by-election**) was issued.
- 4.4. Under s 138A(2), the Electoral Commission may not review the Register to determine whether a party should be deregistered during an election writ period.
- 4.5. Similarly, under s 127, during an election writ period, no action is permitted to be taken in relation to any application for the registration of a political party. This is taken to include any deregistration proceedings.
- 4.6. On 26 October 2020, The AEC sent correspondence to the registered officer of the Party advising of the suspension of processing [**Attachment E**].

## Resumption of processing

- 4.7. On 2 December 2020, the writ for the Groom by-election was returned. The AEC sent correspondence to the registered officer of the Party advising that processing could recommence, inviting the Party to provide an updated membership list, and notifying the Party that the deadline by which they must reply to the Notice had been extended to 18 January 2021 [**Attachment F**].
- 4.8. On 7 December 2020, the registered officer of the Party confirmed that the AEC could continue testing the October 2020 List [**Attachment G**].

## 5. Assessment of October 2020 membership list

### Testing of the October 2020 List

- 5.1. Between 9 October 2020 and 17 December 2020, the AEC conducted membership testing to determine how many of the individuals contained in the October 2020 List satisfied the requirements of ss 123(3) and 126(2A) as in effect at the time:
- (a) On 9 October 2020, the AEC automatically checked the October 2020 List against the Roll using the AEC's Roll Management System (**RMANS**). This identified that **458** of the **549** individuals named in the list were electors on the Roll.
  - (b) The AEC manually checked the October 2020 List against the Roll using the AEC's General Enrolment Election Support and Information System (**GENESIS**). As a result, an additional 71 of the individuals named in the list were identified as being electors, while six were not enrolled or were unable to be matched to the Roll, and 14 were deceased. This resulted in the identification of **529** claimed members.
  - (c) The AEC uploaded the list of 529 names to the AEC's Funding And Disclosure Client & Return Management (**FCRM**) system. This resulted in the identification of **525** claimed members as four of the individuals named were identified as duplicates within the list.
  - (d) The ABS testing methodology (mentioned above at paragraph 3.13) recommends that in testing a list of 525 the AEC should obtain confirmation from a random sample of 37 individuals [**Attachment H**]. If more than three of the 37 individuals were to deny membership, there would be insufficient statistical confidence in the number of total members in the list being at least 500.
  - (e) Using the randomising functionality in Microsoft Excel, AEC staff identified a sample size of 74 individuals from the 525 names in list. Individuals from this sample were contacted between 7 December 2020 and 16 December 2020 and asked if they were current members of the Party [**Attachment I**]. Of the 59 individuals contacted to obtain the required 37 responses:
    - 22 provided a neutral response or were not contactable;
    - 29 confirmed being members of the Party; and
    - eight denied being members of the Party.

### Delegate's determination and s 137 Notice

- 5.2. In accordance with the ABS testing methodology, eight denials out of 37 responses exceeded the three denials permitted to provide statistical confidence that the Party's list had at least 500 members.
- 5.3. On that basis, on 11 January 2021, the delegate of the Electoral Commission determined that the Party had failed to satisfy the requirements of s 123(1)(a)(ii), and should be considered for deregistration under s 137(1)(b) [**Attachment J**].

- 5.4. On 12 January 2021, the delegate of the Electoral Commission gave a notice to the registered officer of the Party under s 137(1) (**the s 137 Notice**) that the Electoral Commission was considering deregistering the Party as it was satisfied on reasonable grounds that the Party has ceased to have at least 500 members.

## 6. Assessment of February 2021 membership list

### Party response to s 137 Notice

- 6.1. On 3 February 2021, the Party responded to the s 137 Notice, providing a statement in accordance with s 137(2) and a second membership list of between 500 and 550 members in electronic form (**the February 2021 List**) [**Attachment K**].

### Testing of the February 2021 List

- 6.2. Between 3 February 2021 and 24 February 2021, the AEC conducted membership testing to determine how many of the individuals contained in the February 2021 List satisfied the requirements of ss 123(3) and 126(2A):
- (a) On 3 February 2021, the AEC automatically checked the February 2021 List against the Roll using RMANS. This identified that **474** of the **550** individuals named in the list were electors on the Roll.
  - (b) The AEC manually checked the February 2021 List against the Roll using GENESIS. As a result, an additional 70 of the individuals named in the list were identified as being electors, while one was not enrolled to vote or unable to be matched to the Roll, and five were deceased. This resulted in the identification of **544** claimed members.
  - (c) The AEC uploaded the list of 544 names to the FCRM system. This resulted in the identification of 539 claimed members, as four of the individuals named were identified as duplicates within the list and one was identified as supporting the registration of another party.
  - (d) The ABS testing methodology (mentioned above at paragraph 1.14) recommends that in testing a list of 539 the AEC should obtain confirmation from a random sample of 44 individuals [**Attachment L**]. If more than five of the 44 individuals were to deny membership, there would be insufficient statistical confidence in the number of total members in the list being at least 500.
  - (e) Using the randomising functionality in Microsoft Excel, AEC staff identified a sample size of 88 individuals from the 539 names in list. Individuals from this sample were contacted between 12 March 2021 and 19 March 2021 and asked if they were current members of the Party [**Attachment M**]. Of the 64 individuals contacted to obtain the required 44 responses:
    - 20 provided a neutral response or were not contactable;
    - 35 confirmed being members of the Party; and
    - nine denied being members of the Party.

### Delegate's determination under s 137(5)

- 6.3. In accordance with the ABS testing methodology, nine denials out of 44 responses exceeded the five denials permitted to provide statistical confidence that the Party's list had at least 500 members.
- 6.4. On 9 March 2021, the delegate of the Electoral Commission determined under s 137(5) that the Party had failed to satisfy the requirements of s 123(1)(a)(ii), and should be deregistered on the basis that it had ceased to have at least 500 members [**Attachment A**].

- 6.5. On 10 March 2021, the delegate of the Electoral Commission gave a notice to the registered officer of the Party under s 137(6) (**the Deregistration Notice**) of her determination that the Party be deregistered on the grounds that it had ceased to have at least 500 members.

## 7. Application for review of Delegate's Decision

### Application for review from **Out of scope**

- 7.1. On 21 March 2021, **Out of scope** submitted an application to the Electoral Commission under s 141(2) of the Electoral Act by email, requesting review of the Delegate's Decision [**Attachment N**].
- 7.2. On 22 March 2021, the Commission Secretariat acknowledged receipt of **Out of scope** application by email [**Attachment O**].
- 7.3. On 25 March 2021, **Out of scope** submitted further material in support of his reasons for making his internal review application [**Attachment P**].
- 7.4. On 7 July 2021 at 11.09am, the Commission Secretariat emailed **Out of scope** to invite **Out of scope** to submit an updated membership list on or before 30 July 2021 [**Attachment R**].
- 7.5. On 7 July 2021 at 3.05pm, **Out of scope** emailed the Commission Secretariat to acknowledge the invitation for an updated membership list [**Attachment S**].

### Extensions given **Out of scope** due to Greater Sydney COVID-19 lockdown

- 7.6. On 15 July 2021, **Out of scope** emailed the Commission Secretariat to request a two-week extension on the 30 July 2021 deadline, on account of the COVID-19 lockdown in Greater Sydney preventing his access to the Roll at local AEC offices [**Attachment T**].
- 7.7. On 16 July 2021 at 12.36pm, the Commission Secretariat emailed **Out of scope** to confirm the requested two-week extension to 13 August 2021 [**Attachment U**].
- 7.8. On 16 July 2021 at 2.43pm, **Out of scope** emailed the Commission Secretariat to express his gratitude for the two-week extension [**Attachment V**].
- 7.9. On 28 July 2021, **Out of scope** emailed the Commission Secretariat to request a further extension to 28 August 2021, on account of the four-week extension of the COVID-19 lockdown in Greater Sydney [**Attachment W**].
- 7.10. On 29 July 2021, the Commission Secretariat emailed **Out of scope** to confirm the requested extension to 28 August 2021 [**Attachment X**].
- 7.11. On 4 August 2021, **Out of scope** emailed the Commission Secretariat to repeat his request for a further extension to 28 August 2021, on account of the four-week extension of the COVID-19 lockdown in Greater Sydney [**Attachment Y**].
- 7.12. On 5 August 2021 at 10.18am, the Commission Secretariat emailed **Out of scope** to note that his request for an extension to 28 August 2021 had already been given, and requesting an estimate from **Out of scope** as to when his membership list would be ready. [**Attachment Z**].
- 7.13. On 5 August 2021 at 5.58pm, **Out of scope** emailed the Commission Secretariat to request a further extension to the date that is two weeks after the offices of the AEC re-opens [**Attachment ZA**].

### **Out of scope** request for access to ELIAS and continued extensions

- 7.14. On 15 August 2021, **Out of scope** emailed the Commission Secretariat to request that the Party be given access to the AEC's Electoral Information Access System (**ELIAS**) in the same manner as is given to registered political parties, due to the exceptional circumstances of the COVID-19 pandemic in Greater Sydney [**Attachment ZB**].
- 7.15. On 18 August 2021 at 3.21pm, **Out of scope** emailed the Commission Secretariat to note his request for access to ELIAS and to request a further two-week extension [**Attachment ZC**].



- 7.16. On 18 August 2021 at 5.24pm, the Commission Secretariat emailed **Out of scope** to acknowledge the request for access to ELIAS and to provide a further extension to 11 September 2021 [Attachment ZD].
- 7.17. On 19 August 2021, **Out of scope** emailed the Commission Secretariat to ask about ELIAS access and to express his gratitude for the further extension to 11 September 2021 [Attachment ZE].
- 7.18. On 27 August 2021, the Commission Secretariat emailed **Out of scope** to refuse his request for access to ELIAS, on the basis that the Party is not a registered political party. The Commission Secretariat also noted that it is not a requirement for **Out of scope** to submit an updated membership list [Attachment ZF].
- 7.19. On 1 September 2021, **Out of scope** emailed the Commission Secretariat to request a further two-week extension, on account of his failed request for access to ELIAS and the continued lockdown in Greater Sydney [Attachment ZG].
- 7.20. On 3 September 2021 at 4.52pm, the Commission Secretariat emailed **Out of scope** to confirm the further extension to 25 September 2021 [Attachment ZH].
- 7.21. On 3 September 2021 at 6.48pm, **Out of scope** emailed the Commission Secretariat to express his gratitude for the extension to 25 September 2021 [Attachment ZI].

#### Notification of amendments to Electoral Act

- 7.22. On 15 September 2021, the Commission Secretariat emailed **Out of scope** to provide him with an overview of amendments to the Electoral Act made by the 2021 Amendment Act and to request confirmation as to **Out of scope** intention for his application for review [Attachment ZJ].
- 7.23. On 21 September 2021, **Out of scope** emailed the Commission Secretariat to confirm his intention to continue with his application for review [Attachment ZK].

#### Submission of September 2021 List

- 7.24. On 23 September 2021, **Out of scope** emailed the Commission Secretariat [Attachment ZL] to provide a membership list (the September 2021 List) [Attachment ZM].
- 7.25. On 24 September 2021 at 10.39am, the Commission Secretariat emailed **Out of scope** to acknowledge receipt of the September 2021 List [Attachment ZN].
- 7.26. The September 2021 List, taken with the reasons contained in his application of 21 March 2021 and further material of 25 March 2021, constitute **Out of scope** complete reasons for making the application as required under s 141(3).

#### Progression of internal review

- 7.27. On 24 September 2021 at 11.07am, **Out of scope** emailed the Commission Secretariat to request that an AEC staff member who speaks Greek to speak to the Party's Greek members when conducting membership testing [Attachment ZO].
- 7.28. On 13 October 2021 at 5.29pm, the Commission Secretariat emailed **Out of scope** to update him that the AEC was in a position to commence, from 15 October 2021, contacting a random sample of individuals in the September 2021 List. [Attachment ZP].
- 7.29. On 13 October 2021 at 9.24pm, **Out of scope** emailed the Commission Secretariat to thank the Commission Secretariat for the update [Attachment ZQ].

## 8. Issues for review

#### Standing of **Out of scope**

- 8.1. To seek review by the Electoral Commission under s 141(2) of a reviewable decision, a person must be affected by the decision and dissatisfied with the decision.

- 8.2. The term 'person affected' is not defined within the Electoral Act, nor has the term received judicial consideration within the context of electoral law.
- 8.3. s 42 [Attachment ZR].
- 8.4. This advice and its conclusions support the view that the broad public interest in decisions under Part XI does not create an automatic right of standing for all electors. While each case is a matter of fact and degree, the person seeking review of a decision, or outcome of the decision, in comparison with the public at large.
- 8.5. In his application for internal review, Out of scope identifies himself as 'a person affected by, and dissatisfied with the decision to deregister the party', Out of scope
- 8.6. Out of scope was not a signatory to the Party's statement of 3 February 2021 (see para. 6.1). However, his name appears on the membership list that accompanied that statement (i.e. the February 2021 List), and he was contacted during membership testing of that list as his name was included in a random sample.
- 8.7. On 28 May 2021, the AEC received correspondence addressed from Out of scope via post, which contained a Change Registered Officer form dated 18 May 2021 and signed by Out of scope to change the registered officer of the Party from Out of scope to Out of scope [Attachment ZS]. This document, however, cannot be processed whilst the Party is not registered.
- 8.8. On 22 October 2021, in otherwise unrelated correspondence, Out of scope advised that Out of scope is Chairperson of the Party [Attachment ZT].
- 8.9. Taking this information on its face, AEC Legal Services is of the view that Out of scope has a special interest in the matter and can be considered a 'person affected' by it.

#### Reasons given by applicant regarding testing of October 2020 and February 2021 Lists

- 8.10. In his reasons for making an internal review application given on 21 March 2021 and 25 March 2021, Out of scope submitted that the AEC's membership testing methodology was not a 'true and fair' method of testing in respect of the Party.
- 8.11. The following is a summary of the matters Out of scope submitted for the Electoral Commission's consideration:
- (a) The Party membership is comprised mainly of elderly members, and has a higher death rate than other political parties, resulting in a higher turnover or 'attrition' of its membership.
  - (b) The Party membership incurs a higher incidence of health issues (including terminal / end of life issues) that prevent its members from participating.
  - (c) The Party membership incurs a much higher rate of 'dementia, or loss of memory', which prevents members recalling that they are members when the AEC calls, causing members to answer negatively to membership questions.
  - (d) The elderly are increasingly concerned with phone scammers, particularly people imitating government employees on the phone, causing them to refuse to respond to questioning, or even to answering the phone to unknown numbers. They are much more likely to respond with a "No" to any question put to them over a phone.
  - (e) The finding by the AEC that four duplications existed on both the October 2020 List and February 2021 List, and five deceased individuals existed on the February 2021 List, despite Out of scope personally purging the list after the failure of the October 2020 List, suggests that the AEC made an error in its assessment.

- (f) If the figures for duplications and deaths in the February 2021 List were removed, the list would be much closer to passing, and the remaining denials could have been substituted for other members by the Party.
- (g) Whereas political parties can have scrutineers on polling day, the fact that scrutineers are not allowed during membership testing amounts to procedural unfairness against the Party.
- (h) The Party represents a demographic for which no other political party provides specialist representation. There is a public interest in permitting its continued registration.
- (i) The Party's ability to attract donations is significantly lower than that of other parties as its donations are not tax-deductible. The Party has no other source of funding, and it therefore is at a disadvantage in conducting its affairs, including in respect of communicating, advertising and employing officers.
- (j) As the Party's members are mostly pensioners or part-pensioners, the Party is at a disadvantage in finding appropriate individuals who can afford to be candidates at elections.

### Consideration of reasons given by applicant

- 8.12. In respect of reason (a), it would seem a logical conclusion that a party with an elderly membership base is more likely than some other parties to see members removed from the Roll (due to death, or objection under s 114(1A)) in the course of the registration or review process. However, this would seem to only (potentially) affect the sample size that the AEC tests (and the associated number of denials permitted). It would not follow that it would affect the rate of denials. Neither of the membership lists tested by the AEC fell below the minimum of 500 names due to those names not appearing on the Roll.
- 8.13. In respect of reason (b), the ability of members to participate in the affairs of the Party (e.g. responding to AEC contact) would not seem to have any bearing on positive or negative response rates, only neutral response (non-response) rates, which do not affect the outcome of membership testing.
- 8.14. In respect of reasons (c) and (d), the applicant does not offer any evidence in support of these assertions. There is no evidence or information before the Electoral Commission to indicate that these assertions are true (i.e. that the relevant individual would reply in the negative instead of providing a neutral answer).
- (a) The AEC's *Party Registration Guide* has made clear at all relevant times that a person whose name is included on a party's membership list must formally acknowledge membership of the party when contacted by the AEC.
  - (b) Section 123 (immediately before and after the 2021 Amending Act) contemplates neither the attribution of membership of a political party upon unwilling individuals, nor an analysis of the motivations or reasons of individuals who deny membership of a political party.
  - (c) The Electoral Commission has previously found that the confirmations and denials made to AEC officers in the process of membership testing constitute the formal acknowledgments required to test membership, and the testing methodology applied by the AEC is consistent with the Electoral Act.
- 8.15. In respect of reason (e), the Parliamentary Engagement and Party Registration Section (**PEPRS**) of the AEC has reviewed its records of the testing of the October 2020 List and February 2021 List and has found no error in its assessment [**Attachment ZU**]
- (a) Two of the duplicates in the October 2020 List appear again in the February 2021 List. The remaining two duplicates in the October 2020 List were omitted, but two new duplicates appeared in the February 2021 List. This suggests that **Out of scope** successfully identified and removed two of the duplicates from the October 2020 List, but replaced them with two new duplicates.

- (b) Of the 14 deceased individuals in the October 2020 List, four of those individuals appear among the five deceased individuals in the February 2021 List. This suggests that [REDACTED] successfully identified and removed 10 of the deceased individuals from the October 2020 List. PEPRS identified that the fifth deceased individual on the February 2021 List died in December 2020 (i.e. in the period between the testing of each list).
- 8.16. In respect of reason (f), [REDACTED] appears to misunderstand elements of the membership testing methodology. Duplicated and deceased members are not counted as negative responses (denials). The removal of these individuals from a membership list would only lead to a potential reduction in the testing sample size. A reduction in sample size does usually reduce the absolute number of permitted denials by a roughly proportional amount. However, as duplicates and deceased electors are not eligible under the Electoral Act to be members on which a party can rely, it is in fact beneficial to parties that they be removed from the membership list by the AEC instead of being counted as negative responses.
- 8.17. In respect of reasons (g) to (j), these matters are not relevant to the issue of whether the Party has ceased to have 500 members.
- (a) Nominated candidates in an election have a statutory right to appoint scrutineers for polling day under s 217, and those scrutineers have an statutory right to attend a polling booth on polling day under s 218. The Electoral Act does not provide political parties with any equivalent right of scrutiny in the Electoral Commission's decision-making process under ss 137(1) or 137(5).
- (b) The 500-member requirement for registration is a statutory one. Where the Electoral Commission is satisfied on reasonable grounds that a party has ceased to have 500 members, it must deregister the party (s 137(6)(a)). The Electoral Commission has no discretion once it is satisfied of this fact on reasonable grounds.
- (c) In any case, in the interests of political neutrality it would not be appropriate for the Electoral Commission to take into account the policies or demographics of a political party in the assessment of its eligibility for registration, or to apply different membership tests to different parties.

### Testing of September 2021 List

- 8.18. Between 28 September 2021 and 19 October 2021, the AEC conducted membership testing to determine how many of the individuals contained in the September 2021 List satisfied the requirements of ss 123(3) and 123A:
- (a) On 28 September 2021, the AEC automatically checked the September 2021 List against the Roll using RMANS. This identified that **473** of the **550** individuals named in the list were electors on the Roll.
- (b) On 29 September 2021, the AEC manually checked the September 2021 List against the Roll using GENESIS. As a result, an additional 69 of the individuals named in the list were identified as being electors, while five were not enrolled to vote or unable to be matched to the Roll, and three were deceased. This resulted in the identification of **542** claimed members on the Roll.
- (c) On 8 October 2021, the AEC uploaded the list of 542 names to the FCRM system. This resulted in the identification of **538** claimed members, as four of the individuals named were identified as supporting the registration of another party [**Attachment ZV**].
- (d) The ABS testing methodology recommends that in testing a list of 538 the AEC should obtain confirmation from a random sample of 44 individuals [**Attachment ZW**]. If more than five of the 44 individuals were to deny membership, there would be insufficient statistical confidence in the number of total members in the list being at least 500.
- (e) On 8 October 2021, using the randomising functionality in Microsoft Excel, AEC staff identified a sample size of 88 individuals from the 539 names in list. Individuals from this



sample were contacted between 15 October 2021 and 19 October 2021 and asked if they were current members of the Party [**Attachment ZX**]. Of the 57 individuals contacted to obtain the required 44 responses:

- nine provided a neutral response or were not contactable;
- 43 confirmed being members of the Party;
- one denied being a member of the Party; and
- a further four members of the party responded to the AEC after the conclusion of the membership test.

## Conclusions

8.19. In accordance with the ABS testing methodology, one denial out of 44 responses provides statistical confidence that the Party's September 2021 list has at least 500 members [**Attachment ZY**].

8.20. Based on the membership testing of the September 2021 List, despite the consideration above of the applicant's reasons for making an internal review application, the AEC is of the view that it is open to the Electoral Commission:

- (a) not to be satisfied on reasonable grounds that the Party has ceased to have 500 members; and
- (b) to set aside the decision of the delegate of 9 March 2021 to deregister the Party under s 137(6), and substitute a decision to re-register the Party.

## 9. Recommendations

### Decision on review

- 9.1. It is recommended that the Electoral Commission set aside the decision of the delegate of 9 March 2021 to deregister the Party under s 137(6) and substitute a decision to maintain the registration of the Party by re-registering the Party.

**REVIEW DECISION:** AFFIRMED / VARIED / SET ASIDE AND SUBSTITUTED AS RECOMMENDED ABOVE

Dated this \_\_\_\_\_ day of November 2021

**The Hon Justice Susan Kenny AM**

Chairperson

November 2021

**Mr Tom Rogers**

Electoral Commissioner

November 2021

**Dr David Gruen**

Australian Statistician (non-judicial member)

November 2021

## 10. Notice of Decision

10.1. Once a decision on the review has been made by the Electoral Commission, the Legal Services section will prepare a formal Notice of Decision for consideration by the Electoral Commission.

## 11. Table of Attachments

Attachment	Description
<b>Attachment A</b>	Delegate's decision to deregister the Seniors United Party of Australia dated 9 March 2021.
<b>Attachment B</b>	Commission paper of 20 March 2017 (meeting number 262) endorsing ABS party registration membership testing methodology in relation 500 members.
<b>Attachment C</b>	The s 138A(3) notice to the Registered Officer of the Party on 20 August 2020.
<b>Attachment D</b>	<ol style="list-style-type: none"> <li>1. The registered officer's response to the s 138A notice.</li> <li>2. Attached membership list (the October 2020 List) to the s 138A response.</li> </ol>
<b>Attachment E</b>	Section 127 – Correspondence to the registered officer of the Party advising of the suspension of the register for the Groom by-election.
<b>Attachment F</b>	Groom by-election writ returned correspondence to the registered officer of the Party advising that processing could recommence, inviting the Party to provide an updated membership list or continue testing the October 2020 List.
<b>Attachment G</b>	Email from the registered officer of the Party advising that the AEC could continue testing the October 2020 List.
<b>Attachment H</b>	The ABS testing methodology table for a list of 525 individuals.
<b>Attachment I</b>	Record of individuals contacted between 7 December 2020 and 16 December 2020 and a record of the outcomes of those individuals.
<b>Attachment J</b>	The delegate of the Electoral Commission's determination of 11 January 2021, that the Party had failed to satisfy the requirements of s 123(1)(a)(ii), and should be considered for deregistration under s 137(1)(b).
<b>Attachment K</b>	<ol style="list-style-type: none"> <li>1. The Party's response to the s 137 Notice, including a statement in accordance with s 137(2); and</li> <li>2. a second membership list of between 500 and 550 members in electronic form (the February 2021 List).</li> </ol>
<b>Attachment L</b>	The ABS testing methodology table for a list of 539 individuals.
<b>Attachment M</b>	Record of individuals contacted between 12 March 2021 and 19 March 2021 and a record of the outcomes in relation to those individuals.
<b>Attachment N</b>	Application from <b>Out of scope</b> to the Electoral Commission under s 141(2) of the Electoral Act by email, requesting review of the Delegate's Decision.

Attachment	Description
<b>Attachment O</b>	Acknowledged receipt of <b>Out of scope</b> application by email from the Commission Secretariat.
<b>Attachment P</b>	Further submission of 25 March 2021 from <b>Out of scope</b> in support of his reasons for making his internal review application.
<b>Attachment R</b>	Email dated 7 July 2021 from Secretariat to <b>Out of scope</b> inviting submission of an updated membership list.
<b>Attachment S</b>	Email dated 7 July 2021 from <b>Out of scope</b> Secretariat, acknowledging invitation.
<b>Attachment T</b>	Email dated 15 July 2021 from <b>Out of scope</b> to Secretariat, requesting extension.
<b>Attachment U</b>	Email dated 16 July 2021 from Secretariat to <b>Out of scope</b> confirming requested extension to 13 August 2021.
<b>Attachment V</b>	Email dated 16 July 2021 from <b>Out of scope</b> to Secretariat, thanking for confirmed extension.
<b>Attachment W</b>	Email dated 28 July 2021 from <b>Out of scope</b> to Secretariat, requesting extension to 28 August 2021.
<b>Attachment X</b>	Email dated 29 July 2021 from Secretariat to <b>Out of scope</b> confirming requested extension to 28 August 2021.
<b>Attachment Y</b>	Email dated 4 August 2021 from <b>Out of scope</b> to Secretariat, repeating request for extension to 28 August 2021.
<b>Attachment Z</b>	Email dated 5 August 2021 from Secretariat to <b>Out of scope</b> noting the requested extension to 28 August 2021 had already been confirmed.
<b>Attachment ZA</b>	Email dated 5 August 2021 from <b>Out of scope</b> to Secretariat, requesting extension to the date that is two weeks after the re-opening of AEC offices.
<b>Attachment ZB</b>	Email dated 15 August 2021 from <b>Out of scope</b> to Secretariat, requesting access to ELIAS.
<b>Attachment ZC</b>	Email dated 18 August 2021 from <b>Out of scope</b> to Secretariat, noting ELIAS access request and requesting further extension to 11 September 2021.
<b>Attachment ZD</b>	Email dated 18 August 2021 from Secretariat to <b>Out of scope</b> acknowledging <b>Out of scope</b> request for ELIAS access and confirming requested extension to 11 September 2021.
<b>Attachment ZE</b>	Email dated 19 August 2021 from <b>Out of scope</b> to Secretariat, thanking for further extension to 11 September 2021.
<b>Attachment ZF</b>	Email dated 27 August 2021 from Secretariat to <b>Out of scope</b> denying his request for access to ELIAS.
<b>Attachment ZG</b>	Email dated 1 September 2021 from <b>Out of scope</b> to Secretariat, requesting two-week extension.



Attachment	Description
<b>Attachment ZH</b>	Email dated 3 September 2021 from Secretariat to <b>Out of scope</b> confirming requested extension to 25 September 2021.
<b>Attachment ZI</b>	Email dated 3 September 2021 from <b>Out of scope</b> to Secretariat, thanking for further extension to 25 September 2021.
<b>Attachment ZJ</b>	Email dated 15 September 2021 from Secretariat to <b>Out of scope</b> providing update in relation to the 2021 Amendment Act.
<b>Attachment ZK</b>	Email dated 21 September 2021 from <b>Out of scope</b> to Secretariat, confirming his desire for his application for review to proceed.
<b>Attachment ZL</b>	Email dated 23 September 2021 from <b>Out of scope</b> to Secretariat, providing an updated membership list for the Party (the September 2021 List).
<b>Attachment ZM</b>	September 2021 List.
<b>Attachment ZN</b>	Email dated 24 September 2021 from Secretariat to <b>Out of scope</b> acknowledging submission of the September 2021 List.
<b>Attachment ZO</b>	Email dated 24 September 2021 from <b>Out of scope</b> to Secretariat, requesting a Greek speaker in membership testing.
<b>Attachment ZP</b>	Email dated 13 October 2021 from Secretariat to <b>Out of scope</b> providing update that testing of the September 2021 List would commence.
<b>Attachment ZQ</b>	Email dated 13 October 2021 from <b>Out of scope</b> to Secretariat, acknowledging update.
<b>Attachment ZR</b>	<b>s 42</b> [REDACTED] [REDACTED] [REDACTED]
<b>Attachment ZS</b>	Change Registered Officer form signed and dated 18 May 2021.
<b>Attachment ZT</b>	Complaint dated 22 October 2021 from Mr <b>Out of scope</b>
<b>Attachment ZU</b>	Correspondence between PEPRS and Legal Services showing review by PEPRS of its assessment of membership testing records in respect of duplicate and deceased members.
<b>Attachment ZV</b>	FCRM identification of duplicates dated 8 October 2021.
<b>Attachment ZW</b>	The ABS testing methodology table for a list of 538 individuals.
<b>Attachment ZX</b>	Record of individuals contacted between 15 October 2021 and 19 October 2021 and a record of the outcomes in relation to those individuals.
<b>Attachment ZY</b>	Breakdown of Membership Numbers dated 19 October 2021.