

# AUSTRALIAN ELECTORAL COMMISSION

## MEETING NUMBER 262

20 March 2017

### Item 5: Party registration – membership testing methodology

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### Purpose

The purpose of this paper is to seek the Electoral Commission's endorsement to:

- maintain the Australian Electoral Commission's (AEC) current policy of treating 'non-responses' as neither confirming nor denying membership
- update the risk parameters in the membership testing table used by the AEC when assessing the registration or review of non-parliamentary political parties under s. 126(2) and s. 138A of the *Commonwealth Electoral Act 1918* (Electoral Act) respectively.

### Background

On 24 August 2016, the Electoral Commission discussed the risk of a legal challenge of the methodology used to determine if a political party has 500 members. To address this risk, the Electoral Commission decided to seek advice from the Australian Bureau of Statistics (ABS) on the validity of the current method.

On 21 September 2016, the Electoral Commissioner wrote to Mr David Kalisch in his capacity as the Australian Statistician, seeking confirmation of the methodology currently employed by the AEC for the random sampling testing of political party membership lists. The Electoral Commissioner requested that the ABS confirm the level of risk associated with the sampling method used by the AEC.

On 9 November 2016, Mr Kalisch replied to the Electoral Commissioner. This response included:

- reiteration of previous advice that the ABS considered still current on the AEC's approach to managing non-responses and recommending minor updates to the risk parameters in the membership testing table
- an updated table showing confidences in membership testing for a membership list between 500 and 550 members. The table lists the 'probability of rejecting a valid list = 10%' and 'probability of accepting an invalid list = 2%'.
- an Excel workbook which included a table showing confidences in membership testing for a membership list between 500 and 1000 members, a risk calculator for alternative invalid list size and risks assumptions, and the algorithm underpinning the basis for this advice.

## Membership testing process

The current membership testing process was introduced in 2010, and with some minor changes in 2011, has been used consistently to determine if parties have the 500 enrolled unique members required to support or maintain registration. To determine whether a political party meets this requirement of the Electoral Act, the AEC contacts a random sample of members. The sample size is based on previous advice from the ABS. Dependent on the actual sample size a political party is permitted a number of denials before the AEC would determine that a political party does not meet the number of members required for registration under the Electoral Act. (See **Appendix 1** for details of the testing process).

The AEC publishes on its website a Party Registration Guide<sup>1</sup> which provides information for parties regarding the party registration process, application process, and reviews of party registration including process and methodology. This includes the current membership sampling rates and number of denials permitted.

## Managing non-responses

The primary legislative intent of Part XI of the Electoral Act is to give applicant political parties every reasonable opportunity to gain or retain registration, providing they meet certain threshold requirements such as having a constitution and providing, through submission of a list, evidence of 500 members who are on the electoral roll.

The AEC's practice has been to treat members who cannot be contacted as 'non-responses' not a 'denial' and to contact the next consecutive person on the random sample list of members used for testing. That is, a non-response is treated as neither confirming nor denying membership. The AEC considers this aligns with the legislative intent to enable parties to gain and retain registration should they meet the requirements set out in the Electoral Act.

Currently, party members are contacted starting from the top of a randomised list. This list is the sample size plus a further 100 per cent of additional names. Contact is attempted on three separate occasions. If after the third attempt the member is still uncontactable they are deemed a 'non-response' (not a denial) and the next consecutive person on the list is contacted. Contact is continued in this way until the required number of contacts for the sample size is reached.

<sup>1</sup> Available at [http://www.aec.gov.au/Parties\\_and\\_Representatives/Party\\_Registration/files/party-registration-guide.pdf](http://www.aec.gov.au/Parties_and_Representatives/Party_Registration/files/party-registration-guide.pdf)

### Random sample size

To date no party has exceeded or used the full 100 per cent extra. If the number of contacts required neared the quota, this would raise concerns about the validity of the list. Advice, taking into account the depth of testing, would be prepared for the delegate's consideration.

### Issues or risks

The ABS's suggested approach to treat a 'non response' as a 'denial' was originally provided to the AEC in 2010. However, the AEC decided at that time not to adopt that approach. While the onus is on the applicant or currently registered parties to demonstrate that they meet the necessary legislative requirements, the suggested change to treatment of non-responses would impact on parties gaining or retaining registration without legislative or parliamentary consideration, oversight of endorsement.

If the approach suggested by the ABS in relation to the treatment of non-responses had been employed for the 2014–15 s. 138A review, of the 24 parties that maintained their membership after the review, 18 parties would have been deregistered. For the 2011–12 s. 138A review, of the 16 parties that maintained their membership after the review, 13 parties would have been deregistered. Since the beginning of 2016, of the eight parties granted registration, only two would have passed testing. This includes Derryn Hinch's Justice Party, (now a parliamentary party), which would have failed to gain registration.

The table below outlines the effect the ABS advice if employed would have had on previous reviews.

138A review	No. of parties reviewed	No. of parties that maintained registration	No. of parties that failed membership testing	No. of parties that would have maintained registration if 'non-responses' had been treated as 'denials'
2014–15	41	24	17	6
2011–12	18	16	2	3

If the ABS advice is applied there would likely be a substantial increase in party membership lists failing initial testing with a flow on effect of an increased number of notices to vary an application (s. 131 notice) or the AEC considering deregistering a party (s. 137 notice) being issued to parties. It could also lead to a corresponding increase in

'review of decisions' submitted to the Electoral Commission and to applications to the Administrative Appeal Tribunal.

#### *Contact attempts*

The contact attempts and methodology undertaken by the AEC for determining non responses could be subject to scrutiny if treated as denials. For example, there is a risk the AEC fails a party's membership on the basis that the maximum number of denials has been exceeded due to non-responses. There may also be cases where the AEC receives a late confirmation of membership from a 'non-respondent' after a delegate's decision to reject an application or deregister a party.

On the other hand, treating non-responses as a denial may encourage parties to be more vigilant in providing accurate and robust lists. This may reduce the administrative burden on the AEC in addition to having a flow on effect on the size of Senate ballot papers if fewer parties are registered.

### Validity of the current membership testing methodology

The updated membership testing table provided by the ABS for a list of 500 to 550 members contains some minor changes to the risk parameters which change some of the 'number of contacts required' and the 'denials allowed' ratios. There is no change to the current overall risk ratios which remain a 'probability of rejecting a valid list = 10%' and 'probability of accepting an invalid list = 2%'.

Maintaining a sample based on a range of 500 to 550 members will, according to the ABS advice, remain a statistically valid method of checking that a party has 500 members. Based on the ABS advice undertaking larger sampling based on a larger list being submitted would not make it any more or any less of a valid outcome as the number of 'yes' responses and the number of 'denials' are percentage based and therefore the percentages in each sample size are equally valid.

Continuing to limit the membership list a party provides to the AEC to between 500 and 550 members allows all parties regardless of their actual size to be on an even playing field in meeting the same requirement for registration. It also ensures resourcing and timeliness for undertaking membership testing remain reasonable – currently it takes on average 10 hours to test a membership list.

The current process for membership testing provides a good balance between a robust and defensible process and a reasonable use of Commonwealth resources. As yet no Electoral Commission decision has been overturned on the grounds of process. This provides a degree of assurance as to the validity and defensibility of the current system.



## Changes to membership testing and timeframe for implementation

Electoral Commission endorsement is being sought to continue to treat non-responses as per current AEC policy and to update the risk parameters in the membership testing table to reflect the recent advice from the ABS. The membership testing table and the Party Registration Guide would be updated to reflect the changes advised by the ABS.

## Recommendations

That the Electoral Commission:

1. **Endorse** updating the membership testing table to reflect updated ABS advice.

Endorsed/not endorsed/set aside

2. **Endorse** maintaining the AEC's current policy of treating 'non-responses' as neither 'confirming nor denying' membership, *as amended by resolution 1.*

Endorsed/not endorsed/set aside

*20 March 2016.*

## Appendix 1

## Current administrative process – membership testing

When a membership list is submitted to the AEC to support either registration or a review, the following steps are taken:

1. The membership list is checked to confirm that it contains between 500 and 550 names.
2. The membership list is checked against the electoral roll through an automated process. Party members will fall into the following three categories: matched to one; matched to many; or no match.
3. The names in the categories 'matched to many' and 'no match' are individually checked against the electoral roll. These members now fall into one of four categories: matched to the electoral roll; deceased; not currently enrolled to vote; or not found on the roll.
4. **Unique members** – Two or more parties cannot rely on the same members for the purpose of registration or continued registration. The names of party members matched to the electoral roll in both stages of testing are then compared to membership lists of other registered political parties to identify any cross party duplicates. Duplicates are removed from the membership list.
5. **Less than 500** - If after this verification process the membership list does not contain 500 names, the party will be issued with a Notice to either vary their application or review submission.
6. **500 or more** - If after this verification process is completed, the membership list contains between 500 and 550 names of electors, the second phase of testing commences.
7. **Random testing** - The membership list is now randomised using an excel function. The size of the random sample is determined by the number of members on the list after steps 2 to 4 are completed.
8. Party members are contacted starting from the top of the randomised list. In the first instance emails are sent to those members with an email address. If no response is received after 24-48 hours the member will be contacted via phone.
9. Contact is attempted on three separate occasions. If after the third attempt the member is still uncontactable they are deemed a non-response (**not a denial**) and the next consecutive person on the list is contacted. Phone contact is continued in this way until the required number of contacts is reached.

