

AEC reference: LEX1984

s 47F (Personal Privacy)

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By email: s 47F (Personal Privacy)

Dear s 47F (Personal Privacy)

Request for review of decision under s 141 of the *Commonwealth Electoral Act 1918*

1. The Australian Electoral Commission ('the Commission') refers to your email dated 6 May 2022, in which you requested that the Commission review the delegate's decision to deregister VOTEFLUX.ORG | Upgrade Democracy! (VFUD) under section 137(6) of the *Commonwealth Electoral Act 1918* ('Electoral Act').
2. This letter is to notify you that the Commission has decided that it is unable to review the delegate's decision at your request.

Your application

3. On 6 May 2022, the Commission Secretariat received an email from you, requesting a review of the delegate's decision to deregister VFUD under section 137(6) of the Electoral Act ('delegate's decision').
4. In your email, you stated that you were linked to an article on VFUD's website "via one of their communication channels: <https://www.voteflux.org/2022/04/20/wrongful-deregistration/>" and agreed with the reasoning in that article for VFUD's belief that "their deregistration was unfair/unjust". You also stated that "there is no reason not to poll the list of active memberships extensively to reach the firmest result" and that VFUD "pose a plausible attempt at contesting the status quo and creating a better life for all Australians".
5. The Commission notes that no action could lawfully be undertaken regarding your application from 11 April 2022 when the writs were issued for the recent federal election until writs were returned on 23 June 2022.

Decision

6. The Commission has considered your request and has decided that the Commission is unable to review the delegate's decision at your request, because you are not a person "affected by" the delegate's decision within the meaning of section 141(2) of the Electoral Act.

Material taken into account

7. In making this decision, the Commission has had regard to the material before it, including:
- (a) your email dated 6 May 2022 requesting a review of the delegate's decision;
 - (b) the delegate's decision and notice dated 24 March 2022 setting out her reasons for that decision;
 - (c) the material and other information before the delegate in making the delegate's decision, including the list of 1,649 names provided by VFUD on 7 December 2021 (7 December 2021 list); the list of 4,680 names provided by VFUD under cover of a letter dated 13 February 2022 (13 February 2022 list); and the results of membership testing of the 7 December 2021 list and the 13 February 2022 list set out at [16]-[24] of the delegate's reasons for decision;
 - (d) correspondence between the Commission Secretariat and you, including the emails sent by the Commission Secretariat to you dated 24 June 2022 and 4 July 2022;
 - (e) Part XI of the Electoral Act, in particular section 141.

Section 141 of the Electoral Act

8. Section 141(2) of the Electoral Act provides for making an application to the Commission for review of a "reviewable decision". A decision to deregister a political party under s 137(6) of the Electoral Act is a "reviewable decision".
9. Sections 141(2) and 141(3) of the Electoral Act require the application:
- be in writing;
 - be made to the Commission;
 - specify an address of the applicant; and
 - include reasons for making the application.

Your request for review met these requirements.

10. In addition, section 141(2) provides that an application can only be made:
 - by a person affected by the decision who is dissatisfied with the decision; and
 - 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 Commission (either before or after the expiration of that period) allows.
11. By an email dated 24 June 2022, the Commission Secretariat advised you that the writ for the recent election had been returned; that the Commission was therefore able to process your request; and that if you wished to submit an updated application or additional material, you were able to do so. By a further email dated 4 July 2022, the Commission Secretariat specifically referred to the statutory requirements in section 141(2) and invited you to provide such further submissions or comments as you wished. The Commission notes that the Commission Secretariat received no response to its emails of 24 June 2022 and 4 July 2022.
12. On the material before it, the Commission is not satisfied that you are a person “affected by” the decision within the meaning of section 141(2) of the Electoral Act, although it accepts that you are dissatisfied with that decision.
13. The term “person affected” is not defined in the Electoral Act and has not received judicial consideration in the context of electoral law. Judicial consideration of the term in other contexts indicates that the meaning of the term in section 141(2) of the Electoral Act is referable to Part XI of the Electoral Act, having regard to the subject, scope and purpose of the Act as a whole.
14. Your email of 6 May 2022 shows that you are dissatisfied with the delegate’s decision to deregister VFUD under section 137(6) of the Electoral Act, but this does not establish that you are a person “affected by” the delegate’s decision within the meaning of section 141(2) of the Electoral Act.
15. The Commission is of the view that a person is not “affected by” a decision to which section 141(2) applies simply because the person is an elector enrolled on the Commonwealth Electoral Roll or a member of the Australian general public. The material before the Commission does not indicate that you have any particular connection to the delegate’s decision or to VFUD (for example, as a member of the Party). This material does not indicate that the delegate’s decision would have any particular consequence for you other than as an elector or member of the public. Having regard to the terms of section 141(2), Part XI of the Electoral Act and the Act as a whole, the Commission has concluded that this is not sufficient to make you a person “affected by” the delegate’s decision for the purpose of section 141(2) of the Electoral Act.

16. Accordingly, the Commission is of the view that you are not a “person affected” by the delegate’s decision to deregister VFUD under section 137(6) of the Electoral Act and that you are therefore not eligible to apply for a review of that decision under section 141 of the Electoral Act.

Other matters

17. The Commission notes that the Commission Secretariat has received other applications for review of the delegate’s decision to deregister VFUD from two other individuals who contest the delegate’s decision for the same or similar reasons to your own. The Commission accepts that these individuals are “persons affected” by the delegate’s decision and otherwise eligible to apply for a review of the delegate’s decision. The Commission proposes to publish the outcome of its review of the delegate’s decision on the AEC website.

Statement of review rights

18. A statement of review rights in respect of this decision is enclosed.

Yours sincerely,

The Hon Justice Susan Kenny AM

Chairperson

September 2022

Mr Tom Rogers

Electoral Commissioner

September 2022

Dr David Gruen AO

Australian Statistician
(non-judicial member)

September 2022

Your review rights

Under s 141(5) of the Electoral Act, a person (including an organisation) affected by the Commission's decision who is dissatisfied with the decision may make an application to the Administrative Appeals Tribunal ('the AAT') for review of the decision.

How is an application made to the AAT for a review of a Commission decision?

In accordance with s 29 of the *Administrative Appeals Tribunal Act 1975*, the application must:

- (a) be made in writing;
- (b) be accompanied by any prescribed fee;
- (c) contain a statement of reasons for the application; and
- (d) be made within the prescribed time.

The application should also:

- (a) specify the name of the applicant; and
- (b) include an address at which documents in relation to the AAT proceedings may be given.

More information on how to apply to the AAT can be found on the AAT website:

<https://www.aat.gov.au/apply-for-a-review>.

Prescribed fee

The AAT's standard application fee is \$962. In certain circumstances, an applicant may be entitled to pay a reduced fee of \$100.

If an applicant pays the standard application fee and the AAT review is resolved in the applicant's favour, the AAT will refund the difference between the standard application fee and \$100. There is no refund if the applicant paid the reduced fee of \$100.

Further information about fees is available on the AAT website:

<https://www.aat.gov.au/apply-for-a-review/other-decisions/fees>.

Prescribed time

You may apply to the AAT for review of the Commission's decision during the period commencing on the day on which the Commission's decision was made and ending on the twenty-eighth day after this letter 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 for extension is made in writing to the AAT and the AAT is satisfied that it is reasonable in all the circumstances to do so.

Further information about time limits is available on the AAT website:
<https://www.aat.gov.au/apply-for-a-review/other-decisions/time-limits>.

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 afresh 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; 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:
<https://www.aat.gov.au/steps-in-a-review/other-decisions>.

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 Commission.

For more information about access to documents under the FOI Act, please visit the Commission's "Access to AEC information" webpage at: www.aec.gov.au/information-access/index.htm.

Should you have any further queries regarding the Commission's decision, please contact the Commission Secretariat by emailing commission.secretariat@aec.gov.au.