

Australian Electoral Commission Meeting No. 272

Date: Thursday 18 March 2021 **Time:** 11:30am **Location:** Commissioner's Boardroom,
10 Mort Street, Canberra, ACT

Attendees:

The Hon. Justice Susan Kenny AM (Chair);
Mr Tom Rogers (Electoral Commissioner);
Dr David Gruen (Australian Statistician)
Ms Joanne Reid (Assistant Commissioner Disclosure, Assurance, and Engagement Branch)
Mr Andrew Johnson (Chief Legal Officer)

Action Officer: section 47F (Commission Secretariat)

Agenda

Item

1. **Welcome and Commissioner's introduction**
2. **For information:** Membership testing and advice
3. **For Decision:** Application for review under s141 – Stop Selling Australia Party
4. **Closing**

Agenda item 1: Welcome and Commissioner's introduction

The Chair opened the meeting at 11:40am. Mr Tom Rogers acknowledged the traditional owners of the land and welcomed the Commission members; the Hon. Justice Susan Kenny, and Dr David Gruen. The Commission members welcomed this meeting as the first opportunity for a face-to-face meeting since all three members were appointed to the Commission.

Agenda item 2: For information: Party membership process

Ms Jo Reid provided background on party registration for federal elections.

- The role of the AEC is to ensure that parties who apply for registration are compliant under the *Commonwealth Electoral Act 1918* (the Electoral Act).
- Part of Ms Reid's role as the Assistant Commissioner of Disclosure, Assurance, and Engagement Branch, is to act as the delegate of the Electoral Commission for party registration matters under s126(3) of the Electoral Act.
- Parties can either be parliamentary or non-parliamentary. Parliamentary parties must have one Member of Parliament to register. Non-parliamentary parties must provide evidence that they have at least 500 active members.
- The AEC currently has 74 parties and state branches registered. Registered parties can have their party name on the ballot paper next to the name of the candidate.
- Parties are not incorporated entities and are only accountable under the Electoral Act. Regardless of registration, all candidates for an election must lodge a financial return.
- Ms Reid noted that decisions made by the delegate can be subject to further review by the Commission under s141 of the Electoral Act.

Members discussed s129 of the Electoral Act and restrictions of party names, noting the previous decisions made by the AEC and the Commission.

Ms Reid provided Commission Members an overview of the Australian Electoral Commission's membership testing process.

- The AEC uses statistical sampling to attain confidence that a party has at least 500 members. The methodology for this process was developed in March 2010, and reviewed and updated in 2011 and 2017.
- To determine whether a political party meets the requirements of the Electoral Act relating to the number of members, the AEC will contact a random sample of 18 to 50 members where the sample size corresponds with the size of the list provided. A certain percentage of members must confirm their membership when contacted by the AEC.
- Mr Rogers noted that the review of the methodology in 2017 pertained to whether non-responses are able to be considered as neither confirming nor denying membership. The advice received from the previous Australian Statistician, Mr David Kalisch, indicated that the original membership testing considered a non-response a denial. The approach taken by the AEC would not disadvantage the party, in fact considering non-responses as neither confirmations nor denials would be potentially advantageous for the party.
- Based on the advice of the then Australian Statistician, Mr David Kalisch, the current methodology provides no less than a 90% confidence rate that a party has 500 members.
- Ms Reid noted that the process has never been tested in a court. Commission members noted that the process could be tested by the Administrative Appeals Tribunal (AAT).

Members discussed the process, noting the risk that the AAT would consider resourcing limitations a weak argument for the random sample approach. Members noted that a stronger argument would involve a high statistical confidence in the methodology, demonstrated attempts to avoid penalising applicants, and evidence that alternative methodologies have been investigated.

Members agreed that further investigation of the membership testing methodology should be undertaken.

Action	Officer
<p>272.1 The Australian Electoral Commission will engage with the Australian Bureau of Statistics, regarding the membership testing methodology, to:</p> <ol style="list-style-type: none"> 1. Obtain updated advice on the current methodology 2. Explore whether there is an alternative methodology that increases the statistical confidence without unduly affecting the resourcing of the Australian Electoral Commission 	Tom Rogers

Ms Jo Reid excused herself from the meeting.

Agenda item 3: For Decision: Application for review under s141 – Stop Selling Australia Party

Members discussed the application for review under s141 of the Electoral Act concerning the registration of the Stop Selling Australia Party, as outlined by the commission paper.

Members noted the recommendation that the Commission affirms the delegate's decision of 18 September 2020 to refuse the application to register the Party.

Members noted that, as the membership list contains exactly eligible 500 members, a single denial from the testing of 18 members of the list results in a failure to meet the minimum required number of eligible members. . Members reflected the discussion and resultant **action item 272.1** that had occurred under **agenda item 2**.

The Commission reflected that the AEC made demonstrated and numerous attempts to remain in contact with the Party.

On this basis, the Members agreed to affirm the delegate's decision of 18 September 2020 to refuse the application to register the Party, and the additional information provided by the affected party under review pursuant to section 141(4) of the Electoral Act.

Agenda item 4: Closing

The Chair closed the meeting at 12:30pm.