

AUSTRALIAN DEMOCRATS

Your Ref: 18-19-014, 18/829

29 March 2019

Attn: Joanne Reid
A/g Assistant Commissioner
Disclosure, Assurance and Engagement
Australian Electoral Commission
BY EMAIL ONLY TO: fad@aec.gov.au

Dear Assistant Commissioner

Notification of objection lodged under paragraph 132(2)(b) of the Commonwealth Electoral Act 1918 (the Electoral Act)

1. We refer to your letter dated 28 March 2019 in which you have notified our Registered Officer of and provided him with a copy of the objection lodged to the registration of our party, the Australian Democrats (**the party**).

Background

2. We note with interest that one of the objectors is The Australian Democrats (Queensland Division) Incorporated (**the objector**) which is a registered incorporated association in the state of Queensland under the auspices of the Office of Fair Trading in Queensland and subject to the laws of that state. The objector is not a registered political party with the Queensland Electoral Commission nor is it registered with the Australian Electoral Commission.
3. The principal activity of the objector is stated in the attached association extract which states:
"To serve the community in the interests of all Australians".
4. The objector is not a political party and does not have overtly political objectives based on the information publicly available that it has provided to the Queensland Office of Fair Trading.
5. The office holders of the objector are listed as:
 - a. President: Paul Stevenson (**Stevenson**);
 - b. ¹³ [REDACTED] ¹ [REDACTED] and
 - c. Treasurer: ¹ [REDACTED]
6. On or about Wednesday 13 March 2019 the Secretary of the party telephoned ¹ [REDACTED] on the basis of a message received. During that telephone discussion, which is particularised in the Statutory Declaration of Andrew John Castrique (**Castrique**) ⁸ [REDACTED] on 20 March 2019¹, ¹ [REDACTED] threatened to lodge the objection that is before the AEC unless:
 - a. The objector was recognised as the representative of the party in Queensland; and
 - b. Stevenson was endorsed as the lead Senate Candidate in Queensland.

¹ A copy of which is provided with this response.

7. ¹ [REDACTED] somewhat ominously stated to Castrique words to the effect of:
- "We don't want to go the way of the AAT again".*
8. The history above gives some context to the motivations behind the objection.
9. In or about November 2018 the Australian Democrats and Country Minded Amalgamated. The terms of the Amalgamation and terms of the Constitution were approved by a majority of the members eligible to vote in both former organisations.
10. The Party making the application to the AEC for registration is properly constituted.

Grounds for Objection

11. There are only four grounds upon which the objector may object to the registration of the party that can be considered by the AEC namely:
- a. That the party is not eligible for registration²;
 - b. That the technical requirements for an application have not been met³;
 - c. That the party name must be refused⁴;
 - d. That the party logo must be refused⁵.
12. The objector does not demonstrate in any meaningful way that any of the grounds for objection apply to the application by the party. It is telling that instead of providing clear and cogent evidence of a reasonable basis for the objection the objector has instead, attempted to justify the objection through desperate, disingenuous and dastardly allegations, either without any evidence whatsoever, or, by deliberately shutting its eyes to evidence that is sitting in plain sight.
13. We respond to each heading of the grounds for objection by adopting that same heading for ease of reference. It is regrettable that the author of the objection did not have the foresight to format the objection in a way that might assist the AEC with the task of determining the objection made.

Ethical Considerations

14. We do not propose to comment in relation to this heading other than to note the irony of any reference to ethics given the history outlined above.
15. No ground for objection is made out under this heading.

Sufficiency of Notice

16. The premise of the complaint under this heading appears to be a purported failure on the part of the AEC to comply with its own advertising requirements through a failure on the part of the party to comply with section 126(2) of the Electoral Act.

² Ss4 and 123 of the Electoral Act

³ S126 of the Electoral Act

⁴ S129 of the Electoral Act

⁵ S129A of the Electoral Act

17. Section 126(2) relevantly states:

- " (2) *An application for the registration of an eligible political party shall be in writing, signed by the applicant or applicants and by the person who is to be the registered officer of the party, and shall:*
- (a) set out the name of the party; and*
 - (b) if the party wishes to be able to use for the purposes of this Act an abbreviation of its name—set out that abbreviation; and*
 - (ba) if the party wishes a logo of the party to be entered in the Register—set out a copy of a logo; and*
 - (c) set out the name and address of the person who is to be the registered officer of the party for the purposes of this Act; and*
 - (ca) include a list of the names of the 500 members of the party to be relied on for the purposes of registration; and*
 - (d) state whether or not the party wishes to receive moneys under Division 3 of Part XX; and*
 - (e) set out the name and address of the applicant or the names and addresses of the applicants and particulars of the capacity in which the applicant or each applicant makes the application; and*
 - (f) be accompanied by a copy of the constitution of the party; and*
 - (g) be accompanied by a fee of \$500."*

18. The ground of the objection is not made out by obscure reference to an amalgamation⁶ that took place prior to the lodgement of the application. The application complies in every respect with the relevant requirements as set out in the Electoral Act.

19. The confused reference to a High Court decision⁷ about the manner in which legislative discretion may be exercised does not assist the objector because the AEC is not exercising a discretion. The objector states in its own submission under this heading:

"We note the requirements of section 132(2)(a) are Mandatory"

On this point we are at one with our objector, accordingly, the High Court decision referred to has no application here.

20. No ground for objection is made out under this heading.

Status of the Organisation

21. The premise of the objection under this heading appears to pertain to the definition of an organisation pursuant to section 4 of the Electoral Act. The relevant part of that section states:

"Organization includes:

- (a) a body corporate;
- (b) an association or other body of persons;
- (c) an association that consists of 2 or more organizations within the meaning of the preceding paragraphs; and
- (d) a part of an organization within the meaning of a preceding paragraph

⁶ Erroneously referred to as a merger by the objector

⁷⁷ Minister for Immigration and Citizenship v Li [2013] HCA 18

Part in relation to an organization, includes:

- (a) a branch or division of the organization; and
- (b) a part of a part of the organization

22. We fail to see how the party does not meet the definition set out in the said section.

23. There is reference to Section 132(2)(1) of the Electoral Act under this heading. That section does not exist in the Electoral Act and as a consequence we cannot make comment. We do not consider it reasonable that we be required to guess what the nature of what the objection is in that respect.

24. No ground for objection is made out under this heading

Invalid Party Constitution

25. The premises of the objection under this heading is that the constitution of the party is either invalid or fraudulent and by extension offends one or more of sections 132(2)(b)(i), 132(2)(b)(ii) or 126(2)(f).

26. Whilst tedious the allegation made requires an examination of each section. Section 132(2) relevantly states:

"(2) A notice under subsection (1) in relation to an application shall:

- (a) set out the particulars specified in the application in accordance with subsection 126(2); and
- (b) invite any persons who believe that:
 - (i) the application does not relate to an eligible political party; or
 - (ii) the application is not in accordance with section 126 (including because subsection 126(2B) would be contravened); or
 - (iii) the application should be refused under section 129; or
 - (iv) the Electoral Commission should refuse to enter a logo of the party in the Register under section 129A;
 to submit written particulars of the grounds for that belief to the Electoral Commission within 1 month after the date of the publication of the notice on the Electoral Commission's website."

27. The objector does not make out the objection that the application does not relate to an eligible political party and does not make out the allegation that the party contravenes section 126(2B) on the basis that the Registered Officer is the officer of more than one party at the same time. For the avoidance of any doubt the Registered Officer is not the Registered Officer of any other party.

28. Section 126(2)(f) requires the application to be accompanied by a copy of the constitution. The constitution has been provided and has been published on the AEC website.

29. Aside from defaming the good name and character of those associated with the amalgamation, which in and of itself is scandalous and outrageous, the allegations have been made without any evidence whatsoever. The objector admits that it has no evidence upon which it can support its baseless and offensive allegations when it states that:

"... we believe that the text of the Party Constitution was never approved

30. There is no evidence provided upon which the basis of the stated belief can be reasonably founded because there is no evidence to support the allegation at all. The objector and the objector's office bearers are not members of the party.
31. No ground of objection is made out under this heading.

Application contrary to the Australian Constitution

32. This is not a ground for objection. The premise of the objection under this heading is that in some round about way the application for registration offends this country's founding document. Section 118 of the *Commonwealth of Australia Constitution Act* relevantly states:

"Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State."

33. The party does not intend to disobey or ignore any law, public act or record or judicial proceedings. To be frank we are unable to fathom how the registration of the party with the AEC as a political party has any bearing upon the objector who is governed by the laws of the state of Queensland, specifically the *Associations Incorporation Act 1981 (Qld)* and has the purpose particularised in paragraph 3.
34. For the sake of completeness in addressing this heading we again point out that the reference to the High Court decision in *L⁸* shows a fundamental misunderstanding of the registration process. The AEC is not exercising a discretion to register the party, it is ensuring that a mandatory process is followed. If that process is complied with and passed with the AEC is obliged to register the party.
35. No ground for objection is made out under this heading.

Application Contrary to Trademark Law

36. We deny that the objector is the joint holder of any trademark with the party. The words "Australian Democrats" are trademarked to the party under trademark number 639813 a copy of the original certificate and current summary from IP Australia are attached for your consideration.
37. The balance of the objection is denied in the premises of the matters already discussed in this response specifically in paragraphs 19, 26, 27 & 28.
38. No ground for objection is made out under this heading.

Application Technically Flawed

39. The premise of the objection under this heading refers to the High Court decision in *L⁹*, which, as already discussed earlier, does not apply here¹⁰. The objector states that the application is technically flawed because the Constitution cannot be amended.
40. Whether the constitution of the party can be amended or not is not a ground for objection¹¹. Nevertheless, we feel it necessary to point out that rule 57(2) allows the rules that make up the constitution to be changed by special resolution. We point this out to illustrate the absurdity of the objection not only under this heading but in general.

⁸ Minister for Immigration and Citizenship v Li [2013] HCA 18

⁹ ibid

¹⁰ for the reasons already particularised in paragraph 19

¹¹ See paragraph 11 above and 42 below.

41. No ground of objection is made out here.

Summary

42. There are only four grounds upon which the objector may object to the registration of the party that can be considered by the AEC namely:

- a. That the party is not eligible for registration¹²;
- b. That the technical requirements for an application have not been met¹³;
- c. That the party name must be refused¹⁴;
- d. That the party logo must be refused¹⁵

43. In the six pages of prose the objector has failed to go close to identifying a single ground upon which the registration can be refused. The misinterpretation of the Electoral Act and the attempt to import reasoning from a High Court decision that has no application is embarrassing. The objection is nothing short of an abuse of process and should be treated as such.

44. The objector has an ulterior motive, to prevent registration to gain an advantage. The objection was lodged at the last possible moment in an attempt to prevent registration prior to the upcoming federal election. The objection was only made when attempts by one of its registered officers to coerce and influence the internal workings of the party failed. We sincerely hope that the AEC sees the objection for the abuse of process that it is.

45. We look forward to receiving confirmation of registration of the party at your earliest opportunity. Should you have any questions in relation to the content of this response then please do not hesitate to contact the writer via the details on your file or Deputy National President Mr Dan Hutchinson on 7 [REDACTED] or by email dan.hutchinson@australian-democrats.org.au

Yours faithfully

Australian Democrats

4 [REDACTED]

Darren Churchill

Registered Officer

Direct e-mail: 6 [REDACTED]

Enc

- (i) Copy of Association Extract – Australian Democrats (Qld) Incorporated;
- (ii) Copy of Statutory Declaration – Andrew John Castrique 8 [REDACTED] 20 March 2019;
- (iii) Copy of Original Trademark Certificate no. 639813– Australian Democrats; and
- (iv) Copy of Current Extract from IP Australia

¹² Ss4 and 123 of the Electoral Act

¹³ S126 of the Electoral Act

¹⁴ S129 of the Electoral Act

¹⁵ S129A of the Electoral Act

REDACTION CODES

- 1 Personal Information (name) redacted.
- 2 Personal Information (date of birth) redacted.
- 3 Personal Information (photograph) redacted
- 4 Personal Information (facsimile of signature) redacted.
- 5 Personal Information (facsimile of manuscript initialling) redacted.
- 6 Personal Information (Individual's address) redacted.
- 7 Personal Information (individual's telephone number) redacted.
- 8 Personal Information (individual's opinion) redacted.
- 9 Personal Information (opinion about individual) redacted.
- 10 Personal Information (employment history) redacted.
- 11 Personal Information (qualifications) redacted.
- 12 Personal Information (health) redacted.
- 13 Personal Information (identifying individual) redacted.
- 14 Business information (Bank Account details) redacted.
- 15 Business information (Billing Account details) redacted.
- 16 Business information (internal operations) redacted.
- 17 Legal Professional Communication redacted.
- 18 Deliberative material redacted.
- 19 Irrelevant material redacted.
- 20 Electoral Roll material redacted.
- 21 Tests, examinations or audits material redacted.
- 22 Management or assessment of personnel material redacted.
- 23 Proper and efficient conduct of the operations of AEC material redacted.
- 24 Lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law.