

Minute

File reference: 18-19-014, 18/829

To: **Gabrielle Paten**
Assistant Commissioner
Disclosure, Assurance and Engagement

Subject: **For Action – Final determination of application for registration as a non-Parliamentary party under paragraph 126(1)(b) of the Commonwealth Electoral Act 1918 (the Electoral Act) – Australian Democrats (the Party)**

Purpose

This minute asks you as a delegate of the Electoral Commission to approve the application for registration from the Australian Democrats (the Party) under subsection 126(3) of the Electoral Act and to enter a party logo in the *Register of Political Parties* (the Register).

Authority

Subsections 126(3), 132(2) and 132(7) and section 133 of the Electoral Act.

Background

On 5 December 2018, the Australian Electoral Commission (AEC) received all of the requirements for an application for registration from the Party under paragraph 126(1)(b) of the Electoral Act (folio 62).

On 20 February 2019, a delegate of the Electoral Commission determined that the application had passed the initial assessment and approved the advertisement of the application under paragraph 132(1)(c) of the Electoral Act (folio 141). The delegate determined that the Party's application passed the initial stage of assessment for the following reasons:

- the proposed party name is not prohibited under s 129 of the Electoral Act;
- the proposed party logo is not prohibited under s 129A of the Electoral Act;
- the Party's constitution contains both an objective and the definition of the role of secretary as required by sections 4 and 123 of the Electoral Act; and
- the Party's membership list passed membership testing.

A notice of the application was advertised on the AEC website and in 10 major newspapers on 26 February 2019. A copy of the advertisement for publication is at folio 143. The closing date for objections was 26 March 2019.

Written particulars submitted

Legislative framework – written particulars

Paragraph 132(2)(b) of the Electoral Act provides that a person can only submit written particulars objecting to an application to register a political party on the following grounds:

- (i) the application does not relate to an eligible political party; or
- (ii) the application is not in accordance with section 126 of the Electoral Act (the section setting out the requirements to be met by an applicant party); or
- (iii) the application should be refused under section 129 of the Electoral Act (the name and abbreviation tests); or
- (iv) the Electoral Commission should refuse to enter a logo of the Party in the Register under section 129A of the Electoral Act.

Please refer to **Attachment A – Legislative Framework** which outlines in detail sections of the Electoral Act relevant to written particulars.

On 25 March 2019, the AEC received written particulars from [REDACTED] on behalf of the Australian Democrats (Queensland Division) Incorporated (folio 190).¹⁷

A delegate of the Electoral Commission determined the written particulars addressed the requirements of paragraph 132(2)(b) of the Electoral Act. The delegate approved correspondence relating to the assessment of the written particulars (folio 199). The AEC published the written particulars on the AEC website and provided the written particulars, including a notice inviting a reply, to Mr Darren Churchill, Registered Officer of the Party. On 29 March 2019, the Party responded to the written particulars (folio 252). The Party's response was published on the AEC website in accordance with subsection 132(6) of the Electoral Act. The written particulars received by the AEC and Party's response are at folios 200-252.

Objection to the Party's application

Objection from Australian Democrats (Queensland Division) Incorporated

The written particulars from [REDACTED] on behalf of the Australian Democrats (Queensland Division) Incorporated included a signature, specified an address, and objected to at least one of the grounds under paragraph 132(2)(b) of the Electoral Act.

[REDACTED] has summarised the evidence in support of his objection to the Party's application by stating:

"We believe there are numerous problems with this application for party registration, including: a) the sufficiency of the notice of application for party registration, b) the status of the merged entity applying for registration, c) if there is continuity between the merged entity and the Australian Democrats, then the Party Constitution as put forward is either invalid or fraudulent, d) the Party Constitution upon which the application is based is contrary to the Australian Constitution, e) the application is contrary to trademark law, and f) the application is technically flawed."

Response from the Party to the objection from Australian Democrats (Queensland Division) Incorporated

The Party responded to the objection submitted by the Australian Democrats (Queensland Division) Incorporated. The Party's response to the objection submits that:

- the notice published by the AEC of the Party's application for registration "complies in every respect with the relevant requirements as set out in the Electoral Act";
- the Party "fails to see how [it] does not meet the definition" of an "organisation" for the purposes of subsection 4(1) of the Electoral Act;
- the Party's constitution has been provided to the AEC as part of its application and satisfies paragraph 126(2)(f) of the Electoral Act;
- the contention that the Party's application is contrary to the Australian Constitution "is not a ground for objection" under paragraph 132(2)(b) of the Electoral Act.

AEC Consideration

As stated above, the grounds for a valid objection to an application for registration are set out in paragraph 132(2)(b) of the Electoral Act. The AEC agrees with the Party's response to

1's objection that contrariness with the Australian Constitution is not a valid ground for an objection to an application for registration under paragraph 132(2)(b) of the Electoral Act.

The AEC considers that the matters 1 raises relating to the requirements for the publication of a notice of the Party's application under paragraph 132(1)(c) and paragraph 132(2)(a) of the Electoral Act are outside of the objection mechanism contained in paragraph 132(2)(b) of the Electoral Act.

1's objection to the Party's application states that the Party's constitution is an "invalid document" and therefore the requirement set out in paragraph 126(2)(f) of the Electoral Act that the Party provide "a copy of the constitution of the party" has not been met. The objection states further that, "the Electoral Act does not stipulate what is to be included in a Constitution, apart indicating [sic] at Section 123 that the Constitution should set out the aims of the party" (folio 222).

The response provided to the AEC by the Australian Democrats states that, consistent with paragraph 126(2)(f) of the Electoral Act, "the constitution has been provided and has been published on the AEC website".

When undertaking an initial assessment of the Party's application, the AEC assessed the Party's constitution against the requirements of the Electoral Act. A delegate of the Electoral Commission determined that the Party's constitution met the requirements for a constitution set out in section 4 and subsection 123(1) of the Electoral Act. Namely, that the Party's constitution is in writing and sets out the aims of the Party. The delegate determined that the Party's constitution includes one of the objectives of the Party as to "endorse candidates for Senate and House of Representatives elections".

The AEC considers the Party to be an "organisation" and a "political party" for the purpose of subsection 4(1) of the Electoral Act.

1's objection states that the Party's application is contrary to trademark law, as: "the Australian Democrats (Queensland Division) Incorporated is *joint holder of trademark rights to the name Australian Democrats* [emphasis added], and we do not consent to the use of those words in the current application for party registration of the merged entity".

The AEC considers that any joint ownership of a trademark is not a valid ground for an objection under subsection 129(1) of the Electoral Act.

However, paragraph 129(1)(c) of the Electoral Act prohibits the registration of a party name that is the name of a recognised party. Subsection 129(2) of the Electoral Act, set out above, defines "recognised political party". The Australian Democrats (Queensland Division) Incorporated is not a "Parliamentary party" or a "registered party". In addition, the Australian Democrats (Queensland Division) Incorporated is not registered by a state or territory electoral commission (folios 271-294). On this basis, it is not "registered or recognised for the purposes of the law of a State or Territory". The AEC does not consider the Australian Democrats (Queensland Division) Incorporated a "recognised political party" under paragraph 129(1)(c) of the Electoral Act, and there is no basis to refuse the Party's application under s 129(1) of the Electoral Act. LSS provided advice supporting this conclusion, which is at folio 265

Based on the information above, the Party's application **meets the requirements** of subsection 123(1), sections 126 and 129 of the Electoral Act.

Conclusion

On 5 December 2018, the AEC received an application from the Party to register as a non-Parliamentary Party. On 20 February 2019, a delegate of the Electoral Commission approved the advertisement of the Party's application in 10 newspapers and on the AEC website. The AEC received one written particulars objecting to the registration. The evidence provided in support of this objection was within the grounds of paragraph 132(2)(b) of the Electoral Act, but was not sufficient to require the Electoral Commission to refuse to register the Party under the Electoral Act.

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Based on the materials taken into account as part of the initial assessment and final determination, the Party's application satisfies the requirements under section 126 of the Electoral Act and should be approved for registration and the Party's name and logo entered into the Register.

Under subsection 126(3) of the Electoral Act you, as a delegate of the Electoral Commission, have the authority to approve this application.

Freedom of Information Release

Recommendations:

That as a delegate of the Electoral Commission for the purposes of Part XI of the *Commonwealth Electoral Act 1918*, you:

1. note the written particulars from [REDACTED] on behalf of the Australian Democrats (Queensland Division) Incorporated objecting to the Australian Democrats application for registration
2. approve the application for registration of the Australian Democrats, and enter the Party in the *Register of Political Parties* as a non-Parliamentary party under subsection 133(1) of the Electoral Act
3. approve the correspondence and draft notice of decision and statement of reasons to be sent to the Registered Officer of the Australian Democrats, Mr Darren Mark Churchill, as required by paragraph 133(1)(b) of the Electoral Act (Attachment B)
4. approve the correspondence including the draft notice of decision and statement of reasons to be sent to the objector, [REDACTED], as required by paragraph 133(1)(c) of the Electoral Act (Attachment C)
5. approve the publication of a notice of the registration of the Australian Democrats on the AEC website as required by paragraph 133(1A)(a) of the Electoral Act (Attachment D)
6. approve the publication of the Notice of Decision and statement of reasons, which [REDACTED] implements the notice, on the AEC website.

Abe Williamson
A/g Senior Party Registration Officer
Parliamentary and Party Registration
6 April 2019

Reviewed by [REDACTED]

Stuart Oreo
Director
Parliamentary and Party Registration
6 April 2019

6/04/2019

Recommendation 1: Noted / Please discuss

Recommendation 2: Approved / ~~Not approved~~

Recommendation 3: Approved / ~~Not approved~~

Recommendation 4: Approved / ~~Not approved~~

Recommendation 5: Approved / ~~Not approved~~

Recommendation 6: Approved / ~~Not approved~~

[REDACTED]
Gabrielle Paten
Assistant Commissioner
Delegate of the Electoral Commission

7 April 2019

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.