

Minute

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

To: Gabrielle Paten
Assistant Commissioner
Disclosure, Assurance and Engagement

Subject: For Action – initial assessment of application under subsection 126(3) of the *Commonwealth Electoral Act 1918* (the Electoral Act) for registration as a political party – Australian Democrats

Purpose

This minute asks you, as a delegate of the Electoral Commission, to approve the advertisement of an application for registration of a non-Parliamentary party from the Australian Democrats (the Party) under subsection 132(1) of the Electoral Act.

Authority

Sections 123, 126, 129, 129A, 131 and 132 and subsections 4(1) and 123(1) 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 subsection 126(1)(b) of the Electoral Act (folio 62). The application included a copy of the Party's constitution (folio 55), an electronic list of members, a statutory declaration from the Party secretary (folio 57) and a logo (folio 74). The Party is not registering an abbreviation of its name.

Assessment of constitution

Section 4 of the Electoral Act defines a political party as an organisation the object or activity, or one of the objects or activities, of which is the promotion of the election to the Senate or to the House of Representatives of a candidate or candidates endorsed by it. Subsection 123(1) of the Electoral Act provides that one of the criteria for an "eligible political party" is that it is "established on the basis of a written constitution (however described) that sets out the aims of the party".

A party's constitution must also contain the position of secretary, which is defined in subsection 123(1) as "the person who holds the office (however described) the duties of which involve responsibility for the carrying out of the administration, and for the conduct of the correspondence, of the party".

The Party's constitution meets these requirements because:

- Part 1.2 of the constitution lists one of the objectives of the Party as "to endorse candidates for Senate and House of Representative elections, State Parliaments and local governments" (folio 54)
- Part 13 of the constitution outlines the role of party secretary (folio 47).

Based on this information, the Party's **constitution meets the requirements** of sections 4 and 123 of the Electoral Act.

Assessment of proposed Party name

Name sought: Australian Democrats

Section 129 of the Electoral Act prohibits the registration of parties with certain names. An assessment of the proposed name was undertaken to ensure it did not contravene s 129.

The proposed name:

- a) is not more than six words
- b) is not obscene
- c) is not the name, abbreviation or acronym of the name of another political party (not being a political party that is related to the party to which the application relates) that is a recognised political party
- d) does not so nearly resemble the name, abbreviation or acronym of the name of another political party (not being a related political party) that is a recognised political party that it is likely to be confused with or mistaken for that name, abbreviation or acronym
- da) is not one that a reasonable person would think suggests a connection or relationship exists between the party and a registered party
- e) does not comprise the words 'Independent Party' or comprise or contain the word 'Independent' and:
 - i. is not the name, or an abbreviation or acronym of the name, of a recognised political party; or
 - ii. does not so nearly resemble the name, or an abbreviation or acronym of the name, of a recognised political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym, as the case may be.

The federal Register was checked (folios 124-128) and that of each state and territory (folios 98-123) for parties with a similar name. Four party abbreviations were identified that include the word "Democrats":

- "Liberal Democrats" (Federal Register) (folio 126)
- "Liberal Democrats" (Australian Capital Territory Electoral Commission) (folio 123)
- "Liberal Democrats" (Western Australian Electoral Commission) (folio 106)
- "Liberal Democrats" (South Australian Electoral Commission) (folio 104).

The four party abbreviations above share the word "Democrats" with the Party's proposed name, "Australian Democrats". However, the Party's proposed name contains the word "Australian", distinguishing the name from the above abbreviations use of the word "Liberal". There is enough of a difference that the proposed name is not likely to be confused with or mistaken for the abbreviations above. Further, a reasonable person would not think the name "Australian Democrats" suggests a connection or relationship exists between the parties.

Based on the information above **the proposed name is not prohibited** under s 129 of the Electoral Act.

Assessment of party logo

Section 129A of the Electoral Act prohibits the registration of certain party logos. An assessment of the proposed logo was undertaken to ensure it did not contravene s 129A. Proposed logos are also assessed against technical specifications and a background check is performed. A copy of the Party's logo is at folio 74. The proposed logo:

- a) is not obscene;
- b) is not the logo of any other person;
- c) does not so nearly resemble the logo of any other person that it is likely to be confused with or mistaken for that logo;
- d) is not one that a reasonable person would think suggests that a connection or relationship exists between the applicant and a registered political party if that connection or relationship does not in fact exist;
- e) does not comprise the words 'Independent Party' or comprise or contain the word 'Independent' and:
 - i. the name, or an abbreviation or acronym of the name, of a recognised political party (within the meaning of subsection 129(2)); or

- ii. matter that so nearly resembles the name or an abbreviation or acronym of the name of a recognised political party (within the meaning of subsection 129(2)) that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym, as the case may be.

Logo Validation

The logo has been assessed against the specifications described in *Commonwealth Electoral (Logo Requirements) Determination 2016* and has met the requirements (the validation email is at folio 76).

Background Check

The Party's logo has been checked by Cre8ive and the AEC has been advised there are no issues with the Party's logo and there were no similar logos found (folio 92).

In summary, the proposed logo is **not prohibited** under s 129A of the Electoral Act.

Assessment of membership list

The membership list submitted by the Party contained 550 members. This list was checked automatically using RMANS, with 513 members identified on the electoral roll. A further 35 members were manually identified on the electoral roll using GENESIS while two members were unable to be matched to the roll.

No members were identified as duplicates within the list and four members were identified as cross-party duplicates.

On 14 January 2019, the Party elected to remove three members from the Party's membership list. See folio 96 for a breakdown of the membership numbers.

A list of 541 members requires contact with a random sample of 47 members under the formula provided by the Australian Bureau of Statistics (folio 94). For the AEC to be satisfied that the Party has the required 500 members, six denials of membership are permitted.

The relevant numbers for this membership test were:

1. the random sample size was 47
2. the AEC attempted to contact 60 members, as some members were uncontactable or provided a neutral response
3. the highest 47 responses were:
 - 47 confirmed membership
 - none denied membership.

A record of those contacted is at folio 97. Based on this information the Party's membership list **passed the membership testing assessment** of the application process.

Other procedural application requirements

The application for registration as a political party:

- was in writing, signed by 10 members of the Party, one of whom is the Secretary of the Party;
- set out the name and address of the person who is to be the Registered Officer of the Party for the purposes of the Electoral Act;
- advised whether the Party wishes to receive moneys under Division 3 of Part XX of the Electoral Act;
- set out the name and address of the applicants and particulars of the capacity in which each applicant makes the application; and
- was accompanied by a fee of \$500.

In summary, the application for registration **meets** the requirements of paragraphs 126(1)(b), 126(2)(c), 126(2)(d), 126(2)(e) and 126(2)(g) of the Electoral Act.

Conclusion

An assessment of the Party's application was undertaken and it was determined that:

- the Party's **constitution meets the requirements** of s 4 and s 123 of the Electoral Act
- the Party's **name is not prohibited** under s 129 of the Electoral Act
- the Party's **logo is not prohibited** under s 129A of the Electoral Act
- the Party **meets the membership requirements** of s 123 of the Electoral Act

Based on the information above, the Party's application satisfies the requirements of the initial assessment. The AEC should now proceed to advertise the Party's application as required by subsection 132(1)(c) of the Electoral Act.

Freedom of Information Release

Recommendations:

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

1. approve the advertisement of the application for registration from the Australian Democrats under subsection 132(1) of the Electoral Act
2. approve the notice for publication on the AEC website and in 10 newspapers as required under subsection 132(1)(c) of the Electoral Act (Attachment A)
3. approve the letter to the registered officer of the Australian Democrats, Mr Darren Churchill, [redacted] him of the advertising of the application (Attachment B)

Abe Williamson
A/g Senior Party Registration Officer
Parliamentary and Party Registration
19 February 2019

Reviewed by [redacted]

Stuart Oreo
Director
Parliamentary and Party Registration
19 February 2019

Recommendation 1: Approved / Not Approved

Recommendation 2: Approved / Not Approved

Recommendation 3: Approved / Not Approved

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

20 February 2019

Freedom of Information Release

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.