

File reference LS7749



Dear 

Notice of decision under subsection 141(7) of the *Commonwealth Electoral Act 1918* and Statement of Reasons

1. I refer to your application under subsection 141(2) of the *Commonwealth Electoral Act 1918* (Electoral Act) to the Electoral Commission (the Commission) dated 30 April 2019.
2. In your application, you requested review of the decision by a delegate of the Commission to approve the application from "FRASER ANNING'S CONSERVATIVE NATIONAL PARTY" ('the Party') to be entered as a Parliamentary party on the *Register of Political Parties*, received by the Commission on 30 April 2019.
3. This letter is to notify you, in accordance with subsection 141(7) of the *Commonwealth Electoral Act 1918* (the Electoral Act), that on 29 March 2019, the Commission decided to **dismiss** your application

Application for review

4. On 30 April 2019, the Commission Secretariat received an application under subsection 141(2) of the Electoral Act from you by email, requesting a review of the decision by the delegate to enter the Party on the *Register of Political Parties*.
5. In your application, you submitted that you have standing to seek review of the decision as "a person affected by the decision who is dissatisfied with the decision" by reference to two matters:
 - a. the conduct of the party's Registered Officer, former Senator Fraser Anning, and
 - b. your role as the creator of an online petition calling for the AEC to reconsider its decision to register the Party.
6. The reasons provided by you in support of his application for review were that:
 - a. the name of the Party may cause confusion and lead to an unintended vote for the Party, and should be refused under section 129 of the Electoral Act;
 - b. the consequences for voter confusion following the successful motion of the 45th Parliament censuring the leader of the Party, former Senator Fraser Anning;

- c. the delegate failed to correctly apply the decision of the Administrative Appeals Tribunal in *Woollard v AEC* [2001] AATA 166; and
- d. the delegate failed to take into account historical circumstances that arose after the Party was entered on the *Register of Political Parties*.

Decision

7. The Commission has reviewed the application for review and, pursuant to subsection 141(2) of the Electoral Act, has **dismissed** that application on the basis that you do not have standing to seek review of the decision.

Reasons for Decision

8. Based on the materials before the Commission, the Commission has determined that you are not “a person affected by the decision who is dissatisfied with the decision” and therefore do not have standing to seek review of the decision under subsection 141(2) of the Electoral Act.
9. The reasons for the Commission’s decision are set out below.

Material taken into account

10. In making this decision, the Commission had regard to:
 - Your application for review of the decision to approve the application to register the Party as a registered political party, received by the AEC on 30 April 2019;
 - Part XI of the Electoral Act, in particular, section 141; and
 - Interpretation of phrase ‘person affected’ by the High Court of Australia in the matters of *Onus v Alcoa Australia Ltd* (1981) 149 CLR 27, and *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493, and *Allan v Transurban City Link Ltd* (2001) 208 CLR 167.

Findings of Fact

11. On the material before the Commission, the Commission makes the following findings:

Procedural application requirements

12. Subsection 141(2) of the Electoral Act provides for making an application to the Electoral Commission for review of a reviewable decision.

13. A subsection 141(2) application must:

- be made by a person affected by the decision who is dissatisfied with the decision; and
- be made 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 Electoral Commission (either before or after the expiration of that period) allows; and
- be in writing; and
- be made to the Electoral Commission; and
- specify an address of the applicant; and
- include reasons for making the application.¹

14. The application for review dated 30 April 2019 was:

- received within the relevant timeframe; and
- in writing; and
- made to the Electoral Commission; and
- specified an address of the applicant;
- included reasons for making the application.

15. However, the Electoral Commission was not satisfied that you are a person affected by the decision who is dissatisfied with the decision, as required by subsection 141(2) of the Electoral Act.

Standing

16. As an individual, the Electoral Commission accepted that you are a person within the meaning of subsection 2C(1) of the *Acts Interpretation Act 1901* (Cth).

17. The term “person affected” is not defined within the Electoral Act, nor has the term received judicial consideration within the context of electoral law.

18. You did not submit written particulars objecting to the registration of the Party at first instance under subsection 132(2) of the Electoral Act. Therefore, you were not a “party to the application” within the meaning of subsection 132A(2) of the Electoral Act, and was not given notice of the decision of the delegate.

19. A decision under Part XI of the Electoral Act, in particular, the decision to enter a Party on the *Register of Political Parties*, is of broad public interest. For example, a registered political party is entitled to receive a copy of the Commonwealth electoral Roll (amongst other things) under subsection 90B(1) of Electoral Act.

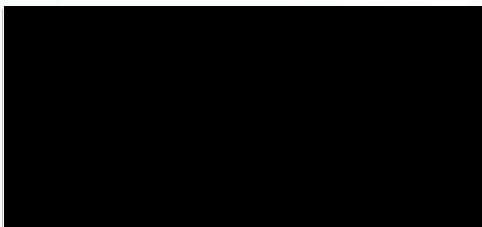
20. Your purported application for review clearly shows your dissatisfaction with the delegate’s decision.

¹ See subsection 141(3) of the Electoral Act.

21. Whilst it is apparent that you have strong intellectual and emotional concerns with the decision to register the Party, the Commission was not satisfied that you had a "special interest" in the decision on the information available.
22. There are a number of judicial decisions on the interpretation of "special interest". Notably, the decision of the High Court in *Australian Conservation Foundation Inc v Commonwealth (ACF)*, which held that:

"[A] person is not interested within the meaning of the rule, unless he is likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense of grievance or a debt for costs, if his action fails.."²
23. Whilst the Electoral Commission acknowledges your strong views about this matter, as evidenced by your petition, and the broad spectrum of political opinion in Australia generally, consistent with the judgment of the High Court in the *ACF* case, a belief, however strongly felt, does not make a person "affected by a decision" and create a right of standing.³
24. On the information available, the Commission was not satisfied that you had a "special interest" in the decision, nor was the Commission satisfied that you were "affected" by the decision in a manner distinct from any other elector enrolled on the Commonwealth electoral Roll. The Commission was of the view that your interest in the matter was of an intellectual concern with the Party and its leader.
25. A statement of review rights in respect of this decision is enclosed.

Yours sincerely



The Hon Dennis Cowdroy AO QC
Chairperson

11 September 2019

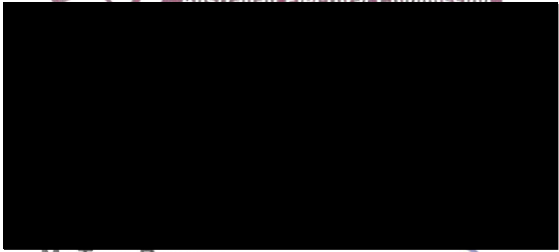
² (1980) 146 CLR 493 at 530-531 per Gibbs J.

³ *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493 [531].



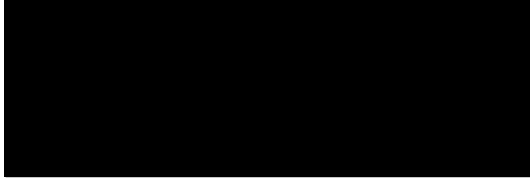
AEC

Australian Electoral Commission



Mr Tom Rogers
Electoral Commissioner

// September 2019



Mr David Kalisch
Australian Statistician
(non-judicial member)

// September 2019

Your review rights

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

How do I make an application to the AAT for a review of a decision?

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

- in writing;
- be accompanied by any prescribed fee;
- contain a statement of reasons for making the application;
- a copy of this notice of decision and statement of reasons; and
- made within the prescribed time.

Your application should also:

- specify the name of the applicant; and
- include an address at which documents may be sent to.

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

www.aat.gov.au/applying-for-a-review/how-to-apply.

Prescribed fee

The standard application fee is \$932. You may be entitled to pay a reduced fee of \$100 in certain circumstances.

If you pay the standard application fee, and the case is resolved in your favour, the difference between the fee you paid and \$100 will be refunded. There is no refund if you paid the reduced fee of \$100.

Further information about fees is available on the AAT website: <http://www.aat.gov.au/applying-for-a-review/fees>.

Prescribed time for making an application

You may apply for review from the period commencing on the day on which the decision is made, being 9 September 2019 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 is made in writing to the AAT and the AAT is satisfied that it is reasonable in all the circumstances to do so.

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 of Political Parties* afresh and made a decisions 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:

<http://www.aat.gov.au/steps-in-a-review/overview-of-the-review-process>

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 AEC. For more information about access to documents under the FOI Act please visit the AEC's "Access to AEC information" webpage at:

www.aec.gov.au/information-access/index.htm.

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