

File reference LS7392

Mr John [REDACTED]
Registered Officer
The No Tax Free Electricity.com

[REDACTED]
[REDACTED]
By email: [REDACTED]

Dear Mr [REDACTED]

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 25 February 2019.
2. In your application, you requested review of the decision by the delegate of the Commission to refuse the application to register The No Tax Free Electricity.com (the Party) as a non-Parliamentary party in the *Register of Political Parties* (the Register).
3. This letter is to notify you, in accordance with subsection 141(7) of the *Commonwealth Electoral Act 1918* (the Electoral Act), that on 15 October 2019 the Commission reviewed the decision of the delegate of the Commission and affirmed the decision under review.

Application for review

4. On 21 February 2019, a delegate of the Commission issued a notice (dated 21 February 2019) in accordance with subsection 133(3) of the Electoral Act notifying you, as Registered Officer of the Party, of her decision to refuse the application to enter the Party as a non-Parliamentary Party in the Register.
5. On 25 February 2019, the Commission received by email your written application for review of the delegate's decision by the Commission. The following reasons were provided for making the application:
 - the listed members who denied membership made their denials due to fear of going against the existing societal system;

- the policy platform of the Party should be supported by the Commission.
6. On 28 February 2019, the Commission informed you by email that the application for review had been accepted as a valid application.
 7. On 7 March 2019, the Commission received by email a membership list of 530 names from the Registered Officer of the Party for consideration by the Commission.
 8. On 9 March 2019, the Commission received by email a revised membership list of 528 names from the Registered Officer of the Party for consideration by the Commission.
 9. On 14 March 2019, the Commission received by email a further revised membership list of 528 names from the Registered Officer of the Party for consideration by the Commission.
 10. On 19 March 2019, the Commission informed the Registered Officer of the Party by email that the Commission was commencing testing of the further revised membership list of 14 March 2019 for the purpose of the application for review.

Decision

11. The Commission has reviewed the delegate's decision of 21 February 2019 to refuse the application to register the Party, and the additional information you have provided, and has affirmed that decision under subsection 141(4) of the Electoral Act.

Reasons for Decision

12. Based on the materials before the Commission, the Commission has determined that the Party's application for registration failed to meet the legislative requirement set out at paragraph 126(2)(ca) of the Electoral Act of having at least 500 members.
13. The reasons for the Commission's decision are set out below.

Material taken into account

14. In making this decision, the Commission had regard to:
 - the Party's initial application to register the Party as a non-Parliamentary party, received by the Commission on 3 January 2018;
 - the Party's varied application of 8 August 2018 made under subsection 131(3) of the Electoral Act;

- the delegate's decision of 21 February 2019 to refuse the application to register the Party under Part XI of the Electoral Act;
- the notice of decision and statement of reasons given under subsection 133(3) of the Electoral Act, dated 21 February 2019 and provided to the Party on 21 February 2019;
- the Party's application for review by the Commission of the delegate's decision to refuse the application to register the Party under Part XI of the Electoral Act, received by the Commission on 25 February 2019, including the reasons for review set out by the Party in that application;
- the Party's revised membership list received by the Commission on 14 March 2019;
- the results of the Commission's testing of the Party's revised membership list to be relied on for the purposes of the Party's application for review, conducted by the Commission in accordance with the sampling methodology developed by the Australian Bureau of Statistics (ABS);
- correspondence between the Commission and the Party;
- section 4 and Part XI (in particular sections 123, 126, 129, 131, 133 and 141) of the Electoral Act;
- the Register of Political Parties of each Australian state and territory; and
- the Commission's *Party Registration Guide*.

Findings of Fact

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

Procedural application requirements

16. The initial application for registration of 3 January 2018:
- was in writing, signed by the applicants and the person who is to be the registered officer of the Party;
 - set out the name 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;
 - stated whether the Party wishes to receive moneys under Division 3 of Part XX of the Electoral Act;
 - set out the names and addresses of the applicants and particulars of the capacity in which each applicant makes the application;
 - was accompanied by a copy of the constitution of the Party; and
 - was accompanied by a fee of \$500.

17. Accordingly, the Commission is satisfied that the initial application for party registration meets the requirements of paragraphs 126(2)(a), 126(2)(c), 126(2)(d), 126(2)(e), 126(2)(f) and 126(2)(g) of the Electoral Act.

Party name

18. The Party Name 'The No Tax Electricity Free.com':
- does not comprise more than 6 words;
 - is not obscene;
 - is not the name, or an abbreviation or acronym of the name of another political party (not being a political party that is related to the Party) that is a recognised political party;
 - does not so nearly resemble the name, abbreviation or acronym of the name of another political party (not being a political party that is related to the Party) that is a recognised political party that is likely to be confused with or mistaken for that name or that abbreviation or acronym;
 - is not one that a reasonable person would think suggests that a connection or relationship exists between the Party and a registered party;
 - does not comprise the words "Independent Party";
 - does contain the word "Independent" and the:
 - name, or abbreviation or acronym of the name of a recognised political party; or
 - matter that so nearly resembles the name or an abbreviation or acronym of a recognised political party that the matter is likely to be confused with or mistaken for that name or that abbreviation or acronym.
19. Accordingly, the Commission is satisfied that the proposed name of the Party meets the requirements of section 129 of the Electoral Act.

Party constitution

20. The Commission is satisfied that the Party's constitution meets the requirements of having a written constitution set out in the definition of an *eligible political party* in subsection 123(1) of the Electoral Act and in accordance with the definition of *political party* at section 4 of the Electoral Act.

Membership list

21. On 14 March 2019, the Party submitted a list of the names of 528 members to be relied on for the purposes of the application for review.

22. Commission staff cross-checked this membership list with the Commonwealth electoral Roll (the Roll), as required by subsection 123(3) of the Electoral Act. These searches identified that:
 - one of the 528 submitted members could not be matched to the Roll; and
 - none of the members were identified as duplicates within the Party's membership list or as supporting the registration of another political party.
23. Accordingly, the Commission then proceeded to test a sample of the remaining 527 members.
24. In accordance with the methodology devised by the ABS, a list of 527 members requires a random sample of 41 contactable members to confirm they are members of the Party, with up to four denials of membership allowed, in order for the Commission to have statistical confidence that the total number of members is at least 500.
25. The Commission attempted to contact 77 persons on the list of members, as some of those listed were unable to be contacted or provided a neutral response. Of the 41 responses received, 12 persons confirmed their membership, while 29 denied membership of the Party.
26. As the number of denials exceeded the four permitted for a sample of this size in accordance with the sampling methodology developed by the ABS, the Commission is not satisfied that the Party meets the minimum membership requirements of paragraph 126(2)(ca) of the Electoral Act.

Comments on the application for review

27. In your application for review by the Commission, you gave the following reasons for making the application:
 - a. the listed members who denied membership made their denials due to fear of going against the existing societal system; and
 - b. the Commission should support the policy platform of the Party.

Denials in membership testing

28. The Commission is of the view that:
 - a. Appendix 3 of the Commission's *Party Registration Guide* makes clear that a person whose name is included on a party's membership list must formally acknowledge membership of the party when contacted by the Commission;

- b. the Commission is not empowered under the Electoral Act to attribute membership to individuals who deny membership when contacted by the Commission; and
- c. the membership testing methodology applied by the Commission in this case is consistent with the Electoral Act.

Policy platform of the Party

- 29. The Commission is of the view that, in accordance with the long constitutional tradition in Australia of an apolitical public service separated from party politics, the *Public Service Act 1999* requires the Commission to be apolitical.
- 30. Accordingly, the Commission is of the view that it cannot take into account the policies of the Party for the purposes of the application for review.

Summary of Decision

31. The Commission has affirmed the decision of the delegate to refuse the application to register the Party in the Register, on the basis that the Party's application for registration failed to meet the legislative requirement of having at least 500 members.
32. A statement of review rights in respect of this decision is enclosed.

Yours sincerely

< signed >

The Hon Dennis Cowdroy AO QC

Chairperson

17 October 2019

< signed >

Mr Tom Rogers

Electoral Commissioner

16 October 2019

< signed >

Mr David Kalisch

Australian Statistician
(non-judicial member)

16 October 2019

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; and
- be made within the prescribed time.

Your application should also:

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

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 15 October 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 afresh and make a decision 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 Commission. For more information about access to documents under the FOI Act please visit the Commission'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.