

File reference LS7023

Mr Charles [REDACTED]
Registered Officer
[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 the written application to the Electoral Commission (the Commission) for review of the decision of the delegate of the Australian Electoral Commission (AEC) to refuse the application to register the Put WA First Party (the Party) as a non-Parliamentary party in the *Register of Political Parties* (the Register), received by the AEC on 16 June 2018.
2. This letter is to notify you, in accordance with subsection 141(7) of the *Commonwealth Electoral Act 1918* (the Electoral Act), that on 20 December 2018 the Commission reviewed the decision of the AEC delegate and **affirmed** the decision under review.

Application for review

3. On 8 June 2018, a delegate of the Commission issued a notice (dated 7 June 2018) 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 register the Party.
4. On 16 June 2018, the AEC 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 Party was confident that it would have at least 500 members who would pass the AEC membership testing, and offered to submit its full list of members for testing;

- the Party's own register contained 779 registered members at the time, and it had manually found 593 of those members on the electoral Roll using the terminal available at an AEC office; and
 - the Party was of the view that the by-elections had affected (and would likely continue to affect) the AEC's membership testing, as the delays may have impacted the recollections of some of the Party's members, and without feedback from the AEC about which members denied membership the Party was unable to address this issue.
5. On 26 June 2018, the AEC informed you by email that the application for review had been accepted as a valid application and provided an initial response to the issues raised in your application. The AEC informed you that section 127 of the Electoral Act had come into effect on 15 June 2018. The AEC also invited the Party to provide by 5 July 2018 any further material it wished to be considered in the review, including a revised membership list. Following a request for extension received from the secretary of the Party on 28 June 2018, on 3 July 2018 the AEC notified the secretary that it had agreed to an amended deadline of 13 July 2018.
 6. On 12 July 2018, the AEC received by email a revised membership list of 536 names from the secretary of the Party for consideration by the Electoral Commission.
 7. On 15 August 2018, the AEC informed the secretary of the Party by email that it would be undertaking testing of the revised membership list, and invited the Party to provide further updates to the membership list by 29 August 2018 due to the time that had elapsed since processing was suspended on 15 June 2018. On the same day, the AEC received an email from the secretary of the Party acknowledging the end of the suspension period and notifying the AEC that the Party would not be providing updates to the membership list for the purposes of the review.

Section 127 of the Electoral Act

8. On Wednesday 7 February 2018, the Speaker of the House of Representatives issued a writ for the election of a Member of the House of Representatives for the Division of Batman. As a result of the issue of the writ, section 127 of the Electoral Act came into effect, suspending the processing of the Party's application for registration, until the writ was returned on Thursday 22 March 2018. Consequently consideration the application for registration recommenced on Friday 23 March 2018. The AEC informed you of this by email, via the secretary of the Party, on the same day.

9. On Friday 15 June 2018, the Speaker of the House of Representatives issued writs for the election of Members of the House of Representatives for the Divisions of Braddon, Fremantle, Longman, Mayo and Perth. As a result of the issue of the writs, section 127 of the Electoral Act again came into effect, suspending the application for the review of the decision by the Commission until after all five writs were returned. The last of these writs were returned on Monday 13 August 2018. Consequently consideration of this application for review recommenced on Tuesday 14 August 2018. The AEC informed the secretary of the Party of this by email on the same day.
10. On 17 September 2018, the Speaker of the House of Representatives issued a writ for the election of a Member of the House of Representatives for the Division of Wentworth. As a result of the issue of the writ, section 127 of the Electoral Act again came into effect, suspending the application for the review of the decision by the Commission, until the writ was returned on Monday 5 November 2018. Consequently consideration of this application for review recommenced on Tuesday 6 November 2018. The AEC informed the secretary of the Party of this by email on the same day.

Decision

11. The Commission has reviewed the delegate's decision of 7 June 2018 to refuse the application to register the Party, 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 having at least 500 members. The reasons for the Commission's decision are set out below.

Material taken into account

13. In making this decision, the Commission had regard to:
 - the Party's initial application to register the Party as a non-Parliamentary party, including the initial membership list, received by the AEC on 8 February 2018;
 - the Party's varied application of 10 May 2018, including a revised membership list, made under subsection 131(3) of the Electoral Act;
 - the delegate's decision of 7 June 2018 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 7 June 2018 and provided to the Party on 8 June 2018;

- 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 AEC on 16 June 2018, including the reasons for review set out by the Party in that application;
- the Party's further revised membership list, received by the AEC on 12 July 2018;
- the results of the AEC's testing of the Party's membership lists (including the initial and revised lists) to be relied on for the purposes of registration, conducted by the AEC in accordance with the sampling methodology developed by the Australian Bureau of Statistics (ABS);
- correspondence between the AEC and the Party, including on the issue of providing revised membership lists;
- section 4 and Part XI (in particular sections 123, 126, 127, 129, 129A, 131, 133 and 141) of the Electoral Act;
- the Register of Political Parties of each Australian state and territory; and
- the AEC *Party Registration Guide*.

Findings of Fact

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

Procedural application requirements

15. The initial application for registration of 8 February 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 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 names 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.
16. Accordingly, the Commission is satisfied that the application for party registration meets the requirements of paragraphs 126(2)(c), 126(2)(d), 126(2)(e) and 126(2)(g) of the Electoral Act.

Party name and abbreviation

17. The Party Name 'Put WA First Party', and the abbreviation 'Put WA First':

- 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.

18. Accordingly, the Commission is satisfied that the proposed name and abbreviation of the Party meet the requirements of section 129 of the Electoral Act.

Party logo

19. The logo set out in the application for registration:

- does not so nearly resemble the logo of any other person that it is likely to be confused with or mistaken for that logo;
- is not one that a reasonable person would think suggest that a connection or relationship exists between the applicant and a registered political party if that connection or relationship does not in fact exist;
- does not comprise the words "Independent Party";
- does not 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;
- is in black and white;

- is in a vector graphic in electronic format;
- is 100% black in a CMYK colour space;
- is contained within a frame of 10 mm by 10 mm;
- is able to be reproduced correctly within a frame of 7 mm by 7 mm;
- does not include live text, transparency or overprinting and custom halftone, transfer curve or colour profile settings; and
- is in a PDF file, of less than 5 megabytes, that complies with International Standard ISO 32000-1:2008 as in force at the time this instrument commences.

20. Accordingly, the Commission is satisfied that the proposed logo of the Party meet the requirements of subsection 126(2AA) and section 129A of the Electoral Act and the specifications described in the *Commonwealth Electoral (Logo Requirements) Determination 2016*.

Party constitution

21. 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

22. On 12 July 2018, the Party submitted a list of the names of 536 members to be relied on for the purposes of registration.
23. AEC 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:
- six of the 536 submitted members could not be matched to the Roll; and
 - two members were identified as members of another political party.
24. Accordingly, the AEC then proceeded to test a sample of the remaining 528 members.
25. In accordance with the methodology devised by the ABS, a list of 528 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 Party has 500 members.

26. The AEC attempted to contact 71 persons on the list of members, as some of those listed were unable to be contacted, did not respond or provided a neutral response. Of the 41 responses received, 33 persons confirmed their membership, while eight denied membership of the Party.
27. 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.
28. As you are aware, the results of the AEC's testing of the initial and first revised membership lists (provided by the Party on 8 February 2018 and 10 May 2018 respectively) also exceeded the permitted number of denials.

Comments on the application for review

29. In your application for review by the Commission you gave the following reasons for making the application.

Number of members

30. You stated that the Party was confident that it would have at least 500 members who would pass the AEC membership testing, and offered to submit its full list of members for testing. You also stated that the Party's own register contained 779 registered members at the time, and it had manually found 593 of those members on the electoral Roll using the terminal available at an AEC office.
31. As mentioned in the AEC's initial response of 26 June 2018, the AEC's policy regarding membership lists and testing (as set out in the publicly available *Party Registration Guide*) is to request a list of between 500 and 550 members. While the Electoral Act requires a non-Parliamentary party to have the names of the 500 members it is relying on for the purposes of registration, there is no legal requirement for a party with more than that number to submit the name of every person who is a member of the party for the purpose of registration. The AEC policy of requesting a list of between 500 and 550 members is considered to be consistent with the Electoral Act.
32. The *Party Registration Guide* makes it clear that not only must the 500 members be on the Roll, they also must not be relied on by another party for registration purposes. A person whose name is included on the membership list must formally acknowledge membership of the party when contacted by the AEC. Without this verification, it would be open to a party to deem persons or classes of persons to be members of the party without their knowledge or agreement.

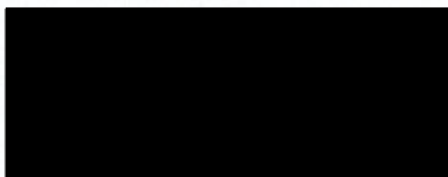
Processing delays and identifying individuals who denied membership

33. You also stated that the operation of section 127 of the Electoral Act due to by-elections had affected (and would likely continue to affect) the AEC's membership testing, as the delays may have impacted the recollections of some of the Party's members, and without feedback from the AEC about which members denied membership the Party was unable to address this issue.
34. Whilst delays in processing caused by the operation of section 127 of the Electoral Act are not strictly relevant to whether or not a party is found to have met the statutory membership requirements, the Commission considers that the Party was given adequate opportunities to mitigate any adverse effects from such delays. The Party was given the opportunity to provide a revised membership list following the return of the writ for the Batman by-election, which it declined. The Party provided a revised membership list on 12 July 2018 for the purpose of this review by the Commission. However, the Party then declined the opportunity to further update this membership list following the return of writs for the by-elections of Braddon, Fremantle, Longman, Mayo and Perth. Accordingly, the membership list of 12 July 2018 was used for testing.
35. In respect of identifying the individuals who denied membership, the Commission is of the view that the *Privacy Act 1988* prohibits the AEC from providing the Party with the personal information of these individuals. The AEC does not have the express or implied consent of these persons to disclose their personal information (including their names) to the Party.

Summary of Decision

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

Yours sincerely



The Hon Dennis Cowdroy OAM QC
January 2019



Mr Tom Rogers
14 January 2019



Mr David Kalisch
15 January 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 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 \$920. 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 20 December 2018 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 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 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.