

[REDACTED]

[REDACTED]
[REDACTED]
Australian People's Party

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

Dear [REDACTED]

Review of decision under s 141(4) of the *Commonwealth Electoral Act 1918* – notice of decision under s 141(7)

1. The Australian Electoral Commission (the Commission) refers to your written application, received by the Commission on 30 November 2021, made on behalf of the Australian People's Party (APP), for review of the delegate's decision to deregister the APP under s 137(6) of the *Commonwealth Electoral Act 1918* (Electoral Act).
2. The Commission is writing to you to give you notice of the decision made by the Commission on review, as required by s 141(7) of the Electoral Act.

Notice of decision – s 141(7)

3. The Commission has reviewed the delegate's decision of 3 November 2021 to deregister the APP.
4. The Commission has **affirmed** the decision under review pursuant to s 141(4)(a) of the Electoral Act.

Reasons for making this decision

5. In making its decision, the Commission had regard to:
 - (a) the material before the delegate including the membership list received by the Commission Secretariat by email dated 31 August 2021 (the August 2021 list);
 - (b) the delegate's decision made under s 137(6)(a) of the Electoral Act to deregister the Party, with notice of the reasons for the decision under s 137(6)(b) of the Electoral Act dated 3 November 2021;
 - (c) your application for review made by email dated 30 November 2021;

(d) the correspondence between you and the Commission Secretariat in relation to your application for review (including correspondence notifying you of the increased membership requirements under the Electoral Act which came into effect on 3 December 2021 and a membership list received by email dated 18 January 2022.

6. In support of your application for review under s 141, you submitted in substance that:
- (a) all individuals identified in the August 2020 list are listed on the Commonwealth Electoral Roll and therefore are eligible as members of the APP;
 - (b) the AEC used an invalid means to conduct membership testing as members of the public are increasingly mistrustful of official business conducted over the phone and of people who claim to be government employees, causing members to refuse to respond to questioning in relation to membership;
 - (c) the APP must be re-registered pending the outcome of this review; and
 - (d) since the APP was deregistered under the 'old rules', the present review should determine whether the APP should be reinstated under the 'old rules'; and the APP's compliance with the 'new rules' should be considered thereafter.

As indicated below, it is unnecessary to address all these submissions.

7. Generally speaking, in conducting a review under s 141 of the Electoral Act, the Commission must make its decision in conformity with the law as it is at the time it makes its decision, on the basis of the facts disclosed in the information before it.
8. The law applicable on this review is principally as set down in the Electoral Act, including as amended by the *Electoral Legislation Amendment (Party Registration Integrity) Act 2021* (Amending Act). The Amending Act received Royal Assent on 2 September 2021 and commenced on 3 September 2021. On this commencement date, an 'eligible political party' (as defined in s 123(1)) was either a Parliamentary party or a party having 'at least 1,500 members'. Before this date, an 'eligible political party' was either a Parliamentary party or a party having 'at least 500 members'.
9. Relevantly, however, so far as the delegate's decision was concerned, the Amending Act contained provisions delaying the application of the amendments to s 137 of the Electoral Act and the application of a new s 123A 'so far as it relates to those amendments' until 3 December 2021. The effect of these provisions was that a registered non-Parliamentary party was given a 3-month period in which to meet the new statutory requirement for 1,500 members, as opposed to the previous requirement for 500 members. This is reflected in the Explanatory Memorandum to the Amending Act, which stated at paragraph [39], that this 3-month period 'is intended to provide non-Parliamentary parties that are registered political parties at the Royal Assent with 3 months in which to become compliant with the increased membership requirements to remain registered'. This meant that when the delegate made her decision a non-Parliamentary party had only to show that it satisfied the previous requirement: that is, that it had 'at least 500 members'.
10. After 2 December 2021, in order to be an 'eligible political party' a non-Parliamentary party was required to have 'at least 1,500 members', the statutory period of grace having ended.

This meant that at the time of making this decision on review, by virtue of the definition of 'eligible political party' in s 123(1), and ss 123A and 137 of the Electoral Act, the Commission is required to deregister the APP where it is satisfied on reasonable grounds that the APP does not have at least 1,500 members.

11. As already noted, in correspondence prior to the Commission's decision on review, you were notified of the increased membership requirement under the Electoral Act and you were requested to provide an updated membership list of 1,500 to 1,650 members in order to confirm that the APP complied with the new statutory membership requirement. Notwithstanding this, on 18 January 2022 you emailed a membership list that contained only 541 names. No response has been received to an email sent by the Commission Secretariat on 19 January 2022 requesting that you confirm that you intended to submit this list of only 541 names and inviting you to provide any additional information by 20 January 2022.
12. In these circumstances the Commission is satisfied on reasonable grounds that the APP does not have at least 1,500 members. This is because in the circumstances mentioned in [11] above, you have supplied a membership list of no more than 541 names. The Commission does not consider that further membership testing of that list is required. This is because the list could not provide reasonable grounds for satisfaction that the APP had at least 1,500 members even if all the listed individuals otherwise met the requirements in s 123A(2) of the Electoral Act.
14. Accordingly, the Commission **affirms** the delegate's decision to deregister the Party under s 137(6)(a). It is unnecessary to address the other matters raised.

Conclusion and review rights

15. The Commission has affirmed the decision under review pursuant to s 141(4)(a) of the Electoral Act.
16. A statement of review rights in respect of this decision is enclosed.

Yours sincerely

[SIGNED]

The Hon Justice Susan Kenny AM

Chairperson

7 April 2022

[SIGNED]

Mr Tom Rogers

Electoral Commissioner

31 March 2022

[SIGNED]

Dr David Gruen

Australian Statistician
(non-judicial member)

4 April 2022

Your review rights

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

How is an application made to the AAT for a review of a Commission decision?

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

- (a) be made in writing;
- (b) be accompanied by any prescribed fee;
- (c) contain a statement of reasons for the application; and
- (d) be made within the prescribed time.

The application should also:

- (a) specify the name of the applicant; and
- (b) include an address at which documents in relation to the AAT proceedings may be given.

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

<https://www.aat.gov.au/apply-for-a-review>.

Prescribed fee

The AAT's standard application fee is \$962. In certain circumstances, an applicant may be entitled to pay a reduced fee of \$100.

If an applicant pays the standard application fee and the AAT review is resolved in the applicant's favour, the AAT will refund the difference between the standard application fee and \$100. There is no refund if the applicant paid the reduced fee of \$100.

Further information about fees is available on the AAT website: <https://www.aat.gov.au/apply-for-a-review/other-decisions/fees>.

Prescribed time

You may apply to the AAT for review of the Commission's decision during the period commencing on the day on which the Commission's decision was made 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 for extension is made in writing to the AAT and the AAT is satisfied that it is reasonable in all the circumstances to do so.

Further information about time limits is available on the AAT website:

<https://www.aat.gov.au/apply-for-a-review/other-decisions/time-limits>.

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:

<https://www.aat.gov.au/steps-in-a-review/other-decisions>.

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 the Commission's decision, please contact the Commission Secretariat by emailing commission.secretariat@aec.gov.au.