

AEC reference: LEX1077

Mr Stephen Campbell
Registered Officer
Democratic Labour Party

By email: [REDACTED]

Dear Mr Campbell

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 6 January 2022, made on behalf of the Democratic Labour Party, for review of the delegate's decision to uphold, under s 134A(1)(d) of the *Commonwealth Electoral Act 1918* (Electoral Act), the objection to the Party's continued use of the name 'Democratic Labour Party' and the abbreviation 'Labour DLP'.
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 – Extension of time to consider application – s 141(2)

3. The Commission has considered the application made by the Democratic Labour Party on 23 December 2021 to allow the party a further period of time to make an application for a review of the delegate's decision of 19 November 2021 (delegate's decision).
4. In this connection, the Commission noted that, by an email dated 6 January 2022 and a letter dated 5 January 2022, the Democratic Labour Party applied for a review of the delegate's decision under s 141(2) of the Electoral Act.
5. The Commission has **granted** the extension sought by the Democratic Labour Party to consider the party's application for the review by the Commission of the delegate's decision.

. Notice of decision – s 141(7) – Review of Delegate’s Decision of 19 November 2021

6. The Commission has reviewed the delegate’s decision of 19 November 2021 to uphold the objection to the party’s continued use of the name ‘Democratic Labour Party’ and the abbreviation ‘Labour DLP’.
7. The Commission has **affirmed** the decision under review pursuant to s 141(4)(a) of the Electoral Act.

Reasons for making this decision

8. In making its decision, the Commission had regard to:
 - (a) the letter of objection dated 18 October 2021 made under s 134A(1)(b) of the Electoral Act by the registered officer of the Australian Labor Party (ALP);
 - (b) the delegate’s decision made under s 134A(1)(d) of the Electoral Act to uphold the objection, with notice of the reasons for the decision under s 134A(2A) of the Electoral Act dated 19 November 2021;
 - (c) the letter sent by the delegate to the Democratic Labour Party on 19 November 2021 regarding the delegate’s decision and the processes under s 134A of the Electoral Act;
 - (d) the extension of time application dated 23 December 2021 made by the Democratic Labour Party under s 141(2) of the Electoral Act;
 - (e) the application for review made by the Democratic Labour Party by email dated 6 January 2022 and by letter dated 5 January 2022; and
 - (f) the Register of Political Parties, which is maintained under s 125 of the Electoral Act.

The written objection

9. In support of its written objection made under s 134A(1)(b), the registered officer of the Australian Labor Party submitted in substance that:
 - (a) the ALP is ‘the parent party’ registered under s 126 before the DLP, ‘the second party’ (see s 134A(1)(aa)); and
 - (b) the name and abbreviation of the second party contains a word that is in the name of the parent party, namely ‘Labour’ (see s 134A(1)(a)(iii)).

Section 134A(1)

10. Section 134A(1)(d) requires the Commission to uphold a written objection by the registered officer of a political party (which is the 'parent party') to the continued use of the name or logo by another registered party (which is the 'second party') where the Commission is satisfied, relevantly, that 'the name or logo of the second party contains a word that is in the name, or abbreviation of the name, of the parent party': s 134A(1)(a)(iii). Under s 134A(1)(aa) the 'parent party' is a registered political party registered under s 126 before another registered party, being the 'second party'.
11. The Australian Labor Party was registered as a political party under s 126 of the Electoral Act on 31 May 1984. The Democratic Labour Party was registered as a political party under s 126 on 20 July 1984. The Australian Labor Party therefore meets the description of the 'parent party' in s 134A(1)(aa), because it was registered before the Democratic Labour Party, which is therefore the 'second party' for the purposes of s 134A.
12. The registered officer of the parent party submitted an objection in writing to the continued use of the name 'Democratic Labour Party' and the abbreviation 'Labour DLP' by the second party as required by s 134A(1)(b). The Commission noted that s 134A(3) defines the word 'name' in this context as including the abbreviation entered in the Register.
13. The Commission is satisfied that the name of the second party, including the registered abbreviation, contains a word that is in the name of the parent party because the word 'Labor' is in the name of the parent party ('Australian Labor Party') and a commonly accepted variant of the word 'Labor' (the word 'Labour') is in the name of the second party ('Democratic Labour Party'). In this context, the Commission notes that pursuant to s 129(6) of the Electoral Act, in applying s 134A(1)(a)(iii), 'in relation to a word, other grammatical forms, and commonly accepted variants (including ... alternative forms), of the word are to be treated in the same way as the word'.
14. The Commission did not accept the Democratic Labour Party's contention in its 5 January 2022 letter that the Commission should overturn the delegate's decision on the basis that '[T]he use of the word 'Labour' in the name of the Democratic Labour Party is definitely a collective noun for people, as per the Macquarie Dictionary definition ... and accordingly, pursuant to section 129(5)(b) of the Electoral Act, ... [section] 134A(1)(a)(iii) [does] not apply'.
15. The Commission accepts that the word 'labour' may sometimes be used as a collective noun for people, but does not accept that the word 'Labour' is used as a collective noun for people in the name 'Democratic Labour Party' and the abbreviation 'Labour DLP'. Rather, in these instances, the word 'Labour' has an adjectival or descriptive use in relation to the noun 'Party'. The Commission also notes that the Explanatory Memorandum (EM) to the Electoral Legislation Amendment (Party Registration Integrity) Act 2021 (Registration Amendment Act)

states that the expression “Collective noun for people’ is intended to include words including, but not limited to ‘Party’, ‘Group’, ‘Alliance’, ‘Network’ and ‘Team’”.

16. In these circumstances, s 129(5) does not operate to remove the word ‘Labour’ in the name ‘Democratic Labour Party’ and the registered abbreviation “Labour DLP’ from the application of s 134A(1) of the Electoral Act.
17. The Commission is therefore required by s 134A(1)(d) to uphold the objection made by the registered officer of the parent party, being the Australian Labor Party, under s 134A.

Procedural fairness

18. In its letter of 5 January 2022, the Democratic Labour Party complained that ‘the decision to uphold the ALP’s objection to our use of the word “Labour” in our name was made without prior notification to us and without inviting the DLP as the affected party to provide a submission in regard to the objection’; and submitted that this was contrary to the principles of natural justice or procedural fairness.
19. The Commission does not accept this submission. In particular, the Commission does not accept that, having regard to the legal framework created by Part XI of the Electoral Act, including ss 134A and 137, the delegate was required as a matter of fairness to notify the Democratic Labour Party as the Party contends, and to afford it an opportunity to make submissions, before the delegate decided to uphold the objection made by the Australian Labor Party. This is because the Electoral Act provides makes full provision for notification and submissions after a decision under s 134A(1)(d) to uphold an objection is made and before any deregistration under s 137(6) could occur.
20. Where a decision to uphold an objection is made under s 134A(1)(d) of the Electoral Act, s 134(1)(e) requires the Commission to notify the registered officer of the second party (the DLP) that the second party will be deregistered under s 137 if the second party fails to make an application as set out in s 134A(1)(e)(i) or is unsuccessful in that application: s 134A(1)(e)(ii). Section 137(1) provides that if the Commission is satisfied in accordance with that provision, the Commission must notify the registered officer of the party (relevantly here, the DLP) that it is considering deregistration. Section 137 also sets out the procedures to be followed prior to any deregistration, and provides opportunities for the party to make a written statement as to why the party should not be deregistered: s 137(2). Pursuant to s 137(5), the Commission must consider any such statement before determining whether the party should be deregistered under s 137(6).
21. Furthermore, even before s 137 is engaged, the second party may apply for internal review pursuant to s 141(1)(ca), as the Democratic Labour Party has done in this case. A party may also seek internal review if a decision to deregister is made under s 137(6): s 141(1)(e). There is also an opportunity to seek merits

review in the Administrative Appeals Tribunal once the Commission has made an internal review decision: s 141(9) of the Electoral Act.

Conclusion and review rights

13. The Commission decided to **affirm** the decision under review pursuant to section 141(4) of the Electoral Act.
14. A statement of review rights in respect of this decision is enclosed.

Yours sincerely

[SIGNED]

The Hon Justice Susan Kenny AM
Chairperson

4 February 2022

[SIGNED]

Mr Tom Rogers
Electoral Commissioner

4 February 2022

[SIGNED]

Dr David Gruen
Australian Statistician
(non-judicial member)

9 February 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.