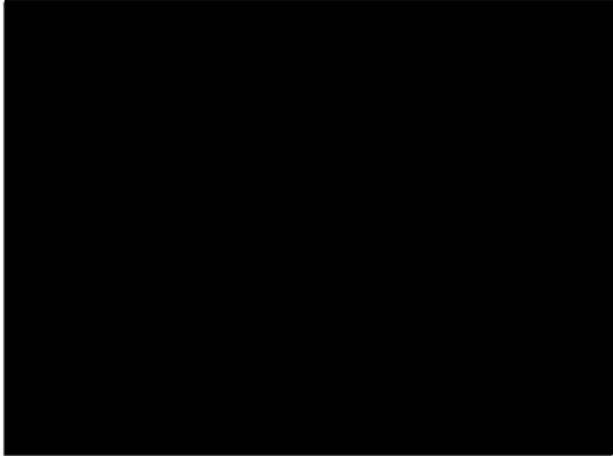


AEC reference: LEX3482



Dear 

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 the written application received by the Commission Secretariat on 10 November 2022, for review of the delegate’s decision to deregister the Australian Progressives (“the Party”) under s 137(6) of the *Commonwealth Electoral Act 1918* (“Electoral Act”).
2. The Commission notes that, due to the operation of ss 127 and 138A of the Electoral Act, no action could lawfully be undertaken regarding the review application from 11 April 2022 when the writs were issued for the 2022 federal election until the writs were returned on 23 June 2022. Further, due to ss 127 and 138A of the Electoral Act and certain by-elections, no action could be taken from 27 February 2023 to 21 April 2023, from 12 June 2023 to 31 July 2023 and from to 29 January 2024 to 22 April 2024.
3. The application for review was made under s 141(2) of the Electoral Act. This letter is to notify you that the Commission has reviewed the delegate’s decision and **affirmed** the decision under review.

Notice of decision – s 141(7)

4. The Commission has reviewed the delegate’s decision of 12 October 2022 to deregister the Party.

5. The Commission has **affirmed** the decision under review pursuant to s 141(4)(a) of the Electoral Act.

Reasons for making this decision

6. In making its decision, the Commission had regard to:
- (a) the application for review and related correspondence between the Party's office-holders and the Commission Secretariat;
 - (b) the notice under s 138A of the Electoral Act (under cover of a letter dated 8 October 2021) requiring the Party to provide specified information on the Party's eligibility to remain registered by 8 December 2021 and the Party's membership list spreadsheet provided by email dated 8 December 2021 ("the December 2021 list");
 - (c) the notice of intention to deregister under s 137(1)(b) of the Electoral Act (under cover of a letter dated 11 January 2022);
 - (d) the Party's statement under s 137(2) of the Electoral Act and the membership list both provided by email on 11 February 2022 ("the February 2022 list");
 - (e) the delegate's decision made under s 137(6)(a) of the Electoral Act to deregister the Party, together with the notice of the reasons for the decision under s 137(6)(b) of the Electoral Act dated 15 March 2022, together with your email dated 16 March 2022 requesting a review of the decision and the revocation of that decision by the delegate on 30 March 2022;
 - (f) the Party's membership list provided by email dated 11 July 2022 ("the July 2022 list");
 - (g) the Party's membership list provided by email dated 15 August 2023 ("the August 2023 list");
 - (h) the Party's membership list provided by email dated 1 September 2023 ("the September 2023 list");
 - (i) the delegate's decision made under s 137(6)(a) of the Electoral Act to deregister the Party, with the notice of the reasons for the decision under s 137(6)(b) of the Electoral Act dated 12 October 2022 ("reasons for decision");
 - (j) the material before the delegate, including correspondence between the Party and the Commission;
 - (k) the methodology for testing membership as outlined in the AEC's Party Registration Guide and published on its website from time to time ("Methodology");
 - (l) the results of the testing of the membership lists mentioned above in accordance with the testing methodology.

7. In support of the application for review under s 141, in summary, the following submissions were made:
- (a) The Party clearly has more than 1,500 party members.
 - (b) The Party has attracted more members since the list of members was provided to the Commission on 11 July 2022. The Party's database has 1,623 members.
 - (c) The statistical sampling method used by the Commission is based on probability. The 'tolerance level' used by the Commission with this calculation could be set higher and allow for a higher failure rate.

Methodology

8. The Commission noted that the Electoral Act does not provide a method for ascertaining whether a political party satisfies the numerical membership requirements of the Electoral Act. The Commission considered the Methodology (as outlined in the AEC's Party Registration Guide) for determining whether a non-Parliamentary party satisfies these membership requirements. The Commission noted that the Methodology was the same as the sampling methodology recommended by the Australian Bureau of Statistics ("ABS").
9. Up until mid-2023, the Methodology required:
- (a) the provision of a membership list of between 1,500 and 1,650 names for membership testing;
 - (b) the removal from that list of:
 - i. names that cannot be matched, either via an automated process or manually, to a Roll kept under the Electoral Act (collectively the Commonwealth Electoral Roll);
 - ii. names relied on by another party for the purpose of registration or continued registration ("cross-party duplicate members");
 - iii. duplicate names.
 - (c) the list of the remaining names ("the examined list") is assessed to determine whether there are reasonable grounds for the Commission to be satisfied that the party does not have "at least 1,500 members" (noting that if at this stage the examined list contains less than 1,500 names, the party is given an opportunity to provide a further membership list);
 - (d) if the examined list contains between 1,500 and 1,650 names, that list is randomised using an Excel function, the size of the random sample being determined by the number of names on the examined list in conformity with advice received from the ABS: see Appendix 2 of the Guide for a shortened version of the sample size table;
 - (e) the people named in the random sample are contacted first by email and, if no response is received after 24-48 hours, then by phone. Contact is attempted on three separate occasions. If the person named remains uncontactable after the third attempt, the person is deemed a "non-response" (not a denial). Then the next person on the list is sought to be

contacted. The process continues until a response is obtained from the requisite number of people according to the ABS advice.

10. An elector cannot be relied upon by more than one political party for the purposes of party registration: see s 123A(1). In mid-2023, the Commission amended the Methodology with respect to “cross-party duplicate members” (as detailed in the Commission’s previous decision with respect to the “Health Australia Party” in December 2023). The Commission determined that the names of those “cross-party duplicate members” would no longer be removed as a matter of course from a party’s membership list for the purpose of testing. Instead, those members are asked to nominate, within at least 30 days, which party can rely upon them as a member for the purposes of party registration. Only the names of members who nominate the Party for registration purposes remain within the membership list for further testing.
11. As explained below, the final list provided by the Party in September 2023 was re-tested in accordance with this updated Methodology.

Testing of Membership Lists

12. In support of the Party’s response to the review under s 138A, you provided five membership lists.

The December 2021 list

13. On 8 October 2021, the delegate wrote to the Party’s then registered officer (Mr Robert Knight) requesting a list of between 1,500-1,650 names. The Party provided the December 2021 list on 8 December 2021. This list contained 1,532 names. Officers of the Commission cross-checked the list with the Electoral Roll to ensure that each listed person was “an elector” as required by the definition of “a member of a political party” in s 123(3) of the Electoral Act. The results were as follows.

Submitted membership list	1,532
Automatically matched to the electoral roll	819
Manually matched to the electoral roll	656
Unable to match or not enrolled on the electoral roll	(44)
Deceased	(13)
Total	1,475

14. As summarised in the above table, the delegate identified 44 names that could not be matched to an individual on the Electoral Roll and 13 names who were matched to deceased electors previously on an Electoral Roll. This left only 1,475 names in the December 2021 list.
15. Accordingly, the delegate could not be satisfied that the December 2021 list contained the names of at least 1,500 members of the Party (since only a person whose name appears on the Electoral Roll can be a member of the Party), and no further testing of this list was therefore undertaken.

The February 2022 list

16. On 11 February 2022, the Party provided a second membership list containing 1,576 names. Officers of the Commission cross-checked the February 2022 list with the Electoral Roll to ensure that each named individual was “an elector” as required by the definition of “a member of a political party” in s 123(3) of the Electoral Act. The results were as follows:

Submitted membership list	1,576
Automatically matched to the electoral roll	185
Unable to match to the electoral roll	(1,391)
Total	185

17. Accordingly, on 15 March 2022, the delegate determined that the Party should be deregistered under s 137(5) of the Electoral Act, and deregistered the Party, on the basis that she was satisfied on reasonable grounds that the Party did not have at least 1,500 members.
18. On 16 March 2022 Mr Carroll as the Party’s registered officer requested the Commission Secretariat to reconsider the delegate’s decision. Mr Carroll submitted that the results of testing, as set out in the delegate’s decision, indicated that a ‘clerical error’ of some kind must have occurred. He noted that the February 2022 list was an amended version of the December 2021 list, and as such, it did not make sense that the match rate had dropped from 1,475 members on the December 2021 list to 185 members on the February 2022 list.
19. Officers of the Commission investigated the February 2022 list. They found that an error had indeed occurred when reformatting the Party’s membership list for testing.
20. On 30 March 2022, in reliance on s 33(3) of the *Acts Interpretation Act 1901*, the delegate revoked her 15 March 2022 decision.
21. As a result of this revocation, the Party was reinstated on the Register of Political Parties.

The July 2022 list

22. On 11 April 2022, writs were issued for the 2022 federal election.
23. On 24 June 2022, an officer of the Commission wrote to you to advise that the writs for the 2022 election had been returned on 23 June 2022 and therefore processing of the Party’s application for review had recommenced.
24. On 27 June 2022, an officer of the Commission wrote to you inviting you to provide an updated membership list for testing by 11 July 2022.
25. On 11 July 2022, you provided the July 2022 list.

26. The list contained 1,591 names. Officers of the Commission cross-checked that list with the Electoral Roll to ensure that each listed person was “an elector” as required by the definition of “a member of a political party” in s 123(3) of the Electoral Act. The results were as follows.

Submitted membership list	1,591
Automatically matched to the electoral roll	1,294
Manually matched to the electoral roll	250
Unable to match or not enrolled on the electoral roll	(34)
Deceased	(13)
Total	1,544

27. As summarised in the above table, 34 names were unable to be matched to any individual on the Electoral Roll. Thirteen names were matched to deceased individuals whose names had previously been removed from the Electoral Roll.
28. As set out in the table below, the officers also identified 13 names and/or individuals who, in conformity with s 123A(1), could not be relied upon for the purposes of the Party’s registration.

Total matched to the electoral roll	1,544
Duplicates identified in the membership list provided by the Party	(1)
Members identified as also supporting the registration of another party (s 123A(1))	(12)
Total	1,531

29. For a list of 1,531 names, the advice from the ABS was that there can be statistical confidence that the Party has at least 1,500 members where a random sample of 33 individuals confirm that they are members of the Party, with two denials permitted. The results were as follows.

The relevant numbers for this membership test were:	Members
The random sample size	33
Maximum number of denials permitted	2
Contact attempts made	51
Responses received	
Confirmed Membership	30
Denied Membership	3
PASS/FAIL	FAIL

30. The Commission notes that on 9 September 2022, an individual whom the Commission had unsuccessfully sought to contact telephoned the Commission and confirmed membership of the Party. The Commission further notes that the inclusion of this individual would not result in a different outcome because, in accordance with the ABS advice, only two denials are permitted, whether the sample size is 33 or 34.
31. On 12 October 2022, a delegate of the Electoral Commission deregistered the Party because, on the basis of the Party's membership testing results, the delegate was satisfied on reasonable grounds that the Party did not have at least 1,500 members.

The August 2023 list

32. As noted at [9] above, in mid-2023 the Methodology for testing party membership lists was amended with respect to "cross-party duplicate members". The Party was invited to provide an updated list to be tested in accordance with the amended Methodology.
33. The Party supplied a list on 16 August 2023. Upon reviewing the list, officers of the Commission note that this list did not contain the dates of birth for the individuals named on the list, and, in consequence, the list could not be tested. On 17 August 2023, the Commission Secretariat wrote to the Party requesting a list containing the dates of birth of the individuals named on the list in order that testing could proceed.

The September 2023 list

34. On 1 September 2023 Mr Carroll provided an updated list (the September 2023 list).
35. The September 2023 list contained 1,607 names. The delegate cross-checked the list with the Electoral Roll to ensure that each listed person was "an elector" as required by the definition of "a member of a political party" in s 123(3) of the Electoral Act. The results were as follows.

Submitted membership list	1,607
Automatically matched to the electoral roll	1,239
Manually matched to the electoral roll	296
Unable to match or not enrolled on the electoral roll	(53)
Deceased	(19)
Total	1,535

36. As summarised in the table above, officers of the Commission identified 53 names that were unable to be matched to any individual on the Electoral Roll, and 19 names that were matched to deceased electors whose names had been previously removed from the Electoral Roll.
37. The officers also identified one duplicate name and 13 individuals who had previously been relied on for the registration of another registered political party.

Total matched to the electoral roll	1,535
Duplicates identified in the membership list provided by the Party	1
Members identified as also supporting the registration of another party	13

38. In accordance with the amended Methodology, these 13 individuals were contacted and asked to nominate which party could rely on them as a member for the purposes of party registration. As the table below indicates, only two of the 13 individuals nominated the Party as being able to rely on their membership for the purpose of its registration.

Cross Party Duplicate Testing	
Supports applicant party	2
Supports another party	5
Has not nominated a party	0
Did not respond	6

39. As a consequence, the subsequent membership list testing was directed to a list of 1,523 named individuals.
40. For a list of 1,523 names, the advice from the ABS was that there can be statistical confidence that the Party has at least 1,500 members where a random sample of 33 individuals confirm that they are members of Party, with two denials permitted. As set out in the table below, twenty-three individuals whose names appeared on the September 2023 membership list confirmed membership of the Party, with ten denying such membership.

The relevant numbers for this membership test were:	Members
The random sample size	33
Maximum number of denials permitted	2
Contact attempts made	50
Responses received	
Confirmed Membership	23
Denied Membership	10
PASS/FAIL	FAIL

41. The testing of the September 2023 list did not support the Party's claim to have at least 1,500 members and did not indicate that the delegate's decision of 12 October 2022 was made in error.

Application for review

42. As already stated, the application for review of the delegate's decision of 12 October 2022 was made in November 2022. This application was accompanied by the submissions summarised at [7] above.
43. On 11 November 2022, the Commission Secretariat invited the Party to supply any further material in support of this review application by 10 December 2022, including but not limited to an updated membership list. In September 2023 the Party's registered officer (Mr Carroll) supplied an updated membership list. This was tested as discussed above.

Testing methodology

44. You submitted that the statistical sampling method used by the Commission is not definitive; it is based on probability; and the "tolerance level" used by the Commission with this calculation could be set higher and allow for a higher failure rate.
45. The Commission accepted that there is a level of probability involved in the Methodology. However, given the Commission's task, the Commission was satisfied that the Methodology is appropriate. The Commission noted that its task on this review is to consider whether it is satisfied on reasonable grounds that the Party does not have at least 1,500 members.
46. The Commission noted that the Electoral Act does not provide a method for ascertaining whether a political party satisfies the numerical membership requirements of the Electoral Act. The Commission considered the Methodology (as outlined in the AEC's Party Registration Guide) for determining whether a non-Parliamentary party satisfies these membership requirements. The Commission noted that the Methodology was the same as the sampling methodology recommended by the ABS. The maximum number of permitted denials used by

the Commission is that recommended by the ABS. The Commission noted the ABS advice that if the amended Methodology is followed, then, with respect to a list of 1523 members where 2 denials are permitted, the probability of rejecting a valid list is 1.2% or below.

47. The Commission concluded that the Methodology was appropriate for this purpose.

Other arguments raised

48. It was also submitted that the Party “clearly” has “more than 1,500 party members” and that the Party “has attracted more new members” since the list of members was provided to the AEC on 11 July 2022.
49. On 11 November 2022, the Commission Secretariat invited the Party to provide a new membership list to support these contentions by no later than 10 December 2022. No response was received from the Party by the 10 December deadline.
50. As set out above, in September 2023 the Party supplied a new membership list. The Commission tested the September 2023 list. The results were as described above.
51. On the basis of the membership testing results of the December 2021 list, the July 2022 list and the September 2023 list, the Commission is satisfied on reasonable grounds that the Party does not have “at least 1,500 members”.
52. Accordingly, the Commission affirms the delegate’s decision to deregister the Party under s 137(6)(a).

Conclusion and review rights

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

Yours sincerely,

[Redacted]

The Hon Susan Kenny AM KC

Chairperson

17/05/2024

[Redacted]

Mr Tom Rogers

Electoral Commissioner

17/05/2024

[Redacted]

Dr David Gruen AO

Australian Statistician
(non-judicial member)

17/05/2024

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 listed on its website. In certain circumstances, an applicant may be entitled to pay a reduced fee.

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 the reduced fee.

There is no refund if the applicant paid the reduced fee. 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.