

259

**Shawn O'Brien**

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**From:** FAD  
**Sent:** Monday, 18 February 2013 11:10 AM  
**To:** stuart.horrex@nsw.democrats.org.au; Charlie.Bell@act.democrats.org.au; 'drew.simmons@nsw.democrats.org.au'  
**Cc:** Darren.Churchill@act.democrats.org.au; secretary@democrats.org.au  
**Subject:** AEC declines to change records of Democrats secretary or registered officer [DLM=For-Official-Use-Only]  
 File Reference: 07/1322-4

**Attachments:** Reg4904-a copy of letter to J Davey.pdf; Reg4904-b letter to current RO.pdf; Reg4904-c submission from current RO.pdf; Reg4904-d submission from Churchill-Howe.pdf; Reg4904-e s.141 of Electoral Act.docx

**Categories:** For-Official-Use-Only

**For-Official-Use-Only**

Letter attached.

Regards

**Shawn O'Brien | Registrar of Political Parties**  
 Funding & Disclosure Section | Legal & Compliance Branch  
 Australian Electoral Commission  
 T: (02) 6271 4607 | M: 0406 379 968 | F: (02) 6293 7655



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**For-Official-Use-Only**

*By mail to:  
 Mr P Moore, 1857 Dumbarton Rd, Katoomba - Proposed RO  
 and Mr, Westbourne St Strathfields - applicant*

**Shawn O'Brien**

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**From:** FAD  
**Sent:** Monday, 18 February 2013 11:12 AM  
**To:** johnd@hermlegal.com.au  
**Subject:** response to applications [DLM=For-Official-Use-Only]  
File Reference: 07/1322-4  
**Attachments:** Reg4904-a letter to J Davey.pdf; Reg4904-b letter to current RO.pdf; Reg4904-c submission from current RO.pdf; Reg4904-d submission from Churchill-Howe.pdf; Reg4904-e s.141 of Electoral Act.docx  
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Reference: 07/1322-4, Reg4904  
 Contact Officer: Shawn O'Brien

**COPY**

Mr John Davey  
 National Treasurer  
 Australian Democrats  
 PO Box 2119  
 Oak Park Vic 3046

Dear Mr Davey

**Re: Applications to record a change in secretary and registered officer**

I refer to your advice that you act on behalf of Mr S Horrex in the matter of the application that the Australian Electoral Commission (AEC) record Mr Horrex as the secretary (National Secretary) of the Australian Democrats (the Party) and the application to amend the *Register of Political Parties* to show Mr P Morgan as the registered officer of the Party.

There is clearly a factional dispute in the Party. The AEC is not assisted by the factions' suspending or expelling members of a different view, but has paid attention to the report of the National Disputes Committee. The AEC is not in the position of a court which can assess evidence, including under cross-examination, and come to a finding on the evidence. The AEC records decisions made by political parties and, in the case of internal disputes, attempts to judge if a dispute within a registered party has been resolved before making changes to its records or to the *Register of Political Parties*. If the Party needs the assistance of a body with the powers of a court to resolve a dispute, the Party must take the necessary steps. At this time, the AEC is not convinced the internal dispute in the Party has been resolved.

The AEC further notes that the National Disputes Committee recommended immediate elections be held for all positions on the Party's National Executive, which in any case must be completed before mid-June 2013. The AEC hopes that if those elections are conducted in an inclusive manner, the resulting National Executive and its decisions will give the AEC confidence to make changes to its records that are put forward by the Party.

Change of National Secretary

The AEC does not propose to alter its records of the National Secretary of the Party, pending the result of the forthcoming Party elections. In the meantime, the AEC will be aware that there are two claimants to the position and intends to copy both Mr Howe and Mr Horrex into any correspondence sent to the Secretary of the Party. The main function of the National Secretary under the *Commonwealth Electoral Act 1918* (the Electoral Act) is to be a conduit for correspondence to and from the Party.

There is no formal appeal provision in the Electoral Act whereby an affected person can seek review of the AEC's decision not to action the application to record a change in the Party's secretary.

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Change to registered officer


A delegate of the AEC has initially considered the application to change the registered officer of the Party and submissions lodged by the currently recorded registered officer and the currently recorded National Secretary and National President. The delegate notes the National Executive of the Party seems to have the authority to determine who is to be the registered officer of the Party under Clause 6.7(h) and 6.8(e) of the Party's constitution. However, because there is dispute as to the proper make-up of the current National Executive combined with a National Disputes Committee recommendation for immediate elections to resolve the dispute, the delegate of the AEC does not intend to make a change to the registered officer of the Party on the basis of the application lodged.

The comments against making the change lodged by the currently recorded registered officer, National President and National Secretary are attached for your information. You are free to respond to those comments and the delegate will reconsider a change to the registered officer in the light of any comments you make. Alternatively, possibly the better solution would be for the Party to work towards making the forthcoming elections inclusive so that the dispute is resolved. With a newly constituted National Executive in place, the AEC can have confidence in decisions made by the Party's National Executive.

The AEC notes that the Party's constitution does not appear to include a role relating to registered officer. However, under the Electoral Act, the registered officer can nominate candidates for the federal election which has been announced for September 2013. Nominations are announced to open from Monday 12 August 2013 and close at midday on Thursday 22 August 2013, so there is time for a resolution of the Party dispute. The AEC also notes that decisions about pre-selection and nomination appear to be generally made by divisional executives in the Party (that is at state and territory level) and not by the National Executive.

A decision by a delegate of the AEC to refuse an application to change the registered officer of a party is a reviewable decision under s.141 of the Electoral Act. A person dissatisfied with and affected by such a decision may apply for a review of the decision by the three Commissioners of the AEC. Written applications to request a review must be made within 28 days of the decision coming to the attention of the affected person. A person whose interests are affected by a decision made by the Commissioners on review may further apply for review of that decision by the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975*. A copy of s.141 of the Electoral Act is attached.

Yours sincerely

  
Shawn O'Brien  
Registrar of Political Parties  
Funding and Disclosure Section, Legal and Compliance Branch

18 February 2013

*copied to other applicants and persons who lodged comments*



Reference: Reg4844, 07/1322-4  
Contact Officer: Shawn O'Brien  
Telephone: 02 6271 4607  
Facsimile: 02 6271 4555  
Email: fad@aec.gov.au

John Charles Bell  
Registered Officer  
Australian Democrats

Dear Mr Bell


I refer to an application received by the Australian Electoral Commission (AEC) on 21 December 2012 to replace you as the Registered Officer of the Australian Democrats (the Party). A copy of the application is enclosed.

Section 134 of the *Commonwealth Electoral Act 1918* states that a registered officer can be changed by written application when the application is made by three members of the Party, as well as being signed by both the current and proposed new registered officer.

As you are the current Registered Officer of the party and have not signed the application the AEC is obliged to give you a period of seven days from receipt of this letter to submit written particulars as to why the application should not proceed. As this letter will not reach the post until Wednesday 2 January 2013, if you do not agree with the proposed change could you please submit your reasons to the AEC by Monday 15 January 2013.

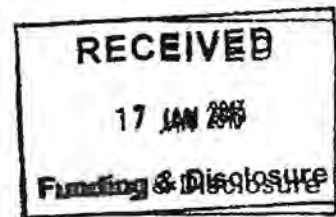
If you have any questions about this matter, please do not hesitate to contact me on (02) 6271 4667 or email: fad@aec.gov.au.

Yours sincerely

  
Shawn O'Brien  
Registrar of Political Parties  
Funding and Disclosure Section, Legal and Compliance Branch

24 December 2012



LS+  
HD

Shawn O'Brien, Registrar of Political Parties  
Funding & Disclosure Section, Legal & Compliance Branch  
Australian Electoral Commission  
PO Box 6172  
Kingston ACT 2604

Re: Application to change the Registered Officer of the Australian Democrats –  
December 2012

Dear Shawn,

My signature is not on the form to change the Registered Officer because I knew nothing about the application. It is my opinion that this application is not a legitimate submission from the Australian Democrats. As you will be aware there is a small group within the Australian Democrats that is conspiring to take over the party. I believe that the National President (Darren Churchill) and the National Secretary (Roger Howe) will provide you with further information about the recent Australian Democrats National Executive elections and current office holders.

I have been a member of the Australian Democrats since 1988 and have held a number of significant positions within the party since that time, and my knowledge of the party constitution and electoral practices is reasonably good. The real determinant of power within the Australian Democrats comes from member ballots rather than personal claims to positions. The latest members ballot for National Executive positions has now been held and I believe gives the legitimate result to who holds what position in the party.

While the people who signed the application to change the Registered Officer may or may not be members of the party (as is required by the electoral act), it is my contention that they do not have the authority to make this decision on behalf of the party - that can only be done by a motion of the National Executive.

May I request that you wait until you are confident about the legitimacy of purported Australian Democrats office holders before making any determination about this application?

John Charles Bell  
Registered Officer, Australian Democrats

[REDACTED]  
13 January 2013 [REDACTED]





**National President****Darren Churchill**

President@democrats.org.au

www.democrats.org.au

14th January, 2013

Shawn O'Brien, Registrar of Political Parties  
 Australian Electoral Commission  
 West Block Offices  
 Victoria Terrace  
 PARKES ACT 2600

PO Box 6172  
 KINGSTON ACT 2604

Dear Shawn,

E: National Registered Officer

We refer to your letter of 24th December, 2012, referring to an application to change the Registered Officer of the Australian Democrats.

We note that our current Registered Officer, John Charles (Charlie) Bell has written and advised you of his position in relation to the proposal, in a letter dated 13<sup>th</sup> January, 2013.

Please be advised that there has been no valid motion of National Executive to change the Registered Officer, since 6<sup>th</sup> October 2009 when Charlie Bell was appointed to replace Andrew Bartlett.

Charlie has advised you "there is a small group within the Australian Democrats that is conspiring to take over the party." Members of that group include members who in March 2012, lodged an unauthorised submission to the AEC's membership audit of the party, which contained many errors and would have resulted in loss of registration.

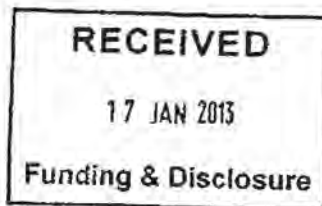
The person they have attempted to appoint, Paul Morgan, is a relatively new member (10 months). Mr Morgan did not even provide the party with his correct electoral address and was therefore not included in the final list submitted by the National Secretary, Roger Howe to the AEC.

Whilst the three people claiming to appoint Mr Morgan are members of the party, they are not authorised to do so.

As the AEC is aware, Stuart Horrex is **NOT** the National Secretary. Roger Howe is the Secretary and the National President will confirm this, over the next few days.

Andrew Dean (Drew) Simmons is not the National Membership Officer. Drew was part of the renegade membership submission to the AEC in March 2012 (and is currently the subject of a resulting internal investigation). He has no access to the Membership Database other than for NSW (where he holds office as State President).

David Orr holds no office in the party outside of the NSW Division.

**National Secretary****Roger Howe (Acting)**

Secretary@democrats.org.au

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252

711

# DEMOCRATS

democrats.org.au

**National President  
Darren Churchill**

President@democrats.org.au      www.democrats.org.au

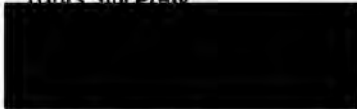
Due to the internal situation, National Executive has not met since September in order for the party to conduct a new ballot for National President. The newly elected National President (now with fresh authority), Darren Churchill will convene a constitutional meeting of the National Executive before the end of January.

The National President ballot, which concluded on 12<sup>th</sup> December, saw Mr Churchill win 73% of the vote.

The factional group has attempted to conduct unauthorised National Executive business by email motions. This included an attempt to appoint officer positions in a secretive, invalid process, which deliberately excluded three voting members of the National Executive and included some invalid proxies from Tasmania and Queensland, as well as one person claiming to be a Deputy National President when e wasn't.

In light of this information and that provided by Charlie Bell, we ask the AEC to continue to recognise John Charles (Charlie) Bell as Registered Officer of the Australian Democrats.

Yours Sincerely



Darren Churchill  
National President  
Australian Democrats



Roger Howe  
National Secretary (Acting)  
Australian Democrats

**National Secretary  
Roger Howe (Acting)**

Secretary@democrats.org.au

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## Extract from the *Commonwealth Electoral Act 1918*

### 141 Review of certain decisions

(1) In this section:

**Commission** does not include a delegate of the Commission.

**decision** has the same meaning as it has in the *Administrative Appeals Tribunal Act 1975*.

**person** includes a political party.

**reviewable decision** means a decision of the Commission, or of a delegate of the Commission:

- (a) to register a political party under this Part; or
- (b) to refuse an application for the registration of a political party under this Part; or
- (c) to grant an application under subsection 134(1); or
- (ca) to uphold an objection under subsection 134A(1); or
- (cb) to refuse to uphold an objection under subsection 134A(1); or
- (d) to refuse an application under subsection 134(1); or
- (e) to deregister a political party under subsection 137(6).

(2) Where a delegate of the Commission makes a reviewable decision, a person affected by the decision who is dissatisfied with the decision may, within the period of 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Commission (either before or after the expiration of that period) allows, make a written application to the Commission for the review of the decision by the Commission, specifying in the application an address of the applicant.

(3) There shall be set out in the application under subsection (2) the reasons for making the application.

(4) Upon the receipt of an application under subsection (2) for the review of a reviewable decision, the Commission shall review that decision and shall make a decision:

- (a) affirming the decision under review;
- (b) varying the decision under review; or
- (c) setting aside the decision under review and making a decision in substitution for the decision so set aside.

(5) Application may be made to the Administrative Appeals Tribunal for review of a reviewable decision made by the Commission or a decision under subsection (2) or (4).

(6) For the purposes of a review referred to in subsection (5), the Administrative Appeals Tribunal is to be constituted by 3 members, at least one of whom is a Judge of the Federal Court of Australia.

(6A) Subsection 21(1AA) of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to a review referred to in subsection (5) of this section.

(7) Where the Commission makes a decision under subsection (4), it shall give written notice of that decision to:

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- (a) the person, or each person, to whom written notice of the reviewable decision to which the decision of the Commission relates was given under this Part; and
  - (b) the person who made the application for the review of that reviewable decision.
- (8) Where a delegate of the Commission makes a reviewable decision, a written notice of the decision given to a person or persons under this Part shall include a statement to the effect that:
- (a) a person affected by the decision may, if dissatisfied with the decision, seek a review of the decision by the Commission in accordance with subsection (2); and
  - (b) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Commission upon that review make application to the Administrative Appeals Tribunal for review of the decision made by the Commission.
- (9) Where the Commission makes a reviewable decision or a decision under subsection (2) or (4), a written notice of the decision given to a person or persons under this Part shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision, make an application to the Administrative Appeals Tribunal for review of the decision.
- (10) Any failure to comply with the requirement of subsection (8) or (9) in relation to a decision does not affect the validity of the decision.