



Mr John Davey representing Stuart Horrex
PO Box 2119
OAK PARK VIC 3046

Mr Roger Howe
PO Box 4070
KINGSTON ACT 2604

Dear Mr Howe and Mr Davey

Re – Change of secretary and registered officer of the Australian Democrats

I refer to the correspondence between yourselves and the Australian Electoral Commission (AEC) over the course of the last few months.

Let me clearly state at the outset that the AEC is politically neutral in relation to exercising the powers under the *Commonwealth Electoral Act 1918* (Electoral Act). The AEC is unable to favour any particular political party or faction within a political party. The AEC has no role in dealing with the internal disputes between members of registered political parties. Such disputes are matters to be resolved between the individual members themselves and if necessary by resort to the Courts (see *McLean v McKinlay and Others* [2004] WASC 2, *Clarke v Australian Labor Party (SA Branch)* [1999] SASC 36 and *Coleman v Liberal Party of Australia, New South Wales Division (No 2)* [2007] NSWSC 736).

The AEC only reflects decisions made by the party relating to changing office bearers in its records. That is, secretary, party agent, registered officer and deputy registered officers. Part of the process that the AEC follows is to ensure that changes of office bearers have occurred in accordance with the party's constitution. In doing this the AEC applies evidence-based decision making.

In this case, an overwhelming number of documents have been lodged by parties to the dispute. However, the vast majority of those documents are of little evidentiary value to the AEC in determining whether the Australian Democrats (the Party) has changed its secretary and registered officer in accordance with its constitution.

At this point, I would like to clarify that the delegate has not made a decision regarding either of the applications to change office bearers. The letter from the Registrar of Political Parties dated 18 February 2012 appears to have caused some confusion in that regard and for that I apologise. At this point in time, no determination has been made, for the reasons set out in that letter. That is, that given the evidence on hand at that time, it was still unclear whether the Party had validly changed its office bearers in accordance with its constitution.

In order to allow a delegate of the AEC to make a determination in these matters, I request the following information.

The meeting of 18 September 2012 appears to be the last point at which both parties to the dispute held a meeting as the National Executive of the Party. As such, I request that each side provide the following:

1. A copy of the notice of the meeting of the National Executive 18 September 2012; and
2. Evidence that the notice of meeting of 18 September 2012 was circulated, including the list of persons to whom it was circulated and the date on which it was circulated.
3. A copy of the notice of agenda for the meeting of the National Executive 18 September 2012; and
4. Evidence that the notice of agenda for the meeting of 18 September 2012 was circulated, including the list of persons to whom it was circulated and the date on which it was circulated.
5. Copies of emails circulated before the meeting of 18 September 2012 in which motions that were not included in the agenda for the meeting were raised.

Both parties to the dispute assert that they have continued to conduct the business of the Party since the meeting of 18 September 2012. For any action that you wish to assert has taken place after 18 September 2012 I request the following:

1. Copies of any notices of meetings which were held after the 18 September 2012 meeting; and
2. Evidence that those notices of meetings were circulated, including the list of persons to whom it was circulated and the date on which it was circulated.
3. Evidence that any meeting held after the 18 September 2012 meeting was quorate.
4. Evidence that any meeting held after the 18 September 2012 meeting was conducted in accordance with the Party's constitution and Standing Orders.
5. Evidence supporting any decisions alleged to have been made by any meeting after the 18 September 2012 meeting.

A number of motions are alleged to have been passed via email. For any such motions I request the following:

1. Evidence that the full text of all motions was supplied to all members of the Executive and the date on which the motions were circulated.
2. Evidence of any discussion, debate or amendments to the motions circulated.
3. Evidence of any vote conducted on motions circulated by email.

A number of allegations about the suspension or expulsion of members have been made. For any such allegations I request the following:

1. A reference to the power under the constitution which confers the power to suspend or expel members.
2. Evidence that such a power has been validly exercised.
3. Where necessary you should provide evidence about meetings or email resolutions where such powers are alleged to have been validly exercised.

I am also aware of two reports written by a National Dispute Convener covering part of the dispute. If you wish to rely upon any of the content of either of the reports, I request that you provide the following:

1. Evidence that the National Dispute Convener was validly appointed.
2. As above, you should provide evidence about any meetings or email resolutions where the appointment is alleged to have occurred.

I would also like to remind you both that providing false or misleading information to a Commonwealth Officer is a serious offence under section 137.2 of the Schedule to the *Criminal Code Act 1995*.

I would also like to reiterate that the AEC is primarily interested in meetings or motions that purport to change office bearers. Any evidence put forward by any party to the dispute should be accompanied by an explanation as to which office bearer change it related to and why it is relevant.

Further, the AEC expects the evidence put forward by the parties to be in the form of scanned copies of primary documents. If a notice of meeting was circulated by email, the AEC expects to see copies of the entire email, including who it was sent to and at what time. Asserting that a document put forward as evidence contains what was in the original document is unhelpful and serves only to delay the process.

Finally, I should outline the process going forward.

1. Relevant submissions to the points raised in this letter should be made to the AEC by close of business on 5 April 2013.
2. The AEC will then circulate all documents to all of the parties to the dispute for their comment. A period of two (2) weeks will be allowed for final comments.
3. A delegate of the AEC will then make a determination based on the information available.

I should note that the burden of proof lies upon the party wishing to make a change to the office bearers. That is to say, the delegate will refuse the applications to change officers unless there is sufficient evidence put forward that clearly demonstrates that any changes have been made validly in accordance with the party's constitution.

I trust that the above information is clear.

Yours sincerely



Donella Greer
A/g Director, Funding and Disclosure

19 March 2013

