

Patricia Georgee

From: FAD
Sent: Monday, 29 April 2013 3:18 PM
To: johnd@hermlegal.com.au; [REDACTED]
Subject: Additional documents for comment [DLM=For-Official-Use-Only]
Attachments: 5042013_Letter to AEC_Donella Greer from Roger Howe-signed.pdf; 20130504_Index of material related submissions_RogerHowe.pdf; StatDecRoger.pdf

For-Official-Use-Only

Dear Mr Davey and Mr Howe,

It has come to my attention that three documents supplied by Mr Howe as part of his submission regarding the applications to change the registered officer and secretary of the Australian Democrats were not included on the USB drive which was mail to you both on 08 April 2013.

I sincerely apologise for this oversight.

I have attached the documents to this email for your comment.

In order to expedite this process it would be appreciated if you could provide any comments on these documents to the AEC by close of business Thursday 02 May 2013. This will allow the submissions and comments to be put to a delegate as promptly as possible for decision.

Kind regards,

Alex Lewis | Project Officer
Funding & Disclosure Section | Legal & Compliance Branch
Australian Electoral Commission
T: (02) 6271 4635 | F: (02) 6293 7655



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**ELECTION
2013**

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Donella Greer
A/g Director, Funding and Disclosure
AEC
Australian Electoral Commission
P O Box 6172
Kingston ACT 2604

West Block Offices
Queen Victoria Terrace
Parkes ACT 2600

By Hand

Dear Ms Greer

I refer to your correspondence of 19 March 2012.

I provide as requested the documents indicated as necessary to ensure that changes of office bearer have occurred in accordance with the constitution of the Australian Democrats; in particular to enable a determination as to whether the Party had changed its secretary and registered officer in accordance with the constitution.

I confirm that our understanding is that no decision has been made by the delegate as you have previously advised.

I attach a statutory declaration indicating that the contents of this letter and attachments are true and correct and that attachments are true and correct copies of the originals.

Documents are attached as requested in scanned format and are named according to the numbering in your letter. Five folders with the following names have been created. Emails will include the name of the initiating author and the time that the initiating email was created.

- A1_18092012_DocumentName_Your reference 1 to 5
- A2_For documents post this date – Date_Document Name_Your reference 1 to 5
- A3_For motions – Date_Document Name_Motion_Your reference 1 to 5
- A4_For allegations – Date_Document Name_Allegation_Your reference 1 to 5
- A5_For National Dispute Convenor –Date_Document_NDC_Your reference 1 to 2

Further attachments for your information include:

- A6_AD National Constitution and Standing Orders
- A7_Additional referenced material

I note that the burden of proof lies upon the party wishing to make the change.

I provide referenced summary points in a further tabular attachment that may be helpful to the Delegate by way of rebuttal or substantiation that such a change has indeed occurred. In particular the information relevant to each office bearer is included with initial references and submissions as follows –

- Secretary
- Registered officer
- National Disputes Convenor

Other office bearers are also included and a further brief section covers specific rebuttals.

Thankyou for the opportunity to have this issue determined. If you require any further information, please do not hesitate to contact me.



Yours sincerely,

Roger Howe

Attachments

1. Statutory Declaration
2. Index of material and related submissions
3. Directories in soft copy form of material including
 - a. A1
 - b. A2
 - c. A3
 - d. A4
 - e. A5
 - f. A5
 - g. A7

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Meetings or Motions that purport to change office bearers

1. National Secretary – Roger Howe

Note: 'Clause' refers to the Constitution and 'Rule' to the Standing Orders both of which are provided in Attachment 7

<i>Date</i>	<i>Event/Issue</i>	<i>Relevant clause/rule of the constitution/standing orders</i>	<i>Reference in Attachments</i>
2003	National Secretary position in Constitution		Submission below
Aug 2011	Original appointment of Roger Howe		
Aug 2012	Validity of motion seeking to remove Roger Howe	Clause 6.8 (e) gives requirements to change as notice at least 14 days prior to the vote. Rule 12 requires 14 days and copies to all members of the Executive and to the officer in question.	Submission below Email re validity of motion DC to National Executive membership. A3_Motions/Motions_Item 2 2012 26 Aug_Re [NE Members] Proposed Motion A6 – Standing Orders
	Validity of calling of meeting of 18 September 2012	Rule 4. Convening and Notice provisions	A1
Jan 2013	Application to change Secretary	See above for issues with validity of motion	A7_Addtional referenced Material Email to AEC 17 January 2011

1.1. Was Roger Howe validly appointed?

Yes, the National Executive (NE) had appointed Roger Howe on 2nd August 2011. The appointment was titled "Acting" in order to comply with the party's National Constitution for a period of no person holding both a non-voting and voting position on the National Executive. This was accepted by the AEC and is recorded as "person performing the role of Secretary." two years.

1.2. Was the position of Roger Howe as the National Secretary changed?

No, the conditions requiring removal were not met.

- 14 days' notice was not given – only 13 days and 9 hours 18 minutes and 58 seconds. The failure to meet this requirement was drawn to the attention of the mover of the motion – Aaron Moss as soon as it was lodged. It was open to them to re-lodge the notice at a later meeting. This did not occur.
- The motion was not included as part of the Agenda for the September meeting. The most senior elected officer, the Senior Deputy National President as locum tenens due to there being no elected National President, outlined his reasons why it was not included.
- The motion carried no Absolute Majority at the meeting of 18 September.
- Roger Howe was not provided with a copy of the motion pursuant to Clause 12.
- At no time before or since the meeting of 18 September was Roger Howe given the opportunity to address concerns either in writing or in person.

1.3. Was the meeting of the 18th of September (postponed from 4th September) validly called?

Yes, the provisions of Rule 4 were complied with. The meeting was originally scheduled for 4th September – and set at the August 7th National Executive meeting. Reminder Notices were sent by email to all members on 28th August 2012. Due to a number of apologies coming in early, it was realised that the meeting scheduled for 4th September would be inquorate. The Secretary rescheduled it for 18th September prior to the originally scheduled meeting time, of 8.30pm on 4th September.

1.4. Were the motions subsequently sent out to members for vote by email by [REDACTED] filed prior to the meeting of 18 September and within time according to the Constitution and Standing Orders?

No

1.5. Are there circumstances where such an email procedure can be undertaken and were they met?

Yes - The circumstances are outlined in Part 1, Clause 40 and Part 5, Clause 4 (i) of the National Standing Orders. They were not adhered to and despite the error being pointed out by any of (depending on which motion) Mr Churchill, Mr Howe, Mr Collyer and Mr Baumann the error in process was not corrected. The errors were pointed out to ensure correct process was followed and that Part 1, Clause 3 of the Standing Orders did not enable validity by default.

1.6. *Is the passage of a motion via an email ballot available under the Constitution?*

Yes if the process under Standing Orders for Meetings of the NE are followed. In this case they were not. Specifically; Standing Orders Part 1, Clause 40.1, 40.5, 40.6 and 40.8; as well as Part 5, Clause 4 (i).

1.7. *Was Roger Howe elected to any other position?*

Roger Howe was elected as Senior Deputy National President in a count-back following the election of Darren Churchill as National President, after his position as SDNP was declared vacant on 12th December 2012.

2. Registered Officer – John Charles Bell (Charlie Bell)

2.1. Was John Charles Bell validly appointed as the National Registered Officer?

Yes. John Charles (Charlie) Bell was appointed by a constitutionally valid meeting of the National Executive in October 2009, replacing Andrew Bartlett, who had resigned from the Party. The AEC was advised shortly afterwards.

2.2. Was the position of Mr Bell changed?

No. National Executive has been extremely satisfied with the way Mr Bell has performed his duties, especially in relation to the appointment/removal of Deputy Registered Officers; the 2010 federal election; and the 2011/12 AEC membership audit, which saw the Party's continued registration.

3. National Dispute Convenor – Brian Dickson (Acting) / [REDACTED] (disputed)

Date	Event/Issue	Relevant clause/rule of the constitution/standing orders	Reference in Attachments
2009/2010	Original attempt to appoint NDC – request to Divisions with 2 responses. Brian Dickson takes on role.	Clause 8.11	A5 A5-Item 1 Email copy : DC to BD
3 Jan 2013 3.18 pm	Brian Dickson raises membership status and Darren Churchill responds with reference to disputes resolved by BD while he was not a member & reference to meeting in 2010 where non-membership discussed. Also notes that no resignation received from the position.	Clause 8.11	A5-Item 2 Email copy Re: valid points
3 Jan 2013 11.13 pm	Darren Churchill suggests two NDC's attempt to work together to resolve issue. [REDACTED] recognises Darren Churchill as President until dispute resolved.		A5 - Item 2 Email Re Final Notice

<i>Date</i>	<i>Event/Issue</i>	<i>Relevant clause/rule of the constitution/standing orders</i>	<i>Reference in Attachments</i>
	NDC – Brian Dickson indicated he could not resolve the current matter, after noting non-membership of party		As above
25 Jan 2013	Darren Churchill & other members of NE provided information to ██████████ in answer to questions.	Clause 8.13 not complied with. Status of ██████████ unknown. Consideration not exhibited.	A5 Reports_submissions to Dispute Convenor
27 Jan 2013	██████████ hands down decisions without allowing responses to material lodged and in short time.	Clause 8.14 not complied with.	As above
Jan 2013	Report not provided to NE, obtained via DC & RH. NE accepts recommendation for early ballot and makes attempts with success, limited due to loss of AP assets.	Clause 8.15 breached. Clause 8.18 complied with.	

3.1. Was [REDACTED] correctly appointed?

No, [REDACTED] was appointed following a ballot which resulted from a call for nominations initiated in an invalid email motion. The decision to cause such call for nominations and ballot was not made by a validly constituted meeting of the National Executive. Nor were the "Desirable qualities in a Disputes Resolution Convener," set down by National Executive in July and September 2010 adhered to in the subsequent call for nominations.

National Executive had appointed Brian Dickson to an acting position as Disputes Convenor in June 2010. A ballot was planned and criteria determined for "desirable qualities for the position." Mr Dickson is an independent Strategic Management Solutions consultant and was a previous National Secretary of the Australian Democrats. Mr Dickson continues to act in the position until it can be legally balloted.

3.2. Did members work with [REDACTED] in any event?

Yes, with this qualification, information was provided to [REDACTED] in a cooperative effort to resolve the matter as members in the interests of the Party. The difficulty with [REDACTED] appointment was indicated to him at the time; and he was instructed to work as part of a team with Brian Dickson.

4. National President – Darren Churchill

<i>Date</i>	<i>Event/Issue</i>	<i>Relevant clause/rule of the constitution/standing orders</i>	<i>Reference in Attachments</i>	
Aug 2012	Brian Greig resigns Darren Churchill assumes vacancy as a temporary measure until ballot likely in November.	Clause 6.8(b) (c)	See Submission	
Nov 2012	Publication of purported National Journal including incorrect reference to 'resignation' of Darren Churchill	Rule 10 specifies written resignation to the National Secretary.	See submission	Copy of 'Democrats National Journal Vol 36 No. 2'
Jan 2012			See submission	Letter to AEC indicating position held at that date by Darren Churchill
		Rule 40 requires that if email questions are to be considered then they may only be carried by an absolute majority	See submission	

4.1. What are the requirements for the resignation of a National President or other Office Bearer

Office bearers must resign in writing to the National Secretary and in the case of the Secretary to the President. Resignations take effect 24 hours later or another period specified in the resignation with 24 hours' notice. They may be withdrawn in writing. No such resignations have been made by Darren Churchill. Officers may vacate office if ineligible under Rule 11. No such vacation has occurred.

4.2. Has Darren Churchill resigned from the position of National President?

No. Darren Churchill held the office of Senior Deputy National President from 13th July 2012 to 12th December 2012. From 7th August 2012 to 12th December 2012, Mr Churchill was *locum tenens* (temporary replacement) pending a 2nd National President ballot, as Brian Greig had resigned as National President on 7th August. On 12th December, Mr Churchill was re-elected as National President until 30th June 2013.

4.3. Has Darren Churchill vacated the position of National President

No. Darren Churchill has performed the role of National President since his re-election on 12th December, 2012.

4.4. Has Darren Churchill ceased to be eligible to be elected or appointed?

No. Darren Churchill remains a "member in good standing" as attested to by Acting National Membership Officer, in a statement of 25th January 2013 and 4th April, 2013. Mr Churchill's membership remains fully paid until 30th June 2013 (and constitutionally financial until 30th September, 2013).

The Executive of the ACT Division ratified their recognition of Mr Churchill as elected ACT Division President, and (at the time) Senior Deputy National President and their pre-selection candidate for Ginninderra in the ACT Election 2012, at their meeting of 25^h September, 2012.

4.5. Was Darren Churchill unable to assume the presidency because he had no other form of entitlement as stated by the NDC?

No, He did have an entitlement. At Paragraph 28, [REDACTED] asserts the following:

In other words, in circumstances where there was no president or nominee (the term 'nominee' is a reference to the president's nominee) Mr Churchill should not have assumed, as he did, that he would be the chair. Mr Churchill was no-longer the president of the party; he was one of five Deputy National Presidents, anyone of which had as much claim to the chair as he did.

Clause 6.8 requires that in the event of a casual vacancy in the office of President, that a replacement election shall be conducted unless the casual vacancy occurs within the last six months of the term of office in which case the Senior Deputy President shall become the Acting President for the remainder of the term.

Clause 6.(c) uses a 'count-back' to establish a temporary Deputy President in the case of a vacancy. In this instance as already noted, Brian Greig the elected President had resigned within the first 6 months not the second 6 months of his Presidency. The Constitution does not clarify what is to happen in this instance however the surrounding clauses applying are instructive. Darren Churchill was the most senior Deputy President (having in fact been elected Senior Deputy National President) and was the next person on the ballot for the Presidency in numbers of ballots received in the previous presidential vote. On that basis he was the closest person to fill the position until a further vote.

In addition, the NE had supported him in undertaking this responsibility and in particular that of chairing the meetings at the previous meeting on 7 August 2012 immediately after the resignation of Brian Greig.

4.6. Was Darren Churchill able to determine when meetings were convened?

Yes, he is the President and under Rule 4.1 must convene meetings. He was also previously the Senior Deputy President and 4.1 gives the same power to any Deputy President, if the President fails to convene a meeting. The office of President was vacant. [REDACTED] is not correct in the footnote below where he quotes and criticises Darren Churchill's 'belief'.

The National Secretary and I decided that the next NE meeting should occur after the National President ballot" illustrates a belief that between them, they can decide when the NE meets, which is simply not the case 2.

Footnote 2 then states

See Clause 4.1 of the Standing Orders. Neither Howe nor Churchill was the president and, from 15 October 2012, Howe was not the secretary.

Although not the President until 12th December, Mr. Churchill was the placeholder (as Senior DNP). Rule 4.1 in the Standing Orders says that the "President or Secretary as nominee must convene meetings." Mr. Churchill as locum tenens (placeholder) consulted with the Secretary, who with the Presidency being vacant had the responsibility to convene meetings.

Note: Roger Howe was elected as the Senior Deputy National President. See above.

5. National Treasurer – John Charles Bell (Charlie Bell)**5.1. Was John Charles Bell validly appointed as the National Treasurer?**

Yes. A validly constituted meeting of the National Executive made Mr Bell's appointment at a meeting on 31st January 2013. This was the first operational meeting of the National Executive (other than the extraordinary meeting which preceded it) since the resignation of former Treasurer Bruce Carnwell.

See references above to the meeting of 31 January 2013

6. *Interim National Ballots Administrator – Julia Melland*

6.1. *How did Julia Melland become the National Ballots Administrator?*

Julia Melland was undertaking the role in an interim capacity and delegated from Deane Crabb the Returning Officer. Given time constraints no motion was undertaken because the ballot had to be completed by the end of the year. Previous experience had shown that ballots generally take at least 2 months to organise.

In addition, power exists for the National Returning Officer to appoint deputies to assist in any aspect of division ballots under Rule 12 of Part V of the Standing Orders. In this instance, the National Returning Officer had taken the opportunity to obtain assistance and was able to do so, given Julie Melland's capacity as recognised by Troy Anderson.

7. Other Office Bearers

All other Officer positions appointed by National Executive prior to the dispute (where there were nominations for positions) were appointed at validly constituted meetings of the National Executive. Mostly, these were in August 2011, with the appointments being for two years (Clause 6.8 c in the National Constitution and Part 1, Clause 9.1 of the Standing Orders). Historically, approximately half the appointments have occurred on the even numbered years and approximately half on the odd numbered years.

There have been no valid motions to declare all positions vacant. This would require at least 14 days' notice be given to all members of the National Executive and the Officers (Part 1, Clause 12 of the Standing Orders) and a solid rationale to justify the decision, as declaring all Officer positions vacant would be tantamount to stopping the party from operating.

Specific Rebuttals

8. *Material provided to* [REDACTED]

The documents contained in A7 and which were provided to Troy Anderson are reproduced for this submission and are correct.

9. *Minutes of meetings conducted by* [REDACTED] *after the 18th of September*

Minutes without exception contain inaccuracies and breach the Constitution and Standing Orders. In particular,

- Darren Churchill did not attend the meeting on 29 January except that he attempted to call the meeting by phone to order and open it.

10. *Notices of Motion from* [REDACTED] *post 18 September 2012*

Email motions were tabled at random by various people and were not conducted by either claimant to secretary position. [REDACTED] made declarations of purported motions.

Notices were not sent to all members of the National Executive. In particular,

- A Notice requiring decisions on the National Office Bearer's Positions (A3 Item 1) was not received by Darren Churchill, Roger Howe or Trevor Jenner.

11. *Suspension and Expulsions*

Suspensions and expulsions purported to be concluded by [REDACTED] are not valid.

12. *Evidence that power validly exercised*

Please refer to above.

13. *Motions*

At all relevant times the entireties of all submitted motions were forwarded to the National Executive with the exception of motions not complying with the constitution and rules as detailed above; or falling outside standard meeting procedures (Roberts Rules – used by House of Representative's Standing Orders and covering issues outside of these Standing Orders, See Rule 2. 2.1 – Validity of Motions) Please see A1 Item 5 Section 40 of Roberts Rules.