Minute

AEC Australian Electoral Commission

Classification: OFFICIAL
File reference: OBJECT ID: fA225101
To: Joanne Reid, Assistant Commissioner – Disclosure, Assurance and Engagement Branch

Through:	Stuart Oreo	Director	Parliamentary Engagement and Party Registration
CC:	Tim Ingold	Assistant Director	Parliamentary Engagement and Party Registration

Subject: For action – Final determination of application made under s 126(1)(b) of the *Commonwealth Electoral Act 1918* (Electoral Act) for registration as a non-Parliamentary party – David Pocock (the Party)

Purpose

You, as a delegate of the Electoral Commission, are required to determine whether the Party, 10 members (the Applicants) of which have made an application for registration (the Application), should be registered under s 133(1) of the Electoral Act.

Authority

Sections 126, 129, 129A, 131, 132, and 133 of the Electoral Act.

Background

The Application

On 24 December 2021, the Australian Electoral Commission (AEC) received the Application made by 10 members of the Party to register the Party as a non-Parliamentary party under s 126(1)(b) of the Electoral Act (OBJECT ID: A1298922).

On 6 January 2022, the AEC confirmed all of the requirements from the Party for an application for registration as a non-Parliamentary party and sent an acknowledgment letter to the Party (OBJECT ID: A1331531).

Proposed name	David Pocock
Proposed logo	DAVID POCOCK FOR THE A.C.T

On 4 February 2022, a delegate of the Electoral Commission for the purposes of s 131 of the Electoral Act, determined that the Application passed the initial consideration, and in capacity as an

AEC authorised officer for the purposes of s 132(1) of the Electoral Act, authorised the advertisement of the Application in 10 newspapers nationally and on the AEC website (OBJECT ID: A1389361).

On 11 February 2022, the Application was advertised on the AEC website and in 10 major newspapers. A copy of the advertisement is at OBJECT ID: A1354991. The closing date for the submission of written particulars was 11 March 2022.

The AEC received four sets of written particulars ('objections') during the public consideration period for the Application, from three persons ('the Objectors').

Written particulars submitted

Written particulars from	Date received	Relevant part of the Electoral Act	OBJECT IDs:
1. [redacted] Ernst [redacted]	10 March 2022	Ss 126 or 129	– original - A1428572 – redacted - A1428570
2. [redacted] Ernst [redacted]	10 March 2022	Ss 126 or 129	– original - A1431087 – redacted - A1431089
3. [redacted] Neil [redacted]	10 March 2022	Ss 126 or 129	– original - A1428568 – redacted - A1428566
4. [redacted] Lis [redacted]	10 March 2022	Ss 126 or 129	– original - A1428574 – redacted - A1428564

Legislative framework – written particulars

Section 132(2)(b) of the Electoral Act provides that a person can only submit written particulars objecting to an application to register a party (or a logo in the case of s 132(2)(b)(iv) of the Electoral Act) if the person believes that:

a) the application does not relate to an eligible political party; or
b) the application is not in accordance with s 126 of the Electoral Act (the section setting out the requisite contents of an application); or
c) the application should be refused under s 129 of the Electoral Act (the name and abbreviation tests); or
d) the Electoral Commission should refuse to enter a logo of the party in the Register under s 129A of the Electoral Act (the logo test).

For the Application, written particulars are required to meet the following administrative requirements under ss 132(2)–(3) of the Electoral Act:

1. be in writing;
2. be signed by the objector (either physically, or electronically as per s 10(1) of the *Electronic Transactions Act 1999*);
3. specify a postal address of the objector that does not consist of a post office box number (noting the definition of 'address' in s 123(1) of the Electoral Act and the postal service requirements in s 140(1) of the Electoral Act);
4. be submitted within 1 month after the publication of the relevant s 132(1) Notice on the AEC website; and
5. set out the objector's belief that the Application should be refused for a reason listed in s 132(2)(b) of the Electoral Act and provide grounds in support of that belief.

Written particulars received objecting to the Application must be processed in accordance with ss 132(4) and (5) of the Electoral Act. This requires the Electoral Commission to make the written particulars available for public inspection (published on the AEC website) under s 132(4) of the Electoral Act, and provide a copy to the Registered Officer for an opportunity to reply under s 132(5) of the Electoral Act.

Summary of Objection one from [redacted] Ernst [redacted]

‘At the time the application for registration as a political party was lodged it was clear from interviews published in the media including the Canberra Times that Mr David Pocock was a citizen of a foreign country, Zimbabwe, and therefore ineligible for the Senate.’

‘The AEC should not accept registration of a party named in relation to a person who is ineligible for the Senate.’

‘To name a party with the name of a person who at the time of application for registration of the party is ineligible for election is surely inappropriate.’

‘Election of a number of persons to the Parliament was overturned by the High Court. Amongst other things the High Court held the critical issue was eligibility at the time of nomination.’

‘The AEC should reject this registration application. Mr Pocock should be invited to resubmit the application if and when he has become eligible for election to the Senate.’

Summary of Objection two from [redacted] Ernst [redacted]

‘I submit this proposed name must be rejected because the proposed name is not consistent with the concept of a party.

Simply put, a party is a body of persons united in some sort of cause or opinion or otherwise engaged together.

A single person or the name of a single person cannot constitute a party. Accordingly I submit the registration must be rejected.

This can be compared or contrasted with the proposed registered party logo, David Pocock for the ACT. That represents a cause. So an application to register the name of a party along the lines David Pocock for the ACT may well be valid. So would a name along the lines David Pocock for the environment. Names along these lines indicate a cause or opinion or some sort of engagement beyond a mere name.

The AEC will appreciate that an invalid registration could have serious consequences. For example if this ‘party’ was registered and placed above the line and the candidate was successful another candidate could challenge the validity of the election.

The AEC should not countenance such obvious uncertainty which can so easily be corrected by a fresh application with a name that satisfies the concept of ‘party’.’

Summary of Objection from [redacted] Neil [redacted]:

‘I object to acceptance of the proposed party name as simply “David Pocock”.’

‘Such a title is a person’s name only and not indicative of a political party and social cause. If the applicant wishes only to be referred to by name, as a candidate he can appear in that way below the line on the ballot paper. If this application is successful. The same words would be printed on the ballot paper above and below the line which would surely be confusing.’

‘Secondly, if media reports and suggestions are correct in that, at the time of submission of the application for registration of a political party, Mr Pocock was a citizen of another country, surely this renders him in eligible to submit such an application until such time as he has surrendered citizenship of that other country.’

Summary of Objection from [redacted] Lis [redacted]:

> ‘A single person or the name of a single person cannot constitute a party. The reason being: a party is a body of persons united in some sort of cause or opinion or otherwise engaged together.
>
> This can be compared or contrasted with the proposed registered party logo, David Pocock for the ACT. That represents a cause. So an application to register the name of a party along the lines David Pocock for the ACT may well be valid. So would a name along the lines David Pocock for the environment. Names along these lines indicate a cause or opinion or some sort of engagement beyond a mere name.’
>
> ‘However, a single name on its own obviously does not constitute a party in accordance with the ordinary meaning of party, hence I submit the registration must be rejected.
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> ‘The AEC will appreciate that an invalid registration could have serious consequences. If this ‘party’ was registered and placed above the line and the candidate were to be successful, then another candidate could challenge the validity of the election.
>
> The AEC should not countenance such obvious uncertainty which can so easily be corrected by a fresh application with a name that satisfies the concept of a ‘party.’

On 16 March 2022, the Registered Officer of the Party, Mr Glenn Cummings, responded to the written particulars contained in the objections from ‘Ernst’, ‘Neil’ and ‘Lis’ (OBJECT ID: A1435232 and A1435234). The response was published on the AEC website in accordance with s 132(6) of the Electoral Act.

The response from the Party to each of the objections is outlined below.

> ‘In summary, our client’s view is that there has been nothing raised in the Objections which, under the Act, would either (i) prevent the Electoral Commissioner from registering the Party or (ii) respectfully, permit the Electoral Commissioner to decline to register the Party, as a non-Parliamentary party under Part XI of the Act.).’

In relation to Objections from Ernst (2), Neil (3) and Lis (4) the Party responded that:

a) none of the particulars of the Objections refer to a provision of the Act which would prevent the registration of the Party with its proposed name;
b) there is no requirement in the Act that a name of a party be ‘consistent with the concept of a party’;
c) the ground invites a qualitative evaluation of what a party should be or how it should operate which goes far beyond the requirements in the Act and in doing so asks the Commissioner to perform a task which it is not empowered by the Act to do;
d) in any event, the objects and operation of the Party meet the requirements of the Act as set out at 6(a) such that it is entirely consistent with the concept of a party. The name is simply the means by which that party is identified and there is no requirement that the name include a specific reference to it being a ‘party’, ‘group’ or some other ‘cause based entity’ as is argued in the Objections.

In relation to the second Objection from Ernst the Party responded that:

a) it is a speculative allegation that the outcome of the election could be challenged on the basis that the Party is placed above the line and the Objections are silent as to which provision of the Act could properly found such a challenge or declaration of invalidity under s 362 of the Act;

b) again, it invites a qualitative evaluation of the effect of the name of a party, where that name does not contain any of the prohibited features in s 129 of the Act.

In relation to Objections from Ernst (1) and Neil (3) (the Section 44 reference) the Party responded that:

a) the question of eligibility of a proposed endorsed candidate of a party for election is separate to the eligibility of a party to be registered as a non-Parliamentary Party;
b) the Party meets the requirements for registration as a non-Parliamentary Party and the eligibility of any proposed endorsed candidates is not permitted by the Act to be undertaken in the assessment of a party registration application;
c) even if it were relevant to consider the eligibility for election of a proposed candidate, the point at which a candidate must be eligible is the point at which they nominate for election, not the point at which the party is registered.

'Based on the above, the Party submits that the Electoral Commissioner should reject the particulars in the Objections and not decline to register the Party on the basis of such particulars.'

Consideration of the Objections and the Response

Under ss 132A(1) and 133(3) of the Electoral Act, if the Electoral Commission refuses an application for registration, the Electoral Commission must:

- publicise the reasons for the Electoral Commission's decision; and
- give written notice of those reasons to the applicant(s); and
- give written notice of those reasons to any person who submitted an objection under s 132(2) in relation to the application.

Under ss 133(1) and 133(1A) of the Electoral Act, if the Electoral Commission makes a determination that a political party should be registered, the Electoral Commissioner must:

- publish notice of the registration on the AEC website (and may publish the notice in any other way that the Electoral Commissioner considers appropriate);
- give written notice of the registration to the applicant(s); and
- give written notice to any person who submitted an objection under s 132(2) in relation to the application, setting out the reasons for rejecting the person's reasons for making their objection.

You are a delegate of the Electoral Commission for the purposes of ss 132A(1), 133(1) and 133(3), and you are authorised to publish notice of registration under s 133(1A) of the Electoral Act.
A copy of a draft statement of reasons ('the Draft Statement of Reasons') is at OBJECT ID: A1389673 and has been drafted on the recommendation that you make the determination that the Party should be registered.

Although it would not be a legal requirement for you to publicise or provide reasons to the Applicants if you make the determination that the Party should be registered (as opposed to if you decide to refuse the Application), the Draft Statement of Reasons has been drafted in the interests of transparency and consistency.

Conclusion

On 24 December 2021, the AEC received all of the procedural requirements for an application for registration from the Applicants under ss 126(1)(b) and 126(2) of the Electoral Act.

On 4 February 2022, a delegate for the purposes of s 131 of the Electoral Act of the Electoral Commission determined that the Application passed the initial assessment. The delegate (also an authorised officer for the purposes of s 132(1) of the Electoral Act) approved the advertisement of the Application in 10 newspapers circulating generally in each State and Territory and on the AEC website. The Application was advertised on 11 February 2022 and four sets of written particulars from three objectors, were received during the public consultation period by the closing date of 11 March 2022.

After considering the objections and response from the Party, the AEC found there are no additional grounds or information provided to give reason for the delegate to refuse the application for registration.

Based on this information, there is no basis to refuse the Application and the Application should be approved for registration. Under s 126(3) of the Electoral Act you, as a delegate of the Electoral Commission, have the authority to approve the Application.

Recommendations

That you, as a delegate of the Electoral Commission for the purposes of ss 126(3) and 133 of the Electoral Act:

1. approve the Application for registration from 10 members of David Pocock and enter the David Pocock in the *Register of Political Parties* as a non-Parliamentary party under s 133(1) of the Electoral Act;
2. approve the draft correspondence and notice of decision, which will also include a copy of the Statement of Reasons, to be sent to the Proposed Registered Officer and Secretary of David Pocock, Mr Glenn Cummings, under s 133(1)(b) of the Electoral Act (OBJECT ID: A1395341);
3. approve the publication of a notice of the registration of David Pocock on the AEC website under s 133(1A)(a) of the Electoral Act (OBJECT ID: A1389674);
4. approve the publication of a Statement of Reasons, which complements the notice, on the AEC website (OBJECT ID: A1389673).
5. approve the draft correspondence to [redacted] Ernst [redacted] (OBJECT ID: A1435205)
6. approve the draft correspondence to [redacted] Neil [redacted] (OBJECT ID: A1435211)
7. approve the draft correspondence to [redacted] Lis [redacted] (OBJECT ID: A1435218)

Prepared by:
Karen [redacted] – Senior Project Officer – Parliamentary Engagement and Party Registration
16 March 2022

Reviewed by:
Maria [redacted] - Project Officer – Parliamentary Engagement and Party Registration
17 March 2022

[redacted]

Stuart Oreo
Director – Parliamentary Engagement and Party Registration
18/03/2022

1.	☒Approved	☐ Not approved
2.	☒Approved	☐ Not approved
3.	☒Approved	☐ Not approved
4.	☒Approved	☐ Not approved
5.	☒Approved	☐ Not approved
6.	☒Approved	☐ Not approved
7.	☒Approved	☐ Not approved

Joanne Reid
Assistant Commissioner – Disclosure, Assurance and Engagement Branch

[redacted]

Signature

Date 18 March 2022