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ACT 2608

31 March 2022

Mr Tom Rogers
Australian Electoral Commissioner
Locked Bag 4007
Canberra City ACT 2601

By email to: commission.secretariat@aec.gov.au

Dear Mr Rogers

REQUEST FOR REVIEW OF DECISION

Pursuant to section 141(2) of the *Commonwealth Electoral Act 1918,* (the Electoral Act), we request a review of the decision on 4 March 2022 by the Delegate of the Commissioner, Joanne Reid, to deregister the Democratic Labour Party (the DLP) under section 137(6)(a) of the Act.

In the first instance, it is of concern to us that amongst many small parties which have received Notices of Intent to Deregister, conservative Christian parties such as the DLP and the Christian Democrats appear to have been singled out for quick deregistration while left-leaning secular parties such as "Derryn Hinch's Justice Party" which also received similar notices months before the DLP continue to be registered. It is also of great concern to us that we appear to have been denied natural justice in our efforts to comply with the minimum 1500 member requirement by being restricted to only providing 1650 names, by having only a tiny sample of these being contacted by the Electoral Commission and then finally by being denied the opportunity to provide any additional lists of members.

On 27 January 2022 we received a letter from the AEC delegate, Joanne Reid, advising us of the intention to deregister the DLP. We were given a month to supply "a statement, in writing, setting out the reasons why the party should not be deregistered."

Shortly after this notice I, as registered officer, had a conversation with a member of the AEC who rang me. I asked what we could include in the statement and was advised we could provide any statement that would explain why we should not be deregistered. I twice asked whether we "can we supply a new list of members" and was advised the statement can contain anything that demonstrates why we should not be deregistered. The person I spoke with did not refer to a new list or whether a new list could be supplied.

On 26 February 2022, we submitted our statement setting out the reasons why we should not be deregistered including the fact that we did have over 1500 members, The email we sent with the statement specifically asked for permission to submit a new list of names and the statement itself also specifically asked for permission to submit a new list of names.

We now find that parties who never asked for permission were permitted to lodge new lists along with their statement and those lists were accepted by the AEC. This despite no reference to supplying a new list being mentioned in the "intention to deregister" letter we received and no acknowledgment or suggestion that a new list could be lodged being mentioned in my phone conversation with the AEC, despite my specifically asking that question.

At the very least the AEC, who are happy to call and advise us that we are being deregistered, could have called and said a new list would be accepted if supplied within 24 hours. I am seriously concerned about impartiality in the AEC when some parties were permitted to lodge a new list supposedly without permission while those who sought permission were ignored, to their detriment.

Instead of acting on the request contained in the DLP's statement and email, the statement seems to have been given priority for denial, because barely four business days later we received the notice of 'Intention to Deregister.' Meanwhile, the "Derryn Hinch Justice Party" which was listed for deregistration on 17 December 2021, the Health Australia Party which was listed on 18 January 2022 and the Australian Progressives which was listed on 11 January 2022 all remain on the list of registered parties.

I would suggest the least the AEC could do is to immediately restore the DLP to the list of Registered Parties while examining the new list of members supplied with this appeal.

Attached to this statement is another list of 1650 members. As mentioned we request we be afforded the same treatment as other parties and our qualification for registration be immediately re-established then re-assessed based on this list.

In the Notice of Decision on Party Registration dated 4 March 2022, the Delegate, Joanne Reid, simply asserts that she "rejects the reasons outlined by (the DLP) in its statement provided on 26 February 2022" including both the issue of the legal validity of the sampling process used to assess the membership number and the fact that the DLP advised that it has more membership names which it was prevented from providing, without explaining how or why this "rejection" is decided upon. The fact that the DLP requested permission to lodge another list of members in the very statement the Delegate rejects while other parties, whom the same delegate would presumably have dealt with for deregistration purposes, were permitted to lodge new lists apparently without permission seems to be unfair and suggests the Delegates reasons for rejection of our statement are inconsistent with her or the AEC's actions.

Ms Reid declares that she "remain(s) satisfied that the (DLP) does not have 1500 members" despite the fact that we have advised that we have more than the maximum 1650 sample we were permitted to provide, so it is not clear how the Delegate would arrive at this prejudicial conclusion when it appears to be at odds with all available facts.

The use of a sample of only 42 members to draw conclusions regarding the membership status of 1572 members would appear to be questionable from the standpoints of both procedural fairness and legal validity. In the Notice, the Delegate declares that her faith in the validity of this approach derives from the fact that the Electoral Commission "has previously concluded that the methodology was appropriate for membership testing because it was rational, fair and practical in all the circumstances," however her own organization's endorsement of its own process is an entirely circular justification and provides no credibility whatsoever. In fact, from a statistical standpoint, a parametric estimate of valid membership numbers using such a tiny sample must have a huge standard error and so can only logically be regarded as indicative rather than definitive.

Moreover, the Delegate's statement that she considers that a statistical estimate "provide(s) a more robust method for ascertaining whether a party has satisfied the requirements of the Electoral Act than a statement by the party" appears disingenuous.

We did not, nor obviously would anyone else, seriously suggest that an assertion of membership numbers had any weight in assessing eligibility for registration. We merely pointed

out that we had additional members which we could have provided if we had been told that we were allowed to do so.

In fact, the key question that we raised was neither this nor whether the ABS provided estimation method was an effective indicative tool, but rather whether statistical extrapolation from a sample of only 42 members could be a fair and valid method to decide definitively that a party which supplied 1650 member names did not have 1500 members.

The DLP would contend that the only way to definitively assess whether a party has the minimum 1500 members required by the amended Electoral Act is for the AEC to contact each and all of the members provided.

While this may be a major task for the AEC, given that rejection of a party's claim to the required membership denies it the right to participate in our nation's democratic processes, we submit respectfully that the AEC's convenience should not be the primary consideration.

As set out in the Administrative Review Council's Best Practice Guide to Decision Making, an important legal requirement in any administrative decision making is to conform to the principles of natural justice, to the extent that "natural justice generally applies whenever a statute gives power to make an administrative decision that might adversely effects the rights, interests or legitimate expectations of an individual or organization."[1] Moreover, as the guide makes clear, "the requirement of natural justice comes from general administrative law, not the particular statue being administered"[2] and these obligations for administrative decision makers are reflected in the Australian Public Service Values and Code of Conduct set down in the *Australian Public Service Commissioner's Directions 2016* and the *Public Service Act 1999.*

The wording of the Delegate's written decision suggests to us that she may have been unfamiliar with these obligations.

In conclusion, the grounds upon which we request review of the Delegate's decision are

1. That in not being advised that we were allowed to submit additional names as part of our statement on 26 February 2022 as other parties did, we were denied natural justice in the decision making process;

[1] Administrative Review Council Best Practice Guide 2, "Decision Making: Natural Justice", 2007, p4
[2] Ibid, p5

2. That in not responding to our request for permission to lodge a new list of names, as contained in both our email and statement of 26 February 2022, the DLP was denied the ability to demonstrate our eligibility to registration as was granted to numerous other parties;

3. That the means of statistical extrapolation by which the minimum membership is determined is neither “fair” nor “robust” but merely indicative and therefore does not comply with the AEC’s legal obligations to definitively determine eligibility for registration under the Electoral Act;

4. That because the AEC failed to contact 1530 of the 1650 members we supplied, the AEC denied us a just and equitable assessment of our membership; and

5. That wording of the Delegate’s written response suggests an apprehended bias against us and raises the possibility that we were not afforded an objective assessment.

Accordingly we request that our registration be immediately re-established while our ongoing entitlement to registration is re-assessed by the Commission, including an assessment of the new list of 1650 member names which we attach.

Yours sincerely

Stephen Campbell
Federal Secretary and Registered Officer
Democratic Labour Party