

NOTICE OF DECISION ON PARTY REGISTRATION DEREGISTERING A POLITICAL PARTY AND REMOVAL FROM THE REGISTER OF POLITICAL PARTIES DEMOCRATIC LABOUR PARTY

Notice of decision under s 137(6) of the *Commonwealth Electoral Act 1918* (Electoral Act) and Statement of Reasons

1. I am writing in accordance with s 137(6)(b) of the Electoral Act to notify you of the review conducted under s 138A(1) of the Electoral Act and the determination to deregister Democratic Labour Party (the Party).
2. As a delegate of the Electoral Commission, I am authorised to deregister the Party under s 137(6)(a) of the Electoral Act, and to cancel the particulars of the Party from the *Register of Political Parties* (the Register) under s 138 of the Electoral Act.
3. On 8 October 2021, the Electoral Commission issued a Notice to the Registered Officer of the Party, Mr Stephen Campbell, under s 138A(3) of the Electoral Act (s 138A Notice). This Notice requested the Party provide the Australian Electoral Commission (AEC) with an electronic membership list of between 1,500 and 1,650 members in order for the AEC to determine the eligibility of the Party to remain registered. The due date for responding was 8 December 2021.
4. On 26 November 2021, I sent a reminder to the Party outlining the requirements of the s 138A notice and the deadline for providing a response.
5. On 8 December 2021, the Party responded to the s 138A Notice providing a list of 1,650 members.
6. On 27 January 2022, as delegate of the Electoral Commission, I gave the Registered Officer of the Party a notice under s 137(1) of the Electoral Act (the s 137 Notice), that I was considering deregistering the party because I was satisfied on reasonable grounds that the Party does not have at least 1,500 members (s 137(1)(b)). Pursuant to s 137(2) of the Electoral Act, the Party was given one month to respond to the s 137 Notice (being 27 February 2022).
7. On 26 February 2022, the Registered Officer of the Party provided a statement in accordance with s 137(2) of the Electoral Act.
8. Section 137(5) of the Electoral Act prescribes that:

Where, in response to a notice given under s 137(1) in relation to a political party, a statement is lodged under s 137(2), the Electoral Commission shall consider that statement and determine whether the political party should be deregistered for the reason set out in that notice.

Decision

9. As a delegate of the Electoral Commission I am satisfied on reasonable grounds that the Party does not have at least 1,500 members and that the Party should be deregistered.

10. I have determined that Democratic Labour Party should be deregistered under s 137(6)(a) of the Electoral Act, for the reasons set out below. Therefore, the particulars of the Party will be cancelled from the Register under s 138 of the Electoral Act.

Materials I have taken into account

11. In making my decision, I have had regard to:
- the s 138A Notice;
 - the results of the testing of the Party's membership list conducted by the AEC in accordance with the sampling methodology developed by the Australian Bureau of Statistics ('the ABS');
 - the s 137 Notice;
 - the statement provided by the Party in response to the s 137 Notice on 26 February 2022;
 - Part XI of the Electoral Act; and
 - the AEC *Guide for maintaining party registration*.

Findings of Fact

12. On the material before me, I make the following findings.
13. No member of the Party is a member of the Parliament of the Commonwealth.
14. The membership list lodged on 8 December 2021 contained the details of 1,650 people.

Membership list

15. The membership list submitted by the Party contained 1,650 names of people that the Party considers to be current members (referred to as 'members' below). The following results were found after initial membership testing against the Commonwealth Electoral Roll (electoral roll) of the membership list submitted by the Party:

Submitted membership list	1,650
Automatically matched to the electoral roll	1,474
Manually matched to the electoral roll	118
Unable to match or not enrolled on the electoral roll	(37)
Deceased	(21)
Total	1,592

16. Of the 1,592 members matched to the electoral roll the following were identified as duplicates within the membership list or as duplicate members who have previously supported the registration of a registered political party (or parties):

Total matched to the electoral roll	1,592
Duplicates identified in the membership list provided by the Party	(3)
Members identified as also supporting the registration of another party	(17)
Total	1,572

17. In accordance with the random sampling formula provided by the ABS, a list of 1,572 members requires a random sample of 42 contactable members to confirm they are members of the Party, with up to four denials of membership permitted. The Electoral Commission's view is that, absent of any relevant factors to the contrary, a failure to satisfy

the test provided by the ABS constitutes reasonable grounds upon which a delegate of the Electoral Commission can be satisfied that a non-Parliamentary political party does not have at least 1,500 members.

The relevant numbers for this membership test were:	Members
The random sample size	42
Maximum number of denials permitted	4
Contact attempts made*	70
Responses received	
- Confirmed Membership	28
- Denied Membership	14
PASS/FAIL	FAIL

*as some members were uncontactable, or provided a neutral response.

18. Accordingly, there are reasonable grounds on which I, as a delegate of the Electoral Commission, can be satisfied that the Party does not have at least 1,500 members (s 137(1)(b) of the Electoral Act).
19. As such, the Party was issued with a s 137 Notice on 27 January 2022.
20. On 26 February 2022, in response to the s 137 Notice, the Party lodged a statement with the Electoral Commission setting out reasons why the party should not be deregistered.

Supporting statement

21. I have considered the Party's statement. Extracts from that statement follow:
 - a) "In summary, the reasons are that the DLP challenges the legal validity of the method used by the Electoral Commission in determining whether the party has the 1500 members purportedly required under the Act as amended, but also points out that the question of whether 1500 members are indeed required is currently before a Court and therefore no determination of registration status can be validly made by the AEC until the Court renders its decision."
 - b) "In point of fact, in seeking to comply with the new "minimum 1500 member" rule we were only permitted by the Electoral Commission to provide a sample of 1650 members listed from our total membership database, yet once again, this is a restriction imposed by the Electoral Commission and not something required by legislation. Accordingly, we contend that we were unreasonably prevented from complying with the Act by being restricted from supplying our entire membership base and therefore we contend that any action to deregister us in those circumstances denies us natural justice. As our complete membership database is considerably more than the 1650 we were permitted to supply we should, as a minimum, be granted the right to supply a supplementary list of names to demonstrate that we have more than the necessary 1500."
 - c) "Most important of all however, whether or not we are able to comply with the "minimum 1500 member" registration requirement, the validity of the *Electoral Legislation Amendment (Party Registration Integrity) Act 2021* that purportedly raised the minimum number of members from 500 to 1500 in the *Electoral Act 1918* is currently before the High Court and therefore we contend that none of its provisions should be used by the Electoral Commission as grounds to deregister us, or any other political party, until the Court renders its decision."
 - d) "In this statement therefore, since: As a result of not allowing us to provide a list of all of our members for assessment and not contacting all members supplied by us, the

Electoral Commission has not disproven the DLP's contention that we have at least 1500 members; and"

- e) "The claimed requirement for "at least 1500 members" to register or maintain party registration may itself not survive the review of the constitutional validity of the enabling *Electoral Legislation Amendment (Party Registration Integrity) Act 2021* currently before the High Court;"
 - f) "the Democratic Labour Party respectfully submits that legally valid grounds for the Electoral Commission to deregister the DLP have not been established."
22. I reject the reasons outlined by the Party in its statement provided on 26 February 2022.
23. The Party challenges the legal validity of the AEC's membership testing process. This process has been developed by the AEC to support the delegate's consideration of whether a party has sufficient members. It is based on sampling methodology designed in consultation with the ABS and provides a valid methodology to satisfy a delegate of a party's membership. The Electoral Commission has previously concluded that the methodology 'was appropriate for membership testing, including because it was rational, fair and practical in all the circumstances.'¹
24. I remain satisfied that the Party does not have at least 1,500 members despite the Party's contention that their 'complete membership database is considerably more than the 1650'. I consider that the membership testing results outlined above provide a more robust method for ascertaining whether a party has satisfied the requirements of the Electoral Act than a statement provided by the party.
25. The Party refers to the current High Court challenge in relation to the *Electoral Legislation Amendment (Party Registration Integrity) Act 2021*. This process is separate and independent to my consideration of whether a party should be registered based on the current legislation in force.
26. The Party contends that none of the provisions of the Electoral Act which are the subject of the High Court challenge should be used by the Electoral Commission to deregister the party until the High Court renders its decision. The Electoral Act does not provide a mechanism for me to delay my decision pending the High Court challenge in the way that the Party proposes. Under s 137(5) of the Electoral Act, I am required to consider the Party's statement and determine whether the party should be deregistered for the reason set out in the s 137(1) notice.
27. Accordingly, I am satisfied that the Party does not have at least 1,500 members. In my capacity as a delegate of the Electoral Commission I have deregistered Democratic Labour Party under s 137(6)(a) of the Electoral Act. The particulars of the Party have been cancelled from the Register under s 138 of the Electoral Act.

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https://www.aec.gov.au/Parties_and_Representatives/Party_Registration/Registration_Decisions/2021/notice-of-decision-with-reasons-SUPA.pdf

Review rights

28. Under s 141(2) of the Electoral Act, a person (including an organisation) affected by the decision who is dissatisfied with the decision may make a written application to the Electoral Commission for internal review of this decision within 28 days after the day on which the decision first comes to the notice of that person. There is no fee payable for requesting an internal review.
29. Requests for review of this decision should be addressed to Mr Tom Rogers, Australian Electoral Commissioner, and emailed to commission.secretariat@aec.gov.au or posted to Locked Bag 4007, Canberra City ACT 2601.
How do I request an internal review?
30. In accordance with ss 141(2) and 141(3) of the Electoral Act, an application for review must:
- be in writing;
 - specify the name of the applicant;
 - specify an address of the applicant; and
 - set out the reasons for making the application.
31. If you wish to apply for additional time beyond the 28 days to make an application for review of the delegate's decision, please also include the reasons for the application for additional time.

Who conducts an internal review?

32. The Electoral Commission, which is comprised of three members, the Australian Electoral Commissioner, a judicial member and a non-judicial member, conducts internal reviews. Under s 141(4) of the Electoral Act, the Electoral Commission shall review an application and make a decision to either:
- affirm the decision under review;
 - vary the decision under review; or
 - set aside the decision under review and make a decision in substitution for the decision set aside.

What can I do if I disagree with the outcome of an internal review?

33. If an internal review decision has been made by the Electoral Commission a person whose interests are affected, and who is dissatisfied with the decision made by the Electoral Commission, may apply to the AAT for an external merits review of the decision. More information on how to apply to the AAT and any applicable fees can be found on its website: www.aat.gov.au/applying-for-a-review/how-to-apply.

Freedom of Information

34. Under the *Freedom of Information Act 1982* ("the FOI Act") any person has the right to request access to documents held by the AEC. For more information about access to documents under the FOI Act please visit the AEC's "Access to AEC information" webpage at: www.aec.gov.au/information-access/index.htm.

35. Should you have any queries regarding party registration, please contact the AEC on 02 6271 4552, visit www.aec.gov.au or email fad@aec.gov.au.

Yours sincerely

(signed)

Joanne Reid
Assistant Commissioner
Delegate of the Electoral Commission

4 March 2022