

## Commission Meeting No. 257, 1 March 2016

# Statement of Reasons

### Item 2: **Consideration of applications for review of a delegate's decision to deregister the Democratic Labour Party.**

File Reference: LS5303~15/370

**The Australian Electoral Commission has set aside the decision of the delegate to deregister the Democratic Labour Party (DLP) and substituted the decision that the DLP does meet the requirement to have at least 500 members and that the DLP should be reinstated on the Register of Political Parties.**

## Background

### Review of political party eligibility—section 138A of the Act

Political parties need to meet the requirements for registration under Part XI of the *Commonwealth Electoral Act 1918* (the Act) at all times to remain on the Register of Political Parties (the Register) and access the benefits of party registration conferred by the Act.

Section 138A of the Act provides the Commission (or its delegate) with the power to review the continued eligibility of registered political parties at any time, other than during the period commencing on the day when a writ for an election is issued and concluding on the day on which the writ is returned. Specifically, section 138A empowers the Commission/delegate to:

1. review the Register to determine if one or more parties is an 'eligible political party'<sup>1</sup>; or

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<sup>1</sup> Defined by section 123 of the Act to be a political party that is either a Parliamentary party or a party that has at least 500 members, *and* is established on the basis of a written constitution (however described) that sets

2. review the Register to determine if one or more parties should be deregistered under section 136 or section 137 of the Act.

The AEC's current policy is to review each registered political party once between general elections: that is, in the mid-term of each Parliament.

To help determine if a Parliamentary party remains an eligible political party, the Commission/delegate seeks a statutory declaration from the party's secretary<sup>2</sup> annexing an up-to-date copy of the party's constitution, and checks that there is at least one Senator or Member of the House of Representatives who is a member of the party.

To help determine if a political party—that is not a Parliamentary party—remains eligible, the Commission/delegate seeks a statutory declaration from the party's secretary annexing an up-to-date copy of the party's constitution, together with a list of at least 500 party members whose names appear on the Electoral Roll (the Roll). AEC staff then conduct membership testing to determine if the party remains an eligible political party, to the extent that it still has at least 500 members, none of whom are members of any other party.

### Membership testing

To determine if a political party (not being a Parliamentary party) has at least 500 members, the AEC contacts a random sample of the party's nominated members to verify their membership status.

After verifying that each member is enrolled and is not a member of another political party, the AEC prepares a random sample for further testing. The sample size is based on a methodology developed by the Australian Bureau of Statistics (ABS).

This method is used in all circumstances where membership testing is required to determine if a party may be registered for the first time or to review its entitlement to remain registered.

### Review of the DLP's eligibility

By way of a letter dated 3 December 2014, the AEC issued a written notice to Mr Mark Farrell, the then registered officer of the DLP, under subsection 138A(3) of the

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out the aims of the party. To be a member of a party a person needs to be an 'elector' under the Act—that is, a person whose name appears on an electoral roll. Importantly, subsection 126(2A) of the Act also provides that two or more parties cannot rely on the same member for the purpose of qualifying, or continuing to qualify, as an eligible political party.

<sup>2</sup> Defined by section 123 of the Act to be the person who holds the office (however described) the duties of which involve responsibility for carrying out the administration, and for conducting of the correspondence, of a political party.

Act. Attached to the notice was a schedule specifying the information required by the AEC to conduct its eligibility review. The notice required the registered officer to provide the AEC with the statutory declaration by the secretary of the DLP which stated:

1. that he or she was the secretary of the DLP;
2. annexed a copy of the current DLP constitution; and
3. annexed a list of at least 500 (but not more than 550) members of the DLP, whose names appeared on the Roll.

The DLP did not respond to this notice within the timeframe provided—that is, by 5 February 2015. However a membership list was subsequently provided by the new Registered Officer, Mr Michael Byrne, on 12 March 2015 in response to a notice under section 137 of the Act.

Following receipt of the information supplied with the DLP's 137 statement, AEC staff proceeded to conduct the membership testing.

### **Deregistration action—section 137**

On 22 April 2015 the Commission's delegate determined that the DLP should be deregistered for lack of the requisite 500 (or more) members, in accordance with section 137(5) of the Act. Following this, the Commission's delegate gave a written notice to the last registered officer of the DLP, Mr Byrne, in accordance with subsection 137(6) of the Act.

## **The applications for review**

Subsection 141(2) of the Act provides that:

Where a delegate of the Electoral Commission makes a reviewable decision, a person affected by the decision who is dissatisfied with the decision may, within the period of 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Commission (either before or after the expiration of that period) allows, make a written application to the Commission for the review of the decision by the Commission, specifying in the application an address of the applicant.

Subsections 141 (3) and (4) then provide:

- (3) There shall be set out in the application under subsection (2) the reasons for making the application.
- (4) Upon the receipt of an application under subsection (2) for the review of a reviewable decision, the Electoral Commission shall review that decision and shall make a decision:
  - (a) affirming the decision under review;
  - (b) varying the decision under review; or

- (c) setting aside the decision under review and making a decision in substitution for the decision so set aside.

On 11 May 2015, the AEC received a letter (dated 6 May 2015) from Mr Paul McCormack regarding the decision to deregister the DLP. Mr McCormack's letter was accepted as an application for review for the purposes of subsection 141(2) of the Act.<sup>3</sup>

On 21 May 2015, the AEC received a letter (of the same date) from Mr Byrne, the last registered officer and (federal) secretary of the DLP, regarding the decision to deregister the DLP.<sup>4</sup> Mr Byrne made it clear that his letter constituted an application for review for the purposes of subsection 141(2) of the Act.<sup>5</sup>

Following a DLP federal conference in July 2015, the AEC received correspondence from Mr Stephen Campbell, the newly elected (federal) secretary of the DLP. Accepting that Mr Byrne had, up until the point of Mr Campbell's contact with the AEC, been representing the DLP in its capacity as 'a person affected by the decision' for the purposes of section 141 (and therefore the relevant review applicant)<sup>6</sup>, the AEC agreed to channel all future correspondence to the DLP through Mr Campbell. Both Mr Campbell and Mr Byrne were informed of this decision.

In addition to the grounds of review submitted by Mr McCormack and Mr Byrne, on 13 August 2015 Mr Campbell submitted a revised membership list for the DLP.

## Response to issues raised in the review applications

### Membership numbers

The principal issue under review was if the DLP did or did not have at least 500 members as required by paragraph 137(1)(b) of the Act. Upon receipt of the revised membership list, the AEC conducted further membership testing using the same methodology as that used for all membership testing.

The AEC contacted 42 members out of a list of 540 enrolled and unique members provided. Of the 42 individuals contacted, 37 confirmed membership with the DLP while 5 denied membership. According to the sampling methodology, as applied to a list of 540

<sup>3</sup> Having regard to information contained on files maintained by the FAD Branch, it was considered likely that Mr McCormack was a member of the DLP and, therefore, 'a person affected by the decision' to deregister the DLP (notwithstanding his failure to identify himself as a member in his application).

<sup>4</sup> Mr Byrne in fact made two applications on 21 May 2015, however, he asked for the first application to be disregarded. Consequently, consideration was not given to that application.

<sup>5</sup> As the last registered officer and secretary of the DLP, Mr Byrne was initially considered to be 'a person affected by the decision' to deregister the DLP for the purposes of subsection 141(2).

<sup>6</sup> Subsection 141(1) of the Act defines a 'person' to include a 'political party' for the purposes of section 141.

names, if 6 or more people denied membership then the AEC could conclude that the party did not have 500 members<sup>7</sup>.

Given the results of the sampling, the Commission is satisfied, on reasonable grounds, that the DLP does have at least 500 members. On the basis of information compiled by ABS, the Commission is satisfied that the statistical risk in erroneously concluding that the DLP does have at least 500 members is acceptably, or reasonably, low.

### Other Issues

In their applications for review, Mr McCormack and Mr Byrne raised three further grounds for review. These may be summarised as the recent resignation of Senator Madigan from the DLP and the effect this had on the party; the favourable findings in relation to membership by other electoral administrators; and the longstanding history of engagement with the political process by the DLP.

The Commission noted these grounds however these issues are not relevant to determining if the DLP has at least 500 members as required by paragraph 137(1)(b) of the Act.

### Decision

Having regard to the fact that the Commission is satisfied on reasonable grounds that the DLP does have at least 500 members, the Commission decided to set aside the decision under review and substitute the decision that the DLP does meet the requirement to have at least 500 members and that the DLP should be reinstated on the Register of Political Parties.

\_\_\_\_(signed)\_\_\_\_

**The Hon Dennis Cowdroy OAM QC**  
Chairperson

4 May 2016

\_\_\_\_(signed)\_\_\_\_

**Mr Tom Rogers**  
Electoral Commissioner

4 May 2016

\_\_\_\_(signed)\_\_\_\_

**Mr David Kalisch**  
Australian Statistician  
(non-judicial member)

4 May 2016

<sup>7</sup> According to the ABS, testing a sample of 42 from a list of 540 carried with it a 2.27% risk that the AEC could end up accepting a party that had only 400 members, and an 8.76% risk that the AEC could end up rejecting a party that had 500 members.