

Commission Meeting No. 257, 1 March 2016

Statement of Reasons

Item 3: Consideration of an application for review of a delegate's decision to deregister Australia First Party (NSW) Incorporated.

File Reference: LS5368~15/606

The Australian Electoral Commission has set aside the decision of the delegate to deregister the Australia First Party (NSW) Incorporated (Australia First) and substituted the decision that Australia First does meet the requirement to have at least 500 members and that Australia First 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'¹; or

¹ 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 secretary² 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 Australia First's eligibility

By way of a letter dated 3 December 2014, the AEC issued a written notice to Dr James Saleam, the registered officer of Australia First, under subsection 138A(3) of the Act.

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.

² 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.

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 Australia First which stated:

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

The AEC received a response to the subsection 138A(3) notice from Dr Saleam, in his capacity as secretary of Australia First, on 6 February 2015.

Following receipt of the above information, AEC staff proceeded to conduct the membership testing.

Deregistration action—section 137

On 30 April 2015, the Commission's delegate issued Australia First with a 137 notice. The notice was issued on the ground that the delegate was satisfied that Australia First had ceased to have at least 500 members. The delegate gave Australia First until the close of business on 1 June 2015 to respond to the notice.

On 1 June 2015, the AEC received a 137 statement from Australia First that attached a new membership list. As with the previously supplied list, this list contained the names of 550 nominated party members.

After the results of the further membership testing were provided to the delegate, on 10 July 2015 the Commission's delegate determined that Australia First should be deregistered for lack of the requisite 500 (or more) members. Following this, the Commission's delegate gave a written notice to Dr Saleam, as the last registered officer of Australia First.

The application 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 10 August 2015, an application for review was made by Dr Saleam. Dr Saleam's application contained a detailed statement of reasons outlining the basis upon which the deregistration of Australia First should be set aside. He supplemented his application with additional material on 13 August 2015.

Response to issues raised in the review applications

Membership numbers

The principal issue under review was if Australia First 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 34 members out of a list of 521 enrolled and unique members provided. Of the 34 individuals contacted, 31 confirmed membership with Australia First while three denied membership. According to the sampling methodology, as applied to a list of 521 names, if four or more people denied membership then the AEC could conclude that the party did not have 500 members.³

Given the results of the sampling, the Commission is satisfied, on reasonable grounds, that Australia First 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 Australia First does have at least 500 members is acceptably, or reasonably, low.

Other Issues

In his application for review, Dr Saleam raised three further grounds for review.

³ According to the ABS, testing a sample of 34 from a list of 521 carried with it a 2.86% risk that the AEC could end up accepting a party that had only 400 members, and a 4.68% risk that the AEC could end up rejecting a party that had 500 members.

These may be summarised as:

1. The membership testing has not established 'reasonable grounds' for deregistration;
2. The testing was confusing for those nominated members who were contacted by the AEC; and
3. The testing was flawed, or potentially flawed, by the AEC's decision to exclude certain nominated members from the final testing pool.

The Commission noted these grounds however was of the view that either the ground was not substantiated or that, where there had been some confusion about the circumstances of individual members, the membership testing for the review resolved these issues.

Decision

Having regard to the fact that the Commission is satisfied on reasonable grounds that Australia First does have at least 500 members, the Commission decided to set aside the decision under review and substitute the decision that Australia First does meet the requirement to have at least 500 members and that Australia First 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