From: Paul Pirani
Sent: Thursday, May 21, 2015 6:58 AM
To: 6 [redacted]
Cc: FAD <FAD@aec.gov.au>
Subject: RE: DLP of Australia - Request for extension of Time : Letter Attached [DLM=For-Official-Use-Only]

For-Official-Use-Only

Mr Michael Byrne

Federal Secretary

Democratic Labour Party of Australia

Dear Mr Byrne

I refer to your letter dated 20 May 2015 addressed to the Electoral Commissioner, Mr Tom Rogers. I also refer to our telephone conversation of the same date.

As we discussed, the Electoral Commissioner is unable to agree on his own to any grant of an extension of time in this matter. Subsection 141 (2) of the *Commonwealth Electoral Act 1918* provides:

"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."

However, I note that the exercise of the power to grant an extension of time is a power under subsection 141(2) of the Act can only be exercised by the three member Electoral Commission. This power has not been delegated and cannot be exercised by only the Electoral Commissioner. The three member Electoral Commission is unable to meet prior to the expiration of the 28 day period for lodging an application for review in this matter which I am instructed expires at COB today.

The following should not be regarded as legal advice. I strongly suggest that it is in your interests to obtain your own legal advice on this matter. The exercise of the power to grant an extension of time is subject to the requirements of administrative law as set out in such cases as *Hunter Valley Development Pty Ltd v Cohen, Minister for Home Affairs and Environment* (1984) 3 FCR 344. In this case Justice Wilcox looked at a number of non-exhaustive criteria which help the court to decide whether or not to exercise its discretion to grant an extension of time:

1. The court will not grant the application unless satisfied that it is appropriate to do so. The applicant must show "an acceptable explanation of the delay"

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and also that it is "fair and equitable in the circumstances" to extend the time limit.

2. Whether any action has been taken by the applicant apart from the application to extend time.
3. Whether extending time would cause any prejudice to the respondent.
4. The mere absence of prejudice is not enough to justify the grant of an extension.
5. The merits of the substantive case.
6. Considerations of fairness as between the applicant and other persons in a like position.

The three member Electoral Commissioner would be bound to consider the above matters in determining a request for an extension of time beyond the 28 day period specified in subsection 141(2) of the Act.

Accordingly, to preserve your interests in this matter it would appear to be prudent to ensure that an application for review is lodged with the AEC in Canberra prior to the expiration of time today. If this does not take place then an application for an extension of time should address the above matters.

I trust that the above information explains the position of the AEC in this matter.

Yours sincerely

Paul Pirani | Chief Legal Officer
Legal & Procurement Branch Executive | Legal & Procurement Branch
Australian Electoral Commission

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From: 6[redacted]
Sent: Wednesday, 20 May 2015 11:21 AM
To: FAD
Subject: DLP of Australia - Request for extension of Time : Letter Attached

Good morning

Please forward the letter to the Commissioner's office.

As well, please confirm receipt of this email.

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Kind Regards

Michael Byrne

Federal Secretary - Democratic Labour Party of Australia

7 [redacted]

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REDACTION CODES

1 Personal Information (name) redacted.

2 Personal Information (date of birth) redacted.

3 Personal Information (photograph) redacted

4 Personal Information (facsimile of signature) redacted.

5 Personal Information (facsimile of manuscript initialling) redacted.

6 Personal Information (Individual's address) redacted.

7 Personal Information (individual's telephone number) redacted.

8 Personal Information (individual's opinion) redacted.

9 Personal Information (opinion about individual) redacted.

10 Personal Information (employment history) redacted.

11 Personal Information (qualifications) redacted.

12 Personal Information (health) redacted.

13 Business information (Bank Account details) redacted.

14 Business information (Billing Account details) redacted.

15 Legal Professional Communication redacted.

16 Deliberative material redacted.

17 Irrelevant material redacted.

18 Electoral Roll material redacted.

19 Tests, examinations or audits material redacted.

20 Management or assessment of personnel material redacted.

21 Proper and efficient conduct of the operations of AEC material redacted.