

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

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

1. I am writing, as a delegate of the Electoral Commission, to give you notice in accordance with s 137(6)(b) of the *Commonwealth Electoral Act 1918* (Electoral Act) of my determination to deregister 'Liberal Democratic Party' (the Party) under s 137(6)(a) of the Electoral Act.
2. As I have determined to deregister the Party, I have now cancelled the Party's particulars from the *Register of Political Parties* (the Register) under s 138 of the Electoral Act.

Decision

3. I have considered the Party's statement lodged under s 137(2) of the Electoral Act and I am satisfied that the Party should be deregistered for the reason set out in the notice previously given to the party under s 137(1) of the Electoral Act. The reason was that an objection against the continued use of the Party's name ('Liberal Democratic Party', abbreviation: 'Liberal Democrats') was upheld under s 134A of the Electoral Act, and although an application to change the party's name was made within one month of the objection being upheld, it was later refused (due to the application being withdrawn).
4. I have determined that the Party should be deregistered under s 137(6)(a) of the Electoral Act, for the reasons set out in this Notice.

Materials I have taken into account

5. In making this decision, I had regard to:
 - the objection lodged under s 134A of the Electoral Act (s 134A Objection) by the Registered Officer of Liberal Party of Australia on 9 November 2021;
 - the s 134A Objection being upheld by a delegate of the Electoral Commission on 23 November 2021;
 - the Party's application to change its name in the Register, received by the AEC on 22 December 2021 to the name 'Liberty & Democracy Party' and the abbreviation 'Liberty Democrats' (First Application);
 - the publication of the Party's First Application, as required under s 132(1) of the Electoral Act;
 - the Party's application to change its name in the Register, received by the AEC on 8 March 2022 to the name 'Liberty & Democracy Party' and the abbreviation 'Liberty Democrats (LibDems)' (Second Application);
 - the request received by the AEC on 22 March 2022, by the same three members of the Party who made the First Application to withdraw the First Application;
 - the refusal of the First Application (on the basis that it had been withdrawn) on 1 April 2022;
 - the notice issued to the Registered Officer of the Party under s 137(1)(ca)(ii) of the Electoral Act on 1 April 2022;
 - the response to the s 137 Notice received from the Party on 1 May 2022;

- the Register and the Register of Political Parties of each Australian State and Territory; and
- the AEC's *Guide for maintaining party registration*.

Findings of Fact and Consideration

6. On the material before me, I make the following findings:
7. Section 134A of the Electoral Act provides a basis for one registered political party (the parent party) that was registered before another party (the second party) to object to the name of the second party on various grounds including that the name of the second party contains a word that is in the name of the parent party.
8. On 9 November 2021, the Registered Officer of Liberal Party of Australia, Mr Andrew Hirst, lodged with the AEC an objection under s 134A of the Electoral Act to the continued use of the name 'Liberal Democratic Party' and the abbreviation 'Liberal Democrats' by the Party.
9. On 23 November 2021, I upheld that objection. On the same day, I wrote to the Party to advise that as I had upheld the objection the party would be deregistered if:
 - *the Party does not make an application under s 134 of the Electoral Act to change its name and abbreviation **within one month of the date of the notice**; or*
 - *the Party makes such an application, but the application is refused.*
10. On 22 December 2021, the AEC received the First Application. In that application the Party sought to change the Party's entry in the Register to the name 'Liberty & Democracy Party' and abbreviation 'Liberty Democrats'.
11. On 14 February 2022, the First Application was published on the AEC website and on 18 February 2022 the First Application was published in 10 major newspapers. The closing date for the submission of written particulars objecting to the First Application was 14 March 2022.
12. The Electoral Commission received two sets of written particulars (the Objections) objecting to the First Application during the public consideration period. As the First Application was refused (on the basis that it was withdrawn), I have not considered the Objections in my determination.
13. Similarly, I have not considered the Party's response to the Objections, received 22 March 2022, in my determination.
14. On 8 March 2022, the AEC received the Second Application. In that application the Party sought to change the Party's entry in the Register to the name 'Liberty & Democracy Party' and abbreviation 'Liberty Democrats (LibDems)'.
15. On 15 March 2022, the AEC wrote to the Party in the following terms:

As the First Application [the application lodged 22 December 2021] is still in progress, the Party's newest application to change the Register will not be considered until a delegate of the Electoral Commission makes a determination on the First Application.
16. On 22 March 2022, the Party wrote to the AEC to formally request to withdraw the First Application. The withdrawal request was made by the same three members of the Party (the Applicants) who made the First Application, was in writing and provided sufficient evidence to show that the Applicants intended to withdraw the First Application.

17. From 23 March 2022 to 28 March 2022 there was an exchange of emails between the AEC and the Party in which the AEC explained to the Registered Officer of the Party that the consequence of the Party withdrawing the First Application would be that the AEC would be required to issue the Party with a notice under s 137(1) of the Electoral Act advising that it is considering deregistering the Party. On 28 March 2022, the AEC wrote to the Party in the following terms:

Liberal Democratic Party (the Party) has until 12PM tomorrow (29 March 2022) to provide a response.

If no response is received by that deadline, the Party's 22 December Application will be withdrawn and the Commission will proceed to issue the Party with a notice of intention to deregister the party under s 137(1) of the Electoral Act.

18. The Party did not respond by the deadline.
19. On 1 April 2022, I refused the Party's First Application on the basis that the Party had withdrawn the application. On the same day, I issued the Party with a notice under s 137(1) of the Electoral Act (the s 137(1) Notice), that I, as the delegate of the Electoral Commission, was satisfied on reasonable grounds that the Party made an application within one month of the upholding of the objection (lodged under s 134A of the Electoral Act), but that application was later refused (s 137(1)(ca)(ii) of the Electoral Act). I advised the Party that it had one month to respond to the s 137(1) Notice.
20. On 12 April 2022, the AEC wrote to the Party to advise that on 11 April 2022 writs for the 2022 federal election had been issued, and that work relating to changes to the Register would be suspended under s 127 of the Electoral Act until the writs were returned.
21. On 1 May 2022, the Registered Officer of the Party provided a statement in response to the s 137(1) Notice in accordance with s 137(2) of the Electoral Act.
22. On 23 June 2022, the writs for the 2022 federal election were returned and on 24 June 2022 the AEC wrote to the Party advising that processing of the Second Application could recommence, pending an outcome of the s 137(1) Notice.

Supporting statement

23. Section 137(5) of the Electoral Act provides 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.

24. I have considered in full the statement lodged by the Party on 1 May 2022, setting out reasons why the Party should not be deregistered. The following key points are taken directly from that statement.
- a. The AEC claims to have refused our 22 December 2021 name-change application, but in fact that was not possible because the name-change application had already been withdrawn. As quoted above, the AEC explicitly said they would consider the application to have been withdrawn by 12pm on 29 March 2022 if there was no response, and there was no response, so logically the application should have been considered withdrawn from that time. The AEC claimed to refuse that name-change application on 1 April 2022, but by that time the name-change application in question did not exist.

- b. We note that there is relevant recent precedent, with the AEC on 12 November 2021 confirming a request by “The New Liberals” to withdraw their name-change application. In that case, the name-change application was not “refused” but was simply withdrawn. Our situation was the same in that we withdraw our application, and therefore that application no longer existed for the AEC to refuse.
- c. It is important to note that our party had also submitted an updated name-change application on 8 March 2022, with the slightly modified abbreviation of “Liberty Democrats (LibDems)”. The AEC acknowledged receipt of all necessary documents and fees for this updated name-change application on 15 March 2022, but stated that they could not progress that application while the old application was still being considered. Our withdrawal of the original name-change application on 22 March 2022 therefore removed that impediment, and at that point the AEC should have proceeded with actioning the 8 March 2022 name-change application.
- d. We note that the AEC has issued the notice of intention to deregister based on s137(1)(ca)(ii) above, which requires a refusal of a name-change application. As noted above, we had already withdrawn the initial name-change application on 22 March 2022, which was accepted by the AEC on 29 March 2022, and so that name-change application simply didn’t exist for the AEC to refuse on 1 April 2022.
- e. Further, we note that we did comply with s137(1)(ca)(i) in that there was a name-change application submitted and accepted within one month of the upholding of the objection. Further still, we note that our party has had an acknowledged name-change application with the AEC at all times since 22 December 2021, and our 8 March 2022 updated name-change application should be under consideration now.
- f. Based on the above facts, we do not believe there is a basis to issue a notice of intention to deregister our party. It is our sincere hope that the AEC is now willing to continue with the updated and acknowledged name-change application of 8 March 2022, and we note that the difference between the 22 December 2021 and 8 March 2022 name-change applications is sufficiently minor to allow the AEC to act quickly in conducting initial reviews so that the process can be expedited.
- g. We believe the above arguments are sound, but if (and only if) the AEC rejects our above arguments then we request that our withdrawal of the 22 December 2021 name-change application be itself withdrawn, so that the original name-change application is still live.
- h. We withdrew the 22 December 2021 name-change application on 22 March 2022 on the understanding that we had already submitted a legitimate and acknowledge revised name-change application, and by our reading of the legislation we had not done anything to violate s137(1) that would justify deregistration. We believed (and believe) that it was not possible to refuse an already-withdrawn application. If the AEC rules that it is possible for them to refuse a withdrawn application, then that new and unexpected information significantly changes how we want to proceed and we ask that our 22 March 2022 withdrawal request be set aside.

- i. By setting aside our withdrawal request, we acknowledge that our 8 March 2022 name-change application will be paused until the original 22 December 2021 name-change application is fully processed. Nonetheless, we would like to reiterate that we do want to proceed with the 8 March 2022 name-change application as soon as practicable.

Delegate consideration and decision

25. Having considered the material before me I am satisfied that it is appropriate for me to deregister the Party under s 137(6)(a) of the Electoral Act.
Power to refuse application once it had been withdrawn
26. As a number of the Party's submissions in its statement concern my decision to refuse the First Application on the basis it had been withdrawn, I will address those submissions and the circumstances surrounding that decision first.
27. The Electoral Act contains no express provision dealing with withdrawal of an application. However, there is no restriction in the Electoral Act prohibiting an applicant from withdrawing an application. In those circumstances it does not seem to me that the Electoral Act requires the AEC to continue to process an application when the applicant has sought to withdraw the application. Following the Electoral Act and in the interest of fairness and practicality I consider that the Party was entitled to withdraw the First Application. The Party was, of course, also entitled to make the Second Application. However, in processing both applications and in responding to the withdrawal of the First Application the AEC is required to act in accordance with the Electoral Act.
28. Once the First Application had been withdrawn, I considered that it is consistent with Parliament's intention in relation to Part XI of the Electoral Act to conclude that I was entitled to refuse the application on the basis it had been withdrawn. Were this not the case, it seems to me that the express provisions and underlying purposes of the Electoral Act would have been defeated.
29. The reason for this is clear when the steps to be taken upon an objection to the party's name having been made are considered. Once I upheld the Liberal Party of Australia's objection to the Party's name on 23 November 2021, I was required to notify the Party that if it did not make an application under s 134 of the Electoral Act to change the Party's name within 1 month it would be deregistered. The First Application was made within that 1 month. Consideration of that application required the AEC to follow the steps in s 132 of the Electoral Act including publication of the proposed change to allow persons who object to the change to submit particulars.
30. Had the Party not submitted the First Application within 1 month of the Commission upholding the objection under s 134A of the Electoral Act, the Party would have been issued with a notice that the Commission was considering deregistering the party under s 137(1)(ca)(i) of the Electoral Act as no name change application would have been made within 1 month of the objection being upheld. If that Party was entitled to withdraw the First Application (made within the 1 month limit) and entitled to cause the Commission to once again take the same steps set out in s 132 of the Electoral Act in relation to the Second Application (not made within the 1 month limit), the purpose of s 134A(1)(e) of the Electoral Act in requiring an application to be made within 1 month would be defeated. I therefore considered that I had power to refuse the application on the basis it had been withdrawn.

Commission could not have proceeded with Second Application

31. The Party makes submissions that its withdrawal of the First Application 'removed the impediment' to the AEC proceeding with the Second Application. The Party submits that once the First Application had been withdrawn it 'simply didn't exist for the AEC to refuse on 1 April 2022'.
32. I reject this submission. As set out at [29], if the AEC were required to deal with the Second Application, this would have had the effect of prolonging the period by which the party could remain registered under a name ('Liberal Democratic Party', with abbreviation 'Liberal Democrats') in relation to which a s 134A objection had been upheld. In fact, if this submission were to be accepted, the Party could extend this period indefinitely by continuing the same process of filing a new application and then withdrawing its previous application at some point near the end of the public consultation period. It cannot be the case that the intention of Parliament in enacting s 134A to protect certain names from being registered, was that the Commission be so prevented from ever reaching the point of making a decision in relation to an application.
33. The Party noted that on 12 November 2021 I confirmed a request from The New Liberals to withdraw an application to change the party's name and logo. I did not at the time expressly refuse that application on the basis it had been withdrawn. I do not accept that the current situation is the same nor do I accept that this example has any relevance to my power to refuse the First Application on the basis of it being withdrawn. The particular issues described above in relation to Parliament's intention in enacting s 134A did not arise in relation to the withdrawal of the application by The New Liberals. As explained above, the consequences of withdrawal were also clearly explained to the Party.
34. Accordingly, I am satisfied that I acted correctly in refusing the Party's application on the basis that it had been withdrawn. I am not persuaded that any of the arguments made by the Party about this point mean that I should not deregister the Party for the reason set out in the notice.

Fairness afforded to the party

35. The Party now argues that it is 'new and unexpected information' that I could refuse its application after it had been withdrawn. I reject this submission on the basis that correspondence between the AEC and the Party clearly shows that the Party was on notice as to what would be the consequences of it withdrawing its application. In particular, following earlier correspondence from 23 - 28 March 2022 as set out above, on 28 March 2022 the AEC wrote to the Party in the following terms:

*Liberal Democratic Party (the Party) has until 12PM tomorrow (29 March 2022) to provide a response. If no response is received by that deadline, the Party's 22 December Application will be withdrawn and the Commission **will proceed to issue the Party with a notice of intention to deregister the party under s 137(1) of the Electoral Act.***

(emphasis added)

36. The AEC clearly and deliberately gave the Party an opportunity to take back its withdrawal and advised the Party of the consequences of it not doing so, namely: the AEC would issue a notice of intention to deregister the Party under s 137(1) of the Electoral Act. On 1 April 2022, as the Party did not respond by the deadline, having refused the application on the basis it had been withdrawn I did precisely this. It is disingenuous for the Party to now claim

that it was unaware of the consequences of withdrawing its application when the AEC clearly set out the consequences and gave it the opportunity to avoid those consequences.

Party cannot now withdraw its withdrawal

37. The Party submits that if I reject its primary arguments, I should allow it to withdraw its withdrawal and continue with the First Application. That is not possible nor appropriate because on 1 April 2022, I refused that application so it cannot simply be re-enlivened. Nor is it possible for me to consider the Second Application which was not made within 1 month of the decision to uphold the objection.

Party not prevented from re-registering

38. Finally, in considering whether to deregister the Party I have considered that after being deregistered, the Party may choose to apply to register as a political party again. It may choose to seek registration using the same name in the First Application, the Second Application or a different name and abbreviation. The Party argues that I should simply continue to consider one of its applications. Whilst this may be the most administratively convenient course for the Party, I am not satisfied that this is a compelling reason for me not to deregister the party for the reason set out in the notice.

Conclusion

39. It is important for me to make my decision within the framework of the Electoral Act and to seek to give effect as best I can to the text and the intention of Part XI of the Electoral Act. Section 134A(1)(e) of the Electoral Act clearly contemplates that the party will be deregistered where a party makes an application to change a name within 1 month but it is refused. Section 137 of the Electoral Act sets out grounds for deregistering a party of which s 137(1)(ca)(ii) is one. Having considered the party's statement in response to the s 137(1) notice, I am not satisfied that the party has presented me with a sufficiently compelling reason as to why I should not deregister the Party for the reason set out in the notice. I am satisfied that deregistration of the Party is consistent with and supportive of the underlying purposes of Part XI of the Electoral Act, including the protection of certain party names.
40. I am satisfied that the Party's First Application lodged in response to an objection lodged under s 134A of the Electoral Act, which was upheld by a delegate of the Electoral Commission, was made within 1 month but was refused.
41. Accordingly, in my capacity as a delegate of the Electoral Commission, I have deregistered Liberal Democratic Party under s 137(6) of the Electoral Act. The particulars of the Party have been cancelled from the Register under s 138 of the Electoral Act.

Your Review rights

42. 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.
43. 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?

44. 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.
45. 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?

46. The Electoral Commission, which is comprised of three members, the Electoral Commissioner, a judicial member and a non-judicial member, conducts internal reviews.
47. 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?

48. 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

49. 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.
50. 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.

(signed)

Joanne Reid
Assistant Commissioner
Delegate of the Electoral Commission
19 July 2022