

NOTICE OF DECISION ON PARTY REGISTRATION DEREGISTERING A POLITICAL PARTY AND REMOVAL FROM THE REGISTER OF POLITICAL PARTIES THE SMALL BUSINESS 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 The Small Business Party (the Party) and cancel the Party's particulars from the *Register of Political Parties* (the Register).
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 on the Register under s 138 of the Electoral Act.
3. On 1 February 2021, the Electoral Commission issued a notice to the Registered Officer of the Party under s 138A(3) of the Electoral Act (the s 138A Notice). This Notice requested that the Party provide the Australian Electoral Commission (AEC) with an electronic membership list of between 500 and 550 members in order for the AEC to determine the eligibility of the Party to remain registered. On 4 April 2021, the Registered officer responded to the s 138A Notice providing the requested documentation.
4. On 26 May 2021, a delegate of the Electoral Commission issued a notice to the Registered Officer, under s 137(1)(b) (the s 137 Notice) of the Electoral Act 'as the Electoral Commission is satisfied on reasonable grounds that the Party has ceased to have at least 500 members'.
5. On 25 June 2021, the Registered Officer lodged a statement under s 137(2) of the Electoral Act, setting out reasons why the Party should not be deregistered and requested until 16 July 2021 to lodge a list of between 500-550 members.
6. On 28 June 2021, the delegate of the Electoral Commission approved additional time to submit a list of members in support of the Party's response to s 137 Notice. On 29 June 2021, the Party was advised of the revised due date.
7. On 7 July 2021, the Party requested more time to submit a membership list in support of the Party's response to s 137 Notice. The same day, the delegate of the Electoral Commission approved additional time. The Party was advised of the revised due date being 30 July 2021.
8. On 28 and 29 July 2021, the Party responded to the s 137 Notice providing an updated statement in accordance with s 137(2) and an electronic membership list of between 500 and 550 members of the Party.

Decision

9. As a delegate of the Electoral Commission, I am satisfied on reasonable grounds that the Party has ceased to have at least 500 members, and no longer meets the requirements of an eligible political party as required under s 123 of the Electoral Act.

10. I have determined that The Small Business Party be deregistered under s 137(6)(a) of the Electoral Act for the reasons set out in this Notice, and that the particulars of the Party 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 response to the s 138A Notice provided by the Party on 4 April 2021;
 - the s 137 Notice;
 - the statement provided by the Party in response to the s 137 Notice on 25 June 2021;
 - the updated statement provided by the Party in response to the s 137 Notice on 29 July 2021;
 - the membership list lodged by the Registered Officer on 29 July 2021;
 - Part XI of the Electoral Act; and
 - the AEC *Party Registration Guide*.

Findings of Fact

12. On the material before me, I make the following findings:

Membership list

13. The membership list submitted by the Party on 29 July 2021 contained the names of 515 individuals that the Party considers to be current members (referred to as 'members' below). The following results were found after initial membership testing of the list against the Commonwealth Electoral Roll (the electoral roll) in accordance with s 123(3)(b) of the Electoral Act:

Submitted membership list	515
Automatically matched to the Electoral Roll	500
Manually matched to the Electoral Roll	13
Not currently enrolled or unable to be matched on the Electoral Roll	(2)
Deceased	(0)
Total matched to the Electoral Roll	513

14. Of the 513 members matched to the electoral roll, the following were identified as duplicates within the list provided by the Party or as members who have previously supported the registration of a registered non-Parliamentary party (or parties):

Total matched to the electoral roll	513
Duplicates identified in the	(1)
Members identified as also supporting the registration of another party	(1)
Total	511

15. A list of 511 members requires contact with a random sample of 32 members under the formula provided by the Australian Bureau of Statistics (ABS). For the Electoral Commission to be satisfied that the Party has at least 500 members, up to two denials of membership are permitted.

The relevant numbers for this membership test were:	Members
The random sample size	32
Maximum number of denials permitted	2
Contact attempts made by the AEC*	40
Responses received	
- Confirmed Membership	29
- Denied Membership	3
PASS/FAIL	FAIL

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

16. As a result, the Party has not demonstrated that it has the requisite 500 members to maintain registration under the Electoral Act.
17. On that basis, I am satisfied that the Party has ceased to have at least 500 members and therefore does not meet the requirement of being an eligible political party under s 123 of the Electoral Act to remain in the Register.

Supporting statement

18. I have considered the statement lodged by the Party on 25 June 2021 and an updated statement of 28 July 2021 setting out reasons why the Party should not be deregistered. I reject the reasons outlined by the Party for the following reasons.
 - a. The Party was initially issued the s 138A Notice on 1 February 2021, and has had two opportunities (the s 138A Notice and the s 137 Notice) to submit membership lists in support of its eligibility to continue to meet the definition of 'an eligible political party' under the Electoral Act. This has included the Party being provided with extensions of time to respond to both the s 138A Notice and s 137 Notice.
 - b. I acknowledge that there has been some restrictions to accessing the E-Roll facilities in the AEC's divisional offices since February 2021 due to temporary closures in some states due to COVID-19. However, I am of the view that the Party has had a reasonable opportunity to either access the AEC's E Roll facilities or check the contact details of its purported members using the 'AEC Check my enrolment' facility available on the AEC's website. Further, the Party failed membership testing for exceeding the maximum number of permitted denials according to the ABS methodology used by the AEC. It did not fail membership testing due to having an insufficient number of members being identified on the electoral roll (the membership list provided by the Party had 513 purported members identified as being on the electoral roll).
 - c. I note the Party has provided details of the Party's registration in NSW and representation in the NSW Parliament. However, the Electoral Act requires a federally registered political party to continue to meet the requirements for an 'eligible political party' under s 123 of the Electoral Act. I therefore reject that the requirements of 'at least 500 members' is evident in the Party's State activities.
19. In summary, I consider the Party has been provided sufficient opportunities, even with the challenges presented by COVID-19. It is my view that the Party has not provided sufficient grounds in its statements of 25 June 2021 and 28 July 2021 to satisfy me as a delegate of the Electoral Commission that the Party continues to meet the requirements for an 'eligible political party' under s 123 of the Electoral Act.

20. Accordingly, in my capacity as a delegate of the Electoral Commission I have deregistered the Party under s 137(6) of the Electoral Act and the particulars of the Party have been cancelled from the Register under s 138 of the Electoral Act.

Review rights

21. 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.
22. 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?

23. 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.
24. 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?

25. 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?

26. 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

27. 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.
28. 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

23 August 2021