

AEC reference: LS8245

Mr Stephen [REDACTED]
Secretary
Stop Selling Australia Party

By email: [REDACTED]

Dear Mr [REDACTED]

Review of decision under s 141(4) of the *Commonwealth Electoral Act 1918* – notice of decision under s 141(7)

1. The Electoral Commission ('the Commission') refers to your written application to it ('Application for Review') made by email dated 7 October 2020 for review of the delegate's decision dated 18 September 2020 to refuse your application to register the 'Stop Selling Australia Party' ('the Party') in the *Register of Political Parties* ('the Register'). The Application for Review was made under section 141(2) of the *Commonwealth Electoral Act 1918* ('the Electoral Act').
2. This letter is to notify you, in accordance with section 141(7) of the Electoral Act, that on 18 March 2021 the Commission reviewed the decision of the delegate of the Commission and **affirmed** the decision under review.
3. For your benefit, the Commission has also outlined below its reasons for making this decision.

Notice of decision – s 141(7)

4. The Commission has reviewed the delegate's decision of 18 September 2020 to refuse the application to register the Party, and the additional information you provided.
5. The Commission has **affirmed** the decision under review pursuant to section 141(4) of the Electoral Act.

Reasons for making this decision

6. On 18 September 2020, a delegate of the Commission issued a notice in accordance with section 133(3) of the Electoral Act notifying you of the delegate's decision to refuse the application to enter the Party in the Register.
7. Your Application for Review stated:

"The reason for refusal is based on the membership list submitted with the application not meeting the requirements of the Electoral Act.

Following an addition of new members & a number of errors in the list being rectified the Party is now confident that the membership list complies with the Electoral Act."
8. Based on the materials before the Commission, the Commission determined that the legislative requirement in paragraph 126(2)(ca) of the Electoral Act had not been met.
9. Section 126(2) of the Electoral Act sets out certain requirements for the registration of an eligible political party. Relevantly, paragraph 126(2)(ca) requires the application for registration to "include a list of the names of the 500 members of the party to be relied on for the purposes of registration".
10. The effect of sections 123(3) and 126(2A) is that there may be names on a list of members of a political party that cannot be relied on to meet this requirement. Section 126(2A) provides that: "[t]wo or more parties cannot rely on the same member for the purpose of qualifying or continuing to qualify as an eligible political party..." Section 123(3) provides that a reference to a member of a political party in Part XI of the Electoral Act (which includes section 126) "is a reference to a person who is both: (a) a member of the political party...; and an elector". The result is that to satisfy paragraph 126(2)(ca), the list must contain the names of 500 members all of whose names appear on the Electoral Roll; and none of whom are relied on by another political party for the purpose of qualifying as an eligible political party.
11. In making its decision, the Commission had regard to:
 - (a) the initial application from 10 members of the Party ('the Applicants') to register the Party, received in part by the Commission Secretariat on 7 September 2018 and in full on 24 November 2018;
 - (b) the Applicants' varied application of 14 May 2020 made under section 131(3) of the Electoral Act;
 - (c) the delegate's decision of 18 September 2020 to refuse the application to register the Party under Part XI of the Electoral Act;
 - (d) the notice of the delegate's decision and statement of reasons given under section 133(3) of the Electoral Act, dated 18 September 2020 and provided to the Applicants on 18 September 2020;

- (e) the Application for Review;
- (f) the membership list you provided to the Commission Secretariat on 15 January 2021 in support of the Application for Review ('the 15 January List');
- (g) correspondence between you and the Commission Secretariat; and
- (h) the results of AEC staff's testing of the 15 January List, conducted in accordance with the membership testing methodology devised by the Australian Bureau of Statistics ('the ABS').

Testing of the 15 January List

12. AEC staff cross-checked the 15 January List with the Electoral Roll and the AEC's Funding and Disclosure Client & Return Management system, to determine how many of the 549 individuals named in the 15 January List were members of the Party capable of being relied on for the purposes of registration, having regard to sections 123(3) and 126(2A) of the Electoral Act. This cross-checking identified that the names of 49 individuals could not be relied on to meet the statutory requirement for registration in paragraph 126(2)(ca) of the Electoral Act:
 - (a) 24 of the individuals named in the 15 January List could not be matched to the Electoral Roll;
 - (b) 11 of the individuals named in the 15 January List were identified as duplicates within the 15 January List; and
 - (c) 14 of the individuals named in the 15 January List were identified as supporting the registration of another political party.
13. The AEC staff then proceeded to test the remaining 500 individuals named in the 15 January List in accordance with the methodology recommended by the ABS for this purpose.
14. The ABS recommends that, in testing a list of 500 names, the AEC should obtain confirmation of membership from a random sample of 18 individuals in the list.
15. The AEC staff in fact attempted to contact 30 individuals in the 15 January List, because 12 of these 30 individuals were either not contactable or provided a neutral response. Of the remaining 18 individuals whom AEC staff contacted:
 - (a) 17 confirmed being members of the Party; and
 - (b) 1 denied being a member of the Party.
16. The Commission found that one denial of membership from the list of 500 remaining names meant that it was arithmetically impossible for the 15 January List to contain the 500 members required for registration under paragraph 126(2)(ca) of the Electoral Act.

17. Accordingly, the Commission was **not satisfied** that the requirement in paragraph 126(2)(ca) of the Electoral Act had been met for the purpose of registration of the Party.

Conclusion and review rights

18. The Commission **affirmed** the decision of the delegate to refuse the application to register the Party in the Register, on the basis that the statutory requirement of including a list of the names of 500 members of the Party to be relied on for registration had not been met.
19. A statement of review rights in respect of this decision is enclosed.

Yours sincerely

[SIGNED]

The Hon Justice Susan Kenny AM

Chairperson

14 April 2021

[SIGNED]

Mr Tom Rogers

Electoral Commissioner

14 April 2021

[SIGNED]

Dr David Gruen

Australian Statistician
(non-judicial member)

13 April 2021

Your review rights

Under s 141(5) of the Electoral Act, a person (including an organisation) affected by the Commission's decision who is dissatisfied with the decision may make an application to the Administrative Appeals Tribunal ('the AAT') for review of the decision.

How is an application made to the AAT for a review of a Commission decision?

In accordance with s 29 of the *Administrative Appeals Tribunal Act 1975*, the application must:

- (a) be made in writing;
- (b) be accompanied by any prescribed fee;
- (c) contain a statement of reasons for the application; and
- (d) be made within the prescribed time.

The application should also:

- (a) specify the name of the applicant; and
- (b) include an address at which documents in relation to the AAT proceedings may be given.

More information on how to apply to the AAT can be found on the AAT website:

<https://www.aat.gov.au/apply-for-a-review>.

Prescribed fee

The AAT's standard application fee is \$952. In certain circumstances, an applicant may be entitled to pay a reduced fee of \$100.

If an applicant pays the standard application fee and the AAT review is resolved in the applicant's favour, the AAT will refund the difference between the standard application fee and \$100. There is no refund if the applicant paid the reduced fee of \$100.

Further information about fees is available on the AAT website:

<https://www.aat.gov.au/apply-for-a-review/other-decisions/fees>.

Prescribed time

You may apply to the AAT for review of the Commission's decision during the period commencing on the day on which the Commission's decision was made and ending on the twenty-eighth day after this letter was given to you.

The AAT may extend the time for making an application to the AAT for a review of a decision, if an application for extension is made in writing to the AAT and the AAT is satisfied that it is reasonable in all the circumstances to do so.

Further information about time limits is available on the AAT website:
<https://www.aat.gov.au/apply-for-a-review/other-decisions/time-limits>.

Conduct of a review by the AAT

The AAT can exercise the same powers and discretions as the Commission to make a decision on an application to register a party in the Register afresh 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; or
 - remit the matter for reconsideration in accordance with any directions or recommendations of the AAT.

Further information about the review process can be found on the AAT website:
<https://www.aat.gov.au/steps-in-a-review/other-decisions>.

Freedom of Information

Under the *Freedom of Information Act 1982* ('the FOI Act'), any person has the right to request access to documents held by the Commission.

For more information about access to documents under the FOI Act, please visit the Commission's "Access to AEC information" webpage at: www.aec.gov.au/information-access/index.htm.

Should you have any further queries regarding the Commission's decision, please contact the Commission Secretariat by emailing commission.secretariat@aec.gov.au.