

AEC reference: LEX6553

Mr Robert Day AO

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

By email: [REDACTED]

[REDACTED]

By email: [REDACTED]

Dear Mr Day

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

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1. The Australian Electoral Commission (“the Commission”) refers to your written application for review of the delegate’s decision to register Family First Party Australia (“the Party”), a non-Parliamentary Party, in the Register of Political Parties (“the Register”) under s 133(1) of the *Commonwealth Electoral Act 1918* (“Electoral Act”) (“the application”). The delegate gave notice of this decision under s 133(1) of the Electoral Act on 20 September 2024.
2. The application was made by email dated 29 September 2024. It stated that the application for review was made “pursuant to s 141(14)”. There is no s 141(14) in the Electoral Act. The Commission accepts, however, that the application was properly made under s 141(2) of the Electoral Act. The application satisfies the statutory requirements for an application for review made under that provision. The Commission notes that, in your capacity as Federal Director of the Australian Family Party, you previously made an unsuccessful objection to the Party’s registration on the basis of the Party’s name. This objection was made by email dated 22 July 2024 (“22 July objection”).
3. This letter is to notify you that the Commission has reviewed the delegate’s decision and affirmed the decision under review.

## Notice of decision – s 141(7)

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4. The Commission has reviewed the delegate’s decision of 20 September 2024 to enter the Party in the Register.
5. The Commission has **affirmed** the decision under review pursuant to s 141(4)(a) of the Electoral Act.

## Reasons for making this decision

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6. In making its decision, the Commission has had regard to:
  - a. the application and the material referred to therein;
  - b. your further submissions dated 21 October 2024.
  - c. related correspondence between you and the Commission Secretariat;
  - d. the Party’s submissions dated 31 October 2024 and the material referred to therein (under the cover of an email dated 31 October 2024);
  - e. the delegate’s letter dated 20 September 2024 containing the delegate’s decision under s 133(1) of the Electoral Act to approve the Party’s application to register the Party and enter it in the Register, with the notice of registration under s 133(1)(b) and reasons under s 133(1)(c) dated 20 September 2024 (“delegate’s reasons”);
  - f. the South Australian Register of Political Parties (“the SA Register”);
  - g. the material before the delegate, including:
    - i. the application for registration of the Party and registration of the Party’s name;
    - ii. correspondence between the Party and the Commission;
    - iii. the 22 July objection and the Party’s response dated 5 August 2024; and
    - iv. the Register.

## Principal issues for determination on review

7. All matters that are raised by you in the application concern the decision to register the name of the Party and to enter its name in the Register under s 133(1)(a)(i) of the Electoral Act. Accordingly, the Commission’s review proceeds on the basis that the application seeks a review of only this aspect of the delegate’s decision to register the Party and does not seek a review of any other aspect of the delegate’s decision.

8. Under s 129(1) of the Electoral Act, the Commission must refuse an application for the registration of a political party if, in its opinion, the name of the party or an abbreviation of its name that it wishes to use for the purposes of the Electoral Act:
  - so nearly resembles the name, or an abbreviation or acronym of the name, of another political party (not being a political party that is related to the party to which the application relates) that is a recognised political party that it is likely to be confused with or mistaken for that name or that abbreviation or acronym, as the case may be (s 129(1)(d)); or
  - is one that a reasonable person would think suggests that a connection or relationship exists between the party and a registered party if that connection or relationship does not in fact exist (s 129(1)(da)).
9. Section 129(2)(c) provides that a “recognised political party” for the purposes of s 129(1)(d) includes a political party that is:

(c) registered or recognised for the purposes of the law of a State or a Territory relating to elections and that has endorsed a candidate, under the party’s current name, in an election for the Parliament of the State or Assembly of the Territory in the previous 5 years.
10. The Australian Family Party, with which your submissions are concerned, satisfies the definition of a recognised political party, being registered under the *Electoral Act 1985* (SA) (“South Australian Electoral Act”) and having contested the 2022 South Australian state general election and the 2024 South Australian Dunstan by-election.
11. In support of the application you contend that the Party’s name is a name of the kind described in s 129(1)(d) and/or s 129(1)(da) of the Electoral Act and that the Commission should for this reason refuse the Party’s application for registration.

#### Submissions in support of the application

12. By the application and further submission dated 21 October 2024, you submitted that the Commission should refuse the Party’s application for registration because the Party’s name so nearly resembles the name “Australian Family Party” (being a recognised political party), or an abbreviation or acronym of that party’s name, that it is likely to be confused with or mistaken for that name or that abbreviation or acronym (s 129(1)(d)).
13. Second, you submitted that the Party’s name is one that a reasonable person would think suggests that a connection or relationship exists between the Party and a registered party where that connection or relationship does not in fact exist (s 129(1)(da)).
14. In support of your position, you submitted, in summary, that:

- a. all three words contained in the name, “Australian Family Party”, are contained in the Party’s name, “Family First Party Australia” (noting no distinction was made between the words “Australia” and “Australian”), despite there being no connection between the two parties;
  - b. the ‘key word’ in the name “Australian Family Party” and the “Family First Party” is the word “Family”, being the unique characteristic of the name of “Australian Family Party”; and
  - c. the addition of the word “First” to the Party’s name does not detract from the unique use of the word “Family”.
15. Third, you submitted that the delegate irrelevantly considered that the Australian Family Party is not registered with the Commission, because the Australian Family Party is registered with the South Australian Electoral Commission and therefore satisfies the definition of a “recognised political party” as defined under s 129(2) of the Electoral Act.
16. Fourth, by your further submission dated 21 October 2024, you referred to the consent recently provided by the Party for another proposed party to use the word “First” in the proposed party’s name and logo. You submitted that the Commission should infer from this consent that the Party does not consider the word “First” to be an integral part of the Party’s name. You submitted that this inference was “at odds” with the reasoning at [23] of the delegate’s reasons, and that the inclusion of the word “First” does not clearly distinguish between the party names.
17. While not expressly relied on in the application, the Commission has also had regard to the matters raised by you in your 22 July 2024 objection to the registration of the Party.
18. Your 22 July 2024 objection provided a brief history of the formerly federally registered Family First Party (deregistered on 30 August 2017), Australian Conservatives (deregistered 25 June 2019) and the formation of the Australian Family Party in 2020. Your objection stated that “it was clearly understood that the Australian Family Party was intended to be the old Family First Party’s successor – ‘Family First 2.0’ to use common parlance”. Your objection outlined your personal history with these parties and your involvement in Australian federal politics, including your view that your ‘name and the Family First name were inextricably linked in the minds of voters’. Your objection also discussed the reinstatement of Family First Party Australia Ltd pursuant to an order of the Supreme Court of South Australia dated 7 October 2021. Your objection stated that “[a]t the subsequent SA State election (2022), the Family First Party and the Australian Family Party robbed each other of votes and the Labour Party picked up the last Upper House seat...”.
19. The principal issues raised by your objection can be summarised as follows:

Were the name Family First to appear on a federal election ballot paper, a voter may be misled into voting for – or not voting for – this party thinking the party was associated with [you].

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As many political observers would acknowledge, most people do not engage with politics until election time, so having two parties with very similar names on the ballot paper on election day could confuse voters resulting in neither party being elected.

### The Party's submissions

20. By its submissions dated 31 October 2024, the Party argued that its name did not fall within either s 129(1)(d) or s 129(1)(da) of the Electoral Act.
21. The Party's submissions relied on the Party's response dated 5 August 2024 in response to your 22 July 2024 objection, in addition to making further submissions.
22. The Party's submissions relied on the analysis of the Administrative Appeals Tribunal (the "Tribunal") when interpreting and applying s 129(1)(d) in the decision of *Woollard and Australian Electoral Commission and Anor* [2001] AATA 166 ("*Woollard*").
23. In relation to s 129(1)(d), the Party submitted:
  - a. a search of the Register shows that the use of the words "Australia" or "Australian" and "Party" are common, with about 27 registered political parties using these words. In this context, the Party submitted that "the proposition that three of the four words in the [Family First Party Australia] name are in the [Australian Family Party] name has no force";
  - b. the use of the word "First" after "Family" in the Party's name is "a distinctive identifier and there is no real likelihood of mistake or confusion";
  - c. the delegate's conclusion that the word "First" is a distinctive identifier in the Party's name was consistent with the decision of *Woollard* and the decision of the South Australian Civil and Administrative Tribunal in *Day v Electoral Commissioner of South Australia & Anor* [2022] SACAT 2 (the "SACAT decision");
  - d. the abbreviations and acronyms used by the Party bear no resemblance to those of the Australian Family Party; and
  - e. the word "Family" is arguably a "generic word" as contemplated in *Woollard* at [40], where the Tribunal stated that "[a]bsent clear language to the contrary effect, the disqualifying provision is not to be construed so as to lock up generic words as the property of any organisation when it comes to names that can be used on the ballot paper."

24. The Party took issue with your submission that the delegate erroneously had regard to the fact that the Australian Family Party is “not registered with the Commission”. The Party submitted that the fact that the Australian Family Party was not federally registered was relevant in considering “whether a voter is ‘likely to be confused with or mistaken’ at the polling booth”.
25. In response to your further submission dated 21 October 2024, the Party contended that no relevant inference could be drawn from the Party’s decision to consent to another party’s use of the word “First” in that party’s name as contemplated by s 129(3) of the Electoral Act.
26. The Commission also notes that, in its response dated 5 August 2024 to your 22 July 2024 objection, the Party submitted, among other things, that the Commission should act consistently with the SACAT decision and reject your submissions.

**Is section 129(1)(d) engaged?**

27. Under s 129(1)(d) of the Electoral Act, the Commission must refuse to register a political party and enter it in the Register if, in its opinion, the name of the party or the abbreviation of its name:
  - (d) so nearly resembles the name, or an abbreviation or acronym of the name, of another political party (not being a political party that is related to the party to which the application relates) that is a recognised political party that it is likely to be confused with or mistaken for that name or that abbreviation or acronym, as the case may be.
28. As noted at paragraph 10 above, the Commission is satisfied that the Australian Family Party is a “recognised political party” for the purposes of s 129(1)(d).
29. The Commission has determined, however, that the Party’s name (Family First Party Australia) does not meet the description in s 129(1)(d).

Analysis

30. Section 129(1)(d) requires the Commission to compare the Party’s name with the name of the recognised party it is said to resemble to determine whether, in its opinion, the Party’s name “so nearly resembles” the name of the recognised party that “it is likely to be confused with or mistaken for that name”. As at the date of this decision, the Party is the only party on the Register with the word “Family” in its name. Having compared the Party’s name (“Family First Party Australia”) with the name of the recognised party (“Australian Family Party”), the Commission accepts that the two names bear some resemblance to one another. The word “Family” is significant in both names, and both names contain the three words: “Australia/n”, “Family” and “Party”.
31. The critical question is, however, whether the resemblance is so close that the Party is likely to be confused with or mistaken for the Australian Family Party when an elector

is preparing to vote by marking the ballot paper. That this is the relevant context is made clear by the Tribunal in *Woollard* at [22] and [23]. The Tribunal there stated:

[22] ...The ineligibility for registration of names closely resembling those of parliamentary or other registered parties must therefore be directed to the entitlement of a registered political party to have its name printed on ballot papers adjacent to the name of its candidate or group of candidates as the case may be. It is only in relation to this consequence of registration that the question of confusion nor mistake will arise.

[23] The confusion or mistake that is relevant therefore is that of the elector preparing to vote by marking the ballot paper at an election. It is the judgment of the elector in that brief time in the polling booth that is to be protected.

32. That is, when preparing to vote by marking the ballot paper, the Commission must assess the risk that the elector would not distinguish the Family First Party Australia from the Australian Family Party or would be uncertain or not know which name belonged to which party, or mistake one name for the other. In this context, a relevant risk is one that is neither fanciful nor remote but is “relevant to the integrity of the voting process”: see *Ruddick v Commonwealth* (2022) 275 CLR 333 at [43] (“*Ruddick*”), citing *Woollard* at [38]. This test calls for a practical judgment.
33. As the Tribunal in *Woollard* at [23] made clear, the likelihood of confusion or mistake is to be assessed with respect to “all adults, involving a range of age, linguistic ability, literacy, intelligence, commitment and other factors.” Further, as stated in *Woollard* at [23], “[i]t is the judgment of the elector preparing to vote by marking the ballot paper that is to be protected. That is not to say that such judgment takes place in isolation from what is said and published prior to polling day and, indeed, up to and including the publication of how to vote cards outside the entrance to polling places.”
34. In making its assessment, the Commission first considered what the voter would see when preparing to vote by marking the ballot paper.
35. On a ballot paper for a federal election, the Party’s registered name “Family First Party Australia”, or its registered abbreviation “Family First”, will appear adjacent to the name of a candidate endorsed by the Party: see ss 169, 210A and 214 of the Electoral Act. The Party may also request, as is usual for parties with registered logos, that the Party’s registered logo also appear on the ballot paper: see s 214A. The Party’s registered logo is:



36. The result is to draw attention to two key words, “Family” followed by “First” (irrespective of whether the Party’s registered name or registered abbreviation appears on the ballot paper). The combination of these words is an important visual and aural aspect to the Party’s name, abbreviation and logo. The Commission notes that in *Re Fishing Party and Australian Electoral Commission* (2009) 110 ALD 172 (“*Re Fishing Party*”), the Tribunal affirmed on review a decision of the Commission to register the “Australian Fishing and Lifestyle Party” over the objection of “The Fishing Party”. At [40], the Tribunal reasoned that the words “and Lifestyle” were sufficient to “aurally and visually” distinguish the two parties as separate entities without risk of mistake or confusion.
37. The Australian Family Party cannot appear on a ballot paper for a federal election because the Australian Family Party is not registered in the Register. In the Commission’s opinion, in the circumstances of this case, this significantly diminishes any risk of confusion or mistake.
38. The Australian Family Party has registered its name and abbreviation (“Aust Family Party”) in the SA Register and can therefore contest South Australian state elections (and only those elections because the Australian Family Party is registered only in that State). There is no material before the Commission that might indicate that the Australian Family Party is known to electors in any other State or Territory.
39. The Commission considers that it is therefore unlikely that, in preparing to vote by marking their ballot papers for a federal election, electors outside South Australia will confuse or mistake the name “Family First Party Australia” (or its registered abbreviation and, if requested, registered logo) on the ballot paper for the Australian Family Party.
40. Further, notwithstanding that the Australian Family Party is registered on the SA Register and can contest South Australian elections, the Commission does not consider it likely that electors in South Australia will be confused or mistaken when preparing to vote in a federal election by marking their ballot papers. This is for two reasons. First, a federal election ballot paper will not include the Australian Family Party. Second, accepting that electors in South Australia are more familiar with the Australian Family Party than electors elsewhere, the Commission does not consider that this familiarity would result in relevant confusion or mistake on the part of South Australian electors marking their ballot papers in a federal election. In the Commission’s opinion, given the limited resemblance between the name of the Party and the Australian Family Party, electors in South Australia are unlikely to confuse the Party with the Australian Family Party or mistake the Party for the Australian Family Party.
41. As in *Re Fishing Party*, the Commission considers that the names of the two parties are sufficiently distinct, aurally and visually, to avoid any real risk of confusion or mistake on the part of electors in South Australia preparing to vote by marking their ballot papers. These differences will likely be highlighted on a ballot paper for a federal



election in the probable event that the Party also requests the Party's registered logo to appear on the ballot paper with its name.

42. The differences between the names of the two parties include the following. In contrast with the Party's name where the word "Australia" appears last, in the name of the Australian Family Party the word "Australian" (and "Aust." in its abbreviation) appears first. In the latter form, the words "Australian" or "Aust" are emphasised in both name and abbreviation. Further, the word is used adjectivally to describe the type of "Family" with which the party is concerned. In this way, the name "Australian Family Party" (and its abbreviation) might be thought to suggest protection of a family of an "Australian" kind as opposed to families of other kinds. Further, the Party's use of the word "First" not only makes the name aurally different to the name, "Australian Family Party", the combination "Family First Party Australia" may convey a relevantly different meaning to the name "Australian Family Party" in that the Party's name suggests that priority be given to the welfare of all families within Australia, irrespective of their differences.
43. For completeness, the Commission rejects your submission that it can draw any relevant inference from the fact, without more, that the Party has given its consent to the use of the word "First" in the name of another applicant for registration in the Register. Section 129(3) of the Electoral Act grants registered political parties the discretion to provide consent to another party to use a word from the registered party's name as the party sees fit. There is nothing before the Commission to indicate that the circumstances in which the Party gave its consent might be relevant to your application.
44. Accordingly, even if the names of both the Australian Family Party and the Family First Party Australia were to appear on the same ballot paper, the Commission is not persuaded that the Party's name does "so nearly resemble" the name of the Australian Family Party that it is likely to be confused with or mistaken for its name by electors, or by such proportion of them as would be "relevant to the integrity of the voting process", to adopt the language of the Tribunal in *Woollard*, approved in *Ruddick*.

#### **Is section 129(1)(da) applicable?**

45. You have also relied on s 129(1)(da) of the Electoral Act in your review application. Under s 129(1)(da), the Commission must refuse to register a political party if, in its opinion, the name of the party or the abbreviation of its name:
- (da) is one that a reasonable person would think suggests that a connection or relationship exists between the party and a registered party if that connection or relationship does not in fact exist. [emphasis added]
46. The Electoral Act does not define the term "registered party". In the Commission's view, this term should be read as having the same meaning as "registered political party". Since the Party is not a "registered political party", then s 129(1)(da) cannot apply to it and it is irrelevant to your review application.

47. The Commission has come to this view for the following reasons.
48. The Electoral Act does not define the words “registered party”, although it does define the words “registered political party”. Therefore, the Commission examined the legislative history to ascertain why the legislature introduced the phrase “registered party” in s 129(1)(da).
49. Section 129(1)(da) was introduced into the Electoral Act as part of a new s 129 by the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004* (Cth). In discussing this amendment, the Explanatory Memorandum accompanying this Act stated at [84]:

Section 129 of the Electoral Act contains a number of tests a party’s name must pass before the party can be registered. Item 58 will amend section 129 to require that a party cannot be registered if its name suggests to a reasonable person a relationship or connection with a registered political party that does not exist. [emphasis added]
50. The Explanatory Memorandum used the term “registered political party” to describe the party with which the false relationship must appear for the purposes of s 129(1)(da).
51. A “registered party” is one that falls within the definition of “recognised political party” as defined at s 129(2) for the purposes of s 129. The same definition also distinguishes between “a registered party” (s 129(2)(b)), “a Parliamentary party” (s 129(2)(a)) and a party such as the Australian Family Party, being a political party that is “registered or recognised for the purposes of the law of a State” (s 129(2)(c)). In the context of s 129(2), the reference to “registered party” is apparently intended to refer to a “registered political party” that is not a “Parliamentary party”.
52. Section 4 of the Electoral Act defines a “registered political party” as a political party that is registered under Part XI of the Electoral Act. The Australian Family Party does not meet this definition.
53. As the Australian Family Party is not a “registered [political] party” for the purposes of the Electoral Act, there can be no connection or relationship of the kind contemplated by s 129(1)(da) between it and the Party. Accordingly, this provision cannot affect the Commission’s decision on review.
54. For completeness, even if s 129(1)(da) was enlivened by your application, the Commission is not of the opinion that a reasonable person would think that the Party’s name suggests that a connection or relationship exists between the Party and the Australian Family Party.
55. The Commission recently considered mirrored provisions of the Electoral Act concerning the use of logos in its decision dated 19 July 2024 regarding the Libertarian Party (the “LP decision”). As explained at [47] of the LP decision, the Commission must consider s 129(1)(da) in the same context as that presented by s 129(1)(d). Namely,

whether a reasonable person would think that the Party's name is suggestive of a connection or relationship between the Party and the Australian Family Party at the time of preparing to vote by marking their ballot paper. The "reasonable person" for the purposes of s 129(1)(da) is a person of ordinary intelligence and education, with the common knowledge and experience of most electors: see [50]-[52] of the LP decision for further discussion of the "reasonable person".

56. For similar reasons to those outlined at paragraphs 36 and 42 above, the Commission is of the view that the differences between the party names would avoid the risk of a reasonable person thinking that a connection or relationship exists between the Party and the Australian Family Party at the time of preparing to vote by marking their ballot paper. The Commission remains of this view for a reasonable person marking their ballot paper in South Australia, who would be familiar with the Party and the Australian Family Party as individual parties without any connection or relationship.

#### Summary

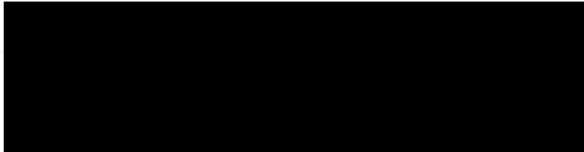
57. In summary, the Commission has carefully considered your submissions concerning the Party but is unable to accept that either s 129(d) or s 129(da) of the Electoral Act are engaged as you contend.

#### Conclusion and review rights

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58. The Commission has affirmed the decision under review pursuant to s 141(4)(a) of the Electoral Act.
59. A statement of review rights in respect of this decision is enclosed.

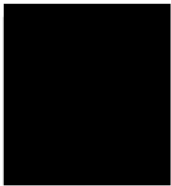
Yours sincerely,



**The Hon Susan Kenny AM KC**

Chairperson

5 February 2025



**Mr Jeff Pope APM**

A/g Electoral Commissioner

5 February 2025



**Dr David Gruen AO**

Australian Statistician

5 February 2025

## Your review rights

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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 Review Tribunal (the ART) for review of the decision.

### **How is an application made to the ART for a review of a Commission decision?**

In accordance with s 34 of the *Administrative Review Tribunal Act 2024* (Cth), the application:

- (a) may be made in writing or in any other manner specified for the application in the practice directions;
- (b) include the information specified for the application in the practice directions; and
- (c) be accompanied by any prescribed fee.

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

<https://www.art.gov.au/applying-review>.

Practice directions published by the ART are available on the ART's website:

<https://www.art.gov.au/help-and-resources/professionals-and-practitioners/practice-directions-guides-and-guidelines>. The practice directions specify the information required to be included in an application, such as your details, details regarding the decision, and the reasons why you say the decision should be reviewed.

### **Prescribed fee**

The ART has a standard application fee. In certain circumstances, an applicant may be entitled to pay a reduced fee.

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

Further information about fees is available on the ART website: <https://www.art.gov.au/help-and-resources/fees>; <https://www.art.gov.au/applying-review/other-decisions>.

### **Prescribed time**

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

Further information about time limits is available on the ART website:

<https://www.art.gov.au/applying-review/other-decisions>.

### **Conduct of a review by the ART**

The ART 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 ART.

Further information about the review process can be found on the ART website:

<https://www.art.gov.au/applying-review/other-decisions>.

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