

Statement of Reasons

Application for registration refused – Katter’s Australian Party

File Reference: 11/645, Reg4226

The delegate of the Australian Electoral Commission determined that Katter’s Australian Party should not be registered under the *Commonwealth Electoral Act 1918*.

Background

On 3 June 2011, the Australian Electoral Commission (the AEC) received an application from Katter’s Australian Party (the Party) for registration as a federal political party under the provisions of the *Commonwealth Electoral Act 1918* (the Electoral Act).

Relevant legal provisions

Political parties may apply for registration for the purposes of federal elections in accordance with the requirements of Part XI of the Electoral Act. The Act requires the AEC to maintain a publicly available ‘Register of Political Parties’. The Register is available on the AEC’s website.

The provisions specifically relevant for the current application under consideration are sections 4, 123, 124, 126, 129, 132, 132A and 133 of the Electoral Act. An extract of the relevant provisions is available adjacent to this document on the AEC website.

In relation to this Party, the relevant provisions require it to:

- be an organisation with an aim of promoting candidates it endorses for election to the House of Representatives and/or the Senate (s4);
- be eligible for registration (s123), that is have at least one member who is a member of the Parliament of the Commonwealth that has not been relied upon for registration by another political party and be established on the basis of a written constitution;
- make application for registration in the manner prescribed in s126; and

- propose a name and optional abbreviation for registration that are not prohibited by s129.

Application of relevant legal provisions

Political Party

This new political party is established on the basis of a written constitution, which sets up an organisation with established principles and sets out its objectives. One of its objectives includes endorsing candidates to contest Senate and House of Representatives elections.

The party has its own phone number, as well as a physical address, postal address and an active website. The AEC was unable to assess its ongoing financial activity because the party has only recently been established.

FAD assessed the party as meeting the test of being a political party under s4 of Electoral Act.

FAD assessed the application against the technical requirements in s126(2) of the Electoral Act as listed above. The application meets the technical requirements in s126(2).

Secretary

The role of party secretary is clearly described and meets the requirements of s123 of the Electoral Act.

Membership

Section 123 of the Electoral Act requires a parliamentary party to have at least one member who is a member of the Parliament of the Commonwealth. The statutory declaration by the secretary states that the Honourable Mr Robert (Bob) Katter MP has been accepted as a member of the Party in accordance with the rules of the Party. Furthermore, a letter from Mr Katter, on his parliamentary stationery accompanied the application in which he confirmed his membership of Katter's Australian Party. Mr Katter is currently the sitting member for Kennedy, and as such is a member of the Parliament of the Commonwealth as required by s123.

Constitution

The party provided a detailed constitution with its application. The party's constitution states the endorsement of candidates at a federal election as one of its objectives and includes significant detail in relation to the structure of the party. It also discusses the terms and conditions of membership of the party in detail.

The constitution defines the positions of the executive committee including the role of the secretary in a manner consistent with the provisions of s123 of the Electoral Act.

Party Name

Section 129 prohibits the registration of parties with certain names. Specifically, the name shall not be approved if any of the following conditions are met. That it:

- is more than six words;
- is perceived to be obscene;
- is the name, abbreviation, or acronym of the name of another political party (not being a political party that is related to the applicant party) that is a *recognised* political party;
- so nearly resembles the name, abbreviation, or acronym of the name of another *recognised* political party (not being a political party that is related to the applicant party) that it is likely to be confused with that other *recognised* political party;
- is one that a reasonable person would think suggests a connection or relationship with another *registered* political party, if that relationship does not exist;
- is comprised of the words 'Independent Party';
- is comprised of, or contains, the word 'Independent', and the name, abbreviation or acronym of a *recognised* political party; or
- is comprised of, or contains, the word 'Independent' and matter, that so nearly resembles the name, or an abbreviation or acronym of the name of a recognised political party, that the matter is likely to be confused with, or mistaken for, that *recognised* political party.

The name sought is Katter's Australian Party and the party abbreviation requested is The Australian Party.

Objections

On 15 June 2011 the delegate determined that the party had passed its initial consideration for party registration and the application was advertised for public objection on 22 June 2011.

On 22 July 2011 an objection was received from Mr David Doe. Mr Doe objected on the basis that the Party's proposed abbreviation failed the names test in s. 129. Mr Doe argued that 'The Australian Party' could easily be mistaken or confused for a number of already registered parties that use the word 'Australian' in their name.

The Party was invited to submit a reply to Mr Doe's objection – which it did on 2 August 2011. The Party claimed in their response that the proposed abbreviation was easily distinguishable from any of the already registered party names, and as such was not prohibited by s. 129.

Analysis of objection

Mr Doe's objection relates to the Party's proposed abbreviation - 'The Australian Party'. In his objection he says 'There are at least SIX [his emphasis] currently federally registered political parties with the word "Australian" in their name.' His concern is that 'All of these parties could potentially be confused with this new "Australian Party" and electors could unwittingly vote for a party not of their choice.'

Mr Doe contends that the proposed abbreviation is prohibited by ss.129(1)(d) and (da). Subsections 129(1)(d) and 129(1)(da) provide that:

Section 129(1) The Electoral Commission shall refuse an application for the registration of a political party if, in its opinion, the name of the party or the abbreviation of its name that it wishes to be able to use for the purposes of this Act (if any):

(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 abbreviation or acronym as the case may be; or

(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;

Section 129(1)(d)

Three federal court judges sitting as the AAT considered subsection 129(1)(d) in *Woollard*. *Woollard* sets out the test to determine if an application must be refused under s.129(1)(d).

44. In summary, the Commission, forming its opinion for the purposes of par 129(d), must determine:

- * whether there is a resemblance between the proposed name, abbreviation or acronym and one already entered in the Register;
- * if so, whether there is a real chance, flowing from that resemblance, that the proposed name, abbreviation or acronym will be mistaken for one already entered in the Register in the sense that an elector intending to vote for the political party with prior registration marks a vote for the newcomer because he or she thinks its name is the name of the party which is intended to receive the vote;
- * alternatively, whether there is a real chance that the proposed name, abbreviation or acronym will cause electors to think that it is the same as the name of the pre-registered party or to be left in such uncertainty as to which name attaches to which organisation that no informed vote can be cast without some additional information.

Prima facie there is a resemblance between the proposed abbreviation and the 6 registered party names as identified by Mr Doe in his objection. The resemblance lies in the shared use of the word 'Australian'. As was the case in *Woollard* the resemblance is limited to the use of a generic word. Nevertheless, a resemblance does exist.

The AAT in *Woollard* decided that the proposed name, when considered in its entirety, emphasised a specific issue which made it different enough from the already registered name to allow an elector to differentiate between the two. In a later decision regarding *The Australian Fishing and Lifestyle Party*, the AAT

determined that the additional words 'and Lifestyle' were sufficient to 'aurally and visually distinguish the two parties as separate entities'.

Importantly, the only word of any significance in the proposed abbreviation is 'Australian', the word which gives rise to the resemblance. On its own, because 'Australian' does not emphasise a specific issue or political philosophy it provides very little information of substance to the elector. The absence of any other informative words within the proposed abbreviation compounds this issue.

This is contrasted by the fact that each of the already registered names which contain the word 'Australian' contain other meaningful words which allow an elector to differentiate them. It is the existence of other identifying words in those registered names which make them 'aurally and visually' distinguishable by an elector. In addition to making the names look and sound different, the other words in those names emphasise issues or political philosophies.

This is not the case with the proposed abbreviation. The proposed abbreviation is almost impossible to distinguish on its own because it lacks the meaning that would be provided by additional words emphasising a specific issue or political philosophy. These additional words would also have the effect of making the proposed abbreviation more 'aurally and visually' distinguishable. The absence of these additional identifying words could give rise to a risk of mistake or confusion by an elector. In a situation where the proposed abbreviation as well as a number of registered names which it resembles are present on a ballot paper it is possible that an elector may be left uncertain as to which organisation 'The Australian Party' refers to.

The Party in its reply to the objection rejected the assertion that the proposed abbreviation could be confused with any of the already registered names. The Party provided a table setting out the names of the six already registered parties alongside the proposed abbreviation but did not offer any further evidence, or arguments.

Conclusion

The AEC accepts the view that the proposed abbreviation is likely to be mistaken with or confused for an already registered name or abbreviation.

Accordingly, a delegate of the Australian Electoral Commission, pursuant to s.133(3) of the Electoral Act, I have determined that Katter's Australian Party's application for registration as a political party should be refused.

16 August 2011