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Review Statement giving reasons for the decision to register the Liberal Democratic Party

Details of the application

An application under section 89 of the Electoral Act 1992 to register the Liberal Democratic Party was received by the acting Electoral Commissioner, Ms Alison Purvis, on 19 July 2001. The application proposed that the following details be registered:

Name of party:

Liberal Democratic Party

Abbreviation of party name:

LDP

Name and address of proposed registered officer:

John Humphreys
5 Argyle Square
REID ACT 2612

The application was signed by the secretary of the party and accompanied by a copy of the party's constitution, and otherwise complied with section 89 of the Electoral Act.

Notification of the application to register the party was published in the Gazette and the Canberra Times on 27 July 2001. The notice stated that objections to the registration of the party could be made up to 10 August 2001.

Objections to the application

Two objections to the party's application for registration were received before the closing date.

Mr John Ryan, General Secretary, The Liberal Party of Australia, ACT Division, objected in writing on 7 August 2001 to the registration of the party on the ground set out in section 93(2)(d) of the Electoral Act, that is, that the name of party so nearly resembles the name of another registered party that it is likely to be confused with or mistaken for that name. In support of this

objection Mr Ryan gives an example of the recent Western Australian State election where election campaign workers for the "liberals for forests" party were advising that "there are two Liberal Party candidates standing for this electorate".

Mr Ryan also suggested that the name of the Liberal Democratic Party would probably have been chosen for the purpose of confusing supporters of the Liberal Party and the Australian Democrats. Mr Ryan stated that the Liberal Party has a high recognition factor among voters by being identified with the word "Liberal" as has the Australian Democrats with "Democrats".

Mr Ryan also noted that, according to records available to him, the proposed register officer of the party, Mr John Humphreys, was not enrolled on the ACT electoral roll, and noted that section 96A of the ACT required registered officers to be qualified to be an elector.

Mr John Charles Bell, Vice President, Australian Democrats, ACT Division, lodged an objection in writing on 8 August 2001 that was in substantially similar terms to the objection lodged by Mr Ryan (except that he did not refer to the enrolment status of Mr Humphreys), adding that his party believed that the creation of a new party name by the process of combining the names of two existing parties must cause significant confusion among voters.

The applicant's response to the objections

Mr John Humphreys, the proposed registered officer of the Liberal Democratic Party was given a copy of the above objections and invited to give a response to the objections. Mr Humphreys provided a written response on 21 August 2001.

Mr Humphreys stated that his party believed that the name Liberal Democratic Party and the abbreviation LDP did not so nearly resemble the registered names or abbreviations of either the Liberal Party or the Australian Democrats that the party's name or abbreviation was likely to be confused with or mistaken for them.

In support of this view, Mr Humphreys cited the decision of the Administrative Appeals Tribunal in *Keith Woolard v. Australian Electoral Commission* [2001] AATA 166 of 6 March 2001. In this case, 3 presidential members of the AAT determined that the name of the party "liberals for forests" should be registered as a party under the Commonwealth Electoral Act 1918. This decision overturned a decision of the Australian Electoral Commission to refuse to register the party on the ground that the name of the party so nearly resembled the name of another registered party that it was likely to be confused with or mistaken for that name.

Mr Humphreys stated that, in the context of Australian party politics, "liberal" and "democratic" are generic words, and cited the AAT's view that the relevant words in the Commonwealth Electoral Act were not to be construed so as to lock up generic words such that other parties cannot use them.

Mr Humphreys also noted that the Democratic Labor Party has co-existed with both the Australian Labor Party and the Australian Democrats, and that the Democratic Socialist Electoral League is currently registered in the ACT, as was the Progressive Labour Party until recently.

Mr Humphreys strongly rejected the suggestion that the LDP chose its name for "underhanded purposes".

Summary of the decision

I have decided not to uphold the objections to the application for registration and to register the Liberal Democratic Party under section 92 of the Electoral Act.

Reasons for the decision

The nub of the objections to the application for registration of the Liberal Democratic Party (proposed registered abbreviation LDP) is that the registration should be refused because the proposed name of the party, in the terms of section 93(2)(d) of the Electoral Act, so nearly resembles the name or abbreviation of two other unrelated registered political parties, namely the Liberal Party of Australia (ACT Division) (whose registered abbreviation is Liberal Party) and the Australian Democrats (whose registered abbreviation is Democrats), that it is likely to be confused with or mistaken for the names of those other parties.

The decision of 3 presidential members of the AAT in *Keith Woolard v. Australian Electoral Commission* [2001] AATA 166 is relevant to the application under consideration. In this case, the AAT determined that the name of the party "liberals for forests" should be registered as a party under the Commonwealth Electoral Act. In reaching this decision the AAT considered whether the name "liberals for forests", within the meaning of section 129(d) of the Commonwealth 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 Parliamentary party or a registered political party (in this case the Liberal Party of Australia, abbreviation Liberal) that it is likely to be confused with or mistaken for that name or that abbreviation or acronym, as the case may be.

This case is relevant to the application under consideration for two reasons. First, the relevant clauses in the two electoral acts: section 93(2)(d) of the ACT's Electoral Act and section 129(d) of the Commonwealth Electoral Act, are substantively the same. Second, the ground for objection, whether the name of a party is likely to be confused with or mistaken for the name or abbreviation of another party because the names of both parties includes similar words such as "liberal", "liberals" or "democratic", is also substantively the same.

The arguments put forward by the AAT in *Woolard* are relevant and persuasive. I will not repeat all those arguments here, and I recommend them to interested readers. Extracts from the conclusions reached by the AAT in *Woolard* as they are relevant to the application under consideration include:

40. The subject matter of mistake or confusion upon which par 129(d) operates is expressed in terms of the name, abbreviation or acronym of the registered political party. The provision has the admitted consequence, as the Joint Committee observed, that it "entrenches the claims of existing political parties, and may deprive individuals of the right to be registered in a name of their choosing." So the registration of the Liberal Party of Australia will defeat a subsequent attempt to register that name in an unrelated party and is likely to defeat variants such as the "Australian Liberal Party". There is however a tension between the protective function of par 129(d) and the freedoms of association and political expression that are incidents of representative democracy. Political parties in Australia use, and historically have used, in their

names generic words such as "Australia", "liberal", "labour", "democrat", "national", "christian", "progressive", "socialist" and the like. Absent clear language to 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. And it is significant that there is no registration requirement conditioning the wider use of party names outside the polling booth. This suggests that the language of par 129(d) should be read according to the ordinary meaning of its words and not strained beyond them.

...

42. The subject matter of the confusion or mistake thus being identified, what does it mean for a name to be "confused with or mistaken for" another? The second limb of the collocation "mistaken for" is clear enough. If there is a real risk that the elector will vote for one registered party because he or she mistakes its name for that of another, then that risk falls within the terms of the section and registration would have to be refused. An example of a name that might give rise to such a risk is the name "Australian Liberal Party". This could be mistaken in the ballot paper for "Liberal Party of Australia". So too, could "Liberals of Australia" and perhaps even "Liberals for Australia". They are not exhaustive examples, but demonstrate the practical operation of the risk of mistake.

43. The remaining issue of construction is the operation of the words "confused with". On the dictionary definition it would seem there is very little difference between those words and the words "mistaken for". To confuse one thing with another is in ordinary parlance - "to mix up in the mind, to fail to distinguish". It is reasonable, however, to assume that these words were intended to fulfil a function that differs from, although it may overlap with, the function performed by the words "mistaken for". They may properly be seen as applying to the case of a name which engenders a risk that the elector will fail to distinguish it from another registered name. That is to say, rather than mistaking one for the other, he or she thinks both are the same. It may also be accepted that one name is confused with another where, because of their similarity, the elector does not know or is uncertain about which is which. So it might be said that an elector confronted with the choice between "Liberal" and "Australian Liberal" may be left in a state of such uncertainty as to which is which that he or she could not make the informed choice intended. Being faced with the requirement to express a preference for each, the elector might simply make a guess. The result might be in accordance with the elector's original voting intention (in which case it might be said that the elector had not mistaken one name for the other), but that would be the result of chance, rather than informed choice. Section 129(d) is intended to protect electors from the risk of such uncertainty, and from the possibility that electors, driven to rely on chance, might choose wrongly.

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.

Application of Paragraph 129(d) to the Present Case

45. The relevant resemblance in this case must be found between the proposed name "liberals for forests" and the name of the Liberal Party of Australia or any of its State divisions or the registered abbreviation "Liberal". There is a resemblance deriving from the use of the word "liberals". This resemblance is limited. It is entirely related to the generic term "liberal" used in each party's name and, in the case of the Liberal Party of Australia, and its State Divisions, in their registered abbreviations.

46. The term "liberals for forests" is a combination of words emphasising a specific issue and describing a party by a name different from that of the Liberal Party of Australia or any of its State divisions. It may be that some persons will draw the inference that members of "liberals for forests" are former members or have some affiliation with the Liberal Party of Australia or one of its State divisions. It is unlikely that any elector, seeing the two names on a ballot paper, will draw the conclusion that "liberals for forests" is a political party related to the Liberal Party of Australia or any of its State divisions. In this case, the possibility that the name "liberals for forests" could be mistaken for the registered name "Liberal Party of Australia (WA Division) or the abbreviation "Liberal" is, in the opinion of the Tribunal, not such as is "likely" to occur in the sense explained earlier, namely that there is a real chance that it will occur. Similarly, the possibility that an elector confronted with the two names on a ballot paper would be in a state of uncertainty as to whether one was the other is not such as to amount to a likelihood. It is not accepted that there is any real risk that the name "liberals for forests" will be confused with or mistaken for the name "Liberal Party of Australia" or the name "Liberal".

In the light of the arguments cited above, in particular the tests set out in paragraph 44 of Woolard, I am of the opinion that:

There is no substantive resemblance between the proposed party name Liberal Democratic Party compared to the registered party names and abbreviations Liberal Party of Australia (ACT Division), the Liberal Party, the Australian Democrats or Democrats (or any variation on these names registered in other Australian jurisdictions), beyond the inclusion in the various names of the generic political words "Liberal", "Democrat" and "Democratic"; Even if there was such a resemblance, there would not be a real chance, flowing from that resemblance, that the proposed name Liberal Democratic Party would be mistaken for the registered party names and/or abbreviations Liberal Party of Australia (ACT Division), the Liberal Party, the Australian Democrats or Democrats in the sense that an elector intending to vote for one of the latter political parties would mark a vote for the Liberal Democratic Party because he or she thinks its name is the name of one of the latter parties; and There would not be a real chance that the proposed name Liberal Democratic Party would cause electors to think that it is the same as the registered party names and/or abbreviations Liberal Party of Australia (ACT Division), the Liberal Party, the Australian Democrats or Democrats 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.

In support of this opinion I note that the ACT Register of Political Parties currently includes the Democratic Socialist Electoral League (abbreviation Democratic Socialist), and that the Christian Democratic Party (Fred Nile Group) and the Progressive Labour Party were both registered until July 2001. The fact that these three parties all appeared on the Molonglo ballot paper with the Australian Labor Party and the Australian Democrats without causing any reported confusion or mistake adds weight to the above opinion.

For the above reasons I have decided not to uphold the objections to the application for registration.

Turning to the other requirements for registration on the ACT Register of Political Parties, I am satisfied on the basis of information supplied by the party and responses to letters sent to a random sample of party members that the party appears to have 100 members who are on the ACT electoral roll.

With regard to Mr Ryan's reference to the fact that the proposed registered officer of the party, Mr Humphreys, did not according to his records appear to be enrolled, I note that Mr Humphreys was entered on the ACT electoral roll on 20 July 2001. Consequently I am satisfied that Mr Humphreys is qualified to be nominated as registered officer of the party.

I am satisfied that the application for registration of the Liberal Democratic Party meets the requirements set out in section 89 of the Electoral Act and that there are no grounds for refusing the application under section 93 of the Electoral Act.

For the above reasons I have decided to register the Liberal Democratic Party under section 92 of the Electoral Act.

Applications for review of this decision

A person affected by this decision may, within 28 days after this review statement is given to that person, or within 28 days after the formal notification of the decision to register the above political party, apply to the Electoral Commission for a review of the decision in accordance with section 247 of the Electoral Act. An application for review of a decision must be in writing, state the applicant's name and address, and set out the applicant's reason for making the application.

Note that no action may be taken in relation to the registration of a political party during the pre-election period for an election, including any review of the above decision. The pre-election period for the 20 October 2001 ACT Legislative Assembly election commences on 14 September 2001 and closes on 20 October 2001.

Phillip Green
Electoral Commissioner

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