



Liberal Democratic Party

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19 June 2007

The Commissioner  
Australian Electoral Commission  
PO Box 6172  
KINGSTON ACT 2604

Attention: Paul Dacey

Dear Sir,

We refer to your letter dated 8 June in which we were invited to respond to two matters by the same date.

S123 Verification of Members

As you know, almost two weeks prior to your letter we submitted a reduced selection of our members, each of whom we had recently called to confirm they were readily contactable.

We understand this has overcome the problem of member verification that you encountered at the first attempt and the sample of members has been confirmed.

S129(1)(da) Party Name

The remainder of this letter responds to your statement that you believe "a reasonable person might think the Liberal Democrats have some affiliation with the Liberal Party of Australia" and, as a consequence, registration should be refused.

Our response is as follows:

1. To think the name of the Liberal Democratic Party (LDP) suggests a connection or relationship with another registered party, a person would need to identify that other party.

We contend that a reasonable person could not assume a connection or association between the LDP and the Liberal Party, or any other party, because there is no obvious party about which to make such an assumption.

The LDP could just as easily be linked to the Australian Democrats or Christian Democrats as the Liberal Party, based on the name.

A reasonable person would also be aware that the Liberal Party and these other parties were not the same and that the LDP could not be associated or connected with more than one of them. Thus there is no basis upon which to decide with which other party the LDP is associated.

2. The likelihood of confusion or mistake is a question of fact. There is no indication that reasonable people have thought the LDP had a relationship with the Liberal Party or any another party since it was first registered in the ACT in 2001.

The LDP contested ACT elections in 2001 and 2004.

The ACT has multi-member electorates in which candidates are elected according to the Hare-Clark system. In each electorate there is invariably an extensive list of candidates with ample opportunity for voters to make assumptions about the parties and their relationships with each other.

At the 2001 election LDP candidates stood against the Australian Democrats and Liberal Party. While these two parties attracted 8.04% and 31.64% of the vote respectively, the LDP attracted just 0.98%.

Further, the LDP did no better than other micro-parties in that election. In the seat of Molonglo the "Gungahlin Equality Party", "Canberra First Party", "Nurses Good Government Party" and "Hillary Back – Independent" all received more votes than the LDP. This indicates voters did not confuse or associate the LDP with any other party.

A similar outcome was seen in the 2004 election when the LDP competed with the Christian Democratic Party ACT Division, ACT Democrats and Liberal Party. These gained 0.7%, 2.3% and 34.8% respectively, against the LDP's 1.3%.

If ACT voters has assumed a connection or relationship between the LDP and other parties with similar names, the LDP would have attracted a much a larger vote. Further, there were no reported cases of confusion.

It is our contention that voters were easily able to distinguish between each of the parties and made no assumptions about connections or associations based simply on their names.

3. There is no evidence that other minor parties that have used similar generic political names have been thought to have a relationship with another party.

The Australian Electoral Commission has previously registered the Democratic Labor Party, Christian Democratic Party, Democratic Socialist Electoral League, liberals for forests and the Progressive Labour Party.

While these parties all share a generic political word with another registered party (either "labor/labour", "liberal" or "democratic") they have consistently received substantially different voter support. If reasonable people were confusing these parties with other registered parties or assuming a relationship, their historical vote should show such a relationship. It does not.

The case most similar to the LDP is the "Democratic Labor Party". If its name had suggested a connection or association with the Australian Labor Party (ALP), it would be reasonable to expect some sort of relationship between its vote and the vote for the ALP. However, no such relationship exists.

Between 1958 and 1975 there were eight federal elections. In four of those the ALP and DLP vote moved in the same direction. In the other four elections the ALP and DLP vote moved in opposite directions. This lack of statistical relationship indicates that voters saw them as separate and unrelated parties.

Since 1984 the new Democratic Labor Party has contested federal and Victorian elections against both the Australian Labor Party and the Australian Democrats. Its vote again showed no correlation with the votes for the other parties. Once again, this indicates that people have not confused the parties nor made an assumption about a relationship between them.

4. Reasonable people generally do not confuse or believe there is a relationship between businesses with similar names.

For example, no reasonable person confuses "General Electric" with "General Motors", "British Tobacco" with "British Telecom" or "ABC Television" with "ABC Childcare".

Most people are also quite used to sorting out the use of generic words: "Master Records" vs "Master Foods"; "Philips Fox" and "Fox News" or "Philips Electronics"; "Energy Australia" vs "The Australian Newspaper".

5. In the context of Australian politics, "liberal" and "democratic" are generic words that should not be owned by any single political party. Indeed, the AAT has ruled that names should not be construed so as to lock up generic words such that other parties cannot use them.

In *Woollard and Australian Electoral Commission and Liberal Party of Australia (WA Division) Inc* [2001] AATA 166 (6 March 2001), the AAT determined that the name of the party "liberals for forests" should be registered as a party under the Commonwealth Electoral Act.

Although the following comments were made in the context of S129(d), they are relevant here:

*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.*

7. In the same case the AAT considered whether a party using a generic political term might be assumed to have a relationship with a registered political party that uses the same generic term. It said:

*"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."*

This statement speaks directly to S129(1)(da) of the Act. If 'liberals for forests' is not thought to be related to the Liberal Party, the Liberal Democratic Party could not be.

It is our contention that registration of the party under the name Liberal Democratic Party would not be in breach of the Act and request that it be registered accordingly.

Yours faithfully,

David Leyonhjelm  
Secretary