

Standing Committee on Finance and Public Administration

ANSWER TO QUESTION ON NOTICE

Australian Electoral Commission

Finance and Deregulation Portfolio

Supplementary Estimates Hearing – October 2010

Outcome 1, Program 1.2

Topic: Registered Name of the Shooters and Fishers Party

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Senator Boswell asked:

So how can a deregistered party link up with another party called the Shooters Party, which is registered?

Answer:

Senator Boswell raised two matters relating to political parties with similar names being registered under Part XI of the *Commonwealth Electoral Act 1918* (Electoral Act), given previous legislative amendment to prohibit the registration of a party with a name that a reasonable person would think suggests a that a connection or relationship exists between that party and a registered party if that connection or relationship does not in fact exist.

The instance raised in this question was that of the registration of the name Shooters and Fishers Party when there was another party registered as the Australian Fishing and Lifestyle Party. Further, the Fishing Party that was registered on 21 September 2007 was deregistered on 16 March 2010 due to the failure to respond to a Notice of Intention to Deregister issued under paragraph 137(1)(d) of the Electoral Act.

When the Australian Fishing and Lifestyle Party was registered shortly before the 2007 federal election, the Fishing Party lodged an appeal to the Administrative Appeals Tribunal (the AAT). The appeal was based partly on the allegation that the Australian Fishing and Lifestyle Party had used Queensland branch members of The Fishing Party to prove its eligibility and partly on the basis that the new registration should have been rejected because of the similarity of names. The AAT handed down its decision in the case of *The Fishing Party and Australian Electoral Commission and The Australian Fishing and Lifestyle Party (Joined Party)* [2009] AATA 170 (17 March 2009) (the Fishing Party case) and, in respect of the similarity of names, found that:

“The Commission has previously formed the opinion that the two names of the Fishing Party and the Australian Fishing and Lifestyle Party are not sufficiently similar

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as to be misleading or confusing. ... We agree with this determination because the words “and Lifestyle” are sufficient to aurally and visually distinguish the two parties as separate entities without risk of confusion or mistake, and would prevent a reasonable person from thinking there was any connection or relationship between the two parties.”

The AAT decision was made in the light of the decision in the *Re Woollard v Australian Electoral Commission & Ors* [2001] AATA 166 (the Woollard case). In the Woollard case three Federal Court judges sitting as a full Tribunal ordered the AEC to register the “liberals for forests”. However, the 2004 legislative amendment to which Senator Boswell referred did not result in individual party names being somehow protected so that they could not be used with other words by a new political party.

In April 2009, the Australian Shooters Party applied to change its registered name to Shooters and Fishers Party with the abbreviation Shooters and Fishers. In the light of the March 2009 AAT decision, the AEC advertised the application in the *Commonwealth Gazette* and ten major newspapers around Australia allowing one month for interested parties or persons to lodge an objection to the change of name. No objections were received and the AEC registered the new name and abbreviation.

Decisions on similar names for registered political parties are complex decisions. The AEC applies section 129 of the Electoral Act in the light of the amendments referred to by Senator Boswell and also consistently with the AAT decisions in both the Woollard case and the Fishing Party case, as well as an opinion on the effect of the 2004 amendments to section 129 given by the Australian Government Solicitors Office in July 2009. This legal opinion is published on the AEC website at [http://www.aec.gov.au/Parties and Representatives/Party Registration/Registration Decisions/legal-advice-similar-names.pdf](http://www.aec.gov.au/Parties_and_Representatives/Party_Registration/Registration_Decisions/legal-advice-similar-names.pdf).