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Dear Bill

PARTY REGISTRATION - POLICY FORMULATION

Thank you for your comments on the draft policy paper relating to the registration of political parties.

As you know section 123 of the Act requires a non-parliamentary party eligible for registration to have at least 500 members who are entitled to enrolment as distinct from an entitlement to vote.

Previous policy sought to determine a party's eligibility by undertaking two checks:

1. checking claimed members against the Electoral Roll
2. conducting a mail out survey a sample of eligible members to estimate membership numbers by a process of extrapolation.

This policy was deficient in that, (1) at any given time, between 5% and 20% of those entitled to enrolment are not registered on the roll thus underestimating eligible members; (2) mail out surveys are an unreliable method of ascertaining likely membership numbers.

In an attempt to overcome these deficiencies we moved to a new approach which relies on applicant parties' providing signed declarations and, in line with the views of the Commission, supported by a statutory declaration from the party secretary. This approach requires the Commission to authenticate the documents provided.

The previous proposal also incorporated a check to RMANS of a sample of names and, where a satisfactory proportion was not found to be enrolled, a mail out survey of a randomly selected sample to verify the authenticity of the documents.

Your response clearly pointed out the flaws in this approach and your suggestions have been incorporated into an amended proposal. The main changes are to conduct the authenticity check as a first step and to dispense with the check to RMANS.

The proposed method will reduce the reliance on sampling to test membership numbers by requiring applicant parties to provide direct evidence of membership in the form of signed membership forms. The inclusion of a declaration of entitlement to enrolment will do away with the need to check to RMANS while producing a more accurate means of verifying eligibility to enrolment, the standard of proof being on a par with that required for claims to enrolment. As you have suggested, the authenticity check will be conducted by telephone to overcome the problems associated with mail out surveys.

Whilst you outlined in your comments a way in which we can improve the certainty of the sampling technique, we feel that the risk involved is still significant in that the Commission would be asked to make its decision based on evidence which was at best questionable and parties would be required to provide evidence of membership greater than is required under the Act in order to attain registration. It is for this reason we would recommend the receipt of 500 signed declarations and their random authentication as the appropriate test.

Policy Proposal

Step 1 Membership Declarations

Applicant parties are to supply 500 membership forms incorporating declarations of both party membership and entitlement to enrolment.

The Commission would supply a suitable proforma for parties to use, incorporating a suitably worded explanation of the criteria for entitlement. (It would be acceptable for parties to prepare forms to their own specification as long as the required wording is incorporated.) The 500 forms must be accompanied, as outlined in the previous paper, by a statutory declaration from the secretary of the applicant party attesting to the authenticity of the documents provided.

In correspondence with applicant parties we would explain the legal ramifications of the statutory declaration and emphasise that the Commission would undertake its own (unspecified) checks on the authenticity of the declarations.

Step 2. Check of authenticity

Telephone contact to be made with 20 people to verify the authenticity of the membership declarations.

Where at least 18 of those confirm that they made the declarations then the party may be registered.

If there are more than two negative responses, the application will fail.

The Electoral Commissioner, as delegate of the Commission, will retain the discretion to authorise such further checks as he considers appropriate in each case.

Comment

The underlying aim is to check the veracity of declarations, not to attempt the daunting task of arriving at actual figures for membership and entitlement to enrolment. A small amount of leeway is built in to allow for members who, in our experience, may be reluctant to acknowledge membership to a government organisation perceived to be "checking up on them". The tolerance is limited, however, taking into account the Statutory Declaration attesting to the validity of all membership declarations. Furthermore, when making telephone contact, AEC officers will advise reluctant respondents of the possible consequences for the applicant party of a negative response.

In the previous proposal a check of authenticity was to be conducted only where the sample enrolment check failed to find an acceptable proportion of members on the Electoral Roll. As you have pointed out, however, this method potentially could permit a fraudulently prepared application to succeed in that an applicant could simply take the requisite number of names from the roll and fill out fraudulent application forms.

In the light of your comment we now propose that the authenticity check be conducted up front. In addition, because approaches by mail inevitably result in low response rates, as you have pointed out, it is proposed that we conduct the check by telephone - asking respondents to confirm that they are members and that they made the relevant declaration. Should any persons express doubt about whether the contacting officer is genuinely from the AEC, they will be invited to call us back as a means of verification.

The sample size of 20 has been selected as providing a reasonable opportunity to detect fraud but the Commission may wish to consider some other number.

Deletion of Entitlement Check

Section 126 of the Act requires the Commission to determine whether a party should be registered. Previous policy and recent proposals have incorporated a check to RMANS as a means of checking entitlement. You will have noted, however, that this is not included in the steps proposed above.

Upon reflection, the RMANS check may put the Commission in conflict with the Act and leave us open to challenge. The reason is that, typically, 5%-20% of those entitled to enrolment are not enrolled at any given time. By requiring parties to have a minimum of 500 members on the roll, the Commission could in effect be requiring that they have up to 600 members entitled to enrolment.

The risk of not conducting a check to RMANS, on the other hand, is that some persons might incorrectly declare their eligibility to enrolment. This risk is reduced, however, by the fact that the declaration form will make clear the eligibility requirements. It should also be borne in mind that the Commission's existing enrolment policy requires no further evidence of entitlement on the claim card than a

declaration by the elector. Is it reasonable to set a higher standard of proof for members of a political party than we do for electors generally?

Summary

It is essential to adopt a fair and equitable process within the limitations of the legislation.

The practical problems identified above are:

- it is difficult to verify entitlement to enrolment without, in effect, applying a standard higher than that specified by the Act;
- the procedure of extrapolating the results of a mail out survey carries a considerable risk of denying registration to an eligible party because mail out surveys typically have low response rates; and
- there is a risk of inconsistency between the standards of proof required for entitlement to enrolment compared with actual enrolment.

The process described however is in accordance with the stated preference of the Commission for working from declarations supported by a statutory declaration from the applicant party.

The spirit of the Act, in requiring 500 members, is that a party should have a substantial level of community support. Whichever process is adopted will inevitably involve a degree of risk. The proposal set above should enable the Commission to determine registration applications without the risk of setting a standard higher than that contemplated by the Act, while at the same time ensuring that parties are not registered unless they have a substantial level of support.

I would appreciate your early view as to whether you would be prepared to have this party registration policy brought before the Commission or whether you continue to have reservations which you would want addressed before further consideration by the Commission.

Thank you for your valuable support and thoughts on this matter.

SGD) W. J. GRAY

Bill Gray

LS August 1996