

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Electoral Commissioner SA Family First v Electoral Commissioner [2022] SACAT 1

South Australian Civil and Administrative Tribunal, President Hughes, 12 January 2022

Whether an application to register as a political party was properly rejected.

Key words: Political Party, South Australia, Registration, Electoral Act 1985, Name, Membership

1. SA Family First Incorporated (the party) was formed in 2021. It wished to become a political party for the forthcoming South Australian state elections.
2. It initially made an application to be registered as a political party to the Electoral Commissioner (the Commissioner), who is required to maintain a register of political parties registered under the Electoral Act 1985 (the Act).
3. Under s 36(1) of the Act, an eligible political party is either a “parliamentary party” or a political party whose membership includes at least 200 electors.
4. The Commissioner noted certain irregularities in the application. The party made a second application to address these issues, but it did not withdraw the first application. The Commissioner found a number of grounds to refuse the applications, although this occurred incrementally as proceedings progressed.
5. The Commissioner found there were grounds to refuse the applications on the basis that:
 - the name “(SA) Family First Incorporated” and the abbreviation “SA Family First” resembled the name of a prominent public body that is likely to be confused with that name. This was the Family First Party, a political party that had previously been registered between 2001 and 2017, and that had more recently been publicly reported as being re-established.
 - the application for registration was not valid because it did not comply with the requirements set out in s 39(2)(f) of the Act, being supplying the names and addresses (as enrolled) of 200 electors who are members of the party and on whom the party relies for the purpose of qualifying as an eligible political party.

6. Further, with two applications on foot with different party names, but similar membership, the Commissioner would usually write to the members to ascertain which party they supported for the purposes of registration.
7. The Tribunal noted that its review was to be conducted by way of a rehearing with further evidence.
8. The Tribunal first dealt with the requirements of s 39(2)(f) of the Act. It found that the number of properly completed membership forms was below the necessary minimum of 200 valid member declaration forms.
9. Further, the requirement that a party have 200 enrolled members in support of the registration of the party is clearly a substantive eligibility criterion and not a procedural matter that could be waived.
10. It was not necessary for the Tribunal to come to a decision about the name.
11. The Tribunal did regard as 'unfortunate' that the Commissioner did not complete its assessment of the application against the requirements of s 39 until after the last date on which the applicant could have submitted a further registration application if it wished to register its party for the upcoming state election (at [85]).
12. The Tribunal affirmed the Commissioner's decision not to register the organisation as a political party.

IMPLICATIONS



Attention to detail and the letter of the law was critical in this application to become registered as a political party. While in the interests of justice, the Courts may entertain pleas to waive minor procedural irregularities and errors, in this case, the matters went to the stated pre-conditions as to registration.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SACAT//2022/1.html>

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Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

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