

**ELECTORAL MATTERS COMMITTEE**

**Inquiry into the conduct of the 2006 Victorian state election and matters related thereto**

Melbourne — 28 August 2007

Members

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Ms G. Clarke, research officer, Victorian Aboriginal Legal Service Cooperative.

**The CHAIR** — The committee is hearing evidence today in its inquiry into the 2006 Victorian state election and matters related thereto. All evidence taken at this hearing is protected by parliamentary privilege, as provided by the Constitution Act 1975. It is further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and, where applicable, the provisions of reciprocal legislation in the other Australian states and territories. I also wish to advise witnesses that any comments made outside the hearings may not be afforded such privilege. I take it that you have read the guide to giving evidence at a public hearing pamphlet. Please state your full name and address.

**Ms CLARKE** — My name is Greta Narelle Clarke. I am from the Victorian Aboriginal Legal Service, which is located at 6 Alexandra Parade, Fitzroy.

**The CHAIR** — In what capacity are you attending this inquiry?

**Ms CLARKE** — I am the research officer at the Victorian Aboriginal Legal Service. I generally write submissions in response to inquiries.

**The CHAIR** — Your evidence will be taken down and become public evidence in due course. I now invite you to make a verbal submission for about 10 or 15 minutes. Members of the committee will then ask you questions.

**Ms CLARKE** — At the outset I would like to thank you for meeting with me and acknowledge that we are meeting on the traditional land of the Wurundjeri people of the Kulin nation and pay our respects. I am going to talk more about accessibility to the voting system for the Aboriginal community, which is a disadvantaged community in Victoria. My comments will relate to general accessibility issues which are broader than the 2006 election. Talking about Aboriginal voting is problematic because we do not have data on how many Aboriginal people are enrolled to vote and how many people actually vote. That sort of information is not collected. From our experience at the Victorian Aboriginal Legal Service we would say that it is fair to allege that many people are not enrolled and many people do not vote because of barrier, and I will list those barriers. First of all, there is ignorance; then there is the complicated history of the Aboriginal vote and how it was achieved; the legacy of these obstacles; low educational attainment; the frequency with which Aboriginal people change their address; fear and misconceptions; location in terms of geography of voting; overrepresentation of Aboriginal people in the criminal justice system and the meaningfulness of the voting system to Aboriginal people.

There are some recommendations I can suggest in response to some of these issues. One is to improve the collection of data about Aboriginal voting patterns and to make the system more meaningful. One suggestion has been that we introduce a quota of indigenous people within Parliament. Something that the Australian Electoral Commission and the Victorian Electoral Commission could get involved in is a joint education campaign of the Koori people that involves the Koori people. I stress that it needs to be ongoing, not just before an election.

We also have general recommendations about simplifying the system. Given the over-representation rate in the criminal justice system, we should open up the vote to people within prison; cater better for people with literacy difficulties, and in particular make it clear that they can receive assistance. I think there is a lack of clarity about that. I understand that at the commonwealth level there have been moves to reduce the amount of time during which someone can enrol after an election has been called. We would say that to go down that line is wrong because of problems with enrolment for Aboriginal people.

In respect of ignorance, there is ignorance across the board about the political process for non-indigenous and indigenous Australians, and there are people who recognise this crisis in education about the political system. There are aspects of this ignorance that are perhaps particular to the Aboriginal community. One of them is a low educational attainment in comparison to non-indigenous Australians and the complicated history of state and commonwealth laws relating

to the ability of Aboriginal people to vote. Also most recently there was the removal of the Aboriginal and Torres Strait Islander Commission and the elections that involved a confusion about that and what it means for the current voting system. The ad hoc nature of voting rights and when they were granted to Aboriginal people was identified in the Royal Commission into Aboriginal Deaths in Custody. It concluded on the way in which voting rights vary throughout Australia prior to 1968 — and this is the quote:

This is revealing of Australia's sense of nationhood; Aboriginal people were to be part of the past, not the future.

History reveals barriers to Aboriginal people voting which have taken, and are taking, decades to remove, the legacy of which is arguably still felt today. For example — this is just a little brief history lesson — in 1901 people already franchised in a former Australian colonies were able to vote in the commonwealth election. That actually included male Aboriginal voters in New South Wales, Victoria and Tasmania and all Aboriginal voters in South Australia. But there was a distinction there. In Queensland in 1915 all Aboriginal people were excluded from the vote, but half-caste people who did not come under the protectorate acts were not excluded, and also if you held exemption certificates.

In 1948 despite in theory all Aboriginal people being classified as Australians — because they were born in Australia — by the Nationality and Citizenship Act, this excluded people living in Western Australia, Queensland and the Northern Territory, because they had no right to vote in the state elections. In 1967 we had the referendum. We have just had the 40th anniversary of the 1967 referendum. There was lot of misconceptions in the Aboriginal community that that referendum granted Aboriginal people the right to vote. It is heralded as giving citizenship rights, but it did not actually say anything about the right to vote. It changed section 51 of the constitution and made it so that the commonwealth could make laws for Aboriginal people. The referendum removed the negative or exclusionary aspect of section 51 that said the commonwealth can make laws for all people except Aboriginal people. It also included Aboriginal people within the census.

To move on to fear and misconceptions, this is another quote from the Royal Commission into Aboriginal Deaths in Custody:

The fact that many Aboriginal people did not enrol to vote was no doubt tied up with their attitudes to surveillance, record-keeping and citizen rights. Previously, 'rights' had meant the rejection of Aboriginality and kin relations. It meant conforming to non-Aboriginal society, close supervision and the ever-present threat of withdrawal of rights.

Fear continues today. There is a reluctance to enrol to vote — the fear that it will mean that their contact details will be made public and the fear of other agencies following them up, such as Centrelink or the tax office. People would prefer not to be contactable. They also fear the fines system. If they are enrolled they fear being subjected to the fines. As an example of this, at the last election a lady by the name of Ursula Smith was employed by the Victorian Electoral Commission for the particular 2006 state elections to improve the Aboriginal rate way of voting. She did a bit of outreach to the Victorian Aboriginal Health Service. I think one day a week she just had a table in the reception foyer area, and people approached her if they had questions. One 70-year-old lady came up to her and actually she was able to leave some of her misconceptions, because she was afraid that for however many years that she had not voted she would have a backlog of fines. That is why it was up until she was 70-years-old that she actually enrolled to vote.

The reality of these barriers — ignorance, fear and misconception — are apparent in the example of the Aboriginal and Torres Strait Islander Commission, which is now abolished. You would think the ATSIC elections would be meaningful to the Aboriginal community, but the rate at which Aboriginal people did vote in the ATSIC elections was not as high as you would perhaps think. ATSIC estimated that there were in excess of 252 000 Aboriginal and Torres Strait Islanders eligible, if enrolled in the commonwealth electoral roll, to vote in the ATSIC elections. However, in 2002 a total of 53 326 people actually voted. There is a big difference between 252 000 and 53 326. I would suggest that if you are wanting to look more into ATSIC and the

voting patterns within ATSIC, there was an inquiry into indigenous affairs relating to ATSIC when there was talk of it being abolished. Aboriginal people have different perspectives on ATSIC voting rates. Some say the glass is half empty; some say it is half full. But without doubt the rate at which Aboriginal people were voting in ATSIC elections was on the increase.

Some people say that the barriers to Aboriginal people voting in the ATSIC election were the fact that you had to be enrolled on the commonwealth electoral roll to vote in the ATSIC election. You had to have a proof of Aboriginality, a way of proving your Aboriginality and be living in the ward you were enrolled to vote in. As I was saying, there are fears about being enrolled on the commonwealth electoral roll. In regard to geography of voting, ATSIC identified that more people in remote areas voted in ATSIC regions than in urban and rural areas. That is perhaps related to the dispersion in urban and regional areas in comparison to remote areas. We face a challenge in urban and regional Victoria about engaging Aboriginal people to vote. Some people say a barrier to voting is the fact that there is no indigenous Australian up there to be elected. As I mentioned, the overrepresentation in the criminal justice system precludes some indigenous Australians in prison from voting.

In relation to the recommendations about data collection, it is hard to know what to do. You could possibly put a question on the enrolment form of 'What descent are you?', but make it applicable to everyone so Aboriginal people do not feel stigmatised by this question. A lot of people say that they do not like forms that say, 'Are you of Aboriginal or Torres Strait Islander descent?' and the fact that there is no other nationality that is questioned in this way. I can only hazard a guess that data on every kind of person from diverse backgrounds about whether they vote would be useful.

The stigmatisation about identifying as Aboriginal is another issue in the sense that some people do not want to be pigeonholed or stereotyped, or they think that if someone knows they are Aboriginal they will be looked at differently. At the Victorian Aboriginal Legal Service we have an arrangement with Victoria Police that if an Aboriginal person is taken into custody, the Aboriginal Legal Service is notified. Some people actually fall through this system because they choose not to identify as Aboriginal. It is only maybe later on that we find out. That is a problem because the whole arrangement was set up to prevent Aboriginal deaths in custody and address the overrepresentation rate in the criminal justice system. One of my suggestions is to actually ask on the census, 'Are you enrolled to vote?' or 'Did you vote in the last election?'.

There is an element of trust increasing amongst the Aboriginal community around the census, because over recent years the number of Aboriginal people identifying as Aboriginal has increased on the census. To make the political process and the voting system more meaningful to Aboriginal people I mentioned introducing a quota of indigenous Australians in Parliament. I know that some people would be very against this for the reason, 'Why not open it up to everyone, because every distinct nationality and people from a diverse background should have a representative?'. I would argue that it is because of the distinct status of Aboriginal people as the first nation and that their sovereignty was actually taken without consent that they above all else should have a quota within Parliament.

I come to the recommendation about education. I understand that the Victorian Electoral Commission has expressed a desire — and I do not know the extent to which this has actually happened — to work with the Australian Electoral Commission on joint education programs. This would be a really good idea to share information about making a Koori-specific and Aboriginal-specific program. One key to this Koori-specific education program is that it should involve Aboriginal people. It could involve the Victorian Electoral Commission, the government, the Australian Electoral Commission and even Aboriginal organisations could get involved in this education campaign. Aspects of this education campaign may be to create the role of Aboriginal education officers who assist with school activities and projects around civics and educating.

I mentioned the role of Ursula Smith of the Victorian Electoral Commission. It was very handy for her to do that outreach at the Victorian Aboriginal Health Service. I understand her position is

until 2010, but we would like to see it an ongoing thing. She produced posters and pamphlets in the lead-up to the 2006 election. On the posters she actually spoke to some Aboriginal elders and got them as role models to state the reason why it is important to vote. When she went to the Victorian Aboriginal Health Service she actually enrolled seven people to vote. Also, when people do not vote and they receive a notice about not voting they — —

I will proceed on as quickly as I can; I do not have that much to go.

**The CHAIR** — Just a couple more minutes and then we will ask questions.

**Ms CLARKE** — When people receive a notice that they have not voted I understand that they can write the reason why they did not vote. Those forms get given to her to process and she has a say on what happens. She has the discretion to look into it. As I said, it is very important for this education to be ongoing, not just a once-off, particular in the Aboriginal community. Our community legal education officer finds that you need to build up trust, so she just rocks up to a community once a year. She blows in and blows out. People do not pay attention to what she has to say, so it is about building that ongoing relationship. I have a quote here from someone in the Northern Territory. He is a Northern Territory electoral commissioner, Mr Bill Shephard. He responded to an inquiry, and he said that ongoing education in the Aboriginal community means that communities will operate more on 'a congenial basis than a transactional basis'. The education campaign could link into what I mentioned about fears and misconceptions to alleviate those fears that often lead to misconceptions and even educate the Aboriginal people that there is no Aboriginal person up for election, but these political parties do have policy on Aboriginal issues and inform them about that.

The other thing that I would like to mention about literacy is that in my personal experience when I have gone to vote I had not known that there is the option to take someone with me or receive assistance on the day to vote if I cannot read or write. Apparently there is, so how can a person who has literacy problems — and the shame involved in that — know that the right to vote is open to them equally? Apparently the Australian Electoral Commission has a booklet outlining this right, but what use is it to a person who cannot read this booklet that tells them about this right?

**The CHAIR** — Thank you. I will open up to questions now, and I might start of myself. You have sort of answered this question. You mentioned the meaninglessness of voting for Aboriginal people. I was going to suggest to you civics education and the importance of parliamentary democracy. Can you tease that out a little bit more? How much impact would that have?

**Ms CLARKE** — I think that because of the low education — —

**The CHAIR** — It is a real middle-class solution to the problem of education, but that would have a real impact?

**Ms CLARKE** — If there was community involvement I think it would, and if it was ongoing. The fact that many Aboriginal people fall out of high school automatically means you are going to access that education. Maybe we do not just focus on children in schools but also adults.

**The CHAIR** — What about some automatic methods of being put onto the voter roll, such as drivers licences or Centrelink? If you register in Centrelink or once you renew your drivers licence, what about those things? What is your view on that? Do you think that would be effective?

**Ms CLARKE** — I think that would be effective. It would mean more people would be on the electoral roll because of the process. It might sound very easy for us to fill out a form, but the literacy issue and also the problems that the Aboriginal community faces, juggling all these balls and having different priorities. Maybe their priority is food that day and not filling out a

form. I suppose if you streamline the process and make it simpler and take away the complications, then it will be more likely that Aboriginal people are at least eligible to vote.

**The CHAIR** — Thank you.

**Mr THOMPSON** — I understand the indigenous population of Victoria numbers about 25 000-plus overall, and the communities are distributed across Victoria and certainly along the Murray River towns and Shepparton, Bairnsdale and western Victoria. Is there an area in Victoria where there is a higher level of engagement in voting among indigenous Victorians, and are there any lessons we can learn from that?

**Ms CLARKE** — It is very difficult to gauge unfortunately because I suppose people are private about whether they voted and that sort of thing and there is no data collected. I know with the ATSIC elections that buses were organised to take people to the polling stations. Polling could happen at the health service and there were mobile ways to vote. I am sorry, I cannot answer that until we get transparency around data. I think if I was to generalise I would probably do the question a disservice.

**Mr THOMPSON** — Do you know anecdotally what the number of votes were in ATSIC elections from Victoria?

**Ms CLARKE** — They are something I do not know. I do not know if it has been broken down by state. I expect so. I do not know that, but I could look into that and get back to you.

**Mr THOMPSON** — That might be of interest. Thank you.

**Ms CAMPBELL** — My question relates to involvement in political parties. Is there an area in this state that has a culture within the Aboriginal community of membership of a political party? There are some areas of Melbourne where there is a particular concentration of a particular ethnic constituency, some might say for less-than-perfect motives, but nonetheless there is an involvement. Do you have any comment to make on that?

**Ms CLARKE** — Once again, I would be generalising.

**Ms CAMPBELL** — So amongst your friends and colleagues — —

**Ms CLARKE** — Something my boss mentioned to me was, 'I know of six Koori people who are members of the ALP', so within his network of people he knows six Koori people, and he said they are not active in encouraging people to vote.

**Ms CAMPBELL** — Thank you.

**Mr SCOTT** — I have a couple of issues. Would you see a quota of Aboriginal representation operating in a similar way that it does in New Zealand with Maori seats, where there is a registration process? I think their electors have an option of registering as a Maori elector or as an ordinary elector, and if they register as a Maori elector they participate in the process of electing their Maori representatives. Is that a fair sort of characterisation of your position?

**Ms CLARKE** — Yes. I think Australia has a lot to learn from New Zealand in many respects, so it would be a really good idea to look at New Zealand. I think there needs to be consultation with the Aboriginal community though because they are a different kind of people compared to Maori people. That is what I was alluding to because that is what I know of.

**Mr SCOTT** — The other issue I want to raise is that a number of your points really relate to accessibility to the political process and issues like enrolment, voting and illiteracy and other issues. The Chair raised issues around civics education. Are there any specific programs that you see the need for beyond civics education to increase the capacity of people to participate in the process?

**Ms CLARKE** — Maybe it is actually providing people with transport, something like the cooperative taking people who do not have a car to a polling station by bus. That happens when community events happen, so why should it not happen when the election is on? That is one way of removing the barrier of lack of public transport and remoteness. Another one is employing Aboriginal people to be at the polling stations. An Aboriginal face is something familiar to people and it automatically puts them at ease and they feel perhaps not foolish in asking questions. I think that actually helps. That is why I mentioned that if there is to be education it needs to involve Koori people. That is very important. I mean the fact that Ursula Smith is working, that needs to be an ongoing thing to make the system more accessible.

**The CHAIR** — I want to take up Mr Thompson's point in his earlier question when he asked about regions within Victoria where the voting rate was higher amongst Aboriginal people. Can we compare states, like the Northern Territory and places like that, with Victoria?

**Ms CLARKE** — With the ATSIIC elections I think there is some research that I can find. I suppose you would classify the Northern Territory as having more remote communities.

**The CHAIR** — That is right.

**Ms CLARKE** — And because the population is more intense and not dispersed as it is in urban areas I think you will find there is a higher voting rate for ATSIIC.

**The CHAIR** — Does it come back to seeing the familiar face and more Aboriginal people perhaps standing for office as well?

**Ms CLARKE** — Yes, there is no doubt that that is involved too. Remote communities have disadvantages — and they are in the spotlight at the moment around the Northern Territory intervention — but so are urban and regional-based Aboriginal people. The challenge that they have is the assumption that they will just assimilate, and it is not as easy as that. Another trend to show the difference is immunisation. Immunisation rates are better in remote areas than in urban areas. I suppose it is just the environment. If people see other people doing something, and they are safe as well, that is a reassurance as well. But where people are more dispersed they might have no-one to go with to the election.

**The CHAIR** — Thank you very much, Greta. You will receive a copy of the transcript within a fortnight. There may be typing errors which you can correct and send back to us for us to fix, but matters of substance will not be changed. Thank you very much.

**Witness withdrew.**