

ELECTORAL MATTERS COMMITTEE

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

Melbourne — 28 August 2007

Members

Ms C. Broad

Hon C. Campbell

Mr P. Hall

Mr M. O'Brien

Mr R. Scott

Mr A. Somyurek

Mr M. Thompson

Chair: Mr A. Somyurek

Deputy Chair: Mr M. O'Brien

Staff

Executive Officer: Mr M. Roberts

Research Officer: Dr N. Wray

Witness

Mr J. Mulholland, secretary and registered officer, Democratic Labor Party.

The CHAIR — Welcome to the public hearings of the Electoral Matters Committee, which today is hearing evidence on its inquiry into the 2006 Victorian state election and matters related thereto. All evidence taken in this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and, where applicable, the provisions of reciprocal legislation in other Australian states and territories. I wish to advise witnesses that any comments they make outside the hearings may not be afforded such privilege. I trust, Mr Mulholland, that you have received a pamphlet, a guide to giving evidence at public hearings, and read it.

Mr MULHOLLAND — Yes.

The CHAIR — For the benefit of Hansard, please state your full name and address.

Mr MULHOLLAND — John Mulholland, unit 5, 786 Warrigal Road, Malvern East.

The CHAIR — Please state if you are attending in a private capacity or representing an organisation; if you are representing an organisation, what is your position in the organisation?

Mr MULHOLLAND — I am attending as a representative from the Democratic Labor Party, and I am the secretary and registered officer of that organisation.

The CHAIR — Your evidence will be taken down and become public evidence in due course. I now invite you to make a verbal submission, and the committee will ask you questions after your address.

Mr MULHOLLAND — Thank you, Chair. My submission does not relate specifically to the 2006 state election. I think it comes more under the heading of ‘matters related thereto’, because the issues that I am raising are issues that affect the registration of political parties. The written submission that I have made is I think fairly concise, but there are a number of points that I would like to just bring to your attention again from the submission. These points give an indication as to what emphasis I wish to put on the points that I have raised.

In relation to paragraph 1, what we in the Democratic Labor Party are looking for — and it may be wishful thinking, but we hope it is not — is the removal from legislation of the bureaucratic obstacles that hinder participation by electors in the democratic process through membership of political parties. We are not looking at participation simply as a matter of voting; we are looking at participation as involvement in political parties themselves. We believe participation in political parties is for the common good and should be promoted.

The first full paragraph on page 2 sums up what our concerns have been in relation to the registration requirements. Members of the Democratic Labor Party have been concerned over a long period of time that the registration requirements for political parties serve to undermine the principle of the secret ballot, intrude on privacy and put barriers in the way of freedom of association.

Further down on page 2 is the quotation of the view expressed by Mr Justice Kirby in the High Court case which we brought in our constitutional challenge to the registration provisions at the federal level. We believe Mr Justice Kirby’s remarks which we have quoted there give support to the views that members of the Democratic Labor Party have had in relation to the registration requirements.

On page 3 the second paragraph has the reference to ‘bureaucratised democracy’ — perhaps we should simply say ‘bureaucracy’, because we would not regard bureaucracy as democracy. Our concern is that the registration system is not a system that aids or assists democracy; it aids and assists bureaucratic control. The largest paragraph further down on page 3 contains a reference to electoral practices to which Australians have become accustomed, including adult suffrage, the

secret ballot and preferential and proportional forms of voting. As a result of the High Court decision in *Mulholland v. Australian Electoral Commission* it was made clear that those practices in our democracy are not constitutionally guaranteed and any government could change those if it had the opportunity and it was in the interests of a government — of course it would be a government that was long entrenched. It would be very difficult to do it, admittedly, but there is nothing in our constitution that would prevent the removal of those particular practices.

Finally, the last paragraph may be seen as a statement that goes too far. It says that when it all boils down ours is a system for identifying the members of political parties and registering their political allegiances in a fashion more befitting despotic and totalitarian regimes. There is no need for a registration system that requires the names of individual members of political parties to be registered in order to meet the aims of the registration system as they were introduced firstly at the federal level and subsequently at the state level. It is the position of the Democratic Labor Party that the registration scheme is not needed at all. However, we recognise there are people who believe there is a need for some sort of regulation of the system and they see the registration process as being the means of doing that.

They are the points that I wished to emphasise in relation to my submission. As I said before, the submission is fairly concise. I do not think there would be too much uncertainty about the points that we are making. I hope we can see some movement in relation to the registration system some time in the future.

Ms CAMPBELL — Do you have examples of where people's allegiance to your party or any other, once publicised, has adversely affected their employment opportunities?

Mr MULHOLLAND — We do not have hard evidence. We certainly have anecdotal evidence of those circumstances. What I have myself is evidence from people who have expressed clear views to the effect that where we have distributed how-to-vote cards in the past they have not wanted to have a polling booth close to their home or to their place of work because they were concerned that their boss may be aware that they were distributing material for the Democratic Labor Party and they knew their boss had allegiances to another party.

Ms CAMPBELL — But that is not registration. That is handing out how-to-vote cards.

Mr MULHOLLAND — That is not registration. Their concern about registration is that the names or the political party or the members of the political party must be submitted to the electoral commission. The electoral commission is not a body to which the ordinary members of political parties relate in any direct way and because it is part of the bureaucracy they are mistrustful. Our concern in regard to that is that if people have a mistrust about how the registration of political parties is being administered, they will have a reluctance to participate in a political party. We see that as a burden on their participation in the electoral process generally.

Ms CAMPBELL — So if I understand correctly, if for argument's sake a party had only 500 members, then every single member of that party would be known, whereas the bigger parties do not have every single member of that party known to the Australian Electoral Commission, and therefore, say, for the ALP or the Liberal Party, there would be over a period of time be 500 people that they could publicly sight who perhaps had been members or Parliament or political staffers or electoral officers; would that be what you are getting at?

Mr MULHOLLAND — That is one of the concerns. That is, I suppose, an issue of fairness in a sense, that small parties have to provide the electoral commissions with a much higher proportion of their membership to justify their registration than larger parties do.

Mr SCOTT — Just to clarify, and we are talking about federal law in a sense in some of this, but my understanding is a process of registration of the Australian Electoral Commission does not involve public disclosure of these for the 500 members but simply to the commission who then conducts an audit process, and there is a privacy act applying to those names, so those

names are not released publicly. That is my understanding of the process. But the concern of your members — I am seeking clarification — is that their details are provided to a bureaucratic organisation in which they have little trust, or some of them have little trust?

Mr MULHOLLAND — Many of them, I think.

Mr SCOTT — Would that be a fair characterisation of the position?

Mr MULHOLLAND — That is true. We recognise that privacy legislation prohibits the disclosure of the particulars of members by the electoral commission, but our members take the view that privacy legislation only punishes those who breach the law; it does not protect the privacy of those whose details it is intended to protect.

The CHAIR — During your submission you talked about participation within the political parties being a big issue.

Mr MULHOLLAND — I am sorry?

The CHAIR — Participation within the political parties being an issue. Can you elaborate on that? What were you referring to?

Mr MULHOLLAND — Voting in elections is one means of participation in the electoral process, and that is available to every registered voter, but participation in the electoral process itself can involve much more than that, particularly participation in political parties. We would think that if people are not able to feel encouraged to join political parties, their participation is somewhat restricted and the registration system as far as we are concerned imposes a burden that would discourage some people from participating by belonging to a political party, or at least belonging to a political party when they know that their personal particulars are going to be submitted to a bureaucratic body. Any agency of government we believe has no business knowing the allegiances of individual members of a political party.

The CHAIR — So you are saying that the registration process impedes participation within political parties?

Mr MULHOLLAND — It discourages people from joining political parties if they know that their names are going to be handed over to somebody outside the political party.

Ms CAMPBELL — Given that there is public funding for parties, what is your view about ascertaining that in fact there is a body of the citizens that is prepared to state it is aligned or a member of a political party? The reason I ask that question is if there are public funds going to political parties, it would seem to me to be reasonable to ensure the legitimacy of the membership of a political party.

Mr MULHOLLAND — We take a different view. It is not the legitimacy of the membership of the party. It is the bona fides of those who administer the organisation and look after the funds. I think the legislation in the UK is probably an indication that they do not require knowledge of the membership. All that they require is the names and addresses and particulars of those who will be responsible for receiving the funds and spending them. A similar situation exists in most of the states of the United States. The only people who are required to provide their details to the relevant electoral bodies are those who are directly responsible for the management of the public funds received.

Ms CAMPBELL — In a week where we have had patient-doctor confidentiality disclosed, which is perhaps one of the most sacrosanct other than the client-lawyer privilege, I can understand where you are coming from.

Mr MULHOLLAND — It has always been a concern since the registration process was introduced. In 1984, when it was first introduced, there was no requirement that political parties actually disclosed to the electoral commission the names and particulars of members. It was not until 1991 when we first received a request from the electoral commission that we identify the 500 members on whom we were relying for registration, and ever since then there has been unease within the Democratic Labor Party and despite the fact that the High Court decided against us in the constitutional challenge, members were prepared to say that they would hand their names over, but they took the view that we should continue to oppose the underlying principle that requires disclosure of personal information.

Mr THOMPSON — With the constitutional challenge, what was the majority in the judgement and what clause of the constitution was relied upon in the case?

Mr MULHOLLAND — There were two aspects of the judgement. One was whether or not the requirements for registration of political parties imposed a burden on democracy, and court decided, I think it was probably five to two — I am not sure of the exact numbers on that particular point — but I think it was about five to two who decided that the legislation did impose a burden on democracy, but the majority, or the whole court, decided that the federal Parliament had the power to impose that burden on the basis that it considered it in proportion to the need to regulate the electoral system for the whole electorate.

The CHAIR — I do not mean to put you on the spot here, but you can comment on it if you want to because it is a little bit outside your submission: what has emerged out of the public hearings today is that there is strong interest in public funding of elections, prohibition of donations and capping of campaign expenses. I would like to know what your party's view, as a minor party, on that is, but I do not want to put you on the spot if you do not have a view on that as a party?

Mr MULHOLLAND — We have a view, but we have not actually made any policy decisions in relation to it. There is a general feeling within the Democratic Labor Party that political parties should not be funded by the taxpayer.

The CHAIR — Thank you.

Ms CAMPBELL — I cannot let this opportunity go without asking you: do you wish to make any comment on the electoral counting system in the last state election?

Mr MULHOLLAND — That is a difficult one because I do not have all the information I need to be able to say anything about it.

Ms CAMPBELL — Thank you.

The CHAIR — No questions? Thank you.

Mr MULHOLLAND — May I ask you a question? Do you mean the specific counting that went on, or are you talking about the proportional — —

Ms CAMPBELL — No, I am just talking about the sense of personal assurance you have that the election result and what was announced was actually how the voters cast their votes, as opposed to the result you would have liked. Do you believe the votes were accurately counted and entered?

Mr MULHOLLAND — I can say that before the announcement of the result in my electorate I had expected that I would not be declared the winner of the fifth position. I thought I would miss out by about 4000 votes. When the recount took place I did miss out by about 4000 votes. On that basis I would say that the system was managed properly.

Ms CAMPBELL — Thank you.

The CHAIR — Are you happy with the rectification that will be taking place? Are you aware of the rectification that will be taking place as a result of the error?

Mr MULHOLLAND — No.

The CHAIR — It is in the reports. We might get that out to you. My next question was going to be: are you satisfied with the rectification?

Mr MULHOLLAND — I do not know what actually happened that caused the error.

The CHAIR — Thank you very much. You will receive a copy of the transcript in about a fortnight. Typing errors may be corrected but not matters of substance. Thank you very much.

Mr MULHOLLAND — Thank you.

Witness withdrew.