

CORRECTED EVIDENCE

ELECTORAL MATTERS COMMITTEE

Inquiry into the future of Victoria's electoral administration

Melbourne — 14 March 2013

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Mr J. Mulholland.

The CHAIR — Welcome to the public hearings of the Electoral Matters Committee inquiry into the future of Victoria's electoral administration and matters related thereto. All evidence taken at 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 and the Defamation Act 2005 and, where applicable, to the provisions of reciprocal legislation in other Australian states and territories. I also advise that any comments you make outside the hearing may not be afforded such privilege. Have you read the *Guide to Giving Evidence at a Public Hearing* that the committee provided?

Mr MULHOLLAND — Yes, I have.

The CHAIR — I ask you to state your full name and business address and whether you are attending in a private capacity or representing an organisation. If you are representing an organisation, what position in that organisation do you hold?

Mr MULHOLLAND — My name is John Vincent Mulholland. I do not have a business address, but my residential address is 5/786 Warrigal Road, Malvern East. I am representing the Democratic Labor Party today. As members of the committee would be aware, there is a dispute as to who is or is not a representative of the Democratic Labor Party, but I have been authorised by the executive to attend and present my submission.

The CHAIR — Your evidence will be taken down and become public evidence in due course. I ask you to make a verbal submission, and after that verbal submission we will ask some questions. As you point out, there is somewhat of a dispute going on within the DLP, as I understand it. We would not like to be drawn into that dispute, I have to say, so, if you could keep your comments within the parameters of our inquiry, we would appreciate it enormously.

Mr MULHOLLAND — Thanks to the committee for the opportunity to make a submission further to the written submission I have already provided. Initially I was not given the opportunity to make a further submission, and it was probably because the committee misunderstood the thrust of my written submission. It was very detailed, and it was probably rather confusing for people who were not familiar with what had been going on. The subject matter of my written submission was intended more as background rather than as matters that I wanted the committee to give consideration to and deliberate on.

The subject matter of my written submission did concern ongoing legal proceedings. They have been going on since 2008 and are continuing. These proceedings are not just within the DLP; they also involved the Victorian Electoral Commission. It was not my intention to involve the committee in these matters; it was simply to point out what I regard as an unfortunate consequence of how the legislation is drafted. There are provisions of Part 4 of the Electoral Act that I hope the committee can examine with a view to looking at amendments. I will not specifically propose amendments, because I do not have the legal background to do that, but I can certainly propose the direction in which amendments might be possible.

I made a submission in relation to provisions of the Electoral Act to the inquiry that was conducted in 2007. Those submissions relate to different aspects of the Electoral Act, but they still indicate my concern that the Act allows the electoral commission to intrude into the affairs of a political party in a way that many members of the party would regard as unacceptable on the basis that it would tend to breach privacy, put barriers in the way of freedom of association and even to some extent undermine the principle of the secret ballot. That submission in 2007 is not unrelated to my present submission, because both arise from what I regard as the unacceptable intrusion into the internal affairs of the DLP by the electoral commission. I am not saying this as a complaint against the electoral commission so much, but as a complaint about the way in which the legislation is drafted.

I refer to discussion point 5 of the inquiry's discussion paper, and say that the community needs to be able to engage with the electoral process as fully as our system of representative democracy allows. Since the overwhelming majority of electors vote for candidates endorsed by political parties that they support, any appearance of bureaucratic intrusion into the internal affairs of those parties could put that support and

community engagement at risk. That is, I suppose, in summary what my point is in making this submission.

I would like to move from there to part 4 of the Electoral Act, which deals with the registration of political parties. I will not be going through the whole thing, but before I go to that, there are a few points that I would like to make about the benefits of registration. Under Part 4 of the Act a register of political parties is established and the name and address of the person who is to be the registered officer is included on that register. Once on the register, a registered party has the benefit in elections of having the name of the party printed on the ballot paper next to the name of its endorsed candidates.

These points that I am making now are not directly relevant to Part 4 of the Act; they are general observations which are based on provisions of the Act. If necessary, I can identify the particular provisions, but for the moment I will not do that. A registered party has the benefit in elections — and you would all know this — of having the name of the party printed on the ballot paper next to the name of the endorsed candidate. A registered political party is entitled to receive electoral enrolment information. A registered political party is entitled to receive certain information — and I was not really aware of this until I made this submission — containing the names and addresses of electors and where they voted and whether they voted in person or by postal vote.

A registered political party is entitled to receive public funding. I think most members of Parliament would be aware of that. A registered political party may nominate its candidates centrally at the electoral commission, rather than at the district or regional offices.

A registered political party has the benefit of ‘official standing’ — and I put that in inverted commas — compared with parties that are not so registered. That is not something that is in the Electoral Act; it is more an anecdotal point, but I think that most candidates who stand for political parties would regard the registration as providing official standing that without which Independents or the members of unregistered parties may have an electoral disadvantage.

The next point I wish to make is one which can tie in with the provisions of the Act. The registered officer of a political party is the main point of contact between the political party and the electoral commission for all purposes under the Act and is the sole person entitled to nominate the registered party’s endorsed candidates in elections. This basically means that the electoral commission, which decides effectively who the registered officer will be, in certain circumstances, can have an influence within the political party which is inconsistent with the independence of the electoral commission. That is a concern that many people in the DLP have.

Of the provisions of the Electoral Act which I wish to refer to in part 4 — I will not deal with all of them — section 45 of the act relates to applications for registration. In section 45(2), paragraphs (a) and (c) are the limits within which the application must be made; (e) and (f) relate to matters which I raised in my submission back in 2007 — that is, the ‘500 rule’ and the ‘no-overlap’ rule. If you have a look at section 45(2)(a), any application for the registration of a political party must be in writing and signed by the secretary of the political party, and it must include the name of the person who is to be the registered officer.

At section 50(1), if an application is made for registration, the commission determines that a political party that has applied for registration may be registered. There are a number of things the commission must do, one of which is to include in the register the name of the party and the name of the person who should be the registered officer. That is all subject to the commission being able to determine correctly whether the application was signed by the secretary.

Section 51 of the act relates to the register of political parties. In relation to changes there is still a condition that any application be in writing and be signed by the secretary of the political party. If there is a dispute within the party about who is the secretary, it is my submission that the status quo should be maintained until there is a court order establishing otherwise — I should say a final court order and not an interlocutory order.

In regard to the circumstances of the DLP, the commission determined that an application that I had made for reregistration of the party — this is section 58 — —

The CHAIR — Mr Mulholland, are we now wandering into areas that might be currently before the courts? Because I would ask you not to do that.

Mr MULHOLLAND — No, these are all matters that have been finalised in the courts. There are no court proceedings — —

The CHAIR — No court proceedings, fine.

Mr MULHOLLAND — dealing with these particular provisions. These have been finalised. I think I included a copy of the transcript of the judgement with my submission. Have you received a copy of that?

Mr TARLAMIS — Yes, it is in the back of the folder.

Mr MULHOLLAND — Essentially what I am saying is summed up in paragraph 8 and the last part of paragraph 13 of my written submission, if I may read those. Under section 51 of the act, application may be made to the VEC to change the registered officer of a registered party. The application must be signed by the secretary. Where the holder of that office is a matter of dispute within a party, as occurred in the DLP case, it is my submission that the VEC has no role except to maintain the status quo. This would be to recognise the existing registered officer as continuing in that capacity. It is my submission that to do otherwise would be to compromise the independence of the VEC. This is the central point of my submission.

In relation to the last part of paragraph 13, I simply say that it is not the role of the electoral commission to make legal determination on matters rightly within the constitutional jurisdiction of political parties themselves. That is either a matter for the political parties or for the courts. That is pretty much my submission.

The CHAIR — Mr Mulholland, thank you very much for your time today. You will receive a copy of the transcript in about a fortnight. If you could check for any typing errors or anything that needs correction, please do that, and if you could resist any temptation to make any other substantial changes, that would be a marvellous thing. Thank you very much for coming in today.

Mr MULHOLLAND — Thank you Chair, and thank you members of the committee.

Witness withdrew.