

NOTICE OF FILING

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Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

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Form 59
Rule 29.02(1)

Affidavit of Kim Wells

VID 1023 of 2023

Federal Court of Australia
District Registry: Victoria
Division: General

MOIRA DEEMING

Applicant

JOHN PESUTTO

Respondent

Affidavit of: **Kim Wells**

Address: [Redacted]

Occupation: Member of Parliament

Date: 8 July 2024

Filed on behalf of (name & role of party)	Moira Deeming, Applicant
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[Version 3 form approved 02/05/2019]

I, Kim Wells, of [REDACTED], say on oath:

1. I swore my first affidavit on 24 May 2024 (**First Affidavit**),
2. Since then, I have read the following affidavits served on behalf of Mr Pesutto:
 - (a) The affidavit of John Pesutto affirmed on 27 May 2024;
 - (b) The affidavit of David Southwick affirmed on 27 May 2024;
 - (c) The affidavit of Georgie Crozier sworn on 27 May 2024;
 - (d) The affidavit of Matthew Bach affirmed on 26 May 2024;
 - (e) The affidavit of Rodrigo Pintos-Lopez affirmed on 24 May 2024;
 - (f) The affidavit of Nick Johnston affirmed on 24 May 2024; and
 - (g) The affidavit of Louise Staley affirmed on 24 May 2024.

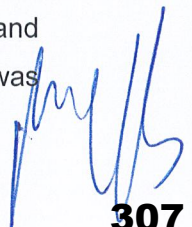
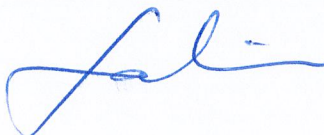
Introduction

3. I joined the Liberal Party in 1984 and have mixed with a wide range of people within the Liberal Party since then. As set out at paragraph [1] of my First Affidavit, I have served as a Liberal Member of the Legislative Assembly in the Victorian Parliament since 1992 – representing Wantirna, then Scoresby, then Rowville. Rowville covers the eastern suburbs of Melbourne, and includes, for example, the suburbs of Ferntree Gully, Knoxfield, Lysterfield, Scoresby and Rowville. As a result of having represented these areas generally since 1992, I know and interact with many members of the public, as well as politicians (from all sides of politics), throughout these regions. Accordingly, and as a result of having represented these areas for over thirty years, I consider that I have a good sense of the prevailing moods and sentiments and viewpoints of people within those regions, and whether particular views are likely to be popular or unpopular or regarded as ‘extreme’ or ‘fringe’. As a Member of Parliament since 1992, I know many people within Parliament – on all sides of politics. At the relevant times, from the time Mrs Deeming was elected as the Member for the Western Metropolitan Region in November 2022, until she was expelled in May 2023, I knew and interacted with all members of the Victorian Parliamentary Liberal Party.

Response to Mr Pesutto’s affidavit

4. In relation to paragraphs [16] and [22] of Mr Pesutto’s affidavit, I am not aware whether the Prime Minister’s Office (PMO) or the Liberal Party Federal Secretariat had previously intervened and prevented Mrs Deeming’s pre-selection at the federal level, as alleged by Mr Pesutto.

5. In relation to paragraph [21] of Mr Pesutto's affidavit, I recall Mrs Deeming being endorsed as the Liberal Party candidate for the Western Metropolitan Region at the November 2022 State Election but I do not recall any controversy surrounding her endorsement. I would expect to recall if there had been any significant controversy surrounding her endorsement.
6. In relation to Mr Pesutto's comment at paragraph [22] of his affidavit to the effect that it 'was very rare' for the PMO or the Liberal Party Federal Secretariat to intervene to prevent a person's pre-selection, I agree it is rare but it does happen and can happen for all sorts of reasons including factional issues playing a part or because of technical or procedural reasons. In my experience, it does not follow from the fact that the PMO or the Liberal Party Federal Secretariat intervened to prevent a person's pre-selection that the person had been regarded as unsuitable for the position.
7. In relation to Mr Pesutto's allegation at paragraph [25] of his affidavit that there were 'growing concerns' by some of his colleagues 'that Mrs Deeming's public commentary in relation to transgender and sex-based rights would continue to attract controversy, not align with the Party's views of liberalism, and were perceived poorly in the community', I was not aware of any such concerns and nobody I knew, within Parliament or outside it, had expressed any such concerns to me.
8. In relation to paragraphs [29] and [30] of Mr Pesutto's affidavit, I do not recall the content of Mrs Deeming's maiden speech. I recall hearing that Mr Pesutto or Ms Crozier had wanted to speak to Mrs Deeming after it. Nobody – within the Parliament, the Liberal Party, the public, or elsewhere - raised any concerns with me about Mrs Deeming's maiden speech, including any concerns that she had 'made various controversial statements in relation to transgender people and sex-based rights' or that she 'should have been more sensitive in her language', as alleged by Mr Pesutto at paragraph [29] of his affidavit. I do not recall being a party to, or being told about, any discussions within the Victorian Parliamentary Liberal Party in which anybody raised any such concerns. I would expect to recall if there had been any such discussions. I do not recall Mrs Deeming's maiden speech being 'the subject of widespread negative media coverage', as alleged by Mr Pesutto at paragraph [30] of his affidavit. If this had occurred, and been politically significant for the Liberal Party, I would expect to recall discussions about this subject within the Victorian Parliamentary Liberal Party.
9. In relation to paragraphs [44] and [45] of Mr Pesutto's affidavit, I knew little about Mrs Deeming prior to 19 March 2023. If Mrs Deeming, as a member of the Liberal Party and later the Victorian Parliamentary Liberal Party, had a bad reputation and views which were 'notorious', as alleged by Mr Pesutto, I would expect to have known a lot about her and her views. Prior to 19 March 2023, I did not know of her views and as far as I was



concerned her views were not 'notorious', as alleged by Mr Pesutto. In fact, I was aware that Mrs Deeming had very strong support in the eastern suburbs of Victoria as well as in the Western Metropolitan Region that she represented. Prior to 19 March 2023, amongst the circles in which I moved, as set out at paragraph [3] above, she did not have a negative reputation including a reputation for giving succour to hateful and/or extreme social or political views as alleged by Mr Pesutto. I interact in Parliament not only with my colleagues within the Victorian Parliamentary Liberal Party but also with many crossbenchers (mainly crossbenchers who are more right leaning). I had never heard anyone raise any such concerns about Mrs Deeming prior to 19 March 2023. Mrs Deeming was elected to be the Liberal Party Whip in the Legislative Council in December 2022. This was a prestigious position. That she was elected to be Whip indicated to me that she had strong support from the Leadership Team and from the majority of MPs.

10. In relation to paragraph [104] of his affidavit, the reason Mr Pesutto says he intended to convey in the Media Release for proposing Mrs Deeming's expulsion (i.e. for associations with people who were themselves associated with far right-wing extremist groups including neo-Nazis):

(a) was not the same reason he gave me over the phone when he called me on 19 March 2023 (as set out at paragraph [11] of my First Affidavit);

(b) was not the reason I understood he was giving in the Media Release (as set out at paragraph [13] of my First Affidavit); and

(c) was not in my view, based on my experience, a sufficient reason to expel a Liberal MP.

11.

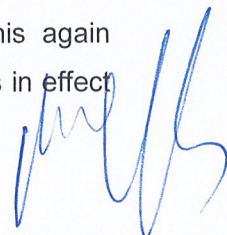
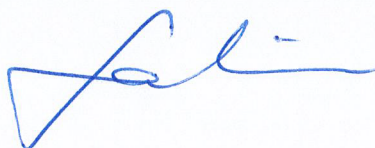
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] That is not how I and others around me I talked with were understanding his statements. My view at the time was that he was accusing Mrs Deeming of associating with extremists and Nazis, but that what he was really suggesting, without saying it directly, was that she was herself a Nazi. It soon became clear to me this is how people I spoke to and observed were in fact understanding his words. He may not have explicitly labelled her a Nazi, but this was, to my belief and observation, the practical effect of his words.

12. In response to paragraphs [106]-[113] of Mr Pesutto's affidavit:

(a) I repeat the comments I made in my First Affidavit including at paragraph [14].

- (b) Based on my experience as a Liberal Party Member of Parliament for 31 years, and a member of the Liberal Party for 44 years, I consider that all decisions relating to discipline of Liberal Party MPs should have been dealt with behind closed doors, internally within the Party, in accordance with the established Party practice and tradition, as had always occurred previously. Publicising his decision to expel Mrs Deeming, by issuing the Media Release, demonstrated a lack of leadership and judgment. The Victorian public had a right to know if a decision was made by the Party Room to expel Mrs Deeming. But issuing the Media Release before a decision had been made, and before the Party Room had even discussed the proposed expulsion, was improper. It put Mr Pesutto in an impossible position in that he had to follow through with the proposed expulsion or risk his own leadership. It also put Mrs Deeming in an impossible position of having to defend the extreme damage to her reputation in public due to her Leader's statements ahead of any consideration by the Party Room of the Expulsion Motion.
- (c) In response specifically to paragraph [108] of Mr Pesutto's affidavit, I do not understand why he could not wait until the Party Room meeting on 21 March 2023 to communicate his concerns and seek input from the Party Room.
- (d) In response specifically to paragraph [109] of Mr Pesutto's affidavit, there was no good reason based on my experience within the Victorian Parliamentary Liberal Party to think that his decision to seek to expel Mrs Deeming would be leaked to the media. At any rate this was not a legitimate reason for him to voluntarily send it out to the press.
- (e) In response specifically to paragraph [110] of Mr Pesutto's affidavit, I do not recall any publicity about Mrs Deeming on 18 or 19 March 2023. I do not agree that Mrs Deeming's involvement in the Let Women Speak rally would have become a news story, or a significant news story, if Mr Pesutto had not himself generated the story by issuing the Media Release and then making other public statements on 20 March 2023. To my observation, he created the controversy by going public.
- (f) At paragraph [111] of Mr Pesutto's affidavit, he says he 'did not believe that staying silent was an option' and he 'believed [he] needed to address the issue to retain credibility'. My view, based on my long experience in politics and the Liberal Party, is that a strong leader would have remained silent, and allowed the Party Room to make a decision, before making any public statement, and it was inappropriate for Mr Pesutto to have done otherwise. [REDACTED]
[REDACTED]
- (g) In response specifically to paragraph [112] of Mr Pesutto's affidavit, this again demonstrates in my mind Mr Pesutto's lack of judgment politically. He says in effect



he was concerned that Daniel Andrews was going to make something out of Mrs Deeming's involvement in the Let Women Speak rally. He should have remained calm, and taken time to properly investigate the facts and what had happened, and spoken to others within the Party Room. [REDACTED]
[REDACTED]

13. In relation to paragraphs [114]-[115] of Mr Pesutto's affidavit, I repeat paragraph [14] of my First Affidavit and paragraph [12] above.
14. In relation to paragraph [137]-[142] of Mr Pesutto's affidavit:
- (a) Mr Pesutto states at paragraph [137] of his affidavit that, in an interview with Peta Credlin on Sky News on 20 March 2023, he said he would consider releasing the Expulsion Motion and Dossier to the public but that he 'wanted to give Mrs Deeming due process and had to consider that issue, including conventions, carefully'. Based on my knowledge and experience of Liberal Party practice and procedure, if he had given due process to Mrs Deeming, and considered the question of Liberal Party conventions, he would not have released the Expulsion Motion and Dossier to the public.
- (b) I do not know whether the Expulsion Motion and Dossier was leaked to and republished in part by *The Age*. I did not leak the Expulsion Motion and Dossier and do not know anyone who did. But even if that occurred, it was not a reason, in my political experience, for Mr Pesutto to provide the Expulsion Motion and Dossier to the media. Again this showed a lack of judgment. He added more fuel to the fire by authorising an internal document to be given to the media. [REDACTED]
[REDACTED] It was contrary to the Liberal Party rules and all they stand for. He should never have released the Expulsion Motion and Dossier.
15. In relation to paragraphs [143] and [144] of Mr Pesutto's affidavit:
- (a) I have given my recollection of the Party Room meeting on 21 March 2023 at paragraph [23] of my First Affidavit.
- (b) I recall Mrs Deeming flicking through the Expulsion Motion and Dossier and talking about its contents. In relation to Mr Pesutto's allegation that Mrs Deeming described an image as 'hilarious', it was obvious to me at the time that Mrs Deeming was not saying that the image itself was 'hilarious' but rather that it was 'hilarious', in the sense of being ridiculous, that the image had been included in the Expulsion Motion and Dossier as somehow justifying her expulsion. I was horrified too when I read the Expulsion Motion and Dossier, that Mr Pesutto thought it could properly justify Mrs Deeming being expelled.

16. In relation to paragraphs [158]-[159] of Mr Pesutto's affidavit, my impression at the time (as I said at paragraph [27] of my First Affidavit) was that during the Party Room meeting on 27 March 2023 the numbers were shifting in favour of not expelling Mrs Deeming and that after Mrs Deeming spoke it was clear [REDACTED] that the vote was not going to pass. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17. In relation to paragraphs [160]-[162] of Mr Pesutto's affidavit:

(a) I have given my recollection of the negotiations at paragraphs [28]-[32] of my First Affidavit.

(b) Mrs Deeming was adamant, and made crystal clear to me, that she would not agree to any compromise or deal unless there was full exoneration and a joint statement from her and Mr Pesutto together. I communicated that to Mr Pesutto. I made clear to Mr Pesutto, and it was part of the compromise, that there would be no deal unless there was a full exoneration of Mrs Deeming and unless she and Mr Pesutto would issue a joint public statement. [REDACTED]
[REDACTED]

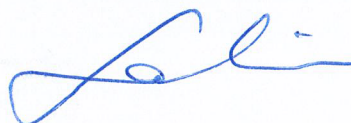
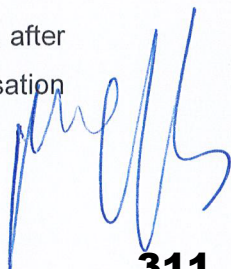
18. At paragraph [172] of his affidavit, Mr Pesutto refers to a press conference in which he said:

'The outcome for the party room meeting on the 27th of March was very clear. It was based on a dossier which formed the basis of the motion. The party room overwhelmingly accepted the outcome of the meeting which was a nine month suspension, statement to be prepared jointly which was in fact done on the day and then confirmation publicly, which was done on many occasions...which nothing on the dossier ever accused Moira Deeming of being a Nazi or herself having Nazi sympathy'.

[REDACTED]
[REDACTED] Mr Pesutto agreed to give a joint statement – jointly with Mrs Deeming – and that is what the Party Room voted on and approved. In making the above comments, Mr Pesutto misrepresented what had happened at the Party Room meeting on 27 March.

Response to Mr Southwick's affidavit

19. In response to paragraph [59] of Mr Southwick's affidavit, and his suggestion that, after Mrs Deeming spoke at the Party Room meeting on 27 March 2023, he had a conversation

with Mr Pesutto in which they agreed they 'could not proceed' based on what they had just heard, I repeat paragraph [16] above.

20. In relation to paragraphs [60]-[62] of Mr Southwick's affidavit:

(a) I repeat paragraph [17] above.

(b) I do not understand how Mr Southwick could have understood from our discussions that what was being agreed was 'a statement agreed by both parties'. I made clear to Mr Pesutto and Mr Southwick that Mrs Deeming was insisting on full exoneration in a joint statement from her and Mr Pesutto together.

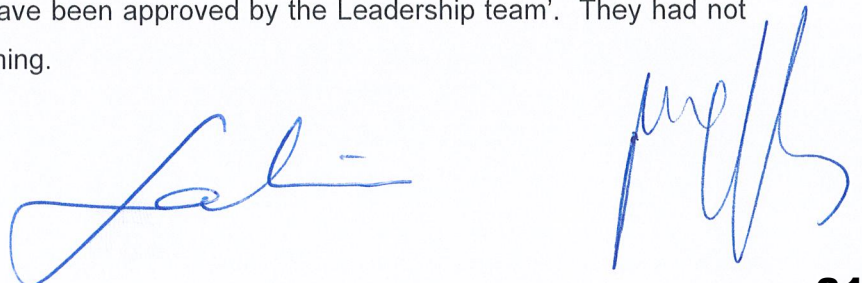
(c) I also dispute that it was 'a matter of common political sense' that we were discussing 'a statement agreed by both parties'. What made political sense was for Mr Pesutto and Mr Southwick to stick to the agreement which had been reached and which was then approved by the Party Room.

(d) I made clear that it was a part of the compromise that Mrs Deeming would get full exoneration. I do not understand how Mr Southwick could have understood, as he alleges, that 'the statement would effectively be Moira unequivocally condemning the Nazis and acknowledging that it was [an] ill-informed error to attend the Rally', which is not full exoneration.

21. I do not recall Mr Southwick saying words to the effect alleged at paragraph [66] of his affidavit, although I do not dispute he may have said them. What I said to Mr Southwick was similar to what I said to Mrs Deeming in my call with her that evening (as set out at paragraph [34] of my First Affidavit) – that is, I said words to the effect that Mrs Deeming should do her part of the joint statement first and then Mr Pesutto should do his part so they could then put out the joint statement. It was clear at all times, I thought, that it was to be a joint release from both of them. If Mr Pesutto or Mr Southwick had ever said they were going to release a statement from Mrs Deeming alone, not a joint statement as promised, I would have stopped the negotiations.

22. In relation to paragraph [74] of Mr Southwick's affidavit, I have given my recollection of the conversation at paragraphs [41]-[44] of my First Affidavit. My contemporaneous notes of the meeting were included in my First Affidavit at pages 7-8 of Exhibit KW-1.

23. At paragraph [76] of his affidavit, Mr Southwick says he sent an email to me at 5.05pm on 30 April 2023 (at Annexure DS-10 to his affidavit) 'with the agreed suspension conditions'. Mr Southwick's email said it 'set out expectations that are expected from you whilst you are on suspension' which 'have been approved by the Leadership team'. They had not been approved by Mrs Deeming.



- 24. In relation to paragraph [79] of Mr Southwick's affidavit, I have given my recollection of this meeting on 3 May 2023 at paragraph [46] of my First Affidavit. Mr Southwick agreed to sort out Mr Pesutto's part of the full exoneration by the next day.
- 25. In relation to paragraph [82] of Mr Southwick's affidavit, my recollection of this meeting is at paragraphs [48]-[49] of my First Affidavit.
- 26. In relation to paragraph [83] of Mr Southwick's affidavit, although I was disappointed that Mrs Deeming had sent her email to the Leadership Team in the morning of 4 May 2023 without telling me, I did not think that 'that Moira had shown bad faith or broken an 'agreement' as alleged by Mr Southwick at paragraph [83].

Response to Ms Crozier's affidavit

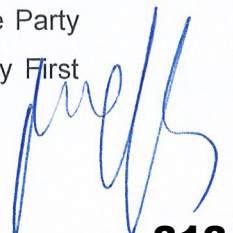
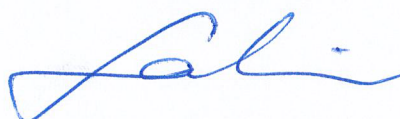
- 27. In relation to paragraph [20] of Ms Crozier's affidavit, I repeat paragraph [8] above. I do not recall Moira's maiden speech generating a negative response as alleged by Ms Crozier. I do not recall there being 'negative publicity'.
- 28. In relation to paragraphs [47]-[49] of Ms Crozier's affidavit, I repeat paragraph [15(b)] above. I recall Mrs Deeming was, in effect, 'scoffing and rubbishing' that the material had been included in the Expulsion Motion and Dossier.
- 29. In relation to paragraph [52] of Ms Crozier's affidavit, in the lead up to the vote on the Expulsion Motion on 27 March 2023, there were people campaigning for and against the Expulsion Motion.
- 30. In response to paragraph [57] of Ms Crozier's affidavit, I agree with her that the Party Room was alarmed and distressed after Mrs Deeming's speech including the disclosures Mrs Deeming had made.
- 31. In relation to paragraph [59] of Ms Crozier's affidavit:

(a) [REDACTED]

(b) In response to the second sentence of paragraph [59], I repeat what I have said at paragraph [17] above and at paragraphs [28]-[32] of my First Affidavit.

Response to Mr Bach's affidavit

- 32. In response to paragraph [56] of Mr Bach's affidavit, what was announced to the Party Room and approved by the Party Room was as set out at paragraph [32] of my First



Affidavit – that Mrs Deeming would be suspended for 9 months and that a joint statement from her and Mr Pesutto would be issued which would make it clear that no one was accusing Mrs Deeming of being a Nazi or a Nazi sympathiser. I do not recall the words ‘joint press conference’ being used. But if they were, it would not have been ‘absurd’ as alleged by Mr Bach. It would have been appropriate. If Mr Pesutto had issued a joint media statement with Mrs Deeming, as he promised, or joined her for a ‘joint press conference’, that would likely have been the end of this matter.

Response to Mr Johnston’s affidavit

33. In response to paragraph [33] of Mr Johnston’s affidavit, and the suggestion that he and Mr Pesutto ‘agreed that it was not appropriate to just put out a statement and refuse to answer any questions about it’, my view, based on my experience in Parliament and the Liberal Party, is that it was inappropriate for Mr Pesutto to have put out his Media Release in the first place and that, having done so, it was also inappropriate for him to make further public statements about it and he should have refused to answer any questions about it.

Response to Mr Pintos Lopez’s affidavit

34. [REDACTED]

[Handwritten signature] *[Handwritten signature]*



Response to Ms Staley's affidavit

35. In response to paragraphs [13]-[15] of Ms Staley's affidavit, I repeat paragraph [9] above, to the effect that, in the circles in which I moved, Mrs Deeming did not have a settled reputation as someone with fringe or extreme views.

Sworn by the deponent
at Scoresby
in Victoria
on 9 July 2024
Before me:

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)
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Signature of deponent

Signature of witness

Name and qualification of witness



Lin FAN
An Australian Legal Practitioner within the meaning
of the Legal Profession Uniform Law (Victoria)