

NOTICE OF FILING

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

Registrar

Important Information

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Form 59
Rule 29.02(1)

Affidavit of Ryan Smith

VID 1023 of 2023

Federal Court of Australia
District Registry: Victoria
Division: General

MOIRA DEEMING

Applicant

JOHN PESUTTO

Respondent

Affidavit of: **Ryan Smith**

Address: [REDACTED]

Occupation: Non-Executive Director, Lincoln Minerals Ltd

Date: 21 July 2024

I, Ryan Smith, of [REDACTED], say on oath:

1. I swore my first affidavit on 21 May 2024 (**First Affidavit**).
2. In this affidavit, I adopt the defined terms used in my First Affidavit.
3. Since swearing my First Affidavit, 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; and
 - (e) The affidavit of Louise Staley affirmed on 24 May 2024.

Filed on behalf of (name & role of party)	Maira Deeming, Applicant
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Introduction

4. I have been a member of the Liberal Party since 2003, and during that time have interacted and mixed with many members of the Liberal Party.
5. As set out at paragraph [2] of my First Affidavit, I was a Liberal Party Member of the Victorian Legislative Assembly from 2006 to 2023, representing the electorate of Warrandyte. Warrandyte is an outer metropolitan electorate of Victoria and contains the suburbs of Park Orchards, Ringwood North, Warrandyte, Warrandyte North, Warrandyte South, Warranwood, Wonga Park, most of Donvale, and parts of Chirnside Park, Doncaster East, and Ringwood. During my time representing Warrandyte from 2006 to 2023, I was heavily involved in the community including interacting with and getting to know people within the electorate, from various cross-sections of society. It was part of my role being the member for Warrandyte to seek to understand the views and perspectives of those within that region.
6. As a Member of Parliament from 2006 to 2023, I interacted with many people within Parliament. I mixed not only with those within the Victorian Parliamentary Liberal Party but also but with people across the political spectrum.

Response to Mr Pesutto's affidavit

7. In relation to paragraphs [16] and [22] of Mr Pesutto's affidavit, I do not know whether the Prime Minister's Office or the Liberal Party Federal Secretariat intervened to result in the rejection of Mrs Deeming's candidacy at the federal level as suggested by Mr Pesutto. It would be rare for such intervention to occur, but in my experience where there is intervention this does not necessarily reflect upon the person's suitability for the role. Rather, there may be a reason based on political factors which may not even be specifically related to that person.
8. In relation to paragraph [21] of Mr Pesutto's affidavit, I recall there being some publicity around the time that Mrs Deeming was endorsed as the Liberal Party candidate for the first spot on the group ticket for the Western Metropolitan Region at the November 2022 State Election. But I recall that publicity being limited to one media outlet (The Age) which in my experience is generally viewed in political circles as a publication that would often write negatively about internal Liberal matters. If the publicity had been widespread, or if it had been politically significant, I would expect I would recall that. In my experience in politics, it is not unusual for there to be some publicity around the endorsement of new MPs. I do not recall the publicity around Mrs Deeming being outside the scope of what in my experience was to be expected or was usual in relation to the endorsement of new



MPs. As set out in my First Affidavit at paragraph [10], I had coffee with Mrs Deeming after she was pre-selected. I walked away from the coffee with a positive view of her.

9. In relation to paragraph [24] of Mr Pesutto's affidavit, I do not recall there being an 'emerging media controversy' surrounding Mrs Deeming's 'views in relation to transgender and sex-based rights' in early December 2022 that should have caused overt concern with the Liberal Party, as alleged by Mr Pesutto. I expect I would recall any 'emerging media controversy' beyond that expected from what are generally considered unfavourable media publications or platforms for the right of politics, if I or anyone else I spoke to was aware of or considered there to be such a 'controversy'.
10. In relation to paragraph [25] of Mr Pesutto's affidavit:
 - (a) I do not recall anyone raising with me any 'concerns' including '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 would expect to recall such conversations if they had occurred.
 - (b) I do not agree with Mr Pesutto's suggestion that Moira's views in relation to transgender and sex-based rights were perceived poorly in the community. My view, based on my experience as set out at paragraphs [4]-[6] above, is that across the broad spectrum of the views of Victorians, some people may have perceived some of Moira's views poorly but others would have supported them and that more people would have supported them than opposed them. Prior to 19 March 2023 I had circulated in community groups where Mrs Deeming's views were well supported.
11. In relation to paragraphs [29] and [30] of Mr Pesutto's affidavit, I was not aware of any concerns or discussions about Mrs Deeming or her maiden speech within the Victorian Parliamentary Liberal Party at the time. If there had been any such concerns or discussions being raised within the Victorian Parliamentary Liberal Party, I would have expected to have heard about them at the time and to recall them. I do not recall her maiden speech being the subject of 'widespread negative media coverage', as alleged by Mr Pesutto. If this had occurred, I would have expected to have seen the publicity at the time and to recall it.
12. In relation to paragraph [33] of Mr Pesutto's affidavit, I do not recall any publicity about the 'FOI documents' (as he describes them). Reading Mr Pesutto's affidavit is the first time I can recall ever hearing about this.
13. In response to paragraph [44] of Mr Pesutto's affidavit, within the circles in which I moved prior to 19 March 2023, as set out at paragraphs [4]-[6] above, Mrs Deeming was known

for having the courage to speak openly about some issues that other people were too fearful to speak about. For example, she was well known for standing up for women's rights. Not everyone within the Victorian Parliamentary Liberal Party, or the Parliament, shared or supported those views. But in the circles in which I moved, her views were widely supported and she had a good reputation. I do not agree they were 'notorious'. It is possible, based on my experience, that some may have regarded some of her views 'as hateful', but anything can be hateful to some people. I can think of left wing views which would be regarded as 'hateful' by many on the right wing. For example, the left wing characterising COVID lockdown protestors as right-wing fascists when in reality (in my view) the vast majority simply felt they could not endure what they considered to be draconian lockdowns. The left-wing's 'identity politics' is also in my experience often viewed as 'hateful' by many on the right of politics. Likewise, in response to Mr Pesutto's suggestion that Mrs Deeming 'had a mixed reputation in the Parliament', in my experience all participants, at least to some extent, had a mixed reputation in Parliament, depending on who you spoke to. Mrs Deeming may not have been universally liked and respected by each and every member of Parliament, but neither was I, and neither was Mr Pesutto. The current Labor Premier, and former Labor and Liberal Premiers, also had 'mixed' reputations in the Parliament.

14. In response to paragraph [45] of Mr Pesutto's affidavit, I repeat paragraph [13] above. I reject Mr Pesutto's suggestion that Mrs Deeming had a negative reputation, 'particularly for giving succour to hateful and/or extreme social or political views'. That was not true in the circles in which I moved. Within the circles in which I moved, my perception is that Moira's views on sex-based rights would have been supported by the majority of people who also had views on those topic.
15. In response to paragraph [46] of Mr Pesutto's affidavit, I did not have concerns that Mrs Deeming's presence within the Victorian Parliamentary Liberal Party was 'an overall negative in terms of winning votes'. To the contrary, as I set out at paragraph [11] of my First Affidavit, we were using Mrs Deeming to gain votes in the Western Metropolitan Region, including within Islamic communities. My observation and perception at the time was that she had generated strong support within those regions. When Mrs Deeming was elected in November 2022, there was a swing to the Liberal Party in her Western Metropolitan Region. My belief, based on my experience in politics, is that she contributed to that swing. As I said at paragraph [12] of my First Affidavit, Mrs Deeming had a reputation as being popular amongst and having the support of her constituents within the Western Metropolitan Region. I thought she could be valuable in helping the Liberal Party gain votes, and there was no evidence or indication that I had seen that she was or would

be a negative in terms of winning votes. Neither Mr Pesutto, nor anyone else within the Liberal Party, raised any concerns with me about Mrs Deeming potentially being a negative in terms of winning votes.

16. I have read paragraphs [102]-[113] of Mr Pesutto's affidavit in relation to the publication of the Media Release. I do not agree that any of what he says justified him issuing the Media Release. I repeat what I said at paragraph [17] of my First Affidavit – to the effect that, based on my experience as a politician since 2006, including my experience and knowledge of the usual practice and processes within the Victorian Parliamentary Liberal Party, I considered it completely inappropriate that Mr Pesutto publicised the Media Release. Based on my experience, and my observations as to how leaders have responded to similar situations in the past, it is my strong view that Mr Pesutto should have remained silent, and not made any public comments, other than perhaps (at most) that he had some concerns which he would discuss internally within the Party Room, until he and the Party Room understood what had occurred over the weekend and until a decision had been made by the Party Room as to what, if any, punishment Mrs Deeming should face as a result of what had occurred. The Victorian public would have a right to know once that decision had been made by the Party Room, and the reasons for it. Until that time, there should have been no public statement.
17. In relation to Mr Pesutto's view expressed at paragraph [109] of his affidavit that his intention to move to expel Mrs Deeming 'would leak to the media', this may or may not have been leaked, but either way it did not justify him publicising the Media Release.
18. In relation to paragraph [110] of Mr Pesutto's affidavit, I repeat paragraph [16] of my First Affidavit. Mr Pesutto seems to have made a judgment call that the Rally, and Mrs Deeming's involvement in it, 'would be a major news story if not the story for every masthead and network in the coming days'. I think he was wrong about that. At any rate, his actions ensured that it was a major news story.
19. In relation to paragraph [111] of Mr Pesutto's affidavit, I repeat what I have said at paragraph [16] above. Mr Pesutto alleges that he 'did not believe that staying silent was an option'. Based on my experience, not only was staying silent an option; it was the most sensible (and perhaps the only sensible) option for him to take. He should not have made a public statement until he had gone to the Party Room. To the extent that he felt he had to speak publicly, he could easily have shut this down by saying he wouldn't be talking about it until after the Party Room had made a decision.
20. I make the same comments in relation to Mr Pesutto's decision to do media statements on 20 March 2023, and I repeat paragraph [18] of my First Affidavit.

21. At paragraph [137] of Mr Pesutto's affidavit, he states that he told Peta Credlin on 20 March 2023 that 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' before doing so. Based on my knowledge and experience of Liberal Party conventions, and the usual accepted practice within the Victorian Parliamentary Liberal Party, Mr Pesutto should not have released the Expulsion Motion and Dossier to the public, especially before the 27 March Meeting to vote on it.
22. I have read paragraphs [138]-[142] of Mr Pesutto's affidavit in relation to the publication of the Expulsion Motion and Dossier. Based on my experience and knowledge of Liberal Party conventions and practices, none of what Mr Pesutto says at paragraphs [138]-[142] of his affidavit justified him providing the Expulsion Motion and Dossier to the media.
23. In relation to paragraphs [143] and [144] of Mr Pesutto's affidavit, I have given my recollection of the 21 March Meeting at paragraphs [24] to [28] of my First Affidavit. In response to paragraph [144] of Mr Pesutto's affidavit, I recall Mrs Deeming saying words to the effect that to use the 'Nazi Barbie doll image' (to use Mr Pesutto's words) as evidence that Ms Keen was a Nazi or had Nazi views was hilarious or ridiculous. My impression at the time is that she was saying that the image did not prove that Ms Keen was associated with Nazis, or that she (Mrs Deeming) should be expelled because of any such associations. She was not saying the image itself was 'hilarious'.
24. In relation to Mr Pesutto's account of the negotiations following the 27 March Meeting, at paragraphs [160] and [161] of his affidavit, I have given my recollection of those negotiations at paragraph [36] of my First Affidavit. To clarify, Mrs Deeming had emphasised to Kim Wells and I that there would be no deal unless she was exonerated by way of a joint statement from her and Mr Pesutto. That was the main thing for her. I cannot recall precisely what words Mr Wells used when communicating Mrs Deeming's position to Mr Pesutto and Mr Southwick, but my impression at the time was that Mr Wells had clearly communicated Mrs Deeming's position and that everyone understood that she was prepared to accept a 9 month suspension but only if she received exoneration by way of the joint statement, meaning a statement from her and Mr Pesutto together. When Mr Pesutto says that by 'joint statement' he meant 'a statement that would be jointly prepared', he did not say this at the time and that was not my understanding at the time.
25. In relation to paragraph [172] of Mr Pesutto's affidavit, about the comments he gave at a press conference on 4 May 2023, I repeat paragraph [40] of my First Affidavit.

Response to Mr Southwick's affidavit

26. In relation to paragraphs [61] and [62] of Mr Southwick's affidavit, I repeat paragraph [24] above. I do not agree with Mr Southwick's suggestion that 'as a matter of common political sense' the words 'joint statement' meant 'there would be a statement agreed by both parties, which Moira would release through the Leader's office'. This is not what was discussed at the time. As I have said, it was clear there was going to be a joint statement from two people.

Response to Ms Crozier's affidavit

27. In relation to paragraph [20] of Ms Crozier's affidavit, I repeat paragraph [11] above.
28. In response to paragraph [47]-[49] of Ms Crozier's affidavit regarding the 21 March Meeting, I repeat paragraph [23] above. My clear impression at the time was that Mrs Deeming was ridiculing the suggestion that the material in the Expulsion Motion and Dossier justified her being expelled.
29. In relation to paragraph [52] of Ms Crozier's affidavit, I agree that Mrs Deeming had supporters who were trying to convince the Leadership Team not to proceed with the Expulsion Motion and persuade other members of the Victorian Parliamentary Liberal Party to vote against the Expulsion Motion. But my observation at the time was that Mr Pesutto and the Leadership Team were doing the same – campaigning for support to expel Mrs Deeming.

Response to Mr Bach's affidavit

30. In response to paragraph [56] of Mr Bach's affidavit, I repeat paragraphs [24] and [26] above.

Response to Ms Staley's affidavit

31. In response to paragraphs [13] and [15] of Ms Staley's affidavit, I repeat paragraphs [13] and [14] above. Within the circles in which I was moving, as set out at paragraphs [4]-[6] above, Mrs Deeming did not have a reputation as someone with fringe or extreme views. In fact, as I have said, her views were widely supported within the circles in which I mixed.

Sworn by the deponent
at ~~Croydon~~ ^{WANTIRNA} _{SOUTH} 3
in Victoria
on 21 July 2024
Before me:

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Signature of deponent

N. Wakeling
Signature of witness

Name and qualification of witness

MICHAEL WAKELING JP
[REDACTED]
JUSTICE OF THE PEACE FOR VICTORIA
[REDACTED]