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Democratic Audit of Australia
As most readers of this newsletter would know, the Electoral Regulation Research Network (ERRN) was established in March 2012 with sponsorship from the Victorian Electoral Commission, New South Wales Electoral Commission and Melbourne Law School. Since that time, close to 50 events have been held across the country under the auspices of the Network; its working paper series has proven to be a valuable avenue for writings on electoral regulation with 27 papers published to date; the Research Collaboration Initiative is significantly underway and will provide strong guidance on how to promote ‘thick’ research collaborations between electoral commissions and academics; and this newsletter series has become an important staple of information on contemporary developments in Australian electoral regulation.

As the three-year Memorandum of Understanding establishing ERRN comes to its end, it is useful to reflect upon what has enabled the energy and dynamism that characterise the Network. Critical to the success of ERRN is its ability to live up to its name – its ability to function as a network, as a constellation of organisations and individuals committed to the mission of ERRN.

Underpinning this is fidelity to the mandate of the Network – that is ‘the aim of fostering exchange and discussion amongst academics, electoral commissions and other interested groups on research relating to electoral regulation.’ This implies attentiveness to the diversity of interests in this area of electoral regulation while at the same time, not shying away from debate of controversial topics, including – especially – when robust discussion might be inconvenient to the interests of key players.

Other core features of the activities of ERRN warrant mention: its decentralised structure with convenors having autonomy to determine what events they wish to organise; its interdisciplinary thrust that recognises and affirms the various disciplines that contribute to understanding electoral regulation; its collaborative spirit with many events organised with co-sponsorship by other organisations; and its national scope with convenors in most jurisdictions in the country.

One feature sustaining the success of ERRN deserves particular acknowledgment – strong support of the vision animating ERRN by the New South Wales Electoral Commission and the Victorian Electoral Commission. ERRN would not have come into existence without far-sighted support from both Commissions and Commissioners (in Victoria, Steve Tully, Liz Williams and Warwick Gately; in New South Wales, Colin Barry). This support has again been powerfully demonstrated by the Commissions agreeing with Melbourne Law School to provide another three years of funding (2015-2018) to ERRN through a second Memorandum of Understanding. Such funding will provide a platform for ERRN to consolidate its current efforts, explore new research efforts – and continue contributing to a more democratic Australia through informed debate and discussion of electoral regulation.

Associate Professor Joo-Cheong Tham
Director, Electoral Regulation Research Network
**News**

**Commonwealth**

There 2013 federal election continues to be a rich source of information for research, analysis and discussion among the Australian electoral regulation community, and also parliaments.

The results of the half Senate election in Western Australia for six Senate seats were not finalised at the time ERRN’s April newsletter was prepared. The election was held on 5 April 2014 and final preferences were declared on 29 April 2014. To refresh, the election was called following the 2013 federal election after the results for the Senate seats in Western Australia were voided by the High Court, sitting as the Court of Dispute Returns, which found the best remedy for the ‘missing’ votes due to the close margin was a special election. Six senators were elected; three from the Liberal Party, one from the Labor Party, one from the Australian Greens and one from the Palmer United Party. Voter turnout was 88 percent of the electoral roll, with an informal voting rate of 2.5 percent.

The Commonwealth Joint Standing Committee on Electoral Matters’ (JSCEM) inquiry into the conduct of the 2013 federal election has received media coverage, with the Committee receiving 205 submissions and holding 17 days of public hearings from February to September 2014. On 9 May 2014 the Committee tabled an interim report on the conduct of the election, focusing specifically on Senate voting practices in the wake of preference deals that saw some candidates elected to the Senate on less than one percent of the total vote (Australian Motoring Enthusiasts’ Ricky Muir was elected on 0.51 of the primary vote). Amongst other analysis, the Committee recommended the Commonwealth Electoral Act 1918 be amended to introduce optional preferential voting above the line voting and ‘partial’ optional preferential voting below the line with a minimum sequential number of preferences to be completed equal to the number of vacancies (six for a half-Senate election; twelve for a double dissolution; or two for any territory Senate election). The Committee's interim report also presented recommendations to the Australian Government for a stronger regime for political party registration, as well as a recommendation, supported by Independent Committee Member Nick Xenophon, to abolish group voting tickets. Subsequent to the report being tabled, Xenophon was quoted in media reports in July suggesting the Abbott Government had shelved its plans for reform, and would revisit the issue closer to the 2016 federal election.

Since the 2013 federal poll and findings from the Keelty report into the 'missing' ballot papers from the 2013 Western Australian Senate election, there has been a wide-ranging discussion amongst Australia’s electoral community about how the Australian Electoral Commission (AEC), and Australian electoral commissions more generally, might use technology to improve internal processes, electoral administration and the integrity of election outcomes. In particular, discussion has focused on electronic voting, in the form of online voting or ‘e-voting’. Giving evidence to the Commonwealth JSCEM on 31 July 2014, Tom Rogers, the Acting Australian Electoral Commissioner, told the Committee that the AEC did not have the internal resources to safely implement an e-voting solution for the 2016 federal election. Mr Rogers said the AEC was committed to overhauling its administration and logistics in the wake of the Western Australian re-election, and that the organisation would not have the time to properly investigate an e-voting solution.

One of the reforms implemented by the AEC as a result of the Keelty report was the establishment, in July 2014, of the AEC Electoral Integrity Unit. Since late September, the Unit has been investigating allegations of fraudulent electoral enrolment activity in the federal Division of Indi in the lead up to the 2013 federal election. On 27 September 2014 The Australian reported that some electors, who were originally from Indi and living elsewhere, allegedly switched their electoral enrolment details from Melbourne-based addresses to Indi addresses in the weeks prior to the poll; some media reports alleged that these electors were encouraged to change their enrolment by the ‘Indi First’ grassroots campaign of now Independent Member for Indi, Cathy McGowan. On 1 October 2014 the AEC indicated that the Australian Federal Police (AFP) would be investigating enrolment activity in Indi to ascertain if it was consistent with electoral law. On 2 October 2014 Ms McGowan also released a media statement, supporting the AFP's investigations and withholding further public comments until the matter was finalised.

Elsewhere, the NSW Independent Commission Against Corruption (ICAC)’s hearings for Operation Spicer, into allegations that NSW Liberal party figures tried to circumvent fundraising bans ahead of the 2011 NSW state election,
have heard evidence that the Liberal Party's Federal Director, Brian Loughnane, **allowed political donations in NSW to be channelled to the federal arm of the party**. In evidence before the ICAC, Counsel assisting presented an email allegedly written by Loughnane authorising the use of federal entities, namely the Canberra-based Free Enterprise Foundation, to sidestep the ban in NSW on political donations from property developments – **Senator Arthur Sinodinos, former Chief of Staff to John Howard, has publicly denied these allegations**. In September, the ICAC investigations extended to involve Peta Credlin, the Prime Minister's Chief of Staff and Mr Loughnane's wife, **revealing her as the source of a 'secret' email with businessman Paul Nicolau regarding the Government's Carbon Tax**. Following this, the Australian Greens have been attempting to secure support for a motion in Senate to establish a federal ICAC.

**Victoria**

Electoral issues are receiving solid coverage in Victoria in the lead up to the 2014 Victorian state election, scheduled for 29 November 2014.

Writing on his Australian Broadcasting Corporation (ABC) blog, Antony Green has suggested that Victorian voters will see the **largest Legislative Council ballot paper** in Victorian electoral history, similar in size to the 1-metre ballot Senate paper in Victoria for the 2013 federal election. In comparison to Commonwealth legislation, in Victoria political parties require the signatures of 500 members for registration. This limits the number of parties that contest elections but **Mr Green still anticipates a large ballot paper**; 14 parties have already been registered for the election, with another 9 awaiting approval.

Elsewhere, media reports suggest the VEC is bracing for a substantial increase in early voting at the 2014 state election. **The Age** and the ABC have reported that the VEC is expecting as many as 1 million pre-poll votes at the state poll, representing 27 percent of total electors enrolled. Writing in The Age, Josh Gordon says that the large number of pre-polls could cause delays in vote counting, as pre-poll votes are only counted after election night.

The Parliament of Victoria has also been actively considering electoral regulation. As reported in the ERRN April newsletter, in March 2014 the Parliament's Electoral Matters Committee tabled its **final report on the future of Victoria's electoral administration and matters related thereto**. Following this, the Committee self-referenced an inquiry into the impact of social media on Victorian elections and Victoria's electoral administration; the Committee received submissions and held public hearings in July before issuing a discussion paper in late September. In the chamber, a Bill to amend the Victorian **Electoral Act 2002 (Vic)** was introduced to the Legislative Assembly on 5 August 2014. The Bill draws on several recommendations from the Committee's 2010 report into the conduct of the 2010 Victorian state election, and if passed, would amend, amongst other measures, the provisions around applying for a postal vote. The amendment would also shorten the early voting period by a day to allow the VEC sufficient time to print ballot papers after the close of nominations.

The VEC has also made some interesting administrative changes for the 2014 Victorian state election in consultation with the Committee. **One of these decisions is discontinuing the election night tally room, where the media has traditionally gathered to report and disseminate election results**. Echoing the decision by the AEC in July 2013 to discontinue the federal tally room, the VEC wrote to the Committee in mid-2013 to suggest that the cost of establishing the tally room was outweighed by its usefulness, particularly as it was out of favour as a broadcast point for media agencies. In place of the tally room, the Committee asked the VEC to establish an election night celebration at Federation Square so that Victorians could still have a place to congregate on election night to celebrate the election. The VEC committed to this in its **2014 State Election plan**.

With the establishment of the Victorian Independent broad-based anti-corruption (IBAC) commission in 2013, debate continues about the role and scope of Victoria's anti-corruption agencies. There have been calls for IBAC to have similar powers to the NSW ICAC; on 12 October 2014, the bipartisan integrity lobby group **Accountability Round Table sent a letter to all major political parties calling for IBAC to have greater investigatory powers**.

On the local government front, the independent Local Government review panel has completed its review of Victoria's local government electoral system. The panel's first report on **electoral processes** was provided to the Minister for Local Government in February 2014; the panel's second report on **electoral representation** was provided to the Minister in
August 2014. The panel made 55 recommendations overall. The Victorian Government is now seeking community feedback until 3 November 2014, before finalising its response.

New South Wales

To say the least, the past six months has been an extraordinary period in NSW politics. The NSW Independent Commission Against Corruption (ICAC) is close to concluding formal proceedings and is preparing final reports for Operations Credo and Spicer, which are due in January. The fallout in particular from Operation Spicer, which is investigating allegations that certain members of parliament and others corruptly solicited, received and concealed payments from various sources in return for certain members of parliament and others favouring the interests of those responsible for the payments, in addition to failing to disclose donations as required by law in NSW, has received considerable coverage in the media. The NSW Liberal Party has been deeply impacted by the ICAC's hearings. Since April 2014, 10 Members of Parliament connected with the NSW Liberal Party, including federal Senator Arthur Sinodinos, have either stood down from the NSW Liberal Party or their parliamentary positions. The most high-profile resignation was Barry O’Farrell as NSW Premier on 16 April 2014, after the discovery of a signed thank-you note written by him for a $3,000 bottle of wine he received from former Australian Water Holdings chief executive Nick Di Girolamo.

In NSW, debate continues about the role of ICAC, tightening laws around political donations and NSW’s political finance system. Recent reports have suggested that Premier Mike Baird is looking to extend the statutory limitation period governing who can be charged in relation to the findings from Operation Spicer, although this is unlikely to receive widespread party room support. Mr Baird is also looking to toughen the penalties for taking a prohibited donation from a property developer and for persons who fail to disclose donations. To this end, on 14 October a Bill was introduced in the Parliament to amend the Election Funding, Expenditure and Disclosures Act 1981 (NSW). The Bill would introduce several measures in time for in the 2015 NSW state election, including:

- Broadly increase penalties for a range of offences under the Election Funding, Expenditure and Disclosure Act 1981 (NSW);
- Prohibit third party arrangements being used to avoid donation and expenditure caps – carrying a maximum penalty of 10 years imprisonment;
- Allow for prosecutions for all future offences to be commenced up to 10 years after the offence was committed, increased from the current three year penalty; and
- Require parties to disclose political donations received from 1 July 2014 to 1 February 2015. This disclosure must be made within one week of the end of this period to the NSW Electoral Funding Authority, and made public before the election.

Regarding public funding, the independent expert panel, lead by Dr Kerry Schott, advising the NSW Government on political finance reform has indicated that a move to full public funding for NSW elections would be ‘practically difficult and raise constitutional issues. In a letter to the NSW Government in early October Dr Schott said it would be difficult to design and implement a funding scheme that provided new political entrants with adequate resources to compete against established parties, and not encourage ‘frivolous’ candidacies. The Schott panel released an interim report on 9 October 2014. The panel’s final report is due on 31 December.

As a result of the ICAC’s findings and two resignations from Parliament, two NSW by-elections were held on 25 October 2014 in the Lower Hunter seats of Charlestown and Newcastle. The Labor Party won both elections.

In an interesting development for Australia’s electoral administration, the 2015 NSW state election will see a significant expansion of the iVote remote electronic voting (REV) system. The system was first used at the 2011 NSW election, and was subsequently supported by the Parliament of NSW’s JSCEM. Most recently, the NSW Electoral Commission (NSWEC) has received funding for the financial years 2013/14 and 2014/15 to implement and operate a new version of iVote for the 2015 NSW state election; it is expected under the current elector eligibility conditions that iVote will issue at least 100,000 votes for the election. If this figure is achieved, the iVote system will have facilitated the largest number of REVs for a national general election internationally – the current benchmark is the 2011 Estonian elections, where approximately 140,000 REVs were taken.

Discussion about local government voting reform for the City of Sydney continues. In August the Shooters and Fishers...
Party introduced the City of Sydney Amendment (Elections) Bill 2014 into Parliament, to amend the City of Sydney Act. Amongst other measures the Bill proposes to give businesses in the City of Sydney two votes versus one vote for individual residents, following on from a recommendation from the NSW JSCEM, on which the Liberal Party and Shooters and Fishers have a majority. Under existing arrangements the City of Sydney maintains a non-residential roll for business owners living outside the Sydney City Council area. Non-resident voters must register to vote before each election but have typically not done so: in 2012, only 1700, or 2 percent, of non-residential electors participated. The recommendations have been met with strong opposition from the Lord Mayor of Sydney Clover Moore, who in conjunction with the City of Sydney has organised several public rallies against the Bill. There is also opposition to the Bill in the Parliament, where independent MP Alex Greenwich has introduced a Bill competing with the Shooters and Fishers, to establish a permanent roll for business voters. By way of comparison, in Victoria, the independent Local Government review panel has broadly rejected the current system of election for the City of Melbourne, which allows non-resident businesses two votes; in one news report, Petro Georgiou AO, Chair of the review panel, noted that ‘a corporation is a legal individual and it should be treated as an individual and that means one vote’.

Queensland

On 22 May 2014 the Electoral Reform Amendment Bill 2013 was passed in the Queensland Legislative Assembly, amending the Electoral Act 1992 (Qld). The Bill made a number of significant changes to Queensland’s electoral system, including cuts to public funding to political parties for campaign purposes, increasing the public funding threshold for parties and independents to six percent, raising the donations threshold to $12,400 and removing limits on election campaign spending in individual electorates. In an Australian first the Bill also introduced changes requiring voters to produce some form of ID at a polling booth, such as a utilities bill. Those without sufficient ID submit a declaration vote that is later checked for its validity. Professor Graeme Orr and Antony Green have written about the broader implications of the legislative changes for Queensland’s electoral system.

The first election to take place under the new system was the Stafford by-election, held on 19 July 2014 and won by the Labor Party’s Anthony Lynham. Concerns about the new voter ID laws delaying the counting of votes and resulting in queues at polling places were allayed before the election by Acting Electoral Commission, now Electoral Commissioner, Walter van der Merwe. Appearing before the Queensland Parliament’s Estimates Committee on 15 July 2014, Mr van der Merwe advised that 100 percent of voters at pre-poll voting centres in Stafford presented appropriate ID.

South Australia

The SA state election result of 15 March of 2014 continues to influence the work of the Parliament of South Australia. The Labor Party won 23 of the state’s 47 lower house seats, the Liberal Party won 22, and two Independents won Districts that would otherwise have voted Liberal. When one of these Independents supported Labor to form government, the Liberal Party saw the election result as a failure of the state’s unique fairness clause, while Labor saw the election outcome as a function of its own superior campaigning and its ability to make post-election agreements with Independents.

On May 27 2014 the position of the minority Labor Government was shored up on the floor of the House of Assembly. On that day former State Liberal Leader Martin Hamilton-Smith resigned from the Liberal Party, declared himself an Independent Liberal and was sworn in as a minister in the Weatherill Labor Government. He took on the Ministries of Investment and Trade; Defence Industries and Veterans Affairs, having been until the previous day the Liberal spokesperson on most of these areas. On 6 June 2014 the Parliament of South Australia appointed a Select Committee of the Legislative Council to inquire into a broad range of matters relating to the 2015 South Australian election.

Both houses of the SA Parliament remain focused on electoral reform: Legislation is being considered to set up a permanent Joint House Standing Committee on Electoral Matters. The Bill has passed the House of Assembly but is still with the Legislative Council.

There is continuing debate in the Parliament about the ‘fairness’ of South Australian electoral outcomes. When the Labor Government’s Electoral Laws and Practices Committee Bill was introduced into the Council, the Assembly was considering
a Liberal Bill to set up a one-off Commission of Inquiry on Electoral Reform. That Inquiry would involve three commissioners appointed to provide an electoral system that ‘would ensure that the political party or recognised coalition that receives the majority of the State-wide vote at a general election of members of the House of Assembly is elected in sufficient numbers to enable that party or coalition to form a government (whilst also ensuring that the requirements of section 66 of the Constitution Act 1934 (SA) are maintained)’. The commissioners would not be limited to redistribution methodology but could consider alternatives to the existing single member district system.

Meanwhile there is continuing debate on several proposed changes to the voting system. The Greens’ Electoral (Legislative Council) (Optional Preferential Voting) Amendment Bill would allow OPV for both ‘above and below the line sections’ of the Legislative Council ballot paper, without prescribing any minimum number of preferences; while Family First’s Electoral (Legislative Council Thresholds) Amendment Bill would impose a 2.5% threshold on first preferences below which a Legislative Council candidate could not be elected.

South Australia is also holding local government elections. These take place every four years and the ballot is conducted by postal vote – ballot papers are being sent out in the week 20 to 24 October 2014 and voting closes on 7 November 2014.

Western Australia

A by-election for the District of Vasse was held on 18 October as a result of the resignation of long-term MLA Troy Buswell on 3 September 2014. The seat was retained by the Liberal Party’s Libby Mettam, despite a strong swing to the Nationals.

On 15 September 2014 David Kerslake was appointed to a five-year term as Western Australian Electoral Commissioner.

Tasmania

It is has been a busy 6 months in the Tasmanian election cycle following the Tasmanian state election in March 2014. On 3 May 2014 elections periodic elections were held in the Legislative Council divisions of Huon and Rosevears. The last elections in these divisions were held in 2008. In Huon, Independent Robert Armstrong was re-elected; in Rosevears, Independent Kerry Finch was re-elected.

At the time of writing, voting is taking place in the statewide Tasmanian local government elections, with a voting period from 14 October to 28 October 2014. Tasmania does not have compulsory voting for local government elections, and turnout typically reflects this: turnout was approximately 55 percent at the 2011 local government elections. This is the first time in Tasmania that entire councils have been up for election simultaneously. It is also the first that that people with no direct civic experience with council can run for election for Mayor or Deputy Mayor.

Australian Capital Territory

A Select Committee of the Australian Capital Territory Legislative Assembly completed an inquiry into reform of the Electoral Act 1992. The terms of reference required the Committee to examine the membership of the Legislative Assembly expanding to 25 members at the 2016 election. The Committee was also required to examine the recent High Court decision in Unions NSW & Ors v NSW, and its implications for the Electoral Act 1992. It found that the ACT’s major campaign finance reforms introduced in 2012 generally appeared to be working well, but that adjustments were needed and that donations towards ACT election campaigns will most likely no longer be able to be restricted to ACT voters. On 5 June 2014 ACT Attorney-General Simon Corbell introduced amendments to increase the size of the Assembly to 25 members. The debate continues.

Northern Territory

A by-election was held for the northern Darwin seat of Casuarina on 18 October 2014, following the resignation in June 2014 of Labor MP Kon Vatskalis. Labor’s Lauren Moss retained the seat.
Elsewhere the Australian Electoral Commission is investigating links between the governing Country Liberal Party (CLP) and the private company Foundation 51, to determine whether Foundation 51 is an associated entity of the party. In recent news reports, Northern Territory Chief Minister Adem Giles has said that Foundation 51 did not contribute to his election campaign. However, Giles stopped short of making assurances for other CLP members of Parliament.

### Upcoming Elections

- 7 November 2014: last date for South Australian local government elections
- 4 November 2014: US mid-term elections
- 15 November 2014: Newcastle mayoral election
- 29 November 2014: Victorian state election
- 28 March 2015: NSW state election
- By June 2015: Queensland state election
**Forthcoming Events**

**27 November 2014:** ERRN (VIC) Seminar: Australia's Gridlocked Political System: The Fruit of a Slow-Burn Legitimacy Crisis  
Speaker: Professor Ian Marsh

Since the end of the second world war, Australia’s political system has evolved through four moments. In the first two, the system was bound to its publics through dense organisational and attitudinal tissue. In the most recent two, these linkages have dissolved. The gap between the formal system and its publics is now profound. An accumulation of structural (or systemic) and more immediate changes have corrupted politics and policy making. Political elites are trapped in a short term cage. The present formal system was initiated in 1909 when Australian society divided broadly on binary lines. These days are long past. The community is now much more pluralised and differentiated. It is hard to believe that what we have inherited continues to be fit for purpose for the Australian society of the twenty-first century.

Ian Marsh is a Visiting Professor at RegNet the Australian National University. This talk is based on his most recent book (with Raymond Miller), Democratic Decline and Democratic Renewal: Political Change in Britain, Australia and New Zealand (Cambridge, 2012). David Marquand said of this study: ‘Ground-breaking is an over-used word. But this fine comparative study amply deserves it…A major contribution both to empirical knowledge and normative theory. Indispensable.’

**4 December 2014:** ERRN (SA): Compulsory voting, for and against  
Speakers: Professor Lisa Hill and Professor Don DeBats

At this seminar, Professor Lisa Hill and Professor Don DeBats will finally have a chance to engage in the debate on compulsory voting that they started at our very first ERRN meeting last year. Lisa is the co-author of several works compulsory voting and is very much in favour of it, while Don has a US stance which puts him firmly in opposition to any form of compulsion on electoral matters. When they first started their debate, many of us there were surprised that the subject suddenly came to life and it was clear that there was much more to consider than simply whether compulsory voting is helpful or not. Lisa and Don are both passionate about their positions and will have you firing up as well!

Lisa is Professor of Politics at Adelaide University and author with Jason Brennan of *Compulsory Voting: For and Against* (Cambridge University Press, 2014).

Don is Head of the Department of American Studies at Flinders University, Director (US) of the Centre for United States and Asia Policy Studies, and Chair of the Board of Directors of the Australian-American Fulbright Commission.
ERRN Event Reports

Audio recordings of ERRN events can be found on individual event pages.

May

ERRN (NSW) & AACL (NSW) Seminar: Panel on the Unions NSW & Ors v NSW Political Finance Case
Thursday 1 May 2014
Chair: Mr Ian Temby AO QC (St James Hall Chambers)

In Unions of NSW v NSW [2013] HCA 58, the High Court found two sections of the Election Funding, Expenditure and Disclosures Act 1981 (NSW) invalid for impermissibly burdening the freedom of political communication implied by the Australian Constitution. In doing so, the Court affirmed its acceptance of ‘anti-corruption’ as a legitimate object of electoral reform but found these laws invalid as having no relation to such an object. In this seminar, Professor Adrienne Stone (Melbourne Law School), Associate Professor Joo-Cheong Tham (Melbourne Law School) and Dr Anika Gauja (Department of Government and International Relations, The University of Sydney) explored the significance of the case for constitutional law, election law and law reform.

ERRN (WA), Western Australian Electoral Commission and the Constitutional Centre Seminar: The WA Senate Election(s) – A Conversation with Antony Green
6:00 pm Tuesday 6 May 2014, The Constitutional Centre of Western Australia, Perth
Chair: Professor Alan Fenna, Curtin University of Technology

In this seminar Antony Green discussed the implications of the 2014 WA Senate re-election for Australia’s political and electoral system.

June

ERRN (VIC), Election Watch & CMCL Seminar: Free and Fair Media Reporting of Elections
1:00 pm Tuesday 3 Jun 2014
Chair: Nicholas Reece, Election Watch, The University of Melbourne

Organised in conjunction with the Australian Broadcasting Corporation, this seminar brought together a panel of journalists and experts to discuss important questions relating to the coverage of elections from different national perspectives. Speakers were Stephanie March, the ABC’s India correspondent for the Australian Network, Dhanjay Deo, Fijian journalist, Lady Luseane, News Editor and Broadcom Broadcasting, Tonga and Associate Professor Sally Young, University of Melbourne. The seminar considered the role of the media in reporting on election, particularly in relation to promoting free and fair elections, as well as the democratic responsibility of the media.

Photos from the ERRN (VIC) Seminar on the 3 June 2014.
The last six months have seen considerable developments in the area of party regulation, including the Unions NSW decision, a federal parliamentary inquiry into Senate voting at the 2013 election, substantial political finance reforms in Queensland and, in NSW, the establishment of an expert panel to inquire into the desirability of full public funding for election campaigns following recent ICAC hearings. Following these events, party regulatory reform is on the agenda.

This panel brought together Colin Barry (NSW Electoral Commissioner), Gareth Ward (Chair, NSW Electoral Matters Committee, Liberal Party), Luke Foley (Member of the NSW Legislative Council, ALP) and Geoff Ash (NSW Greens’ Registered Officer) to address some of the issues surrounding party regulation and electoral law reform.

July


Chairs: Professor Tim Lindsey and Dr Helen Pausacker, Centre for Indonesian Law, Islam and Society, The University of Melbourne

In this seminar, four prominent scholars of Indonesian politics discussed the 2014 Indonesian presidential election, speculating on the likely outcome of the following week’s polls and considering its implications for a range of issues, including foreign policy, the place of Islam, regional politics and Indonesia’s relations with Australia.

August

ERRN (NSW) Forum: Every Vote Counts?: Multiple Voting, iVote and Electoral Integrity in NSW Wednesday 6 August 2014

Chair: Gareth Ward MP, Chair, NSW Joint Standing Committee on Electoral Matters

The re-run of the WA Senate election sparked nationwide debate on electoral integrity. As NSW prepares for a State election in March 2015, integrity issues are also on the agenda. In February 2014 a major NSWEC report on multiple voting canvassed the possibility of voter identification laws. And, as the merits and risks of electronic voting continue to be debated, the NSW JSCEM has called for iVote to be available to all voters. This panel brought together four experts to discuss these and other issues around electoral integrity, and possible responses to them.

ERRN (VIC) Seminar: Recommendations of the Presidential Commission on Election Administration Thursday 7 Aug 2014

Chair: Warwick Gately, Victorian Electoral Commissioner

In his acceptance speech on the evening of the 2012 election, President Barack Obama noted the long lines of voters waiting in polling places in Florida and elsewhere, and he ad-libbed ‘we have to fix that’. In his State of the Union Speech three months later he announced the formation of a Commission to be led by his campaign lawyer, Robert Bauer, and Mitt Romney’s campaign lawyer, Ben Ginsberg, which would be tasked with making recommendations to address the problem of long lines as well as other issues concerning the administration of American elections. The following year the Commission made a series of recommendations for improving the American voting experience including making available online voter registration, expanding access to polls, improving polling place management and dealing with changes in voting technology.

Professor Nathaniel Persily – the senior research director for the Commission – discussed the report and recommendations of the Commission with Warwick Gately, the Victorian Electoral Commissioner, commenting from an Australian perspective.
ERRN (VIC) Seminar: The Professionals: Money, Strategy and the Rise of the Political Campaigner in Australia
Friday 29 Aug 2014
Chair: Nicholas Reece, Public Policy Fellow, Centre for Public Policy

Presented by Dr Stephen Mills, University of Sydney, this seminar examined the professionalisation of Australian election campaigns, from the pre-television days to the contemporary campaign model of social media and micro-targeting. Dr Mills’ research included interviews with every living national campaign director of the Liberal and Labor parties, whose experience covers the 16 federal election campaigns from 1974 to 2013. These professional campaign managers have been responsible for centralising campaign management, formulating and implementing the party’s campaign strategy and raising the financial and other resources necessary to conduct the professional campaign. Dr Mills discussed the implications of professionalisation for Australian political parties and for democratic electoral practice.

September

ERRN (VIC) Seminar: Voter ID
Friday 12 Sep 2014
Chair: Liz Williams, Deputy Victorian Electoral Commissioner

Voter identification is currently a hot topic in the USA, the UK and Australia. In this seminar Senator for Victoria Scott Ryan put the affirmative case for voter ID while Professor Brian Costar, Swinburne University of Technology, argued the case against.
ERRN Working Paper Series

In support of the Electoral Regulation Research Network’s aim of fostering exchange and discussion amongst academics, electoral commissions and other interested groups on research regulating to electoral regulation, the ERRN together with the Democratic Audit of Australia regularly publishes a series of Working Papers. These Working Papers are intended to help foster discussion about all aspects of electoral regulation.

Working Paper 25
April 2014: ‘Victorian Local Government Electoral Review’
Petro Georgiou AO, Chair of the Local Government Electoral Review Panel, Former Member for Kooyong
Abstract: In this paper Mr Georgiou discusses the panel’s observations about Victoria’s local government electoral system, the themes addressed by the panel’s Stage One and Stage Two reports.

Working Paper 26
September 2014: ‘Polling officials: The Strengths and Weaknesses of Democratic Systems’
Ed Killesteyn, Australian Electoral Commissioner, 2009 to 2014
Abstract: The scale and logistical demands of conducting elections means that they are typically delivered by many thousands of men and women employed for very short periods of time, most no more than a single day every three, four or five years depending upon the constitutional requirements or electoral laws of the country concerned. The inevitable fact that elections can only be delivered ‘through’ the individual and collective efforts of large numbers of ordinary men and women drawn from the community represents a fundamental strength of modern democratic systems. Their involvement provides transparency, credibility and a strong sense of participation in the process that ultimately determines who will be installed as the government of the day to make decisions affecting the lives of the country’s citizens. Yet, as some recent events in Australia (and elsewhere) demonstrate, serious errors in electoral process made by polling officials can threaten the perceived or actual integrity of the electoral outcome. The capacity of these same men and women from the community to conduct the election on behalf of their fellow citizens represents a challenge for electoral management bodies (EMBs) not only in the training and recruitment practices adopted, but also for Parliament in the design of electoral systems and legislative powers conferred upon EMBs. While much of the research and literature treats these issues independently, this paper contends that the issues of polling official management, electoral system design and powers conferred on EMBs are very much interrelated.

Working Paper 27
September 2014: ‘Enhancing Local Government Democracy: City of Melbourne’
Ken Coghill (Monash University), Yee-Fui Ng (Monash University) and Paul Thornton-Smith (Victorian Electoral Commission)
Abstract: This paper describes a research project which aims to address the following questions: To what extent does representation in the City of Melbourne reflect ‘democratic principles’?; What are the implications of property franchise for local government in the City of Melbourne?; What reforms would enhance representative democracy for the City of Melbourne?; How should the City of Melbourne Act 2001 (Vic) be reformed?
Recent Publications

In the *Alternative Law Journal*, Graeme Orr discusses convenience voting – also known as early voting – and its impact on the ritual of election day.

In the *Australian Journal of Political Science*, Graeme Orr and Anika Gauja discuss *third party campaigning and issue advertising in Australia*. In the same journal, ERRN Working Papers Editor Aaron Martin, Keith Dowding, Andrew Hindmoor and Andrew Gibbons discuss the link between *policy and public opinion*.

In *Election Law Journal*, ERRN South Australian convenor Jenni-Newton Farrelly has published an article about *fair electoral redistricting in the State of New Jersey and the role of the Eleventh Member*.

The independent expert panel appointed by the NSW Government to review the state's political finance system released an *interim report* on 9 October 2014.

The ACT's Select Committee on Reform of the *Electoral Act 1992* has published its *final report* for the inquiry into whether the ACT's Legislative Assembly should be expanded to 25 Members, and other matters.

The Parliament of Victoria's Electoral Matters Committee has issued a discussion paper for its inquiry into the *impact of social media on Victoria's electoral administration and Victorian elections*.

The Victorian Electoral Commission has published a position paper on *multiple voting*.

ERRN Case Notes

Queensland Police Union of Employees v Queensland (High Court)

As outlined in the last newsletter, three unions, the Queensland Police Union of Employees, Queensland Nurses’ Union of Employees and the Queensland Teachers Union of Employees, brought proceedings in the High Court challenging section 553F(2) of the Industrial Relations Act 1999 (Qld).

Section 553F(2) provided that an organisation may only spend more than $10,000 for a political purpose in a financial year if the spending is authorised by a self-funded ballot by members. The applicants are seeking a declaration that section 553F(2) was invalid on the ground that it infringes the implied freedom of political communication.

The case was discontinued on 9 July 2014. This is because the Queensland Government repealed the provision that was being challenged through s 55R of the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014 (Qld). The repeal was due to the Queensland Government reviewing its provisions for balloting to authorise spending for a political purpose following the recent High Court decision of Unions New South Wales v State of New South Wales (2013) 304 ALR 266 (reported in the last newsletter), where provisions in the Election Funding, Expenditure and Disclosures Act 1981 (NSW) were struck down for breaching the implied freedom of political communication.

McCloy v New South Wales and ICAC (High Court)

On 28 July 2014, Newcastle Lord Mayor Jeff McCloy, and two companies he is associated with (McCloy Administration Pty Limited and North Lakes Pty Limited) lodged a writ in the High Court challenging the ban on property developers and other prohibited donors making political donations under section 96GA of the Election Funding, Expenditure and Disclosures Act 1981 (NSW). McCloy is arguing that the bans limit the implied freedom of political communication and that the limitation is not justified by any avoidance of any potential or perceived corruption or undue influence risk.

McCloy launched these proceedings after admitting to the ICAC that he made illegal donations by giving envelopes stuffed with $10,000 in cash each to former Liberal Members of Parliament Tim Owen and Andrew Cornwell before the last election, as well as a smaller sum to MP Garry Edwards.

The writ lodged by McCloy notes that section 9 of the Independent Commission Against Corruption Act 1988 (NSW) provides that conduct that would otherwise be corrupt does not amount to corrupt conduct under the Act unless it amounts to a criminal offence under a State law. If successful in arguing that s 96GA is constitutionally invalid, McCloy contends that his conduct in making the donation ‘was incapable of being unlawful’ and was not a criminal offence.

Currently, there is a cap on political donations in the 2014-15 financial year of $5700 for registered political parties and groups, and $2400 for candidates, unregistered political parties and third party campaigners.

The effect of this case if successful would be to overturn the current bans on political donations from property developers, tobacco business entities, alcohol or gambling business entities, their close associates and industry representative organisations.

ICAC Inquiries

Operations Credo and Spicer

Operation Credo investigates allegations concerning corrupt conduct involving Australian Water Holdings Pty Ltd (AWH). This investigation will examine:

- allegations that persons with an interest in AWH obtained a financial benefit through adversely affecting the official functions of Sydney Water Corporation (SWC) by including expenses incurred in other business pursuits in claims made on SWC for work on the North West Growth Centre; drawing from funds
allocated for other purposes; and preventing SWC from ascertaining the true financial position, including the level of the executives’ remuneration; and

- whether public officials and others were involved in the falsification of a cabinet minute relating to a public private partnership proposal made by AWH intended to mislead the NSW Government Budget Cabinet Committee and obtain a benefit for AWH, and other related matters.

This investigation has implicated Nicholas Di Girolamo, AWH Chief Executive and Liberal Party fund-raiser, and Arthur Sinodinos, a former director of AWH and former Treasurer of NSW Liberal Party. As a result of the publicity surrounding Operation Credo, Sinodinos has stepped aside as federal Assistant Treasurer.

Operation Spicer, on the other hand, investigates allegations of corrupt solicitation, receipt and concealment of political funding payments to various Members of Parliament - including former Liberal Party Energy Minister Chris Hartcher - in exchange for favoured treatment of the funders.

The investigation will examine whether:

- between April 2009 and April 2012, certain members of parliament including Christopher Hartcher, Darren Webber and Christopher Spence, along with others including Timothy Koelma and Raymond Carter, corruptly solicited, received, and concealed payments from various sources in return for certain members of parliament favouring the interests of those responsible for the payments;

- between December 2010 and November 2011, certain members of parliament, including those mentioned above, and others, including Raymond Carter, solicited, received and failed to disclose political donations from companies, including prohibited donors, contrary to the *Election Funding, Expenditure and Disclosures Act 1981* (NSW); and

- Eightbyfive, a business operated by Mr Koelma, entered into agreements with each of a series of entities including AWH, whereby each entity made regular payments to Eightbyfive, purportedly for the provision of media, public relations and other services and advice, in return for which Mr Hartcher favoured the interests of the respective entity.

These two investigations have thus far resulted in the resignations of Barry O’Farrell as Premier; two Liberal Party Ministers, Chris Hartcher and Mike Gallacher; two Members of Parliament, Tim Owen and Andrew Cromwell, and the withdrawal of four Members of Parliament from the Liberal Party, Chris Spence, Darren Webber, Marie Ficarra, and Garry Edwards.

It is anticipated that the ICAC will finalise these investigations in January 2015.
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