In this message, I am delighted to draw attention to two new ERRN initiatives. The first is the development of an Australian Electoral Law Library to be hosted by AustLII. Commencement of this project followed a scoping study undertaken by Dr Paul Kildea (Gilbert + Tobin Centre of Public Law, University of New South Wales). On the basis of this report (including strong support for such a database), the ERRN Governance Board commissioned the development of the Australian Electoral Law Library. As the report by Paul in this newsletter says ‘(t)he online database will be hosted by AustLII and will provide free, open access to electoral law decisions by Australian courts and tribunals, and to legislation, journal articles and other materials’ – it ‘promises to be a valuable resource for electoral commission officials, academic researchers and the general public’.

The other initiative, foreshadowed in my previous message, is the course on ‘Regulation of Elections’ which aimed to provide an introductory course to electoral commission staff on the research and scholarship on the regulation of Australian elections through presentations by leading experts. Over two days in July, more than 30 senior officials from all of the electoral commissions participated in an exciting forum of learning and discussion with leading experts from across the country providing presentations on key topics on the regulation of Australian elections (see report on page 15).

As with all of ERRN activities, these two initiatives would not have come about without effective collaboration. The Australian Electoral Law Library involves collaboration between electoral commissions, the Gilbert + Tobin Centre of Public Law at University of New South Wales and AustLII; the success of the ‘Regulation of Australian Elections’ came about through the combined enthusiasm of academics and electoral commissions for the course.

These initiatives, along with other ERRN activities, contribute to Australia’s democracy in a narrow and broad sense. It is a paradox of democracy that its processes seek to shape regulation as well as being constituted by it. The latter clearly implies the need for deep knowledge of the institutional mechanisms of democracy not only for their effective operation but also in terms of envisioning democratic progress. So it is that ERRN initiatives directly contributes to building and maintaining expertise essential to the democratic enterprise.

The more diffuse way in which ERRN activities contribute to democracy stems from the basic fact that democracies are founded upon community – a profound sense of shared values, shared lives and shared destinies. While there is clearly a significant degree of spontaneity in the creation and sustenance of community, it is equally clear that community needs to be cultivated. Democratic communities in particular depend upon a democratic ethos – a sharing of democratic values as well as the willingness to act to advance these values and, if necessary, to defend them. In small yet significant ways, ERRN contributes to sustaining and deepening Australia’s democratic ethos.

Professor Joo-Cheong Tham, 
Melbourne Law School
Leadership challenges and new prime minister

In August 2018, then Home Affairs Minister Peter Dutton challenged then Prime Minister Malcolm Turnbull for the leadership of the Liberal Party, due to dissatisfaction from the party’s conservative wing about policy direction. Turnbull defeated Dutton in a leadership ballot, but internal tensions continued to mount after the vote and the party ultimately voted in favour of holding a second ballot. Turnbull chose not to be a candidate. In the second vote, then Treasurer Scott Morrison emerged as a compromise candidate, defeating Dutton and then Foreign Minister Julie Bishop to become leader of the Liberal Party and Australia’s 30th prime minister.

Turnbull resigned from Parliament on 31 August 2018. The Wentworth by-election is scheduled for 20 October 2018. Dutton was subsequently reappointed to the Home Affairs’ Portfolio on 28 August 2018. Bishop resigned from the Foreign Affairs Portfolio on 26 August 2018.

Further amendments to political donations Bill

The April 2018 ERRN newsletter reported extensively on the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (Cwlth). The Bill was first introduced in December 2017 and has proposed the most significant changes of federal election funding laws for more than a decade. The Bill was then referred to the Commonwealth JSCEM in December 2017, with the committee issuing an advisory report on 9 April 2018; recommendations from the advisory report were discussed in the April 2018 ERRN newsletter.

On 20 September 2018, the Bill was once again referred to the Commonwealth JSCEM by the Special Minister of State, with the JSCEM asked to examine proposed amendments to the Bill arising from the JSCEM’s April 2018 advisory report. As part of the inquiry process, the JSCEM released an exposure draft of Government amendments to the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017, and a mapping document showing key amendments addressing recommendations of the JSCEM’s April 2018 report. According to the revised explanatory memorandum for the Bill, the “amendments seek to reduce the Bill’s regulatory burden while ensuring the Bill is still effective at achieving its goal of ensuring that only those with a meaningful connection to Australia are able to influence Australian politics and elections through political donations.” A summary of JSCEM’s key recommendations, and proposed responding amendments, follows;

**Political expenditure**

a) Amendments replace the definition of political expenditure with a new definition – electoral expenditure. The definition of electoral matter feeds into this new definition, and is based on intent to influence the way electors vote in a federal election, including by promoting or opposing parties, candidates, groups, or parliamentarians.

**Transparency register and disclosure obligations**

b) Registration processes are streamlined and simplified by the introduction of a single Transparency Register. The number of people and entities required to register is reduced through higher thresholds for political campaigners, and removal of registration requirements for third parties. However, any person or entity not required to register may choose to register voluntarily.

c) Disclosure obligations are made more commensurate with levels of expenditure. Disclosure obligations are reduced for third parties, who will no longer be required to report non-financial particulars. Independent audit requirements are removed.

d) The threshold for Political Campaigners is increased to cover those who incur electoral expenditure of $500,000 or more in the current or past three financial years (or where they spend more than $100,000 on electoral expenditure and electoral expenditure was at least two-thirds of revenue in the previous year).

**Associated entities**

e) New elements of the definition of associated entity are removed, and transitional arrangements introduced for automatic associated entity registration to reduce the regulatory burden.
Foreign donations

A definition of foreign donor is added to the Bill. Whereas the Bill bans political campaigners from receiving gifts from foreign donors and foreign bank accounts, the draft amendments only ban gifts from foreign donors. While third parties are prohibited from financing electoral campaigning with foreign money, they no longer need to keep foreign funds for their other activities in separate bank accounts.

The amendments remove the need for statutory declarations and simplify obligations with respect to foreign donations to:

a) Prohibit the giving and knowing receipt of all gifts from foreign donors, where the donor intends the gift to be used for electoral expenditure and apply penalties to donors who make prohibited gifts or false or misleading statements to recipients;

b) Require donors to affirm to political campaigners, political parties and candidates that they are not foreign for gifts between $1,000 and the disclosure threshold ($13,800 in 2018-19), for instance a check box on a donation form; and

c) Require all covered recipients to verify that donors are not foreign for gifts above the disclosure threshold ($13,800) (a menu of alternative forms of proof is listed, to help recipients check a donor’s status).

11. Aggregation of donations is generally removed and anti-avoidance rules are included in the amendments. Anti-avoidance rules address the movement of foreign funds between organisations. As part of the anti-avoidance rules the Electoral Commissioner can require an organisation that is part of a scheme to report as a political campaigner or associated entity, or can order that people stop a scheme or not participate in it.

Public funding

To assist with the cash flow of independent candidates and smaller parties after an election, amendments provide for the automatic payment of the first $10,000 of public election funding to eligible claimants.

Other amendments include reduced penalties including the removal of imprisonment for some offences, and approximately $60 in funding to assist the Australian Electoral Commission to implement the Bill and provide public education and awareness about the scheme.

On 15 October JSCEM released its second advisory report on the Electoral Legislation (Electoral Funding and Disclosure Reform) Bill 2017. The report made 12 recommendations, including a recommendation from the majority Coalition committee “that proposed sections 302CA and 314B are amended to ensure that Commonwealth laws would not apply to money that is directed towards non-federal campaigners (including state, territory and local government campaigners)”. Labor and the Greens both issued dissenting reports to the recommendation. Labor noted that it did not support “interference with state and territory laws, properly made, which have put in place caps on political donations and bans on particular donors, like property developers”. The Greens also said the Bill was “a missed opportunity to overhaul Australian electoral laws to deliver a stronger democracy…Under the proposed Bill, businesses can continue to buy political influence, including through the use of international funding. This Bill purports to clamp down on foreign donors when in reality it attacks the charity sector, at the same time as it opens the door for more donations to flow into big political parties by circumventing state-based limitations in political donations from industries with a history of buying political influence for private profit”.

Prior to the tabling of the second advisory report commentators broadly welcomed the revised amendments. However, several commentators also critiqued the proposed “state immunity” amendments. Professor Anne Twomey’s submission to the inquiry noted that “the reason that caps are placed on donations at the state level and some jurisdictions and the reason for banning particular types of donors was to ensure the integrity of the electoral system…It’s not really a matter for the Commonwealth to interfere in relation to those matters. Allowing a way of avoiding the system, simply by just telling property developers or whoever else, ‘Don’t put conditions on your donation, so that we can just happily use them as we like at the state level without having to comply with our own laws,’ seems to me to be singularly inappropriate and potentially also unconstitutional”.

In addition, in his submission Professor Joo-Cheong Tham, ERRN Director, argued that sections 302 and 314 of the Bill would “create a dual system of regulation that is likely to benefit major players and disadvantage lesser ones. The immunity granted by these sections will apply to political actors that engage both in federal elections and state and territory elections, political actors that exclusively focus on State and territory elections will not benefit from this immunity”.

July 2018 House of Representatives by-elections

The so-called “Super Saturday” of by-elections for the federal Divisions of Perth, Braddon, Fremantle, Longman and Mayo was held on 24 July 2018 following the parliamentary eligibility crisis which was covered extensively in the media and reported in the 2017 ERRN newsletters and case notes. The by-elections were triggered by the High Court ruling against then Senator Katy Gallagher on 9 May 2018, leading four other MPs in the same situation announced their parliamentary resignations later that day. The by-elections were called by the Speaker on 24 May 2018. The results were as follows;

1. The by-election for the federal Division of Perth took place on Saturday 28 July 2018, following the resignation of incumbent Labor MP Tim Hammond. Hammond’s resignation was for family reasons and was not linked to the parliamentary eligibility crisis. Labor’s Patrick Gorman retained the seat.

2. The by-election for the federal Division of Mayo took place on Saturday 28 July 2018, following the resignation of incumbent Centre Alliance MP Rebekha Sharkie. Sharkie retained the seat with an increased margin.

3. The by-election for the federal Division of Longman took place on Saturday 28 July 2018, following the resignation of incumbent Labor MP Susan Lamb. Lamb retained the seat with an increased margin.

4. The by-election for the federal Division of Fremantle took place on Saturday 28 July 2018, following the resignation of incumbent Labor MP Josh Wilson. Wilson comfortably retained the seat. The Coalition did not field a candidate in the by-election, focusing instead on the Western Australia state by-election for Darling Range held on 23 July 2018.

5. The by-election for the federal Division of Braddon took place on Saturday 28 July 2018, following the resignation of incumbent Labor MP Justine Keay. Keay retained the seat.

Wentworth by-election

A by-election for the federal Division of Wentworth is scheduled for 20 October and was triggered by the resignation of former Prime Minister Malcolm Turnbull. Results will be reported in the April 2019 ERRN newsletter. An opinion poll by Voter
Choice research conducted on 13 October, which sampled 736 voters in the Sydney seat, placed independent Kerryn Phelps on 55.4 per cent of the two-candidate preferred vote, ahead of the Liberals’ Dave Sharma. The Coalition needs to retain the seat to keep the Coalition government’s one-seat majority in parliament.

Other Commonwealth JSCEM inquiries

The Commonwealth JSCEM has completed one other inquiry since the April 2018 ERRN newsletter and is currently working on two others.

“Excluded: The impact of section 44 on Australian democracy” was tabled in parliament on 13 May 2018. The report made four recommendations:

1. The committee recommended that the Australian Government prepare a proposed referendum question to either repeal sections 44 and 45 of the Constitution, or insert into sections 44 and 45 the words: ‘Until the Parliament otherwise provides…’

2. If the referendum passes, the committee further recommended that the Australian Government further engages with the Australian community to determine contemporary expectations of standards in order to address all matters of qualification and disqualification for Parliament through legislation under section 34 of the Constitution.

3. In the event that a referendum does not proceed or does not pass, the committee recommended that the Australian Government consider strategies to mitigate the impact of section 44.

4. The committee recommended that the Government consider the implications of this report in the context of the upcoming by-elections.

The report also recommended a number of practical strategies to mitigate the impact of section 44 if constitutional change is not pursued. These include online self-assessment tools, additional education and support for candidates, formalising the parliamentary referral process, and working with foreign governments to streamline citizenship renunciation.

The Commonwealth JSCEM is also continuing its inquiry into the 2016 federal election and matters related thereto. As noted in previous ERRN newsletters, the committee has tabled three interim reports as part of the inquiry process: the first on authorisation of campaign material, the second on political donations and the third on AEC modernisation. At present, the committee is conducting a review of cyber manipulation of elections, specifically considering:

- The extent to which social media bots may have targeted Australian voters and political discourse in the past;
- The likely sources of social media manipulation within Australia and internationally;
- Ways to address the spread of deliberately false news online during elections; and
- Measures to improve the media literacy of Australian voters.

Submissions closed on 8 August 2018 and the committee has advised that it will hold public hearings.

Finally, the JSCEM is also conducting an inquiry into the Commonwealth Electoral Amendment (Lowering Voting Age and Increasing Voter Participation) Bill 2018. The Bill was referred to the committee by the Senate on 26 June 2018. The Bill proposes to lower the minimum (non-compulsory) voting age in Australian federal elections and referenda from 18 to 16 years; allow 14 and 15 year olds to be added to the electoral roll in preparation for their eligibility to vote at 16 years of age; provide for 16 and 17 year olds to be included in the certified list of voters (but not to be given a penalty notice if they do not vote); and provide that an eligible voter, who is not yet on the electoral roll or enrolled at their correct address, is able to cast a provisional vote on election day. The committee held a day of public hearings on 6 September 2018 in Melbourne, and is scheduled to table its final report on 8 December 2018.

Federal redistributions

Redistributions for South Australia, Victoria and the ACT were formalised in July 2018 following the commencement of the redistribution of electoral boundaries in 2017. As a result of population change, Victoria and the ACT have gained an extra seat, while South Australia has lost a seat. These changes will take effect at the expected 2019 federal election.

The new divisions are:

- Division of Bean (ACT); new seat
- Division of Clark (TAS); replaces Denison
- Division of Cooper (VIC); replaces Batman
- Division of Fraser (VIC); new seat
- Division of Monash (VIC); replaces McMillan
- Division of Macnamara (VIC); replaces Melbourne Ports

Division of Nicholls (VIC); replaces Murray
Division of Spence (SA); replaces Wakefield
In addition, the Division of Port Adelaide was abolished.

NEW SOUTH WALES

Wagga Wagga by-election

A by-election in the NSW Division of Wagga Wagga was held on 8 September 2018 following the resignation of Daryl Maguire after admitting to the NSW ICAC that he sought payment for facilitating a property deal. Independent candidate Joe McGirr won the by-election, representing the first time the Liberal Party had lost Wagga Wagga since 1957.

Electoral Funding Act 2018

On 20 May 2018, the NSW Parliament passed the Electoral Funding Act 2018 (the NSW Act). The NSW Act replaces the Election Funding, Expenditure and Dislosures Act 1981.

The scheme came into effect on 1 July 2018. According to the NSW Electoral Commission’s website, the “new laws provide for more frequent disclosure of political donations and aim to simplify processes for electoral participants in state and local government elections in New South Wales”. The new rules will apply to participants at the 2019 NSW State election. The objects of this Act are as follows:

(a) To establish a fair and transparent electoral funding, expenditure and disclosure scheme,

(b) To facilitate public awareness of political donations,

(c) To help prevent corruption and undue influence in the government of the State or in local Government,

(d) To provide for the effective administration of public funding of elections, recognising the importance of the appropriate use of public revenue for that purpose,

(e) To promote compliance by parties, elected members, candidates, groups, agents, third-party campaigners and donors with the requirements of the...
electoral funding, expenditure and disclosure scheme.

Key changes to NSW political donations scheme include:

1. Pre-election disclosures of reportable political donations before NSW state elections;
2. Half-yearly disclosures of all other political donations;
3. Annual disclosures of electoral expenditure;
4. Annual disclosures of reportable political donations made by major political donors;
5. Regulation of associated entities;
6. New rules for who is responsible for making disclosures and managing campaign finances; and
7. New duties for parties and their senior office holders.

It has been reported that a coalition of six unions led by Unions NSW has filed a “High Court challenge to the laws, which dramatically curtail the amount of money third-party campaigners such as trade unions can spend in the six months before an election, including on television and radio campaigns”, Speaking to The Guardian, Professor Anne Twomey said the new laws “significantly reduce the capacity of third-party campaigners to be heard” during an election campaign and it may be “difficult” for the NSW government to justify the changes. Subscribers to the ERRN newsletter will also recall that Unions NSW successfully challenged in 2013 a prohibition on associations or corporations making a political donation to a state or local election in NSW.

iVote

Following on from the NSW JSCEM’s report into the 2015 NSW state election, as reported in the April 2018 ERRN newsletter, in late 2017 the NSW Electoral Commission engaged Mr Roger Wilkins AO to undertake an inquiry concerning its iVote internet and telephone voting system. Mr Wilkins consulted a panel of experts on security, auditing and scrutinising issues, including Mr Antony Green AO, Mr Alastair MacGibbon, and Professor Rodney Smith. His report was due to be completed by May 2018.

The terms of reference were:

1. Whether the security of the iVote system is appropriate and sufficient;
2. Whether the transparency and provisions for auditing the iVote system are appropriate.
3. Whether adequate opportunity for scrutineering of the iVote system is provided to candidates and political parties.
4. What improvements to the iVote system would be appropriate before its use at the 2019 State General Election.

In other iVote matters, in May 2018 Scytl won a $1.9 million contract to upgrade the NSW Electoral Commission’s iVote application. According to IT publication Computerword, the “refresh project will include enhancing iVote’s security, through improving voter verification as well as generally upgrading the application’s security”.

Inquiry into the impact of expenditure caps for local government election campaigns

The NSW JSCEM is conducting an inquiry into the impact of expenditure caps for local government elections. The inquiry was referred to the committee on 15 August 2018 and requires the committee to inquire into and report on the impact of the expenditure caps for local government election campaigns on local government areas and wards with different populations, with particular reference to:

a) Whether the current expenditure caps are adequate;
b) Whether the number of enrolled electors in a ward or local government area is the best method to calculate expenditure caps; and

c) Whether the current divisions around the number of enrolled electors on which the expenditure cap is calculated are adequate.

Submissions closed on the 14 September and the committee is continuing its investigations.

Legislative Council ‘Red Shirts’ inquiry

In August the Parliament of Victoria’s Legislative Council Privileges Committee tabled its report on the inquiry into matters relating to the misuse of electorate office staffing entitlements, otherwise known as the ‘Red Shirts’ report. On 28 March 2018 the Council agree to three broad terms of reference, with the third requiring the Privileges Committee to inquire into and report, in relation to those current and former Members of the Legislative Council named in paragraphs 45 to 50 of the Ombudsman’s report, on the following —

a. Whether any Members are in contempt of Parliament in relation to the Code of Conduct in the Members of Parliament (Register of Interests) Act 1978;
b. Whether any fine should be imposed and the amount to be imposed pursuant to section 9 of the Members of Parliament (Register of Interests) Act 1978;
c. Whether the conduct of any current or former Members constitutes any other form of contempt of Parliament and if so, what sanction, if any, should be imposed;

The report found that “the conduct of the members in question does not constitute a contempt of parliament, even though in some cases the conduct was not up to the standard expected from members of parliament”.

New political finance regime / electoral processes for Victoria

As discussed in the April 2018 ERRN newsletter, the Electoral Legislation Amendment Bill 2018 passed the Victorian Parliament on 26 July 2018, with new laws being phased in from 1 August 2018 by way of the Electoral Legislation Amendment Act 2018 (VIC). The Act introduces a political donations and disclosure scheme for Victoria; previously, Victoria ‘piggybacked’ on Commonwealth legislation.

The VEC has established a funding and disclosure department to administer the new scheme.

The new scheme has political donations and public funding components. They are;

Political donations
- Cap on political donations and new disclosure and reporting scheme. From 25 November 2018 there will be a cap on donations of $4,000 from the same source (individual or organisation) to any political party, while single donations above $1,000 will need to be disclosed within 21 days by both recipients and donors. Donations made to a candidate will count towards the cap for their political party.

The following forms of payments are not included in the cap:
Donations made by candidates to their own campaigns.

Small donations of $50 or less, ensuring donors are not subject to the cap by making donations at party meetings or events.

Volunteer labour, which will continue to be excluded from the definition of a ‘gift’.

Political parties, third-party campaigners and associated entities will also now need to provide an annual return every 12 months.

Banned donations

Beginning on 1 August 2018 foreign donations and anonymous donations above $1,000 will be banned. Banned donations will be forfeited to the state. Penalties for contravention of these laws include fines of up to $48,357, two years imprisonment, or both.

Further, all fundraising will be subject to a new anti-avoidance offence, intended to stop a person/s entering into a scheme to circumvent the new laws. A scheme of this nature may include the deliberate abuse of donations under $50 or a series of anonymous donations of slightly less than $1,000.

Public funding of elections

Victoria’s formula for public funding of campaigns will be amended to provide additional funding for political parties’ operating expenditure. The funding will make up for the shortfall in funding for political expenditure resulting from the cap on donations.

Under the new scheme, worth $45 million each term, parties will be awarded $6 for each Legislative Assembly vote and $3 for every Legislative Council vote.

Administrative funding

From 1 August 2018 the Victorian Electoral Commission (VEC) will be required to pay administrative funding to registered political parties with Parliamentary representation and independent elected members. The funding is designed to assist MPs with the administrative costs of adhering to the new framework. Payments will begin at $200,000 for the first member with $70,000 for the second member and $35,000 for every subsequent member, capped at forty-five members. The funding cannot be used for political expenditure in election campaigns.

Electoral administration changes

The 2018 Act also introduced a range of administrative and process-related changes for Victorian state elections. These include changes to;

1. Postal voting

From 1 August 2018 registered political parties, candidates and persons other than the VEC will no longer be able to distribute postal vote applications as part of their campaign materials to constituents. The change is designed to protect voters from mistaking political materials for communications from the VEC.

The VEC will provide political parties with details of those who have successfully applied for postal ballots. This change will allow these voters to be supplied with campaign materials they otherwise would have received upon entering voting centres. The Act contains several protections to ensure details of voters are not misused by political parties.

The new Act will allow for processing (but not counting) of postal votes in restricted areas to begin ten hours before close of voting on election day. This change will allow more votes to be counted on election night. All postal votes are being processed at the VEC’s Central Processing Centre at the Melbourne Showgrounds for the 2018 Victorian state election; previously, postal votes were processed at election offices.

2. Political signage

From 1 August 2018 notices or signs relating to an election (including campaign posters, bunting or corflutes) will not be permitted within 100 metres of voting centres. The prohibition does not apply to items such as clothing being worn, pens or stickers. How-to-vote cards and VEC materials will still be permitted.

The Act permits a candidate or political party to display two signs or notices (not exceeding 600mm x 900mm) at designated voting centres.

3. Electronic voting

The Act allows the VEC use technology available to it to provide electronic voting services to electors who are blind or have low vision, have vision motor impairment or have insufficient literacy skills. The VEC may also approve a computer program or system to enable electronic voting and electronic assisted voting if the VEC is satisfied that the criteria specified in subsection (2) of the 2018 ACT apply.

4. Early voting

Early votes will also be processed early at the 2018 Victorian state election, given the VEC has forecast that as many as 45 percent of Victorian electors will vote early. From 4pm on Election Day, election offices will establish a secure zone for the processing – not counting – of early votes until 6pm. All Home District early votes will be counted on election night.

Parliament of Victoria’s Electoral Matters Committee

The Parliament of Victoria’s Electoral Matters Committee tabled its report for the inquiry into civics and electoral participation in Parliament in August 2018. The committee was required to examine:

1. Electoral and civics education, the Victorian Electoral Commission’s (VEC’s) community engagement programs and other best practice approaches used by the VEC, other Australian electoral commissions, the United Kingdom and New Zealand, to ensure that Victorian citizens are adequately informed and able to participate effectively in elections;

2. Strategies to reduce informal voting at Victorian state elections which are not related to the voting system;

3. How the VEC employs and trains casual staff for Victorian state elections. This should involve discussion about methods to attract people to join the VEC’s casual staffing roster for Victorian elections, the Committee should also examine the roles and responsibilities of the VEC’s casual election staff in light of changing technological and societal demands; and

4. Strategies to increase electoral participation amongst community groups that traditionally experience barriers to electoral participation, such as Victorians aged 18 to 24, Victorians from multicultural backgrounds, as well as Victorians who have recently become Australian citizens and are not familiar with Australia’s electoral system.

The committee made 36 recommendations for improving civics and electoral participation in Victoria, including that the VEC investigate introducing a parallel election program alongside its Passport to Democracy program for Victorian state elections, modelled on Canada’s CIVIX Student Vote program. Recommendations were also made to the Parliament of Victoria to investigate a Student Guide program for public tours, a Legislative Paige program modelled on the Ontario Legislative Assembly program, and a range of administrative and process recommendations designed to assist the VEC with its recruitment processes for the VEC’s Senior Election Official pool and election casual staff.
New Electoral Commissioner

Pat Vidgen PSM was appointed Electoral Commissioner of Queensland on 7 September 2018.

Pat has held a number of senior executive positions during a career in the Queensland Public Sector which spans more than 28 years. Prior to his appointment with the Commission, Pat played a crucial role in the successful delivery of the 2018 Commonwealth Games, having worked as the General Manager of Strategic Engagement. He has extensive experience representing Queensland on the Commonwealth and State Government boards and committees, including the national counterterrorism committee. In announcing his appointment as Electoral Commissioner, Attorney-General Yvette D’Ath told State Parliament Pat was “well known as a person of integrity”.

South Australia

Local government elections

Local government elections for South Australia will be held during October and November 2018. These will be conducted by the Electoral Commission of South Australia. The elections will be for 637 councillor positions and 52 mayoral positions in 67 metropolitan and regional councils. Voting closes on 9 November 2018 and results will be made available progressively on 10 November 2018.

Western Australia

Tasmanian local government elections

Local government elections are being held across Tasmania in September and October 2018. Ballot material is being delivered from 8 October 2018 and polling closes on 30 October 2018.

The elections are the first to take place following recent updates to the Local Government Act 1993 (TAS). The regulatory changes reflect issues that arose during the Targeted Review of the Local Government Act 1993, as reported in the April 2018 ERRN newsletter, as well as to simplify some aspects of electoral advertising.

As of 1 August 2018, the Local Government Act 1993 (TAS) requires councils to have a gifts and donations register. The amendments to the Regulations provide details of what is to be included by councilors when providing notice to the relevant general manager about a gift or donation received.

Gifts and donations can include any item; a service; a loan of money; loan of property; or any other benefit. A gift or donation valued at $50 or more is required to be disclosed. Currently, local government election candidates who are not current councilors are not required to disclose gifts and donations received.

The gifts and donations registers are not currently required to be made public. However, councils should publish the register on the council’s website to provide transparency.

Election changes

The Regulations have been amended as follows:

- $16,000 is the expenditure limit for electoral spending in the 2018-19 financial year, for candidates for Clarence City, Glenorchy City, Hobart City, Kingborough and Launceston City councils, based on a significant number of rateable properties in these municipalities.
- $10,000 is the expenditure limit for electoral spending in the 2018-19 financial year, for candidates in all other municipal areas.
- The Regulations no longer provide a separate amount for candidates running as mayor or deputy mayor.
- Removal of the limits on the size and number of posters. Candidates will need to comply with the relevant council planning scheme and other state legislation.
- Removal of the time or space limits in relation to newspaper or television advertising. Candidates are, however,
subject to the expenditure limit.

Further, as a result of amendments to the Local Government Act 1993 that were proclaimed on 1 August 2018, paid advertising on the internet is now captured within the definition of electoral advertising. Candidates will need to include any paid advertising of this type in their electoral returns to the Tasmanian Electoral Commission.

Typeform breach

In June 2018 the Tasmanian Electoral Commission issued a press release about a data breach involving some elector data. The Tasmanian Electoral Commission “was informed by the Barcelona-based company Typeform, that an unknown third party had gained access to one of their servers and downloaded certain information. Typeform online forms have been used on the TEC website since 2015 for some of its election services”. The breach “involved an unknown attacker downloading a backup file. The breach was identified by the Typeform company on 27 June 2018, with the vulnerability closed down within half an hour of detection. Typeform’s full investigation of the breach identified that data collected through five forms on the TEC website had been stolen”.

The Electoral Commission contacted electors who used these services to inform them of the breach and apologised for the breach.

Political donations inquiry

The Northern Territory Government established a broad based inquiry in December 2016 to investigate and report on options for political funding and donations reform in the Northern Territory. The Commissioner was Hon John Mansfield AO QC.

The inquiry published its final report in June 2018. Commissioner Mansfield made several key recommendations;

- The Northern Territory should introduce a cap on electoral expenditure in elections, calculated by an allowance of $40 000 per endorsed candidate in the cases of registered political parties, and fixed at $40 000 for each unendorsed candidate (to be indexed).
- The cap should apply to each political party and to each individual candidate which or who elects to participate in the public funding of the election.
- The electoral process should be partly publically funded in election years, by the payment to each registered political party and to each unendorsed candidate of $8 (to be indexed) per first preference vote received by that candidate, provided that the candidate received at least 4% of the formal first preference votes in the electorate which that candidate sought to represent.
- Donations to registered political parties and to individual candidates should be capped at $5000 or $10 000 per year (to be indexed). Donations to registered political parties and to individual candidates for election should be reported to the Northern Territory Electoral Commission regularly, and be disclosed by the NTEC on its website as soon as practicable on receipt of the report.
- There is no need to change the definition of ‘associated entity’ in the Act. In other relatively minor respects the level of anonymous donations or the definition of donations in kind may be simplified as recommended.

The Commissioner also made adverse findings against Foundation 51, which the report confirmed as an associated entity of the Country Liberal Party.
Forthcoming Events

ERRN (VIC) Seminar: “Who’s in the Room? Access and Influence in Australian Politics and How to Regulate”

30 October 2018

Presenters: Kate Griffiths and George Rennie

Room 920, Melbourne Law School

ERRN (WA) Seminar: Early voting and its effects on elections.

1 November 2018

Co-hosted with Constitution Centre of WA

Presenters: Dr Martin Drum, and Dr Narelle Miragliotta. Chair: David Kerslake

ERRN (SA) Workshop: Homelessness and Electoral Participation

5 November 2018

Presenters: Prof. Lisa Hill and Dr Jonathon Louth

Flinders at Victoria Square

ERRN (ACT) Seminar: The Centenary of the Commonwealth Electoral Act 1918

19 November 2018

Presenters: Peter Brent, Stephen Mills and Brien Hallett

ERRN (NSW) Seminar: How Australians Vote Now: Challenges and Opportunities

29 November 2018

Macquarie Room, NSW Parliament House

Image credit: Lining up to vote in Brisbane, 1937, State Library of Queensland [Flickr]
Workshop on Human Rights and Political Participation under Authoritarianism

21 September 2018

Convenor: Dr Zim Nwokora (Deakin University)

On Friday, September 21, Deakin University hosted a workshop entitled “Kinder, Gentler and Smarter Autocracies? Human Rights and Political Participation under Authoritarianism,” co-sponsored by the Alfred Deakin Institute and the Electoral Regulation Research Network. Motivating the workshop was the observation that what has conventionally been described as “autocracy” or “authoritarianism” is re-appearing around the world, but in unusual guises. The keynote lecture for the workshop, by Prof. John Keane of the University of Sydney, emphasised this point. As Prof. Keane explained, the “New Despotisms” are not crude and totalitarian. Rather, they are led by sophisticated elites who see the value of elections and popular support; avoid violence where possible; and consciously legalise their activities. The regimes in countries such as China, Iran and Russia exemplify this new despotism. Though these regimes are more open than classic dictatorships, there seems no clear or likely path to fully-fledged democracy. Worryingly, Prof. Keane also sees evidence of democratic decline in the West and with it the risk, and in some ways already the reality, of modern despotism. The three panels following Prof. Keane’s lecture explored (a) governance under authoritarianism; (b) elections and party politics under authoritarianism; and (c) religion and authoritarianism.

“Convenience voting in Victoria”

3 September 2018

Parliament House

Australasian Study of Parliament Group presentation for the ERRN Research Collaboration Initiative

Presenters: Dr Matthew Laing and Dr Narelle Miragliotta (Monash University)

The explosion in the number of electors casting their votes early at Victorian elections since the 2000s (and in Australia more generally) has raised important questions about the practical and normative implications of convenient forms of voting. Dr Matthew Laing and Dr Narelle Miragliotta shared the findings from their broad ranging study, conducted in conjunction with Paul Thornton-Smith from the VEC, exploring how convenience voting in Victoria is perceived and experienced from the perspective of the main stakeholders.

ERRN (VIC) Seminar: “Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government”

2 August 2018

Room 920, Melbourne Law School

Presenter: Dr Victoria Shineman (University of Pittsburgh)

Felon disenfranchisement laws restrict the voting rights of more than 6 million US Citizens. Beyond the effects on voter turnout and electoral outcomes, how do these laws affect individual-level attitudes and behaviors? This paper presents the results from two field experiments embedded within panel surveys conducted before and after statewide elections in Ohio and Virginia. The survey population is composed of US citizens with felony convictions who were once disenfranchised, but are now either eligible to vote, or to have their voting rights restored. Experimental treatments provide varying assistance with the restoration of voting rights, as well as assistance with voter registration among those whose rights have already been restored. In comparison to a placebo group who received no information about voting rights, subjects who received treatments about the restoration of voting rights demonstrated stronger trust in government and the criminal justice system, and an increased willingness to cooperate with law enforcement. Treatments also generated increases in political information and efficacy. As a whole, the results suggest that reversing disenfranchisement causes citizens to increase their pro-democratic attitudes and behaviors - all of which are predictors of reduced recidivism.

Victoria Shineman is an Assistant Professor in the Political Science Department at the University of Pittsburgh. She earned her PhD from New York University, and was a Postdoctoral Research Associate at Princeton University. Her research
focuses on electoral policies which affect the costs and incentives to participate, ranging from systems that encourage voting (like compulsory voting) to those that discourage or disenfranchise (like felon disenfranchisement and other forms of voter suppression). Shineman studies the primary effect of these systems on voter turnout, as well as the second-order (downstream) effects of electoral systems on mass behavior, including political information, trust, efficacy, and polarization. Shineman is a BITSS Catalyst with the Berkeley Initiative for Transparency in the Social Sciences, and a member of Evidence in Governance and Politics (EGAP). She teaches courses in public opinion, voting behavior, and experimental research, and supervises research among undergraduate and PhD students. She also teaches units on research ethics, transparency, and reproducibility.

31 July 2018

Presenters: Dr Victoria Shineman (University of Pittsburgh), Professor Lisa Hill, Professor Alex Reilly (Law, University of Adelaide)

ERRN (VIC) Seminar: “The nation’s strictest donations laws? Proposed reforms to Victorian political finance laws”

7 June 2018

Room 920, Melbourne Law School

Presenters: Ms Suzie Thoraval, Dr Paul Thornton-Smith and Professor Joo-Cheong Tham

In July 2018, the Parliament of Victoria passed the Electoral Legislation Amendment Bill 2018 (VIC). The Bill regulates Victorian political funding in five ways: caps on ‘political donations’; obligations to disclose these donations; a ban on ‘foreign’ ‘political donations’; increases in public funding of parties and candidates; and new compliance measures. This seminar addressed complex detail of the Bill and assessed its impact upon the health of Victorian democracy.

Suzie Thoraval is the Director, Funding and Disclosure Implementation at the Victorian Electoral Commission. Her most recent previous role was as the Chief Risk Officer at the Department of Premier and Cabinet. She is a graduate of the Australian Institute of Company Directors and holds a Masters and Bachelor of Law (Honours) and Bachelor of Arts. Suzie has led effective transformational change in major legislative reform, enterprise risk management and procurement reform in high profile Government agencies, engaging stakeholders at a range of levels to achieve change. Suzie has private, public and academic sector legal, policy and operational experience in Australia and internationally.

Joo-Cheong Tham is a Professor at Melbourne Law School. He is one of Australia’s leading experts on political funding with his publications including Money and Politics: The Democracy We Can’t Afford (2010, UNSW Press) and key reports for the New South Wales Electoral Commission on the regulation of political finance and lobbying. He also specializes in the regulation of precarious work and has undertaken considerable research into counter-terrorism laws. Joo-Cheong regularly speaks at public forums and has presented lectures at the Commonwealth, South Australian and Victorian Parliaments. He has also given evidence to parliamentary inquiries into labour migration, terrorism laws and political finance laws. Joo-Cheong’s presentation will be based on his analysis of the Electoral Legislation Amendment Bill 2018 (VIC) available at: http://insidestory.org.au/it-depends-what-you-mean-by-political-donations.

The inaugural ERRN course class photo (July 2018)

ERRN “Regulation of Australian Elections” course

17 and 18 July 2018

In July 2018 the Electoral Regulation Research Network offered a two-day course on ‘Regulation of Australian Elections’. The aim was to provide an introductory course to electoral commission staff on the research and scholarship on the regulation of Australian elections through presentations by leading experts. The course ran on 17 and 18 July 2018 at the Melbourne Law School. Approximately 30 participants discussed topics including Australian constitutional frameworks, the Australian party system, voting rights, electoral participation, voting engagement, forms of voting, political finance and electoral commissions. Participants enjoyed a highly engaging two day program and the opportunity to network with colleagues and practitioners from Victoria and elsewhere in Australia.
Recordings of recent ERRN events are now available on the website.

- **ERRN (VIC) Seminar: “The ‘nation’s strictest donations laws’? Proposed reforms to Victorian political finance laws”** presented by Ms Suzie Thoraval, Dr Paul Thornton-Smith and Professor Joo-Cheong Tham on 7 June 2018 at Melbourne Law School. [Listen now](#)

- **ERRN (VIC) Seminar: Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government** presented by Dr Victoria Shineman (University of Pittsburgh) on 2 August 2018 at Melbourne Law School. [Listen now](#)

- **Polis Keynote: The New 21st Century Despotisms** presented by Professor John Keane (University of Sydney) on 21 September 2018 at Deakin University. [Watch now](#)

**Collaboration with McDougall Trust**

Since 2016 the ERRN has collaborated with the [McDougall Trust](#), a UK-based independent charity promoting public understanding of electoral democracy. The Trust will fund video recording of ERRN events that provide comparative perspectives on electoral democracy. Two of these videos are already available online: Political Corruption Elections and Beyond Perspectives from Indonesia and Australia, and A Comparative Analysis of the Deliberative Quality of Televised Election Debates in Europe.
ERRN Research Collaboration Initiative

A Review of Convenience Voting in Victoria - final report

The ERRN Research Collaboration Initiative report, a Review of Convenience Voting in Victoria by Matthew Laing and Narelle Miraglotta (Monash University) and Paul Thornton-Smith (Victorian Electoral Commission), was released in October 2018.

The project used a mixed method research design to explore how voters, legislators and electoral commissions perceive the challenges presented by the extension of convenience voting – both in terms of its growing use among electors and the liberalisation of its forms.

The findings of the report suggest that these groups perceive the challenges associated with the expansion of convenience voting differently. Voters showed awareness of the possible security risks associated with newer forms of convenience voting but trust that electoral authorities will manage and mitigate these hazards. Voters gave priority to a flexible voting experience. Legislators expressed concern that convenience voting limited their opportunities to engage with voters during the election campaign period, especially early in-person voting. Many also gave voice to fears that convenience voting will erode democratic engagement. Legislators had a more cautious outlook towards convenience voting, placing a higher value on the security of the ballot over voter convenience. Electoral authorities stressed the multifaceted logistical challenges that the expansion of convenience voting presents for the integrity and efficiency of the electoral process. Their concerns centred on the management of these complex processes. Authorities emphasized the importance of efficiently and safely enhancing the voter experience and the electoral process more generally.

The report found, unsurprisingly, that the stakeholders’ construction of the challenges that convenience voting can give rise to was consistent with their particular relationship to the electoral process. Yet leaving aside these differences, all agree that a paradigmatic shift in voting is ultimately underway.

New ERRN initiatives

New electoral law database launching in 2019

Earlier this year the ERRN Governance Board approved funding for the development of an electoral law database. The online database will be hosted by AustLII and will provide free, open access to electoral law decisions by Australian courts and tribunals, and to legislation, journal articles and other materials. This major initiative involves collaboration between electoral commissions, the Gilbert + Tobin Centre of Public Law at UNSW and AustLII. It promises to be a valuable resource for electoral commission officials, academic researchers and the general public.

The electoral law database will be launched in early 2019. It will initially bring together court and tribunal decisions and other materials that are currently available in digital format on AustLII. Users will be able to organise decisions by jurisdiction and by court/tribunal, and the plan is for the database to be easily searchable. The database may later be expanded to include decisions and other materials that are currently only available in hard copy and/or not accessible on AustLII.

The development of the database is being overseen by Dr Paul Kildea of UNSW Law School. Please direct any questions to him at p.kildea@unsw.edu.au.
Publications

Working Papers

The Electoral Regulation Research Network was established in 2012 with the aim of fostering exchange and discussion amongst academics, electoral commissions and other interested groups on research relating to electoral regulation. To this end, the Network together with the Democratic Audit of Australia will be publishing a series of working papers – often called ‘discussion papers’ – to help foster discussion about all aspects of electoral regulation. These working papers will be posted on the Network’s website and circulated to members of the Network. They will also be posted on the Democratic Audit of Australia’s website. We welcome papers written on all aspects relating to electoral regulation from academics, electoral commission officials, parliamentarians, party officials and others interested in this field.

Working Paper 47
175 years of Voting: The 175th Anniversary of the First Parliamentary Election of 1843
Sean Darragh, New South Wales Electoral Commission
August 2018

The first elections in the colony of New South Wales were held between 15 June and 3 July 1843. These elections (albeit with a very limited franchise) saw the birth of democracy in Australia. This short paper highlights some of the most interesting aspects of that first election.

Recent Publications

“Australia’s growing democracy gap”
Joo-Cheong Tham, ERRN Director
2 October 2018
Writing for Inside Story, Joo-Cheong Tham discusses the disenfranchisement of permanent residents and temporary visa holders as an affront to democratic principles; he argues that it is “not recognised as such only makes it more egregious”.

The rise of political advisors in the Westminster system
Yee-Fui Ng, ERRN Legal Editor
July 2018
Political advisors have risen in significance in Westminster countries, and have been increasingly thrust into the limelight by headline scandals and through their characterisation in various television series. This increased prominence has led to greater scrutiny of their role and influence. This book demonstrates that the introduction of political advisors into the structure of the executive has led to the erosion of the Westminster doctrine of ministerial responsibility.

Adopting a comparative approach, the book analyses the rise in the power and significance of political advisors in the Westminster jurisdictions of the United Kingdom, Australia, New Zealand and Canada. It shows the fundamental shift of the locus of power from the neutral public service to highly political and partisan ministerial advisors. Tracing the divergent paths for legal and political regulation of political advisors, Yee-Fui Ng illuminates the tensions that they pose within the Westminster system in terms of the media/politics and faction/opposition interfaces.

Providing insights for those researching or engaged in politics and public administration, this work will interest scholars and students of politics and public law, policy and administration.
**Re Gallagher**

The issue before the High Court, sitting as the Court of Disputed Returns, was whether Senator Katy Gallagher was incapable of being chosen as a senator at the 2016 federal election by reason of s 44(i) of the *Constitution*.

Gallagher was sworn in as a senator for the Australian Capital Territory on 26 March 2015, filling a vacancy left by the resignation of Senator Kate Lundy. Following nomination on 31 May 2016, Gallagher was returned as a senator for the ACT after the double dissolution election held on 2 July 2016. Gallagher was born in Australia in 1970 and has been an Australian citizen from birth. Unbeknown to Gallagher, at the time of her birth she had acquired the status of a citizen of the United Kingdom and colonies by descent.

On 20 April 2016, having become aware that there was a possibility of her having British citizenship, Gallagher applied to renounce her British citizenship by submitting the prescribed form and accompanying documents to the UK Home Office. Her renunciation was not registered by the UK Home Office until 16 August 2016. The Court was asked whether she was under the disability of s 44(i) of the *Constitution* by remaining a British citizen at the time of her nomination and her subsequent election.

The Court (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ) held that the constitutional imperative is engaged when the foreign law must operate irremediably to prevent an Australian citizen from participation in representative government; and that person must have taken all steps reasonably required by the foreign law and within his or her power to free himself or herself of the foreign nationality.

The Court held that British law did not irremediably prevent Senator Gallagher from participation in representative government. The procedure provided for by British law for renunciation of British citizenship was not onerous, and the issue for Senator Gallagher was only ever the timing of the registration.

**Electoral Commission of Queensland v Awabdy [2018] QSC 33**

The Electoral Commission of Queensland took legal action against the LNP to force it to release details of about $100,000 in donations for the party’s federal candidates, which the LNP argued did not fall under the state’s reporting rules.

The former Newman government had raised the donation declaration threshold from $1000 to $12,400 in 2012, arguing it was necessary to match the federal thresholds, but the Palaszczuk government changed it back to $1000 in 2015.

Jackson J held that sections 290 and 291 of the *Electoral Act 1992* (Qld) are not inconsistent with sections 314AB and 314AC of the *Electoral Act 1918* (Cth) within the meaning of section 109 of the *Constitution*.

The judge held that ss 290 and 291 of the *Electoral Act 1992* (Qld) are not inconsistent with sections 314AB and 314AC of the *Electoral Act 1918* (Cth) within the meaning of section 109 of the *Constitution*.

In 2015, Jarrod Bleijie tabled Crown Law advice he received in 2013 when he was the attorney-general, which cast doubt on whether Queensland law could impose a lower declaration limit on donations intended for federal elections, based on section 109 of the constitution that provides: ‘When a law of a state is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid’.

The issue in this case is thus whether a law of the State of Queensland that requires the agent of a registered political party under the *Electoral Act 1992* (Qld) to give a return to a State agency that must include particulars of gifts from any person or organisation that exceed $1,000 is inconsistent with a law of the Commonwealth that requires the agent of a registered political party under the Commonwealth *Electoral Act 1918* (Cth) (“Commonwealth Act”) to furnish a return to a Commonwealth agency that must include particulars of sums received from any person or organisation that exceed $13,500.

Jackson J held that sections 290 and 291 of the *Electoral Act 1992* (Qld) are not inconsistent with sections 314AB and 314AC of the *Electoral Act 1918* (Cth) within the meaning of section 109 of the *Constitution*.
Mubarak v Australian Electoral Commission [2018] FCA 1089

The applicant, Mr Kim Mubarak, was aggrieved by the failure of the respondents to include his name on the ballot paper for the then forthcoming by-election in the Division of Perth on 28 July 2018.

The Commonwealth Electoral Act sets out in Pt XIV a number of requirements governing nominations of persons for election as members of the House of Representatives. This includes section 166, that provides that, unless at the time of nomination the person is a sitting independent in the previous Parliament, or has filed the appropriate nomination form and set out their name, place of residence and occupation, and obtained the signatures of not less than 100 electors entitled to vote at the election for which the candidate is nominated, their nomination cannot be accepted. Another requirement is section 170, which provides that the nomination paper for the House of Representatives election is to be given to the Australian Electoral Officer or the Divisional Returning Officer after the issue of the writ for the election and before “the hour of nomination”, together with a deposit in the sum of $1,000 (either in legal tender or in a cheque drawn by a bank or other financial institution on itself).

Mubarak made an initial attempt to finalise his nomination on 4 July 2018. He received advice from the Australian Electoral Commission that he was 38 elector signatures short. The next day, 5 July 2018, he attempted to overcome the deficiency and provided additional electors’ names and signatures and paid the nomination deposit of $1,000. He says he was subsequently advised that he was four electors’ signatures short of the 100 required and so his nomination was not accepted.

On 15 June 2018, the Speaker of the House of Representatives issued a writ for the by-election in the Division of Perth with polling to take place on Saturday, 28 July 2018. The writ specified that the close of nominations was on 5 July 2018. By reason of the operation of s 175 of the Commonwealth Electoral Act, the relevant cut-off date and time for nominations was 12 o’clock at noon on 5 July 2018.

Mubarak argued that s 172(2) applied, which provided that no nomination shall be rejected by reason of any formal defect or error in the nomination if the officer to whom the nomination is made is satisfied that the provisions of sections 166, 167, 170 and 171 had been substantially complied with.

Barker J dismissed Mubarak’s application. He held that the failure to obtain the 100 signatures is neither a defect nor an error in the nomination. Rather it is a failure to satisfy a mandatory requirement in the nominating process. The judge held that the signatures requirement can only be substantially complied with if the 100 number is reached.

Commonwealth Director of Public Prosecutions v Easton [2018] NSWSC 1516

Voting is compulsory at the Australian federal level. Failure to vote without a “valid and sufficient reason” is an offence under s 245(15) of the Commonwealth Electoral Act 1918 (Cth). Mr Easton did not vote in the 2016 federal election. He provided the following reasons for not voting:

1) The fact that Australia prides itself on being a ‘free democracy’ and yet that it is a ‘criminal offence’ not to vote is an oxymoron that impinges on my most basic right to choose for myself.

2) On 2 July 2016 I watched the election unfold as I had done in the weeks leading up. It was around 5pm when I decided not to attend the polling booth for the following reasons: the Greens remained too radical, and neither Labor or the Coalition convinced me that they could provide a stable government, especially given the revolving door of prime ministers we have had in recent years. And independents do not get enough media coverage to understand what they stand for. These reasons, plus my first point, were the factors I considered when I took what I believe is a basic right to choose whether to vote or not.

3) I believe abstention, when abstaining in numbers, can be an effective democratic tool, especially when a minimum of 50% of voters (for example) is required for a result. At the very least there should be a choice.

4) I believe that if the AEC wants people to vote than politicians need to behave more appropriately. The schoolyard tactics on the Parliament floor in question time and the fact that ‘politicians’ distance themselves from their own profession by constantly reassuring people that they are not going to “play politics” is a case in point.

Section 245(14) provides that:

Without limiting the circumstances that may constitute a valid and sufficient reason for not voting, the fact that an elector believes it to be part of his or her religious duty to abstain from voting constitutes a valid and sufficient reason for the failure of the elector to vote.

The Divisional Returning Officer was not satisfied that Mr Easton’s failure to vote was for a valid and sufficient reason.

The issue raised in this case is whether adherence by an elector to a moral but non-religious belief system that requires him not to vote is capable, as a matter of law, of constituting a “valid and sufficient reason” for failing to do so.

The judge held that a devout but non-religious objection to voting was not a “valid and sufficient” reason for not voting, and thus not an exception to compulsory voting. The judge found that words “without limiting” do no more than bring into the possible meaning of “valid and sufficient reason” one specific example of what can amount to a valid and sufficient reason for the purposes of s 245(15B), namely, religious duty.
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