



November 2021 newsletter

Electoral Regulation
Research Network





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ERRN Director's Message: November 2021



The purpose of the Network is to foster exchange and discussion amongst academics, electoral commissions and other interested groups on research relating to electoral regulation. What I would like to highlight in this message to the November 2021 newsletter is how the Network advances this purpose by providing a rich range of resources.

There are [recordings](#) of past events with recent ones including those on:

- Federal voter ID laws;
- Primary elections in the USA and Australia;
- Data-driven campaigning, electoral regulation and Australian democracy; and
- The struggle to regulate integrity in money and politics.

The ERRN [Research Collaboration](#) Initiative has produced major reports on:

- Enhancing Local Government Democracy: City of Melbourne;
- The Challenge of Informed Voting;
- Implications of Changes to Voting;
- The Desirability and Feasibility of Convenience Voting in Australia; and
- Regulating Money in Democracy: Australia's Political Finance Laws Across the Federation.

The [Australian Electoral Law Library](#) provides the most comprehensive digital database on Australian electoral law. A partnership between ERRN and AustLII, this database enables ease of access through its categorisation of Australian electoral law according to jurisdiction, types of legislation and decisions (courts and tribunals), the search tools and inclusion of law journals and scholarships. The last six months of decisions have been linked at the end of this edition of the newsletter.

The ERRN Working Paper series now has 76 publications. As a sample of the diversity, the working papers have included:

- Dr Melissa-Ellen Dowling (University of Adelaide), [Foreign Interference and Australian Electoral Security in the Digital Era](#) (May 2021);
- Dr Narelle Miragliotta (Monash University), [Remote Voting under COVID-19](#) (September 2020);
- Michael Maley (Electoral Process Specialist, formerly Australian Electoral Commission), [Electoral Management under COVID-19](#) (May 2020);
- Liz Williams (then Deputy Electoral Commissioner, Victorian Electoral Commission), [A Victorian's Response to the Discussion Paper, 'Developing a Legislative Response to a Complex and Dynamic Electoral Environment' by Maley and Orr](#) (March 2020).

The most recent Working Paper focuses on proposed federal [Voter ID laws](#).

Last but not least there is the [twice-yearly newsletter](#). These publications go far beyond given a report of ERRN activities to providing the most complete update on electoral developments together with case notes on recent court and tribunal decisions.

I trust these resources prove to be of use to you.

News

May-November 2021



COMMONWEALTH



In June, the AEC [approved](#) the registration of the “New Liberals”, over objections from the Liberal Party of Australia that the name was too similar to their own, and would confuse electors. The new party intends to run six Senate candidates at the next federal election, alongside lower-house candidates in the Tasmanian seats of Braddon and Bass.

That same month, two prominent Aboriginal leaders brought a [complaint](#) against the AEC to the Human Rights Commission, alleging racial discrimination in the Federal Direct Enrolment Update program. The program, administered by the AEC, automatically updates the enrolment details of electors using data-matching from other government databases, and has helped lift enrolment rates considerably. However the program has not applied to remote areas of the Northern Territory — areas with low enrolment levels — due to difficulty determining reliable postal addresses.

Later, in August, the Commission also finalised its redistributed [boundaries](#) for Western Australian seats in the House of Representatives. Notable changes included the abolition of the Division of Stirling, bringing WA’s share of seats down to 15. This resulted in significant changes to the seats of Cowan, Hasluck, and Christian Porter’s seat of Pearce, which, on new,

more urban boundaries, becomes a [more competitive](#) seat.

But by far the biggest electoral news item this reporting period was the Government’s voter ID bill, introduced in late October. The bill would require that electors present some form of identification — not necessarily photo ID — to be checked against enrolment details, before they can be given ballot papers. Voters unable to produce ID will be able to cast a ‘declaration’ ballot, with their details checked against the roll in a later count. The laws are [controversial](#) — debate was ongoing at time of writing.

NEW SOUTH WALES



It was by-elections galore in New South Wales. First was Upper-Hunter in late May, after a scandal felled Nationals MP Michael Johnsen. The seat was broadly contested, with candidates from One Nation, the Greens, the Nationals, Labor, the Liberal Democrats, the Shooters, Fishers and Farmers Party, and several independents. The Nationals retained the seat, thanks in part to a seven per cent fall in Labor’s primary vote in the seat — a turn of events that resulted in the resignation of NSW Labor Leader, Jodi McKay. In October, McKay also [resigned](#) from Parliament, requiring a by-election for her Sydney seat of Strathfield. McKay’s resignation came alongside several other departures, including long-serving State

Minister Andrew Constance from the seat of [Bega](#); Liberal MLA Melanie Gibbons from [Holsworthy](#); Nationals Leader and Deputy Premier John Barilaro from [Monaro](#); and the seat of [Willoughby](#), vacated after the dramatic resignation of Premier Gladys Berejiklian, over proceedings at the state’s Independent Commission Against Corruption. The state’s electoral commission suggested the by-elections may need to be delayed until February 2022, citing dire funding constraints in a [fiery](#) Budget Estimates session in early November. Results of all five by-elections will appear in the next edition of the newsletter.

Some of the pressure on the NSWEC’s capacity comes in the form of local council elections, scheduled for December. The elections had been scheduled for September 2020, but were held over a year due to the COVID-19 pandemic. The elections were delayed [again](#) in July, due to the severe Delta-strain outbreak this year. Results will appear in the next edition of the newsletter.

Finally, a redistribution of state Assembly boundaries was [concluded](#) in August. Most changes were concentrated in greater metropolitan Sydney to accommodate population growth in the west: the very safe Labor seat of Lakemba is to be abolished; a new notionally Labor seat called Leppington to be created, and cascading changes to other seats through Sydney were required. Several Liberal MPs have seen their margins [slashed](#); the seat of Heathcote goes from a 5 per cent Liberal margin to notionally Labor. Labor leader Chris Minn’s margin will shrink from 1.8 per cent to just 0.1 per cent. The boundaries will be in place for the next state election, due by 25 March 2023.



In June the state's Local Government Inspectorate released its [report](#) on the conduct of the 2020 Council Elections, held during the depths of the state's long second lockdown. The Inspectorate reported a 107 per cent rise in number of complaints lodged compared to 2016, many coming from candidates seeking to 'weaponise' the process for partisan gain. Over a quarter of the nearly 850 complaints related to just three metropolitan councils: Nillumbik, Stonington and Wyndham. The most serious impropriety, however, belonged to the City of Moreland — investigations into ballot fraud, covered in our last newsletter, were ongoing at time of writing. Also notable in the Inspectorate's report was a tripling of complaints relating to social media — a priority reform area in the Inspectorate's recommendations.

The same area was the focus of the state's Electoral Matters Committee, which in September published its [report](#) on social media's impact on state elections. Amongst the Committee's recommendations were the adoption of truth-in-political-advertising laws, along the lines of the South Australian model, despite the [concerns](#) of the state's electoral commission of being given the new role. The government is yet to formally respond.

Meanwhile, the Electoral Boundaries Commission [concluded](#) its redistribution of Legislative Assembly boundaries in October. Nine districts are to be [abolished](#), amongst them the seat of Martin Pakula, Minister in the Andrews Government. Nine new districts were created, with many in Melbourne's booming western suburbs. The boundaries will be in effect for the 2022 State Election.



The state division of Stretton went to a by-election in July after Duncan Pegg, the sitting Labor MP, lost his 20-month battle with cancer. Labor [retained](#) the seat, with Pegg's former staffer, James Martin, elected on first preferences.

Later, in September, the Australian [reported](#) that the Electoral Commission of Queensland was in the midst of two investigations into Liberal-National Party fundraisers held ahead of the 2020 State Election. The fundraisers, it is alleged, were tied to prohibited donations from property developers, worth as much as \$150,000. The ECQ has reportedly frozen tens of thousands of dollars of LNP MP's funds in connection to its probe.



Both sides of state politics found themselves on the wrong end of South Australia's truth-in-political-advertising regime. State Labor Leader Peter Malinauskas was forced to publish a [retraction](#) and apology after claiming the Marshall Government had secret plans to cut hospital staffing. Then, a Facebook page entitled "SA Labor Lies", run by the state division of the Liberal Party, was forced to [retract](#) its claims that Malinauskas opposed various measures in the 2021 state budget.

Meanwhile, the Marshall Government's control of the Legislative Assembly came into doubt with further defections of Liberal MPs to the crossbench. In October, first-term Liberal backbencher Dan Cregan [joined](#) ex-Liberals Felix Ellis and Sam Duluk (see our last newsletter) and the rest of the crossbench, reducing the Liberal Party's numbers to 22 of 47 seats. The crossbench then [voted](#) with Labor to require that the Speaker be independent of the Government, and replaced the Liberal incumbent with Cregan. The chamber also initiated a Select Committee [investigation](#) into the Deputy Premier, Vickie Champion, which found in November that she had misled the Parliament, prompting a successful motion of no confidence in the Deputy Premier. This all comes as the next election creeps closer — South Australians are due to return to the polls on 19 March 2022 — presuming the parliamentary situation does not deteriorate further.



The Western Australian Electoral Commission published its [report](#) on the administration of the 2021 State Election. The report confirmed massive upswings in early and postal voting in light of the pandemic — just 38 per cent of voters cast their ballot on polling day — as well as disappointing but understandably low turnout — 85.5 per cent of enrolled voters. The report also reissued long-standing calls from the WAEC for a new state electoral act, and specifically a pivot towards recognising an election 'period', instead of orienting election administration around a single 'election day'.

Meanwhile, and as anticipated in our last newsletter, the McGowan Government has enacted reform of the Legislative Council. A Ministerial Expert Committee, appointed in May to canvas various options in May, finalised its [report](#) in June. Alongside the adoption of Optional Preferential Voting, it recommended WA's Council 'regions' be abolished, and a 'whole of state' electorate of one replace it. The Government introduced its legislation enacting the changes in September, and they passed their final reading in the Legislative Council on the 17th of November.



The last newsletter reported on the Tasmanian state election, held in May, which saw the Gutwein Government re-elected with 13 seats. Unusually for Tasmania, the Assembly elections were accompanied by some Upper House elections: for the divisions of Windermere and Derwent. Elections were also due for the Council division of Mersey, but the incumbent, Independent Michael Gaffney, was declared [unopposed](#). The polls for Windermere and Derwent were significantly complicated by their pairing with the House election. Following polling day, the state's Electoral Commission [reported](#) to the Legislative Council that over 6 per cent of electors in both Derwent and Windermere attended "House of Assembly only" polling booths and missed out on voting in the Legislative Council. Around 1 per cent in each division were erroneously not given Council ballot papers by Commission staff. The result was a 9-point gap between House and Council turnout. It was enough for one losing candidate for Windermere, Independent Will Smith, to [threaten](#) legal action. However the Commission found that electors voting at House Only booths had all the information they needed to vote correctly, and the electors disenfranchised by its own administrative errors were not numerous enough to alter the counts for Derwent or Windermere at their closest points.

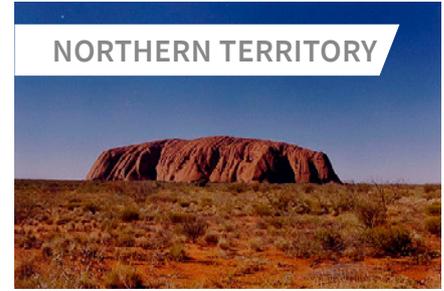
Meanwhile, just one day after being re-elected, Liberal member for Braddon, Adam Brooks, resigned from the Parliament after it was [announced](#) Queensland Police would be charging him with firearm offences, including possession of a handgun, explosives and a fake driver's license. This necessitated a count-back in June, which [elected](#) fellow Liberal Felix Ellis.

Later, in October, the state's Integrity Commission [released](#) the first of a series of papers on 'pork barreling'. It revealed a growing electoral trend of large funds divided up into small grants promised to small community groups: during the 2014 election the victorious Liberals promised 87 grants amounting to \$7.3 million; in 2018, the number of grants was 262, amounting to \$21.4 million. The report also raised questions over the Premier's Discretionary Fund, previously the Premier's Sundry Grant Program under Labor — a fund [criticised](#) in the past by the state's Audit Office. The report called for reform to the state's Electoral Act to enable the Electoral Commission to pursue corruption more vigorously. Further papers in the series are due to be published over the next 12 months.



The ACT's Standing Committee on Justice and Community Safety issued its [report](#) on the 2020 Territory elections in August. Amongst its recommendations were provisions to liberalise early voting, extra transparency around electronic voting systems, a ban on roadside signage, a total prohibition on campaigning on election day (as per the Tasmanian model), a \$10,000 cap on political donations, and further bans on certain classes of donors. All these came on the back of recent reforms to the Electoral Act, covered in prior newsletters.

The Committee also heard evidence from the ACT Electoral Commission regarding the introduction of truth-in-political-advertising laws, based on the South Australian model. The Commission has given the laws lukewarm support, fearing the impact judging claims might have on its perceived impartiality, alongside more practical matters of funding and staffing. The Commission proposed an alternative body be established to hear complaints, and a preference that the adjudication of truth rest not with a commission but with electors. The Committee initially wrote to the Special Minister of State, suggesting a six-month delay of the laws, but when one was not forthcoming, the Committee stopped short of recommending amendments.



In June the Northern Territory Electoral Commission released its [report](#) into the conduct of the 2020 Territory Elections. The elections had been run on significantly different regulations, after three reforms to the Electoral Act in the lead up to 2020, restricting campaign finance and certain campaigning activities, and returning the jurisdiction to full preferential voting. It was also a campaign held in the midst of the pandemic. The report noted the NT's stubbornly low enrolment rate — just 85 per cent, compared to the national average of 96 per cent — and only 74 per cent turnout, compared to 91 per cent national turnout for the federal election a year prior. Turnout was even worse in remote districts, at 61 per cent, while 59 per cent of electors voted by post or early. The Commission recommended further reforms to election administration in the Territory, including further restrictions on campaigning near voting centres, and funding for a new election management IT system.

Through August and September, the Commission was busily running two further elections: first, local government elections held through late August; then, in early September, an Assembly by-election for the seat of Daly, [vacated](#) by Country Liberal Party MP Ian Sloan, for health reasons. In the case of the latter, the governing Labor Party managed to [win](#) Daly with a 7.1 per cent swing, reportedly the first time a Northern Territory Government had won a by-election. The local government elections, however, were less clear cut in their results, at least for Mayoral elections in Alice Springs, which deteriorated to challenges in the NT Civil and Administrative Tribunal. On the first count of votes in August, Matt Paterson, affiliated with the Territory Alliance, [beat](#) challenger Jimmy Cocking by 17 votes after the distribution of preferences. This triggered a partial recount of preferences, which narrowed that lead to just two votes. This tight result led Cocking to petition the Tribunal for a full recount, particularly given the [restrictions](#) on scrutineering due to COVID regulations during the original count.

But the Tribunal [rejected](#) the application — reasons had not been published at time of writing. Cocking is pursuing the release of all ballot papers under Freedom of Information laws.

Event reports



ERRN Webinar

'Data Driven Campaigning Electoral Regulation and Australian Democracy'

18 May 2021

If we are to believe many prominent commentators, data-driven campaigning and microtargeting are said to not only be changing election campaigns, but democracy itself. Christopher Wylie, the Cambridge Analytica whistleblower, told the Guardian, "We exploited Facebook to harvest millions of people's profiles. And built models to exploit what we knew about them and target their inner demons". While there have been numerous enquiries and investigations into data-driven campaigning across the globe, our understanding of the way political parties collect and use data and what voters think of these practices is extremely limited. In this presentation, Glenn Kefferd drew on his original research from his recent book on data-driven campaigning to provide answers to both questions and demonstrate that there is a significant disconnect between current campaign practices and Australian voter attitudes towards these practices.

ERRN/Gilbert + Tobin Centre of Public Law Webinar

'Primary elections in the USA and Australia'

20 May 2021

Primary elections, in which voters are given the opportunity to determine who will be a party's candidate at a general election, are a long-standing feature of the electoral process in the USA. The opportunity they provide to involve party supporters more deeply in shaping election outcomes has sometimes been viewed favourably in countries where public disengagement from politics has been seen as a problem.

And yet, in the USA, primary elections are increasingly being identified as a major factor underpinning a dysfunctional polarisation of, or even "sectarianism" in, political discourse. This is reflected in the invention of a new verb - "to be primaried" - which describes the potential fate of incumbent representatives who face challenges from activists if their political stances have not adhered sufficiently to a typically more extreme (left or right) world view.

What then, can be learned from recent US experience? Would primary elections, if adopted elsewhere, eventually lead to similar consequences? Or are the pathologies seen in the US unique to that country, such that primary elections held elsewhere could be expected to be beneficial to democratic participation?

Watch the recording [here](#).

ERRN Short Course

'Regulation of Australian Elections'

27-28 May 2021

The aim of the online course 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. Participants discussed topics including Australian constitutional frameworks, the Australian party system, voting rights, compulsory voting, forms of voting, political finance, experiments in election research, Australian party systems, media in election, and electoral commissions. The course was offered online, where approximately 140 participants have engaged, and continue to engage, with reading materials and lecturer recordings. Participants enjoyed a highly engaging online program and the opportunity to connect with colleagues and practitioners from across Australia and New Zealand.

ERRN/Gilbert + Tobin Centre of Public Law Webinar

'Federal Voter ID Laws'

5 November 2021

The federal government has recently announced the intention to enact new voter ID requirements for federal elections. This proposal raises issues of constitutionality and broader democratic policy. Do laws of this kind promote electoral integrity, or ultimately undermine it? Are they consistent with our system of compulsory voting? And do they advance principles of equality, or are they racially discriminatory in effect? This online seminar discussed these and other issues relating to the proposed laws, drawing on a range of perspectives, including recent Queensland and overseas experience.

Watch the recording [here](#).

See Working Paper 76 in the publications section for a transcript of this event, and more.

See also, in Spanish, an [interview](#) with Ferrán Martínez i Coma on SBS, on the same issue.

ERRN/Stretton Institute Webinar

'Understanding and Addressing Informal Voting in Australia?'

17 November 2021

This webinar unpacked the aims and approach of an ARC Linkage Grant entitled: 'Understanding and Addressing Informal Voting in Australia, Industry Partner, Victorian Electoral Commission (CI's L. Hill, R. Praino, W. Gately and P. Thornton-Smith). Designed to ultimately reduce relatively high rates of informal voting, this project represents the most ambitious study of informal voting ever undertaken anywhere. In it, the investigators combine experimental data, aggregate level data and individual level data to provide a multi-dimensional understanding of the full implications and effects of both intentional and unintentional informality.

Watch the recording [here](#).

ACT Chapter Webinar

'Voter ID laws: inspiration, execution, and consequences'

25 November 2021

With electoral reform bills - including voter ID requirements - currently before the parliament, this seminar examined the American roots of our ideas about electoral administration and integrity, the Australian case for reform, the public debate, and possible effects on citizens and voters. The speakers brought their political and legal expertise to discuss electoral reforms that are easily misunderstood and mischaracterised by both sides of the debate.

Watch the recording [here](#).

Forthcoming events:

ERRN Webinar

'Changes to the American electoral system: politics as usual?'

Tuesday 30th November, 1pm

Speakers: Dr John Hart & Prof. Tim Lynch

[Register here](#).

SA Chapter Webinar

'Hidden Money: Shining light on political finance for the next federal elections'

Thursday 2nd December, 1pm-2pm

Speakers: Han Aulby and Dr Catherine Williams, Centre for Public Integrity

[Register here](#).



Publications



Matteo Bonotti & Paul Strangio (eds), A Century of Compulsory Voting in Australia: Genesis, Impact and Future, Palgrave Macmillan.

Richard W. Frank and Ferran Martinez i Coma, 2021. '[Correlates of Voter Turnout](#)' Political Behavior,

Anika Gauja, 2021. '[Digital democracy: big technology and the regulation of politics](#)', University of New South Wales Law Journal, vol 44, no. 3.

Josh Holloway and Narelle Miragliotta, '[Examining the effects of convenience voting on accidental invalidity](#)', Election Law Journal: Rules, Politics & Policy, vol. 20, no. 3.

Paul Kildea, 2020. '[Australia's Same-sex Marriage Survey: Evaluating a Unique Popular Vote Process](#)' Monash University Law Review, 46, pp. 85-118.

Ignacio Lago and F. Martinez i Coma, 2021. '[Transaction costs in electoral coordination: How turnout shapes changes in the number of parties](#)' Electoral Studies, 72.

Ferran Martinez i Coma and Duncan McDonnell, 2021. '[Australian Parties, Not Voters, Drive Under-Representation of Women](#)', Parliamentary Affairs,

Narelle Miragliotta, Sarah Murray & Martin Drum, 2021. '[Values, partisan interests, and the voting age: Lessons from Australia](#)', Politics & Policy, vol. 49 no. 5.

Yee-Fui Ng, 2021. '[Institutional Adaptation and the Administrative State](#)' Melbourne University Law Review 44(3): 889-927.

Yee-Fui Ng and Stephen Gray, 2021. '[Wars, Pandemics and Emergencies: What can History Tell us about Executive Power and Surveillance in Times of Crisis?](#)' University of New South Wales Law Journal 44(1): 227-66.

Graeme Orr & Andrew Geddis, 2021. '[Islands in the storm? Responses to foreign electoral interference in Australia and New Zealand](#)', Election Law Journal: Rules, Politics & Policy, vol. 20, no. 1.

Shaun Ratcliff and Darren Halpin, 2021. '[Dark money and opaque politics: making sense of contributions to Australian political parties](#)', Australian Journal of Political Science.

Benjamin Reilly & Jack Hudson Stewart, 2021. '[Compulsory preferential voting, social media and "come-from-behind" electoral victories in Australia](#)', Australian Journal of Political Science, vol. 56, no. 1.

Leena Rikkilä Tamang & Marian Sawyer 2021, '[Enhancing equality in political life: successes and limitations with electoral gender quotas](#)', in R. Vijayarasa (ed), [International Women's Rights Law and Gender Equity: Making the Law Work for Women](#), Routledge, London.

Joo-Cheong Tham, 2021. '[How might digital campaigning affect the problems of political finance?](#)', International IDEA & Friends' Asia & the Pacific Online Lecture No. 4.

For inclusion in November's newsletter, send your publications through to our newsletter editor, James Murphy: james.murphy@unimelb.edu.au

Democratic Audit of Australia 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 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. 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 76

[Voter ID Laws](#)
Various Contributors
November 2021

Working Paper 75

[The Climate Crisis and Democracy: From Democratic Debilitation to Innovation](#)
Prof Joo-Cheong Tham
August 2021



Case Notes

Electoral Commissioner of the Australian Electoral Commission v Futter

Mr Barry John Futter was candidate in the 2019 federal election, in the electoral division of Newcastle in the House of Representatives. Mr Futter was endorsed by The Great Australian Party. The election took place on 18 May 2019, but Mr Futter was not elected.

Under the Commonwealth Electoral Act 1918 (Cth) ('the Act'), candidates for an election are obliged to disclose gifts (s 304(2)) and electoral expenditure (s 309(2)) after the election.

Accordingly, Mr Futter was required under the Act to furnish to the Electoral Commissioner, by 2 September 2019, a return setting out the value of gifts and discretionary benefits received and electoral expenses incurred by him. Mr Futter failed to lodge a candidate return by that date.

The Australian Electoral Commissioner sought declarations that Mr Futter had contravened sections 304 and 309 of the Act.

Griffiths found that J Mr Futter had contravened both ss 304(2) and 309(2) of the Act. Mr Futter's contraventions occurred notwithstanding the numerous occasions on which he was reminded by the Electoral Commissioner of his obligations under the Act. Mr Futter took no active steps in the proceeding, nor sought to explain his conduct. Accordingly, Griffiths J imposed civil penalties of \$12,600 on Mr Futter, who also had to pay the Commission's legal costs.

Victorian case notes

Cases in Victoria relate to the 2020 local government elections.

Moreland City Council, North-West Ward

This case relates to suspected postal vote tampering. The Victorian Electoral Commission (VEC) applied to the Victorian Civil and Administrative Tribunal (VCAT) for the election to be declared void, and the VCAT application has been proceeding in parallel with a separate criminal investigation by Victoria Police and the Local Government Inspectorate. Progress on the VCAT application has been held up as a result of an application by two respondents for access to material in the custody of Victoria Police as part of the police investigation.

Loddon Shire Council applications

There were three applications regarding the Loddon Shire Council election, one by Mr Kenneth Pattison (an unsuccessful candidate for Boort Ward), one by Mr Reginald Holt (an unsuccessful candidate for Wedderburn Ward), and the third by 14 voters for Wedderburn Ward. These applications covered similar matters and were heard together by consent of the parties. The applications related to the conduct of councillors, including the then Mayor, during the election period, and to statements in election campaign material published by or on behalf of the successful candidates. The elections themselves were not directly impugned, and the VEC primarily participated as a 'friend of the tribunal'.

The applicants sought orders that the successful candidates be declared not duly elected, that Mr Pattison and Mr Reginald Holt be declared duly elected, and that financial penalties be imposed. The applicants submitted that any breach of the Local Government Act 2020 (Vic) should result in the setting aside of the election result and/or the disqualification of the offending candidate. They argued that the Mayor's endorsement of the successful candidates (included in brochures) breached section 304 of the Act. That section prohibits councillors and members of council staff from using council resources in a way that is intended or likely to affect the result of an election, and the applicants contended that the Mayor was a resource of the Council, which had been improperly used to advantage two candidates. The applicants also argued that the successful candidates had misused Council resources such as laptops and telephones in their campaigns, and had misbehaved in other ways involving conflict of interest and driving offences.

On 15 September 2021 VCAT Deputy President Lambrick dismissed the applications. The Deputy President agreed with the VEC that the Mayor was not a resource of the Council in the terms of section 304 of the Act, and so the Mayor's endorsement of the successful candidates did not breach the Act. A possible breach of any provision of the Act was not sufficient grounds to overturn the result of an election. The Deputy President could not find that any possible irregularities could have affected the result of the election. Thus there was no basis on which the described irregularities justified a declaration that the election was void.

The Australian Electoral Law Library:

The Australian Electoral Law Library continues to be updated daily, providing access to electoral law decisions and materials across all jurisdictions. Below is a list of court and tribunal decisions handed down in the past six months.

Recent decisions:

Commonwealth

[Electoral Commissioner of the Australian Electoral Commission v Futter](#) [2021] FCA 876 (29 July 2021)

[Electoral Commissioner of Australian Electoral Commission v Wharton](#) (No 3) [2021] FCA 742 (1 June 2021)

New South Wales

[Diaz v Ruddock; Attie v Ruddock](#) [2021] NSWSC 881 (21 July 2021)

[Zaiter v Ruddock](#) [2021] NSWSC 880 (21 July 2021)

Victoria

[Victorian Electoral Commission v Yildiz](#) (Review and Regulation) [2021] VCAT 1206 (20 October 2021)

[Kairouz v Bracks](#) (No 2) [2021] VSC 671 (19 October 2021)

[Asmar v Albanese](#) (No 4) [2021] VSC 672 (19 October 2021)

[Pattison v Victorian Electoral Commission](#) (Review and Regulation) [2021] VCAT 1073 (15 September 2021)

[Asmar v Albanese](#) (No 3) [2021] VSC 334 (9 June 2021)

[Asmar v Albanese](#) (No 2) [2021] VSC 324 (4 June 2021)

[Asmar v Albanese](#) [2021] VSC 263 (7 May 2021)

Northern Territory

[The Electoral Commissioner v Parry & Wilson](#) [2021] NTCAT 33 (13 October 2021)

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