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Welcome from the Director

Associate Professor Joo-Cheong Tham

We live in the age of globalisation. With rapid changes in technology, communication and transport and the increasing integration of economies, national borders are becoming porous and cultures are being united by more than what divides them – the world is becoming smaller, more connected.

Or so we are told.

The rhetoric of globalisation tends to gloss over more complex realities. Astute observers have long pointed out how the local remains stubbornly significant and, in many cases, central; how inequalities and unevenness underpin globalisation; and how globalisation can be a cause for commiseration as much as celebration.

The contradictions of globalisation are apparent in the political realm. Far from disappearing into irrelevance, the nation-state remains the central locus for politics with supra-national institutions like the European Union the exception rather than the norm. Even with more countries than ever opening their economies to international trade and services, there is no significant push to democratise international decision-making; the pace of economic globalisation has thus far outstripped the establishment of global democratic structures.

At the same time, there is a growing sense that political norms are increasingly globalised – that the ideal of democracy has become the international benchmark for evaluating the legitimacy of political regimes across the world. To take an example from Canada, where I am writing this message. Controversial amendments to electoral law were enacted last year through Bill C-23 (more popularly known as the Fair Elections Act). Changes occurred in three main areas:

• To Elections Canada, the statutory agency responsible for the administration of federal elections: A key change was the removal of the Commissioner of Canada Elections, the agency responsible for enforcing federal electoral laws, from Elections Canada and placing it within the office of the Director of Public Prosecutions (also proposed but dropped were restrictions on what the Chief Electoral Officer could communicate, including a prohibition on
campaigns encouraging voting);

- To the right to vote: The original Bill proposed the elimination of ‘vouching’ – a practice where an elector vouched for another – as a means for proving identity and residence. The final Act retained ‘vouching’ but added the requirement that both voucher and vouchee take a prescribed oath; and

- To political finance regulation: The Bill increased contribution limits and the amounts candidates and leadership contestants could contribute to their own campaigns. It also increased the spending limits for parties and candidates while reducing third party limits by applying them ‘in relation to a general election’ (rather than ‘during an election period’). Parties and candidates exceeding their limits now face an additional penalty for breaching spending limits through the reduction of their election expenses reimbursement payments.

Most striking was how the debate was conducted in an international context. In defending the Bill as being essential for the integrity of Canadian elections, the government invoked Canada as being a global leader in democracy. Yet so did critics who considered that the Bill would lead to increased disenfranchisement, reduce the effectiveness and independence of Elections Canada while resulting in a greater role for money in Canadian politics. Remarkably, international electoral experts (from Australia) made key interventions in the debate.

The international aspect of the debate surrounding the Fair Elections Act was reflected not only in the debates in Canada but also within Australia. In the wake of the loss of 1370 votes in the 2013 Western Australia Senate Election, the Australian reported that significant changes to the Australian Electoral Commission were being considered by the Government, including one modelled upon the Fair Elections Act which involved shifting some of the present responsibilities of the Commission, particularly its enforcement-related functions, to the Department of Finance.

In this international context, how can the Electoral Regulation Research Network provide an effective forum for discussion of Australia’s electoral regulation that takes into account its ‘glocal’ (global and local) context? It seems to me that – at the minimum – the Network should foster a broad comparative perspective. The perspective should be broad in that it should consider comparisons with countries outside the Anglosphere. For instance, a recent survey by the Electoral Integrity Project concerning the quality of elections held in 2014 concluded that the five best elections in that year were in Lithuania, Costa Rica, Sweden, Slovenia and Uruguay. These
countries hardly – if ever – feature in comparative studies involving Australia; at the very least, the findings of the Electoral Integrity Project survey prompt us to take a closer look.

The comparative perspective encouraged by the Network should also be of the middle-range in that it should steer a path between, on one hand, decontextualized comparisons which single out one or more aspects of another country’s electoral system and on the other hand, particularistic accounts that provide a surfeit of detail which resists cross-national comparisons. Comparisons should be looking to the challenges facing all electoral systems, and strategies to overcome them.

In this context, the most appropriate stance is of tutored novices, rather than subject-matter experts.
Electoral News

Commonwealth

Nationally, there has been continued interest in electoral reform and regulation following the 2013 federal election. Many of these issues follow on directly from the news section of the ERRN October 2014 newsletter.

The Australian Federal Police (AFP) are continuing to investigate claims of alleged fraudulent electoral enrolment in the Division of Indi leading up to the 2013 poll. While these allegations were initially reported to the AEC’s new Integrity Unit, which was established after the Keelty review into the ‘missing’ votes from the first 2013 WA Senate election, the AFP has since taken full control of the investigation. Most recently, it has narrowed its focus to 27 younger voters based around Wangaratta who were enrolled in Indi for the election but may have been living elsewhere (predominantly Melbourne). Thus far, Voices for Indi, the renamed advocacy group which was formed to help campaign for now Member for Indi Cathy McGowan, has not been questioned by the AFP.

With the Parliament having resumed sitting for 2015, the Commonwealth Joint Standing Committee on Electoral Matters (JSCEM) tabled its final report for the inquiry into the conduct of the 2013 federal election. At a public hearing on 4 March, Tom Rogers, told the Committee that the AEC does not ‘do a good job’ of the handling and transport of ballot papers prior to and after elections. Mr Rogers conceded that private companies could do a better job with the ballot papers. The JSCEM hearing also aired concerns about lax security arrangements for ballot papers. The Committee was told that an Audit Office report in May 2014 found that AEC officials in Western Australia reportedly left a door open to a secure warehouse containing ballot materials to allow ‘fresh air’ in for poll workers. The AEC will improve ballot security for future elections, including using tamper-proof tape to secure ballot boxes.
The Committee's final report also contains recommendations about the method for electing the Senate, following on from the JSCEM's first interim report on the subject. Media reports in mid-2014 suggested that the government had 'shelved' plans to reform the Senate voting system because it lacked the numbers to pass legislation in the Senate. However, in March Tony Smith, called for a fresh attempt to 'clean up' Senate voting and prevent gaming of the system by independents and minor parties. The latest calls for change, which are supported by Greens Senator Lee Rhiannon, centre again on two previous proposals: introducing optional preferential 'above-the-line' voting, and banning group voting tickets. Amidst reports about a potential double dissolution election, Mr Smith has urged his Liberal colleagues to consider the changes sooner rather than later.

Electronic voting continues to be a hot topic in federal Australian electoral administration and regulation. The JSCEM released its second interim report on November 2014, focusing specifically on evidence the Committee received about electronic voting and how it might be introduced for future Australian elections. Predictably, JSCEM found that Australia could not introduce a system of electronic voting on a large scale without fundamentally compromising electoral integrity. However, JSCEM also concluded that there were significant opportunities to use technology to improve the Australian electoral process, mentioning the expanded use of electronic roll mark off, ballot paper scanning to speed up counting and further advances in telephone voting to assist vision impaired electors. To this end, some reports have suggested that electronic voting for federal elections is 'one step closer', although others keenly await how iVote performs at the 2015 NSW state election.

One of the key trends in Australian electoral participation has been the growing popularity of early voting, with nearly 30 percent of electors voting before election day at the 2013 poll. But some reports suggest the accessibility and viability of postal voting, the oldest method of pre-poll voting, is at risk due to changes to Australia Post's mail service. Due to the declining profitability of its letters service, in September 2015 Australia Post will introduce a two-speed postal service, where non-priority mail will take up to three days to deliver. Postage costs for priority mail will also increase from $1 to $1.50. Some reports suggest this will make postal voting increasingly unreliable and too costly to administer, thus stimulating demand for flexible, in person voting methods and electronic voting. In an interesting comparison, in February 2015 New Zealand Post decreased deliveries of post to three days a week.

Returning to the AEC, the AEC has commenced the electoral redistribution process for New South Wales, Queensland and Western Australia. In each state a Redistribution Committee is appointed
and consists of the Electoral Commissioner, the Australian Electoral Officer (AEO) for that state or territory (except for the ACT where the senior Divisional Returning Officer for the territory is a member), the Surveyor-General and the Auditor-General for that state or territory. The AEC’s website publishes information about the redistribution process, including dates and timelines and opportunities for public participation.

In relevant, international news, US President Barack Obama has referred to Australia in supporting moves to make voting compulsory in the United States. Oregon recently became the first US state to adopt automatic voter registration. The move has sparked discussion about how to encourage electoral participation in US elections; Obama’s comments are the first time he has clarified his position on compulsory voting.

Tom Rogers was appointed Australian Electoral Commissioner in mid-December 2014. He was previously Acting Electoral Commissioner.
Victoria

The Victorian state election was held on 29 November 2014 and resulted in a change of government, with the Andrews Labor Opposition defeating the Coalition-National Napthine Coalition Government. Labor won 47 seats, Liberal 38 seats and the Greens won their first ever seats in the Legislative Assembly in Melbourne District and Prahran District. Echoing the results of the Senate at the 2013 federal election, a host of minor parties were elected to the Legislative Council. The Greens won five seats and the Shooters and Fishers Party two. One seat was won by the Democratic Labor Party, the Sex Party and Vote 1 Local Jobs Party.

In general, the election ran smoothly and the VEC was commended for its work. However, on election night, there were complaints the VEC’s website was hard to navigate, which became a particular issue in the seat of Prahran where the count was close and the Greens’ candidate ultimately won, coming from third position in primary votes.

Another trend which became clear in the lead up to the 2014 state election was the popularity of early voting in person. Besides the Australian Capital Territory, Victoria has the highest rates of early voting in person for state elections; at the 2014 poll 910,000 Victorians voted early in person, an increase of 60 percent on the 2010 state election and a 250 percent increase in the rate of early voting in person in the four elections since the 2002 Victorian state election.

The trend towards early voting has several implications for Victorian electoral practice. In relation to the VEC and electoral administration, the high rate of early voting in person at the 2014 state election resulted in calls from some commentators, including Antony Green, for the VEC to start counting early votes on election night (at present early votes and postal votes are not counted on election night). One impediment to faster counting of early votes in Victoria is that the Electoral Act 2002 (Vic) treats pre-poll votes as ordinary votes within or outside an elector’s enrolled District: in practice all votes from all Districts are in the same box, making sorting and counting on election night impractical within
the constraints of current staffing levels. Through amendments to the Commonwealth Electoral Act 1918 (Cwth) in 2010, the AEC does things differently – votes cast outside a Division are counted as declaration votes, votes within a Division are treated as ordinary votes.

Some also argue that the trend to early voting challenges Australia’s electoral traditions. This principle was recently tested in the Victorian Supreme Court. Maria Rigoni, an unsuccessful Palmer United Candidate for the Legislative Council in Victoria’s Northern Metropolitan Region, challenged the validity of the poll because of the large number of pre-poll votes. She argued that the result of the election may have been different because the VEC breached the Electoral Act 2002 (Vic) by allowing many electors to vote early in person at a pre-poll voting centre without a valid excuse.

Interestingly, in making this argument her legal team also claimed that pre-poll voting is weakening the democratic process: Dr Trichardt, the lawyer representing Ms Rigoni, said that voters ‘need to see the sausage sizzle’ as an integral part of democracy. Graeme Orr and Nathaniel Reader have recently written about the relationship between early voting and the important democratic principle of electoral simultaneity, as espoused by Dennis Thompson and others.

The case was dismissed on 23 March. Further commentary is provided in this newsletter’s Case Notes.

The Victorian Parliament’s Electoral Matters Committee has also been formally reappointed in the 58th Parliament. Based on media reports, the Committee formed will likely inquire into the most recent state election, as it has done since 2007. It may also look at methods to reform voting for the Legislative Council, following on from discussions between the then Opposition Leader Dan Andrews and then Premier Denis Napthine about Upper House reform.

In other news, the October 2014 ERRN newsletter reported that the VEC would replace the traditional election night Tally Room with another event, following the decision of the AEC to also discontinue the federal Tally Room at the 2013 federal election. ‘Democracy Live’ was held in Federation Square and was a great success; it was an informal gathering with live entertainment and a space where people could congregate to watch live election coverage on the big screen television and celebrate Victoria’s democracy.

Finally, the Gippsland South District by-election was held on 14 March. The by-election resulted from the resignation of former Deputy Premier Peter Ryan. The seat was comfortably won by the Nationals’ Danny O’Brien, who switched from the Legislative Council to the Legislative Assembly.
New South Wales

The NSW election was held on 28 March 2015. The Baird Liberal Government was re-elected with a reduced majority. The Labor Opposition led by Luke Foley achieved a swing of 9 seats, winning 32 seats. The Baird Government won 52 seats. The campaign was largely fought around the privatisation of NSW’s electricity grid. The Baird Government campaigned on the proposal to sell off the network to fund a large-scale public works program. Labor ran on opposition to the scheme; however, several senior Labor figures openly supported Baird’s privatisation plans.

The NSW state election saw the dramatic expansion of the NSW Electoral Commission’s iVote platform. It is estimated that 250,000 electors used the system to cast their vote; this would make iVote the largest ever electronic vote for a national or subnational election (Estonia holds the current record of 176,000). While the NSW Electoral Commission declared iVote accurate and transparent, the system has experienced technical difficulties. On 17 March voting was temporarily suspended after the NSW Electoral Commission discovered that two parties had been left off the ‘above the line’ section of the Legislative Council ballot paper due to human error. Reports suggest approximately 19,000 ballots were affected. In addition, there has been considerable commentary about iVote’s security. Vanessa Teague, from the University of Melbourne, has discussed her views of iVote’s security flaws. Subsequent to this, on 20 March Dr Teague identified a ‘major security flaw’ with the iVote system which could comprise the security of the ballot. Dr Teague informed the NSW Electoral Commission about this and the Commission fixed the particular issue. The Commission remains confident of iVote’s success.

There has been significant commentary about the NSW Independent Commission against Corruption (ICAC) and the scope of its powers and functions. Most recently, in December 2014 the NSW Court of Appeals ruled that the ICAC had no power to investigate claims relating to the alleged corrupt conduct of NSW Deputy Senior Crown Prosecutor Margaret Cunneen, who denied allegations
that she advised her son's girlfriend to fake chest pains to avoid a blood-alcohol test following a car accident in May 2014. The Court of Appeals said that it would seek leave to appeal to the High Court, adding that any ruling would fundamentally affect ICAC's powers and capacity to conduct investigations into corrupt conduct. **On 15 April the High Court ruled that ICAC did not have the powers to investigate Cunneen's conduct.** The Court heard that any decision could affect current ICAC investigations – Operations Spicer and Crudo have been suspended pending the High Court’s ruling.

On 13 March the Supreme Court ordered **ICAC pay Ms Cunneen's court costs.**

As reported in the October 2014 ERRN newsletter, the High Court is also hearing a challenge to the ban on political donations from property developers in NSW, brought by property developer Jeff McCloy. As reported in October’s ERRN newsletter, on 28 July 2014, Newcastle Lord Mayor Jeff McCloy, and two companies he is associated with (McCloy Administration Pty Limited and North Lakes Pty Limited) lodged a writ in the High Court challenging the ban on property developers and other prohibited donors making political donations under section 96GA of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW). McCloy is arguing that the **bans limit the implied freedom of political communication and that the limitation is not justified by any avoidance of any potential or perceived corruption or undue influence risk.** In March, counsellors for **Attorney-General George Brandis intervened in the case.** While Mr Brandis’ submission generally supports the right of the NSW Parliament to ban donations from whoever it sees fit, it also notes that banning donations can distort the flow of political communication, making it easier for the wealthy to influence politics.

Both High Court cases are discussed at length in this newsletter’s Case Notes section.

Premier Mike Baird has pledged to reform NSW’s political donations system. During the campaign, Baird acknowledged that while NSW has some of the toughest political finance laws in Australia, ICAC’s work during in 2014 revealing donations made by property developers to the Liberal Party demonstrated that more needed to be done. **To this end, Baird has released a statement saying a returned Baird Government would implement 49 of the 50 changes recommended by the Expert Panel, led by Dr Kerry Schott.** The only change not supported by the Government is the recommendation (Recommendation 42) to set up an independent body to approve changes to public funding.

Leading on from this, the NSW JSCEM has risen as a result of the state election. However, the NSW Government has suggested that the work of the Expert Panel, and other submissions, **will form part of the JSCEM's work when it examines the 2015 NSW state election when Parliament reforms.**
Aside from the popularity of iVote, early voting in person was a popular way to vote at the NSW state election. Like Victoria, NSW electors only need to attend a pre-poll voting centre to cast their ballot, although they notionally must provide a reason why they are unable to vote on election day, such as work commitments, illness or travel. The NSW Electoral Commission expects nearly 800,000 NSW electors to vote early.

In September 2014 the NSW Parliament passed controversial reforms to the voting method for the City of Sydney. Under the changes, which were first proposed by the Shooters and Fishers Party and supported by the NSW Government, business owners in the City of Sydney are entitled to two votes for every resident's single vote, echoing the non-residential model used for City of Melbourne elections. Businesses are also automatically enrolled to vote, and the responsibility for preparing the electoral roll for council elections has been transferred to the City of Sydney, not the NSW Electoral Commission.
Queensland

The 2015 Queensland state election was held on 31 January 2015. The Liberal National Party (LNP), led by Premier Campbell Newman lost to the Opposition Labor Party led by Opposition Leader Annastacia Palaszczuk, after Labor formed a minority government with the support of the independent MP Peter Wellington. The result was remarkable given that the previous election saw the then Blight Labor Government suffer the biggest defeat of a sitting government in Queensland’s history, with the LNP winning 78 seats to Labor’s nine. It was also interesting in that then Premier Campbell Newman lost his seat of Ashgrove to Labor challenger Kate Jones, the former Member for Ashgrove prior to Newman’s election to Parliament in 2012. The Parliament is comprised of Labor with 44 seats, the LNP 42 seats, Katter’s Australian Party two seats and Independent Peter Wellington.

At the time of this newsletter’s publication the Palaszczuk Government’s slim hold on power was a risk. The Member for the Far Northern Queensland seat of Cook, Billy Gordon, revealed to Parliament his extensive criminal history and allegations that he had physically abused his ex-partner. With Gordon’s resignation from the Labor Party, Labor now controls just 44 seats with the support of independent Peter Wellington and would need Mr Gordon’s vote, if he remains, or one of two Katter’s Party MPs to pass laws.

One immediate concern from the election related to the seat of Ferny Grove. In early February it was revealed that the Palmer United Candidate, Mark Taverner, stood for election in the District whilst an undischarged bankrupt and was therefore ineligible to run. Initially it was speculated that a by-election would be needed to clear up the result. The LNP also temporarily called for a caretaker government in the advent of a potential by-election in Ferny Grove – Graeme Orr has discussed how these actions amounted to a potential ‘constitutional coup’. Ultimately, on 13 February, the Electoral Commission of Queensland (ECQ) stated that they would not refer Ferny Grove to the Court of Disputed Returns (Antony Green has demonstrated how the original result was not ma-
terially affected by the Palmer United candidacy); Labor was thus free to form government. In late February, the ECQ announced they had referred the Ferny Grove matter to the Queensland Police for further investigation.

Readers of the ERRN newsletter will be aware of the ongoing debates around voter ID in Queensland. As reported in the October 2014 ERRN newsletter the former Newman Government introduced the requirement for electors to present a valid ID to vote in Queensland in May 2014; the new regulations were first tested at the 2014 Stafford by-election, with few obvious administrative hiccups according to the ECQ. Thus far reports about how the voter ID measures fared at the 2015 Queensland state election have been mostly positive. However, in response to widespread criticism of the voter ID laws, the new Labor Government has committed to repealing the legislation. In a statement on 9 March, Attorney-General Yvette D’Ath said the ‘retrograde’ voter ID laws would be abolished as a part of an overall package designed to restore the integrity of Queensland’s electoral processes.

On March 27 the Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon Yvette D’Ath MP, introduced the *Electoral and Other Legislation Amendment Bill 2015* into the Queensland Parliament. In accordance with Standing Order 131 of the Standing Rules and Orders of the Legislative Assembly, the Bill was referred to the Legal Affairs and Community Safety Committee for detailed consideration. Submissions can be found here.

Premier Palaszczuk has also flagged her intention to wind back other aspects of the Newman Government’s electoral reform agenda. Labor intends to reverse the current political donations cap in Queensland from $12,800 to $1,000. Palaszczuk also intends to ‘stop the bulk of council CEOs from acting as returning officers meaning the majority of council elections will be run by the Electoral Commission of Queensland’. These matters are also being investigated by the Committee.
South Australia

Two by-elections were held for seats in the Legislative Assembly. The District of Fisher by-election was held on 6 December 2014 and was brought on by the death of sitting Independent MP Bob Such. Labor’s Nat Cook narrowly won the seat by a margin of 9 votes. The District of Davenport by-election was held on 31 January 2015 following the resignation of sitting Member Iain Evans. The Liberal Party’s Sam Duluck won the election.

The Parliament of South Australia’s Select Committee on Electoral Matters is continuing its inquiry into the 2014 South Australian state election. To date the Committee has received several submissions and taken 150 pages in transcripts of evidence.

Separately, the Parliament is considering two pieces of electoral legislation. The Electoral (Legislative Council Voting Thresholds) Amendment Bill, introduced by Family First’s the Hon Denis Hood MLC, seeks to introduce a threshold of 2 percent for independent candidates for the Legislative Council. The Parliamentary Committees (Electoral Laws and Practices Committee) Amendment Bill would introduce a Committee of such a name, with powers to conduct inquiries into all South Australian elections and matters related to the Electoral Act 1985 (SA).

Premier Jay Weatherill has also flagged his interest in electoral reform, calling for the Legislative Council to have ‘fewer Members’ and shortened terms from eight to four years. Currently South Australia has fixed-term parliaments but this only applies to the Legislative Assembly; the Legislative Council has ‘twin’ eight-year terms. While there have yet to be formal moves towards reform of the Parliament, Premier Weatherill said ‘reform issues had been raised recently when he was meeting individual Legislative Council members about other parliamentary issues’. Crossbenchers have also given in principle support to the term reduction for the Upper House.
Tasmania

The Tasmanian Electoral Commission is preparing to conduct elections in May in the Legislative Council Divisions of Derwent, Mersey and Windermere.

ACT

In February the Legislative Assembly passed the *Electoral Act Amendment Bill*, removing the $10,000 cap on political donations and increasing public funding for elections from $2 a vote to $8 a vote. The Barr Government has argued there is no need for a donations cap with a spending cap in place (candidates can only spend $40,000 or less on an election campaign). Critical reaction to the changes has been mixed: George Williams has said that he was ‘…surprised to hear of it given in NSW the movement, if anything, is to reduce these caps’. Labor argues there is no need for a donations cap if there is a cap on spending. *Candidates will be limited to spending no more than $40,000 on an election campaign at the next election (down from $60,000).*
Northern Territory

In a series of extraordinary developments, the Northern Territory’s Chief Administrator, John Hardy, was nearly called upon to solve a ‘constitutional crisis’ sparked by an ultimately unsuccessful attempt to remove Adam Giles as Chief Minister. At a Country Liberal Party (CLP) meeting on 2 February, the CLP voted to place Giles as Chief Minister with Williem Westra van Holthe. Giles refused to resign and the swearing in of Van Hostre was delayed. Following another party room meeting Giles announced he would remain leader. Anne Twomey has written about the constitutional implications of this event.

Upcoming Elections

Tasmanian Legislative Council elections in Derwent, Windermere and Mersey – May 2015
Federal election – 2016?
ACT election – October 2016
NT – August 2016

UK national elections – May 2015
Canadian national elections – October 2015
## Forthcoming ERRN events

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## Call for Papers

- **ANU Public Law Weekend- Constitutional Deliberations.** The 2015 Public Law Weekend to be held on Thursday 1 and Friday 2 October at the ANU College of Law follows in the tradition established in 1996 by the Centre for International and Public law, encouraging public lawyers around the country to meet with one another in the nation’s capital to engage with and be stimulated by fellow academics and public law practitioners. Further information can be found [here](#).

- **Call for Submissions to the University of New South Wales Law Journal Issue 39(1).** More information can be found [here](#).
Event Reports

March 2015

ERRN (SA) and Parliament of South Australian Research Library Seminar:

‘America’s experiments in Citizen Consultation’.

Chair: Jenni Newton-Farrelly
Speaker: Thad Kousser, Professor of Politics at University of California, San Diego

With half of its states governed through a hybrid of representative and direct democracy, America has a hundred-year long tradition of making policy through both routes. Yet experiments have sought to inject more deliberation and expertise into citizen consultation. How are these processes designed, and what decisions have they produced?

In this seminar Thad Kousser reported on the experience of citizens' redistricting commissions, a ‘Deliberative Poll’ on constitutional reform, and the citizen juries that advice on public and ballot initiatives.

December 2014

ERRN (SA) and South Australian Parliament Research Library:
‘Compulsory voting: for and against’

Chair: Jenni Newton-Farrelly
Speakers: Professor Lisa Hill, University of Adelaide
Don DeBats, Head of American Studies, Flinders University

At this seminar, Lisa and Don engaged in a lively debate about the merits of compulsory voting, a topic of keen debate in the ERRN (SA) chapter since its inception in 2012. The mock debate was most interesting and it quickly became clear to all who attended that compulsion touches on many aspects of political science, not just electoral regulation.
November 2014

ERRN (Vic):

*Australia’s Gridlocked Political System: The Fruit of a Slow-Burn Crisis*

**Chair:** Joo-Cheong Tham

**Speakers:** Ian Marsh, Visiting Professor, Australian National University

Ian Marsh discussed his ideas about how Australia’s political system has evolved through four moments. The seminar addressed these key periods and discussed comparative perspectives on democratic decline and renewal with New Zealand and Great Britain.

October 2014

ERRN (Vic):

*Melbourne’s Democracy: Marvellous? A Workshop to Present Research Findings on City of Melbourne Local Democracy*

**Chair:** The Hon. Alannah MacTiernan MP

**Speakers:** The Hon. Dr Ken Coghill, Monash University

Dr Paul Thornton Smith, Victorian Electoral Commission

Professor Dr Gabriele Buckholz, University of Applied Sciences Osnabruck

Ms Yee-Fui Ng, Lecturer, RMIT School of Law

Professor Dr Michael Mintrom, Monash University

The workshop focused on the group’s research findings on the City of Melbourne franchise – including issues around the property franchise, multiple voting for corporations and issues around deliberative democracy and the engagement of stakeholders.
ERRN Working Paper Series

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

Working Paper 28
October 2014

‘Postals and personation in the United Kingdom’

Professor Brian Costar, Swinburne Institute for Social Research

Abstract: This paper outlines some of the findings and recommendations of the UK Electoral Commission's 2014 Final Report. It questions the methodology used in the report arguing that the data and discussion presented in the report on electoral fraud do not support the recommendation that the introduction of voter ID is necessary to combat fraud.

Working Paper 29
October 2014

‘Professionalisation: Of What, Since When, and By Whom’

Stephen Mills, Graduate School of Government, Sydney

Abstract: This paper presents evidence from research interviews with national campaign directors from Australia’s two major political parties to suggest the continued relevance and utility of the terms professionalisation and its cognates, professional and professionalism, in describing and explaining the transformation of election campaigns and party organisation in Australia in recent decades.

Working Paper 30
March 2015

‘For Compulsory Voting’

Professor Lisa Hill, University of Adelaide

Abstract: This working paper is based on an ERRN Sponsored Debate between Professors Lisa Hill (University of Adelaide) and Don Debats (Flinders University) held at the Parliament of South Australia, December 3, 2014. In this working paper Professor Hill offers a defence of compulsory voting by referring to its benefits and responding to the most common arguments marshalled against it.
ERRN Recent Publications

ERRN (SA) convenor Jenni Newton-Farrelly has written two research papers about electoral reform in the South Australian Legislative Council. Please contact her directly if you wish to see a copy.

In the *Alternative Law Journal*, Graham Orr has written about the normative aspects of the growth of convenience voting and how the ‘ritual’ of election day is threatened by the practice.

In the *Australian Journal of Political Science*, ERRN Newsletter Editor Aaron Martin has written with Nicholas Reece and Kyle Peyton about political trust, using a word-association experiment to test associations around political probity.

Also in the *Australian Journal of Political Science*, Lisa Hill has written about compulsory voting and whether compulsion violates the right not to vote.
Palmer United Party v Victorian Electoral Commission (Supreme Court of Victoria)

The Palmer United Party sought a declaration from the Victorian Supreme Court to disqualify their number one candidate for the 2014 Victorian Legislative Council election, Jason Grant Kennedy.

Kennedy claimed he was eligible as a candidate for election to the Legislative Council when this was not the case as, at the age of 19, he was convicted or found guilty of recklessly causing injury, an indictable offence then carrying a maximum penalty of seven years' imprisonment and now carrying a maximum penalty of 5 years. Section 44(3) of the Constitution Act 1975 (Vic) disqualifies a person from election to the Victorian Houses of Parliament who when aged over 18 years are convicted or found guilty of an indictable offence carrying a maximum jail term of five years or greater.

The judge dismissed the application by the Palmer United Party on the basis that:

- As required under the Electoral Act 2002 (Vic), the ballot papers were printed and from 4pm that day, the early voting period was triggered under the Act;
- At that stage, the ballot papers could not be reprinted without Kennedy's name;
- The provisions of the Electoral Act 2002 (Vic) were mandatory and the timelines could not be altered by the Court; and
- Section 70(a) of the Electoral Act 2002 (Vic) does not give the Commission the power to reject a nomination based on the correctness of the statement made or declaration contained in it.

The judge held that it was a matter for the Commissioner to determine what,
if any, notification should be given to the public about Kennedy's ineligibility to take his seat in the Legislative Council, should he be elected.

Following this, in the 2014 Victorian election, the Palmer United Party failed to win any seats.

**Rigoni v Victorian Electoral Commission**

Ms Maria Rigoni, a Palmer United Party candidate for Northern Metropolitan Region, failed to win a seat in the Victorian Parliament’s Victorian Legislative Council at last November’s election.

Rigoni brought proceedings in the Victorian Supreme Court arguing that the Victorian Electoral Commission (VEC) did not comply with the *Electoral Act 2002* (Vic) because it did not require early voters to make a declaration that they were unable to vote on election day.

Under section 99 of the *Electoral Act 2002* (Vic), a voter may apply to vote early to an election manager or an election official at an early voting centre, while section 65(2)(a)(i) allows the VEC to designate appropriate voting centres as early voting centres.

Rigoni is seeking to overturn the whole State election.

The judge dismissed the case on 23 March.

**Donohue v Victorian Electoral Commission**

Mr Gerard Donohue, an Independent candidate for the Gippsland South by-election, is seeking to overturn the Victorian election results on the basis of the lack of a declaration for early votes, as well as the alleged illegality of the election writs.

The case has been heard, but the judge has yet to hand down his decision.

**Fidge v McCurdy**

Dr Julian Fidge, the Australian Country Alliance candidate for Ovens Valley Dis-
strict, is disputing the validity of the election of the Victorian Legislative Assembly in the seat of Ovens Valley held on 29 November 2014.

Fidge filed a petition pursuant to s 133 of the *Electoral Act 2002* (Vic) to the Court of Disputed Returns alleging that the winning candidate in Ovens Valley, Mr McCurdy, produced electoral material that was misleading and deceptive within the meaning of s 84 of the Act.

A directions hearing for this case was heard on 16 March.

### McCloy v New South Wales and ICAC (High Court)

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

McCloy launched these proceedings after admitting to the Independent Commission Against Corruption to making illegal donations by giving envelopes stuffed with $10,000 in cash each to former Liberal MPs Tim Owen and Andrew Cornwell before the last election, as well as a smaller sum to MP Garry Edwards.

McCloy submitted that Divisions 2A and 4A of Part 6 and s 96E in Div 4 of Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) contravened the implied freedom of political communication. Division 2A imposes a cap on the amount of political donations that can be made per person per financial year to parties, while Division 4A prohibits donations from property developers. Division 4 of Part 6 prohibits certain donors, such as property develop-
opers, from making political donations and makes accepting such a donation unlawful.

MCloy made his argument based on the second limb of Lange v Australian Broadcasting Corporation (1997) 189 CLR 520 of considering whether the law is reasonably appropriate and adapted to serve a legitimate end in a manner which is compatible with the maintenance of the prescribed system of representative and responsible government. McCloy contended that:

- There was no rational connection between the purpose and effect of the contribution with the integrity of the political process generally, and seeking to prohibit a class of persons from participating in the political process does not serve a legitimate end; and/or

- If property developers are particularly prone to pernicious influence, the blanket prohibition on political donations are disproportionate to that end.

The defendant contended that nothing stopped the prohibited donors from voicing support for, or otherwise publicly associating themselves with a party or candidate, and advocating or communicating as they wished, and the act of donation is not a form of public communication. The defendant further argued that property developers are sufficiently distinct to merit separate regulation due to the nature of their business activities and public powers they might seek to influence in their self-interest, as demonstrated by the history of New South Wales.

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

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

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

Written submissions have been filed by the plaintiff, defendant and intervenors.

Legislation

Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014 (NSW)

In New South Wales, the *Electoral and Lobbying Legislation Amendment (Electoral Commission) Act 2014* (NSW) was passed, amending the *Parliamentary Electorates and Elections Act 1912* (NSW), the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) and the *Lobbying of Government Officials Act 2011* (NSW).

The Act consists of three main parts – the reconstitution of the New South Wales Electoral Commission, the abolition of the Election Funding Authority; and the transfer of lobbyist oversight to the New South Wales Electoral Commission. The Act established a Register of Lobbyists to be administered by the New South Wales Electoral Commission and also provided for a Lobbyists Code of Conduct to be promulgated by regulations and administered by the Commission. The Code of Conduct was promulgated in the *Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014* (NSW).
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