



**ERRN**

Electoral Regulation  
Research Network



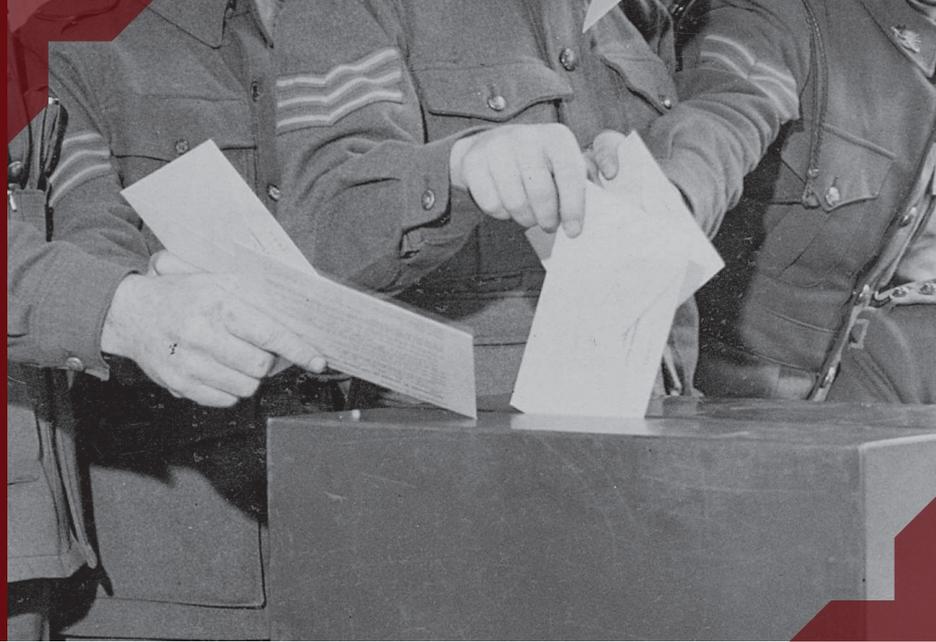
## April 2019 newsletter

---

Electoral Regulation  
Research Network



## Contents



3 Director's Message

4 Electoral News

7 Forthcoming Events

8 Event Reports

9 Event Recordings

10 Research

11 Working Papers

11 Recent Publications

12 Case Notes

*Unions NSW (No 2) [2019] HCA 1*

*Spence v State of Queensland*

*Wheatley v State of New South Wales*

*Watson and Australian Electoral Commission [2018] AATA 4914*

*Jamieson v Wotton*

*Millington v Victorian Electoral Commission (VCAT Reference Z601/2018)*

*Rae v Victorian Electoral Commission*

*Rae v Victorian Electoral Commission and Liberal Party of Australia – Victorian Division (VCAT Reference Z1027/2018)*

*Liberal Party of Australia (Victorian Division) v Rae and Victorian Electoral Commission*

*Sheed v Victorian Electoral Commission (VCAT Reference Z1015/2018)*

*Eckel v Andrews*

*De Santis v Staley and Victorian Electoral Commission*

## Director's Message



It is always with some excitement that I write the message for the first newsletter of the year, a message where I seek to provide a précis of the Network's activities for the year.

By the time the newsletter is published, there would already have been four events in four different jurisdictions. The New South Wales chapter was first cab off the ranks with a preview of the State's 2019 General Elections. The Western Australian chapter has held a seminar on the recent High Court decision in *Unions NSW2*. Tasmanian chapter has organized an expert workshop on Tasmanian Electoral Reform and the Victorian chapter, a seminar on the role of ministerial advisers in Westminster systems.

More is to come. The ACT chapter will be hosting an event on *Unions NSW2* as well as one on parliamentary oversight of elections. In Victoria, there will a seminar on shifts in the Australian party system and their implications for democracy. Three significant workshops will also be held: one on 'Developing a legislative framework for a complex and dynamic electoral environment'; another on 'Elections, Engagement and Democracy'; and a third on 'Informed Voter: Improving the Political Literacy of Young Australians'.

While it might be invidious singling out particular events from these rich offerings, three are of particular importance. First, there will be a launch of the Electoral Law Decisions database, a joint project between AustLII and ERRN (very ably represented by

Dr Paul Kildea) – this database will be an invaluable resource for those researching in the field of electoral regulation.

Professor Lisa Hill and Dr Jonathon Louth are key organisers of the other two events. The first is the ERRN Biennial Workshop which is a flagship event of the Network that brings together leading thinkers in this field. Lisa and Jonathon, together with Dr Andrew Klassen, are also organizing a seminar at the Northern Territory Parliament House on indigenous electoral participation. This will be the first event for the expanded SA & NT ERRN chapter – and truly a worthy one.

This list of events reveals that the real strength of the Electoral Regulation Research Network is its collaborative ethos – it is this ethos that enables it to flourish as a national network. Such ethos does not, of course, magically appear; it is the product of dedication, diligence and good will. So a big 'thank you' to all of you who have contributed to ERRN, in particular, the Administrator, the Convenors, the Editors, the New South Wales and Victorian commissions (a list of the Convenors and the Editors is available at the end of the newsletter).

A specific word of thanks to Amy Johannes and Nathaniel Reader who have respectively stepped down from the roles of ERRN Administrator and Editor of its newsletter. Amy has been a true asset to the ERRN with her professionalism, good humour and creativity. In many respects, she has been the pivot upon which ERRN activities turned.

In Nathaniel's five years as editor of the ERRN newsletter, I have been constantly impressed by his meticulous attention to detail, the breadth and depth of his knowledge, his skill curating the contents of the newsletter and unfailing commitment to making the newsletter the 'go to' publication for updates in the area of electoral regulation.

And finally, welcome to Kaori Kano who has taken up the role of ERRN Administrator; James Murphy as Editor of the ERRN Newsletter; and Dr Andrew Klassen as one of the convenors of the SA & NT chapter. ERRN is fortunate to have these very able persons join its endeavour.

**Professor Joo-Cheong Tham,  
Melbourne Law School**

# Electoral News



In our October 2018 newsletter we noted the looming Wentworth by-election, due on the 20th of that month. The [results](#) of that by-election were an upset win for Independent Kerryn Phelps over Liberal candidate Dave Sharma. The by-election recorded a swing of almost 20 per cent against the Liberal Party in what had been a safe conservative seat since Federation. The election of Phelps also saw the Morrison Government sink deeper into minority government, their majority having been lost in August when Nationals MP Kevin Hogan shifted to the crossbench. The addition of Phelps to the crossbench resulted in the passing of several motions and even legislation against the wishes of the Government in the first months of 2019.

This month the Prime Minister announced that the 2019 Federal Election would be held on the 18th of May. A large number of sitting members (19 as of writing) have announced their retirement at the coming election, including five ministers: Steven Ciobo (Moncreiff, QLD), Michael Keenan (Stirling, WA), Kelly O'Dwyer (Higgins, Vic), Christopher Pyne (Sturt, SA) and Nigel Scullion (Senator, NT).

In February the Australian Electoral

Commission concluded an investigation into how it should classify activist group GetUp!. Some Coalition MPs had called for the group to be formally treated as an associated entity of Labor and the Greens, particularly given GetUp!'s handing out of How-To-Vote cards preferring those parties over the Coalition in 2016. The AEC [found](#) that GetUp! was primarily an issues-based group and that its HTV's comprised just a small part of its overall political activities.

Another AEC investigation, this time into un-authorized election ads, was hampered by the non-cooperation of social media giant Facebook. [Documents](#) obtained under Freedom of Information laws reveal Facebook refused to identify users that posted paid ads without formal authorisations. Facebook also refused to block the pages hosting the unauthorised material. The AEC has since issued a new set of protocols setting out what it expects of social media companies hosting material regulated by election laws. More recently, Facebook [announced](#) it would temporarily ban political ads purchased from overseas. The ban extends to any paid ad that "contains references to politicians, parties or election suppression ... political slogans and party logos," and emanating from outside Australia.

In February it was revealed in Senate estimates that there had been an [unprecedented hack](#) by a foreign 'state-based actor' of Parliament's IT system, and of the ALP, Liberal and National party databases. Assurances were made that the 'electoral system' had not been affected.

The Joint Standing Committee on Electoral Matters continued its inquiry into lowering the voting age to 16. As reported in the October 2018 newsletter, the final report for this inquiry had been due by December 2018 but hearings have continued on into 2019, with no report issued by the time of writing. JSCEM also began its inquiry into the AEC's annual report in November 2018 and was taking submissions at the time of writing.



A state election was held on Saturday the 23rd of March. Polls indicated a close contest, and indeed the final result saw the Coalition under Gladys Berejiklian hang on to government, though whether she will require support from an enlarged crossbench to govern was yet to be seen as of writing. Only a small number of seats changed hands: two Nationals (in Murray and Barwon) lost their seats to the Shooters, Fishers and Farmers party, while Coogee looked like it would return to Labor after a two-term stint with the Liberals. Several seats remained in doubt as of writing: Lismore was a three-cornered contest between Labor, Liberals and Greens, with Labor looking closest; East Hills and Upper

Hunter had Coalition candidates just ahead; Dubbo, Coffs Harbour and Wollondilly were all close seats with independents in play. As has become customary, a great chunk of the electorate voted early — according to the state’s electoral commission, over [one million](#) voters opted to vote before polling day. Some electors (silent electors; the vision-impaired) also had the option of casting a ballot online via the state’s iVote system (see our last newsletter); more than [207,000 iVotes were cast](#). Both methods [suffered from IT woes](#) during the early voting period, and concerns about [coding flaws](#) in the Swiss version of the iVote system were raised, though the NSW Electoral Commission [assured voters](#) the problem would not affect the election.

Readers of our last newsletter will know a coalition of unions mounted a High Court challenge to parts of the Electoral Funding Act 2018 (NSW) — specifically the spending caps on third-party campaigning. In January, the High Court [struck down](#) the spending caps in a unanimous decision of the full bench. They held that the caps would place an ‘impermissible burden’ on the implied freedom of political communication under the Constitution. See this issue’s Case Notes for details.

Meanwhile, the NSW JSCEM [completed](#) an inquiry into spending caps imposed on local government elections by the new Electoral Funding Act. Their report called for substantial changes, including shifting from a two-tiered system to a more dynamic per capita approach. A government response was not due until after the state election.



Victoria held a [state election](#) for both the Legislative Assembly and Legislative Council on Saturday the 27th of November 2018. In the Lower House, Labor won eight seats, the Coalition lost 11, and the Greens came out even, losing Northcote but gaining Brunswick. It was widely considered a landslide in favour of the Andrews Government, with several nominally safe Liberal seats amongst the Labor Party’s gains, including Hawthorn (a swing to Labor of 9 per cent), Nepean (7.6 per cent)

and Box Hill (7.8 per cent) amongst others. In the Legislative Council, Labor gained four seats but nonetheless finds itself with a fragmented crossbench of 11 members (and eight parties) to deal with in the 59th Parliament. Over one million electors (1,294,000) availed themselves of early voting in the 2018 election, a new record. Together with postal votes, nearly 40 per cent of voters did not cast their ballot on election day, undoubtedly to the chagrin of school fundraisers state-wide.

One contest from the 2018 election was yet to be finalised by the time of writing. The result for the outer-suburban seat of Ripon was due to be heard by the court of disputed returns in April, after the Victorian Electoral Commission declared Liberal candidate Louise Staley had won by just 15 votes. Labor [challenged](#) the process for a partial recount that delivered the win to the Staley. A final hearing was set for May.

Just six weeks out from the state election in November, it was revealed that Labor MPs caught up in the ‘red shirts’ scandal — covered in the previous newsletter — had refused to be questioned as part of a police investigation into the affair. In February, Victoria Police determined not to press charges against any of the 16 MPs that had ‘pooled’ their electorate staff to work on the 2014 state election, though investigations into two former MPs continued.

The Victorian Parliament’s Electoral Matters Committee was due to be reappointed, though its composition had not been announced as of writing.

The Victorian Electoral Commission began a review of local government boundaries ahead of the 2020 elections, with a report due by the 24th of April 2020. As of writing 12 out of 31 councils had already gone through the public submissions phase.



The High Court expedited a case on the Queensland’s ban on property developer donations. The laws, passed in 2018 but backdated to before the 2017 state election, earlier triggered the resignation of LNP State President Gary Spence. The case was heard in March – see this issue’s Case Notes for

details.



South Australia saw [two state by-elections](#) since the last newsletter, both held on the 9th of February 2019. The inner-city seats of Cheltenham and Enfield had been held by former Premier Jay Weatherill and his deputy, John Rau, respectively. Both retired following Labor’s loss of government in the 2018 state election. Both seats returned Labor replacements on strengthened margins.

The Electoral Districts Boundary Commission was due to begin its review of the 2018 election, with a draft report due within 24 months of polling day. Readers of our 2017 newsletters will be aware that redistributions in South Australia are required to comply with the ‘fairness clause’ of the state constitution, requiring the distribution of parliamentary seats reflect the two-party preferred vote. The Commission’s last set of findings had been subject of an unsuccessful Supreme Court challenge by Labor – see our April 2017 issue. Labor, which originally introduced the clause via a referendum in 1991, had promised reform in 2018 aimed at elevating ‘one vote, one value’ as the primary consideration for electorate boundaries. Following the receipt of legal advice suggesting a referendum was not required to remove the clause, the Government swung its support behind a Greens motion striking it from the Constitution Act (SA) on the [last sitting day of the 53rd Parliament](#), over the objections of the Liberal Opposition under Steven Marshall. The subsequently elected Marshall Government had considered a court challenge to the change, but in July [accepted defeat](#) on the issue.



WA's Independent Distribution Commission began a [redistribution](#) of state assembly and council boundaries in late March, with public submissions open until the 29th of April and proposed boundaries to be published in July. [11 State Districts](#) are currently over the threshold for permissible variation in the number of enrolled electors.



In February, long-serving Liberal MP Rene Hidding resigned his seat of Lyons to defend accusations of historic sexual assault, [triggering](#) a re-count in March. The loss of a member briefly looked as though it might threaten the Hodgman Government's one-seat majority. The Premier sought the assistance of the State Governor, who agreed to prorogue parliament a week to accommodate the recount, which ultimately elected Liberal John Tucker to replace Hidding.

A major review of the Tasmanian Electoral Act was underway at time of writing. An [Interim Report](#) was published in 2018, with

some of the smaller, more technical changes already being adopted by the Government in the Electoral Amendment Bill 2019 (Tas). Beyond this, several major reforms have been floated, including to Tasmania's election day media blackout, which caused controversy in the last election when a significant story on the Liberal Party's guns policy could not be reported on polling day. The Interim Report advocates removing the blackout entirely. It also flagged several areas to be examined in the next phase of the review, including possible regulation of third-party campaigning and reform of the state's donation laws. Currently Tasmania uses the Commonwealth's disclosure threshold and reporting timeframes. Political pressure for donations reform grew in early 2019 with the Speaker of the Legislative Assembly, Sue Hickey, [suggesting](#) she would be prepared to vote against the government to back restrictions proposed by the Opposition. A final report by the Review is due mid-2019.

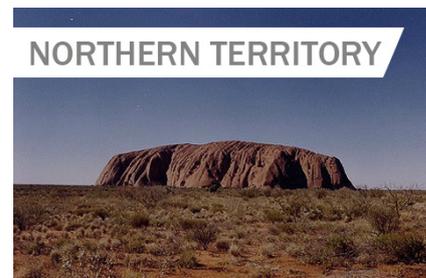
Elections were also due to be held for [three](#) Legislative Council regions on the 4th of May, under Tasmania's system of [staggered elections](#) for its Upper House. Two regions – Nelson and Pembroke – go to the electorate with new boundaries set by the 2016-17 redistribution, while the third, Montgomery, is entirely new, taking in most of the North-West Coast city of Burnie, plus surrounds.



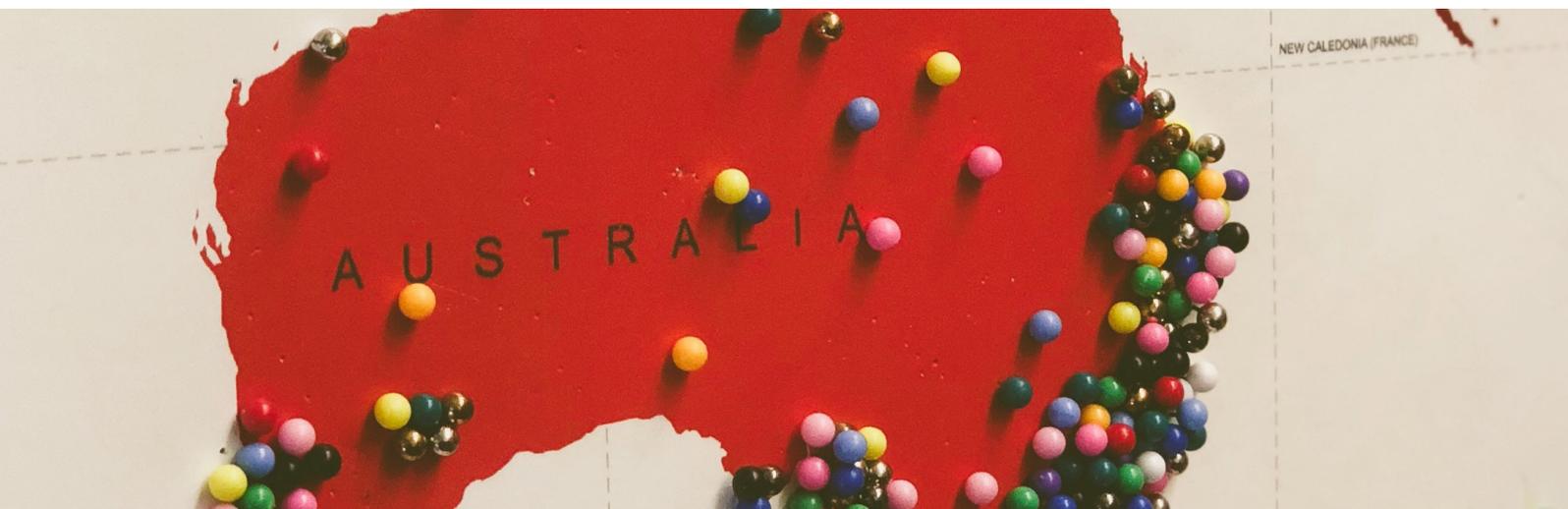
In late 2018 the Barr ACT Government [flagged](#) action on donations reform, as per the [Greens-Labor accord](#) signed in 2016.

The Chief Minister announced that the Government would shortly legislate a ban on developer donations. The Greens [flagged](#) possible amendments to also ban donations from unions and non-profit organisations, as well as a \$10,000 cap.

The ACT Electoral Commission is in the middle of a [redistribution](#) of Legislative Assembly Boundaries. Consultations and comments closed in mid-March, with a report expected ahead of the 2020 elections.



The NT Electoral Commission [began](#) a redistribution of the Northern Territory Legislative Assembly in late February, with public submissions closed late March, with comments on submissions open until mid-April. New boundaries must be in place for the 2020 Territory elections.



## Forthcoming Events



ERRN (VIC) Seminar: Democracy by the People and the Trump Presidency

11 June 2019

Presenters: A/Prof Tim Kuhner

Room 920, Melbourne Law School

ERRN (SA/NT) Seminar: Indigenous Electoral Inclusion

20 June 2019

Presenters: Prof. Lisa Hill, Dr Jonathon Louthm Ian Gumbula, Mercy Gumbula, Iain Loganathan, and Mick Sherry

ERRN (VIC) Workshop: Developing a legislative framework for a complex and dynamic electoral environment

15 July 2019

Room 920, Melbourne Law School

ERRN (WA) Workshop: Elections, Engagement and Democracy

16 July 2019

Room 920, Melbourne Law School

ERRN (QLD) Workshop: Informed Voter: Improving the Political Literacy of Young Australians

Co-hosted with Academy of Social Sciences

22-23 August 2019

ERRN Biennial Workshop

7-8 November 2019



Image credit: Lining up to vote in Brisbane, 1937, State Library of Queensland ([Flickr](#))

## Event Reports



### 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

Melbourne Law School

This seminar on a new Grattan Institute report on transparency and lobbying in the policy process heard from one of the report’s authors, Kate Griffiths. Kate spoke about trust in the political process and identified the ‘risk factors’ for policy ‘capture’ by special interests. George Rennie, lecturer in politics and the University of Melbourne, also spoke on the question of how to regulate access and influence in a way to promote democratic objectives. Specifically, he examined the proposal for an anti-corruption agency at a federal level. Assessment of this proposal requires careful consideration about how democracies have defined “corruption” in law, and whether this definition captures a wide enough range of activities that undermine a democracy, and erode trust in its institutions.

### 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

The dramatic increase in the number of electors casting their votes early at elections raises important questions about

the implications of convenience voting for the management of the electoral process, the nature of election campaigning, and ultimately democratic engagement. In this seminar, Dr Martin Drum and Dr Narelle Miragliotta shared their findings from two broad-ranging studies into convenience voting. They showed that, while convenience voting generates different opportunities and challenges for stakeholders, there is broad, if somewhat sceptical support, for its continuing availability and further expansion.

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

19 November 2018

Presenters: Peter Brent, Stephen Mills and Brien Hallett

The 21st of November 2018 is the centenary of the granting of Royal Assent to the Commonwealth Electoral Act 1918. That law, still in force, has structured the conduct of federal elections in a way that has led Australia to be regarded as one of the world’s outstanding electoral democracies. To mark this significant occasion, the Electoral Regulation Research Network and the Australasian Study of Parliament Group held a joint seminar at which three prominent speakers reflected on the significance of the Act from a number of different perspectives.

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

29 November 2018

Macquarie Room, NSW Parliament House

Presenters: Prof Rodney Smith, Dr Narelle Miragliotta, Dr Stephen Mills and Mark Radcliffe.

In this seminar the panel discussed the rapidly changing voting landscape, from huge chunks of the electorate opting for early voting to the growth of online voting. They presented findings of two recent research projects on the topic, looking at voting in NSW, Victoria and WA. These projects were funded by the ERRN Research Collaboration Initiative.

### ERRN (WA) Lecture: “Election funding and the implied freedom of political communication – *Unions NSW v NSW*”

Speakers: Dr Murray Wesson, Senior Lecture UWA Law School, Dr Martin Drum, Associate Professor, Politics and International Relations, University of Notre Dame

3 April 2019

Constitution Centre of Western Australia

This seminar explored the implications for legislation regulating political donations after the High Court’s recent decision in *Unions NSW v New South Wales* [2019] HCA 1. The case saw the Court unanimously strike down s 29(10) of the Electoral Funding Act 2018 (NSW) as impermissibly burdening the constitutionally protected implied freedom of political communication. Both the constitutional and electoral funding implications of the case were explored during the seminar.

## ERRN (TAS) Workshop: Reform of the Tasmanian Electoral Act: Issues and Options

5 April 2019

Speakers: Carmela Chivers (Grattan Institute), Lindy Edwards (UNSW), Yee-Fui Ng (Monash), Graeme Orr (UQ), Joo-Cheong Tham (UniMelb), Alice Drury (Human Rights Law Centre), James Manoharachadran (GetUp!)

Parliament House, Hobart

In response to the State Government's review of the Tasmanian Electoral Act, the ERRN and The Institute for the Study of Social Change at the University of Tasmania hosted an expert workshop at Parliament House in Hobart on Friday April 5th. Fifteen electoral researchers and administrators from around Australia discussed a range of issues relevant to the reform debate including what Tasmania could learn from recent reforms in other Australian states.

The workshop will inform both the Institute for the Study of Social Change's submission to the review process and an associated Institute Insight discussion paper on reforming the Tasmanian Electoral Act which will be published in late May and circulated across the ERRN.

### ERRN (VIC) Seminar: Ministerial Advisors in Westminster Systems

Presentation by Dr Yee-Fui Ng, ERRN Legal editor

17 April 2019

Melbourne Law School

Just as the newsletter went to print, our very own Yee-Fui Ng was presenting on her new book on political advisors in the Westminster system. She argues the traditional Westminster vertical accountability mechanism of ministerial responsibility to Parliament has become less effective in contemporary times. The multi-faceted nature of a Minister's role, combined with a 24 hour news cycle, mean that horizontal accountability mechanisms, such as the Ombudsman, Auditor-General and the media, have become increasingly important.

## Event Recordings

Recordings of recent ERRN events are now available on the website.

- ERRN (VIC) Seminar: "Who's in the Room? Access and Influence in Australian Politics and how to Regulate" presented by Ms Kate Griffiths and Dr George Rennie on 30 October 2018 at Melbourne Law School [Listen now](#)
- ERRN (WA) and Constitutional Centre of Western Australia Lecture Series 2018: "Early voting and its effects on elections" presented by Dr Martin Drum and Dr Narelle Miragliotta on 1 November 2018 at the Constitutional Centre of Western Australia. [Listen now](#)
- ERRN and the ACT Chapter of the Australian Study of Parliament Group Seminar: "100 years of the Commonwealth Electoral Act" presented by Dr Peter Brent, Dr Stephen Mills, Mr Brien Hallett and Dr Dianne Heriot on 19 November 2018 at the Parliament House, Canberra. [Listen now](#)

## Research



## ERRN Research Collaboration Initiative

One of the objectives of the Electoral Regulation Research Network (ERRN) is to 'facilitate research collaboration amongst academics, electoral commissions and other interested groups on the topic of electoral regulation'. The Network's Research Collaboration Initiative advances this objective by facilitating research collaboration between electoral commissions and academics through the provision of grants for research projects that deal with long-term challenges for the regulation of elections in Australia.

Links to the research reports produced the Network's Research Collaboration Initiative can be found here; <https://law.unimelb.edu.au/centres/ern/research/research-projects>.

- [Implications of Changes to Voting in Australia Project](#)
- [The Desirability and Feasibility of Convenience Voting in Australia Project](#)
- [The Challenge of Informed Voting Project](#)
- [Enhancing Local Government Democracy: City of Melbourne Project](#)

## 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 48:

[A Synopsis on the Deakin Workshop on Authoritarianism](#)

Dr. Zim Nwokora (Deakin University)

Working Paper 49:

[Background Paper on Authoritarianism and Religion](#)

Matthew O’Rourke (Monash University)

Working Paper 50:

[Reference Document: Literature on Authoritarianism](#)

Peter E. Mulherin (Deakin University)

Working Paper 51:

[Resources for a Future: Towards an Articulation of Global Governance \(Review Essay\)](#)

Dr John R. Morss (Deakin University)

Working Paper 52:

[Electoral Inclusion Among South Australian People Experiencing Homelessness: The Work Ahead](#)

Prof. Lisa Hill (University of Adelaide) and Dr Jonathan Louth (Flinders University)

Working Paper 53:

[Campaigns and Regulation: One Hundred Years On](#)

Dr Stephen Mills (University of Sydney)

## Recent Publications

Peter Brent, ‘Voting early, voting often?’, Inside Story, 21 March 2019, <https://insidestory.org.au/voting-early-voting-often/>

Yee-Fui Ng, *The Rise of Political Advisors in the Westminster System*, London: Routledge, 2018.

Zim Nwokora, Malcolm Anderson, Joo-Cheong Tham, Anika Gauja, Stephen Mills and Narelle Miragliotta, ‘Political finance regulation and reform in New South Wales: towards a fairer system?’, *Australian Journal of Politics and History*, vol. 65, no. 1 (March 2019).

Joo-Cheong Tham, ‘Democracy before dollars: the problems with money in Australian politics and how to fix them’, *AQ: Australian Quarterly*, vol. 90, no. 2 (April-June 2019), 20-33.

## Case Notes



### *Unions NSW (No 2) [2019] HCA 1*

The High Court unanimously found that s 29(10) of the *Electoral Funding Act 2018* (NSW) ('the EF Act') was invalid because it impermissibly burdened the freedom of communication on governmental and political matters implied and protected by the Commonwealth Constitution.

The EF Act replaced the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) ('the EFED Act'). The general scheme of the relevant provisions of the EFED Act was to limit the amount or value of political donations to, and the amounts that could be expended by, political parties, candidates, elected members and others, including third-party campaigners. According to the Second Reading Speech to the Bill which became the EF Act, it was designed to 'preserve the key pillars of [the EFED Act], namely, disclosure, caps on donations, limits on expenditure and public funding'. Although the scheme of the EFED Act remained largely intact, s 29(10) of the EF Act reduced the expenditure cap applicable to registered third-party campaigners from \$1,050,000 to \$500,000, which was less than half the amount applicable to, for example, certain political parties. Section 35 of the EF Act prohibited a third-party campaigner from acting in concert with others to incur electoral expenditure above the applicable cap for the third-party campaigner. The EF Act applied to the New South Wales State election in March 2019.

The plaintiffs were a collection of trade union bodies. With the exception of the sixth plaintiff, each plaintiff had registered as

a third-party campaigner under the EF Act. Each of the plaintiffs asserted an intention to incur electoral expenditure during the capped State expenditure period for the 2019 election. In the March 2015 election campaign, three plaintiffs incurred more than \$500,000 in electoral communication expenditure. The plaintiffs brought proceedings in the High Court shortly after the EF Act commenced, seeking declarations of invalidity in respect of ss 29(10) and 35 of the EF Act, and the parties agreed a special case for the consideration of the Full Court.

The High Court applied the two-step test in the case of *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 of considering whether:

- the law effectively burdened political the freedom of political communication in its terms, operation or effect; and
- 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 government.

The defendant, the State of New South Wales, contended that a purpose of the EF Act, and in particular s 29(10), was to prevent the drowning out of voices in the political process by the distorting influence of money ('the identified purpose'). A majority of the Court held that, accepting or assuming that the identified purpose was the real purpose of s 29(10) and that it was a legitimate purpose, it still failed the second limb of the *Lange* test as the reduction in the cap applicable to third-party campaigners was not demonstrated to be reasonably

necessary to achieve that purpose. As a result, s 29(10) (reducing the expenditure cap applicable to registered third-party campaigners) was held to be invalid. For the majority, that invalidity had the result that it was unnecessary to answer the question concerning s 35 of the EF Act, because there was no applicable cap upon which the section could operate.

### *Spence v State of Queensland*

The issue in this case is whether Queensland legislation, which prohibits the making of political donations from property developers to political parties, is invalid.

The plaintiff, former LNP president Gary Spence, submitted that Part 3 of the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* (Qld) ('the Amending Act') is inconsistent with the implied constitutional freedoms of communication on government and political matters. Part 3 of the Amending Act restricts the funds available to political parties and candidates to meet the costs of political communications. Mr Spence further submitted that Part 3 did not have a legitimate end, because there is nothing to show that donations to political parties, members or candidates for election to the Legislative Assembly of Queensland have had any effect on the integrity of Queensland's political processes.

Mr Spence also claimed that Parts 3 and 5 of the Amending Act are invalid as they do not differentiate between donations for the election of members of the

Legislative Assembly, the election of local councillors or the election of members to the Commonwealth Parliament. It further submits that the Commonwealth has exclusive power to regulate the election of Members of Parliament and that the Amending Act undermines that power.

Mr Spence further argued that Parts 3 and 5 are invalid under s 109 of the Constitution as being inconsistent with the *Electoral Act 1918* (Cth).

Justice Gageler referred this matter to the Full Court for its consideration on 24 January 2019.

The questions of law for the consideration of the Full Court include:

- Are the amendments made to the *Electoral Act 1992* (Qld) by Part 3 of the Amending Act invalid (in whole or in part and, if in part, to what extent) because they impermissibly burden the implied freedom of political communications on governmental and political matters, contrary to the Commonwealth Constitution?
- Are the amendments made to the *Electoral Act 1992* (Qld) by Part 3 of the Amending Act invalid because they are beyond the power of the Parliament of Queensland to enact on the basis of an implied doctrine of intergovernmental immunities or on the basis that they impermissibly intrude into an area of exclusive Commonwealth legislative power?
- Is section 302CA of the Act invalid because it is beyond the Commonwealth's legislative power?

The High Court has yet to hand down its decision.

### *Wheatley v State of New South Wales*

The New South Wales Electoral Commission brought proceedings, under the title of the State of New South Wales, to recover from Peter Wheatley and the Liberal Party of Australia (New South Wales Division) \$200,000 (plus pre-judgment interest) paid to the Party bank account by two endorsed candidates for seats in the Legislative Assembly in the 2015 State election. The Commission sought to recover that amount under s 96J(1) of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (EFED Act) as a debt due on the basis that the total sum, which was paid in three separate payments to an account in the name of the Party, comprised unlawful

political donations because they exceeded the \$5,000 cap on political donations to a registered party: s 95A(1)(a), s 95B(1), EFED Act.

Mr Ronney Oueik and Mr Glenn Brookes were nominated by the Party as candidates for election to the New South Wales Legislative Assembly in the 2015 State election for the seats of Auburn and East Hills respectively. Neither had a candidate's campaign account.

During the period from 1 October 2014 to 28 March 2015, the Party held two accounts with Westpac Banking Corporation, one of which was known as the "7155 account". Mr Oueik made two payments of \$120,000 and \$30,000 to the 7155 account on 18 February 2015 and 9 April 2015 respectively (\$147,504.56 in total). Mr Brookes paid \$50,000 to the 7155 account on 4 March 2015. He also spent \$77,959.81 on his election campaign, which was not deposited into the 7155 account (\$127,959.81 in total).

On 28 March 2015, the Party invoiced Mr Oueik for the amount reported as his electoral campaign expenditure (ECE) (\$99,945.1) and Mr Brookes for an amount of \$99,371.19, which comprised the amount reported as his ECE (\$99,011.10) and an in-kind donation. These invoices were rendered in purported compliance with s 84(7)(b) of the EFED Act. On 10 November 2015 the Commission received Mr Brookes's and Mr Oueik's audited disclosures of political donations and electoral expenditure for the year ended 30 June 2015 disclosing the amounts above as ECE. Those disclosures revealed items of expenditure that were not confined to their respective electorates.

Following the disclosures, the Commission made clear to the Party its position that if the candidates paid and authorised campaign expenses that went beyond their respective electorates, they either should have reported the expenditure in their disclosure declarations, or the payments constituted donations in kind by them to the Party.

The Commission sought two declarations in the Supreme Court. First, that payments made by a candidate to the State campaign account kept by a party under section 96 of the EFED Act for the purposes of electoral expenditure constituted contributions to the Party and were not therefore capable of being a candidate's contribution to finance his or her own election campaign for the purposes of section 95A(4) of the EFED Act. Secondly, that expenditure of such funds for the purposes of ECE was subject to the applicable cap on ECE for a party in section 95F(2) of the EFED Act, including party expenditure subject to the additional cap on ECE in section 95F(12) of the EFED Act.

The Commission argued the candidates' payments to the 7155 account were political donations that exceeded the applicable cap for which section 95A(1)(a) of the EFED Act provided and, as such, were unlawful under section 95B(1) of the EFED Act.

Mr Wheatley and the Party defended the case on the basis that the candidates' payments were not unlawful because they were not political donations but, rather, self-funding contributions to their campaigns that were authorised by section 95A(4) of the EFED Act.

The primary judge, Justice Adamson, entered judgment for the Commission, holding that the payments were "gifts" which did not fall within the section 95A(4) exemption and were therefore "political donations" because each was "a gift made to or for the benefit of a party". As each of the three payments was a political donation which exceeded the limit of \$5,000 for political donations to a party, each was unlawful and recoverable by the Electoral Commission as a debt due to the State under s 96J(1) of the EFED Act.

Mr Wheatley and the Party appealed. The primary issues on appeal were:

- Whether the impugned payments were lawful self-funding contributions to the candidates' election campaigns pursuant to s 95A(4) of the EFED Act;
- Whether the impugned payments were a "gift" within the meaning of s 85 of the EFED Act; and
- Whether a candidate is prohibited from self-funding up to \$150,000.

The Court dismissed the appeal. They held that the unambiguous language of the EFED Act makes it clear that payments by a candidate for electoral expenditure for his or her "own election" may not be made from a party campaign account. A candidate's self-funding contribution that leaves the candidate's control and is paid to the Party is a political donation and subject to the \$5,000 cap for political donations to or for the benefit of a registered party. The Court found that neither Mr Brookes nor Mr Oueik made a self-financing contribution to his own campaign in the manner permitted by the EFED Act, that is, by paying such contribution into a candidate's campaign account. They upheld the judgment of the primary judge, which held that the impugned deposits were gifts, and therefore political donations which were unlawful because they exceeded the cap of \$5,000 in section 95A(1)(a) of the EFED Act.

## *Watson and Australian Electoral Commission [2018] AATA 4914*

The issue is whether the application by the Australia First Party (NSW) Incorporated to enter in the Register of Political Parties (Register) the logo set out in its application should be granted.

By s 134 of the Commonwealth Electoral Act 1918 (Cth), where a political party is registered under Part XI, an application may be made to the Australian Electoral Commission to change the Register by entering in the Register the logo set out in the application under section 134(1)(eb).

The Commission made a decision in May 2017 under section 141(4) of the Act affirming the decision of the delegate of the Commission made on 13 October 2016 to grant an application by Australia First, made on 13 April 2016, to enter in the Register that party's logo.

By section 141(5) of the Act, application may be made to this Tribunal for review of such a decision. Such an application was made by Ms Louise Watson on 9 June 2017, who was one of the objectors to whom written notice under section 133(1)(c) of the Act was given by the Commission that it had entered the logo in the Register.

The logo of Australia First set out in its application was as follows:



The applicant argued that the widespread use of the Eureka flag increased the likelihood that use of that symbol on electoral voting papers would lead to confusion or mistake. The Tribunal rejected the applicant's reference to claimed historical or cultural significance of the Eureka flag. The Tribunal held that it must, rather, form its opinion on the material before it whether or not Australia First's logo so nearly resembles the logo of any other person that it is likely to be confused with or mistaken for that logo.

The Tribunal accepted that a purpose of the legislation was, according to the Explanatory Memorandum, to "reduce the confusion that may arise with political parties with

similar names, by allowing party logos to be printed on ballot papers for both the House of Representatives and the Senate". However, the Tribunal did not accept that, in relation to logos that include the Eureka flag, there was confusion such that the use of the symbol on ballot papers as part of the logo of any party should be refused registration. As such, the Tribunal affirmed the Commission's decision that the application by Australia First for their logo to be registered was to be granted.

## *Jamieson v Wotton*

Subsequent to a local government election held on 10 November 2018 due to an administrative error, votes were incorrectly tallied for the Outer Harbor Ward of the City of Port Adelaide. Prior to the detection of the error, declarations were made.

It was later established that Mr Peter Jamieson should have been elected, rather than Mr Adrian Wotton.

Accordingly, the court declared under section 71(1)(f)(i) of the *Local Government (Elections) Act 1999 (SA)* that Adrian Wotton was not duly elected, and that Adrian Jamieson was duly elected as a councillor for the Outer Harbor Ward of the City of Port Adelaide Enfield.

## *Millington v Victorian Electoral Commission (VCAT Reference Z601/2018)*

VCAT decided on an application to review a decision of the Victorian Electoral Commission (VEC) to refuse to register The Flux Party – Victoria as a political party.

Victoria's *Electoral Act 2002* (the Act) provides for registration of political parties. It is not compulsory for a party to be registered, but registration entails substantial advantages, including having the party's name and logo printed next to endorsed candidates' names on ballot papers, the provision of enrolment information, public funding (if the party gains enough votes), and a one-stop process for nomination of candidates and registration of how-to-vote cards. To be eligible for registration, a party must have at least 500 members, who must be Victorian electors, members in accordance with the rules of the party, and not members of another registered party or a party applying for registration.

When a party applies for registration, it must provide the VEC with the name of its registered officer, a copy of its constitution, a statutory declaration that the party has at

least 500 eligible members, a list of at least 500 such members, and the prescribed fee. If after initial consideration the VEC believes that the application does not meet the requirements of the Act (for example, the party's name may be unacceptable), the VEC may request the party to vary its application, and must then give the party time to do so. If the application is acceptable, the VEC then advertises the application inviting objections to registration of the party, and checks the eligibility of the party by writing to the people on the list provided by the party, asking them to confirm whether they are members of the party who meet the criteria in the Act. The VEC provides a form and a reply-paid envelope to facilitate responses. The VEC regards 500 positive responses as evidence that the party has enough eligible members for registration. If positive responses fall short of 500, the VEC allows the party to provide a supplementary list and writes to the people on that list.

In the lead-up to the 2018 State election, the VEC received a stream of applications for registration, most of which were successful. The Flux Party applied on 2 March 2018, including a list of 728 names and addresses with its application. The VEC wrote to the people on this list, and later to those on a supplementary list provided by the party. By 19 June 2018, the VEC had received only 334 positive responses. The Electoral Commissioner advised the party that he had determined to refuse registration, on the ground that he was not satisfied that the party had at least 500 members who satisfied the eligibility criteria.

The Act allows a person whose interests are affected by a reviewable decision (including a decision to refuse registration) to apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of that decision. Mr Scott Millington (who was to be the registered officer of the Flux Party) applied to VCAT for review of the VEC's decision, arguing that the VEC had exceeded its power, because there was nothing in the Act that required, permitted or authorised the VEC to seek to satisfy itself that the party had at least 500 eligible members. He submitted that the combination of a statutory declaration from the party secretary that the party had at least 500 eligible members and the provision of a list of at least 500 such members were all that was required to satisfy the VEC that the party had sufficient members. As all other aspects of the party's application were satisfactory, the VEC should have registered the party at the time of application. Further, Mr Millington argued that a postal survey was not authorised by the Act and was an ineffective means of communication, particularly with Flux Party members. Finally, Mr Millington maintained that the VEC should have offered the party the opportunity to vary its

application in accordance with section 48 of the Act.

In her Order, made on 23 October 2018, Justice Hampel, Vice President of VCAT, refuted every one of Mr Millington's arguments. Justice Hampel observed that the Act does not require the VEC to accept an application at face value; the VEC is required to determine for itself whether a party has sufficient members to be eligible for registration. A postal survey is an appropriate process, providing independent verification of the information provided by the applicant, relating to the matters of which the VEC has to be satisfied in order to make its determination. In oral testimony, it became apparent that the Flux Party could not be certain that its membership database satisfied the requirements of the Act; in particular, it could not ensure that its members were not members of another political party. This reinforced the need for the VEC to check whether the people on the party's list were members satisfying the criteria in the Act. Finally, Justice Hampel rejected Mr Millington's argument about a variation of the application under section 48, because this provision applies to the initial vetting of an application, not to a point during the VEC's checking process.

Accordingly, Judge Hampel affirmed the VEC's decision to refuse registration, and rejected the application for review.

### *Rae v Victorian Electoral Commission*

Following the issuing of a writ for the Victorian general election on 30 October 2018, the Liberal Party of Australia (Victorian Division) lodged a nomination form with the Victorian Electoral Commission nominating Ms Meralyn Klein as its endorsed candidate for the Yan Yean District.

Following this, public announcements were made by or on behalf of the Liberal Party that Ms Klein had been disendorsed by the Liberal Party. By this time, the Commission had printed the ballot paper for the Yan Yean District, and early voting and postal voting had commenced.

Samuel Rae, the State Secretary of the Australian Labor Party (Victorian Branch) (ALP), wrote to the Commission asking that it print new ballot papers that do not identify Ms Klein as a candidate endorsed by the Liberal Party. The Commission responded the following day, advising that it would not be reprinting ballot papers for the Yan Yean District because the Commission had

not received any formal advice from the Liberal Party in relation to Ms Klein, and the Commission has no authority to reprint the ballot papers. The solicitors for the Liberal Party then wrote to the Commission, advising that Ms Klein was no longer the endorsed candidate of the Liberal Party for the Yan Yean District.

Mr Rae and Ms Danielle Green (the current member for Yan Yean) brought a proceeding against the Commission contending that the Commission not only has authority to reprint the ballot papers, but must do so, and seeking a range of orders to that effect. The ALP argued in court on 20 November that the VEC was authorised to reprint ballot papers, and that as Ms Klein was no longer the endorsed Liberal candidate, Yan Yean voters were being misled when they saw the ballot paper.

Richards J dismissed the proceedings, and held that the *Electoral Act 2002* (Vic) does not authorise the Commission to reprint the ballot papers for the Yan Yean District to reflect the fact that Ms Klein was no longer endorsed by the Liberal Party. Richards J found that Parliament made a deliberate choice to fix the endorsement information to be printed on ballot papers at the time of nomination. This was to enable the orderly and efficient conduct of elections by specifying the time at which candidacy and endorsement by a political party on the ballot paper is determined.

### *Rae v Victorian Electoral Commission and Liberal Party of Australia – Victorian Division (VCAT Reference Z1027/2018)*

VCAT decided on an application by the ALP to review the VEC's registration of four how-to-vote cards.

Australia's preferential voting system has meant that how-to-vote cards are a feature of Australian elections, as parties and candidates advise their supporters how to rank the candidates on the ballot paper. Victoria has a system of registration of how-to-vote cards. Cards registered by the VEC are the only printed electoral material that may be distributed within 400 metres of a voting centre on election day. The registration period occurs in the week after the close of nominations – in 2018, from 12-16 November. The VEC assesses whether a how-to-vote card should be registered according to a set of legislative criteria. Importantly, the VEC must refuse to register a how-to-vote card if the VEC is satisfied

that the card "is likely to mislead an elector in casting the vote of the elector". This provision has been narrowly interpreted by courts, following the High Court's 1981 *Evans v Crichton-Browne* decision, to apply only to electors being misled once they had already formed their judgement about who to vote for. Any person may apply to VCAT for review of the VEC's decision on a how-to-vote card.

On 16 November 2018, the VEC registered four Liberal Party how-to-vote cards. These were state-wide cards, giving advice on how to vote for all electorates in the State. On 19 November, Mr Samuel Rae, State Secretary of the ALP, applied to VCAT for review of the VEC's registration of these cards. The case was heard and decided by Deputy President Proctor on 20 November.

The central issue was that the cards recommended a vote for Ms Meralyn Klein, who was originally the Liberal candidate for Yan Yean District but had been disendorsed by the Liberal Party. The ALP submitted that the cards were likely to mislead or deceive an elector, because an elector following the instructions on the cards would be voting for an Independent candidate while under the belief that Ms Klein was a Liberal Party candidate. The Liberal Party submitted that the Liberal Party wanted electors to vote as indicated on the cards, for Ms Klein in the absence of an endorsed Liberal Party candidate, and that the text of the card did not suggest that Ms Klein was an endorsed candidate of the Liberal Party. The VEC took a neutral position, providing technical advice to the Tribunal and stating that it was open to VCAT to decide that electors who were content to be guided by the Liberal Party would not be misled.

Deputy President Proctor noted that the cards were headed "How to vote Liberal" and did not differentiate Ms Klein in any way from endorsed Liberal candidates – unlike the cards' advice for Richmond District, where there was no Liberal candidate. The Deputy President concluded that the cards were likely to mislead and/or deceive an elector within the meaning of the Act. Therefore, VCAT had no option but to refuse registration of the cards. The Deputy President also refused registration of the Liberal Party's Yan Yean how-to-vote card.

The Liberal Party advised that it would appeal this decision to the Supreme Court, and obtained a stay of the decision until the matter was before the Supreme Court.

## *Liberal Party of Australia (Victorian Division) v Rae and Victorian Electoral Commission*

The Supreme Court decided on an appeal by the Liberal Party against a VCAT decision refusing registration of Liberal Party how-to-vote cards. The case was heard on 21 November 2018 and Justice Richards issued orders on 22 November.

The appeal was brought on one question of law: "On the proper construction of s 79(3) of the *Electoral Act*, was it open to the Tribunal to conclude that the impugned how-to-vote cards were likely to mislead or deceive an elector in relation to the casting of the elector's vote?" Section 79(3) was construed conformably with the High Court's decision in *Evans v Crichton-Browne*. The standard adopted by Justice Richards was to assess the cards' likely effect on a gullible or naïve elector, rather than one of more sophistication. The judge found that the cards were capable of being understood by a naïve or gullible voter as representing that Ms Klein was the endorsed Liberal Party candidate for Yan Yean, and that a voter who had decided to vote for the Liberal Party may well have been misled into the belief that Ms Klein was the Liberal Party candidate and voting for her on that basis: "I am satisfied that it was open to the Tribunal on the evidence before it to find that the impugned how-to-vote cards were likely to mislead or deceive a voter in the casting of the voter's ballot."

Therefore, Justice Richards dismissed the appeal.

Justice Richards commented that the outcome in this case may appear inconsistent with that in *Rae v Victorian Electoral Commission*, in which Justice Richards dismissed Mr Rae's application for orders directing the VEC to reprint the ballot papers for Yan Yean District to reflect the fact that Ms Klein was no longer the endorsed Liberal Party candidate. That decision turned on the deliberate choice made by Parliament to fix the endorsement information to be printed on ballot papers at the time of nomination. In contrast, the judgment as to whether a how-to-vote card was likely to mislead or deceive was considered under s 79 of the Act.

## *Liberal Party of Australia (Victorian Division) v Rae and Victorian Electoral Commission*

On 22 November 2018, the Court of Appeal refused leave to appeal from Justice Richards' decision above.

The Liberal Party submitted that Justice Richards was wrong to conclude that the cards were capable of being understood by a voter as representing that Ms Klein was the endorsed Liberal candidate, because the cards did not have any express use of the word "endorsement". Alternatively, even if the cards conveyed the impression that Ms Klein was the endorsed candidate, voters were not likely to be misled in the casting of their votes because a voter who had decided to support the Liberal Party in the election would be able to give effect to that decision by voting for Ms Klein.

The Court was not persuaded by the Liberal Party's submission. The cards in question were clearly identified as carrying the authorisation of the Liberal Party and highlighting for each electorate the candidate backed by the party. Any reasonable reader of the card would have concluded that Ms Klein was the endorsed Liberal Party candidate for Yan Yean. An elector who had decided to vote for the endorsed Liberal Party candidate would have been misled by these cards into thinking that Ms Klein had that endorsement, and thus would have been misled in the casting of the vote.

As such, the Court of Appeal affirmed the decision of the Justice Richards and found that it was open to the Tribunal to find that the impugned how-to-vote cards were likely to mislead or deceive a voter. The Court held that s 79(3)(a) of the *Electoral Act 2002* precludes registration of a how-to-vote card that is likely to mislead or deceive a voter in casting a vote to give effect to the voter's political judgment. They held that whether the Tribunal's conclusion was open is to be determined by considering the likely effect of the how-to-vote cards on any gullible or naïve elector, rather than a sophisticated voter who is informed about current affairs. The Court held that it was a significant thing for electors to be misled into believing that a person had the status of being the endorsed candidate of a political party when in fact she did not have that status.

For these reasons, the Court held that it was open to VCAT to find that the impugned cards were likely to mislead or deceive a voter, and Justice Richards correctly considered this. Leave to appeal Justice Richards' decision was therefore refused.

## *Sheed v Victorian Electoral Commission (VCAT Reference Z1015/2018)*

VCAT decided on an application by Ms Susanna Sheed (Independent member for Shepparton District) to review the VEC's decision to refuse registration of her how-to-vote card.

On 14 November 2018, the VEC refused registration of a card lodged by Ms Sheed, because the VEC considered that the card was likely to lead some electors to induce some electors to just vote "1", which was contrary to the directions on the ballot paper and would produce an informal vote. Ms Sheed applied to VCAT for review on the same day, and the matter was heard by Deputy President Proctor on 15 November.

Ms Sheed's card advised electors to vote "1" for her and then number every box. Ms Sheed submitted that her card clearly indicated both in words and graphics that voters should number every box. Ms Sheed argued that her current card was in fact clearer than the card she had used in 2014, which she believed inadvertently misled some voters into just voting "1", and may have caused the informal vote in Shepparton District to rise from 5.55% of total votes in 2010 to 5.84% in 2014.

The VEC submitted that the card was likely to mislead electors who were illiterate or had English as a second language, who were likely to pay attention to the visual elements of the card (a "1" for Ms Sheed) and ignore the written instructions. The VEC considered that the increase in informal voting in Shepparton in 2014 reflected a Victoria-wide trend, and doubted that Ms Sheed's card had an appreciable effect.

The Deputy President agreed with the VEC's argument that vulnerable voters would be likely to focus on the image on Ms Sheed's card (the "1" next to her name) rather than the text, and thus be misled about how to cast their vote. The Deputy President did not accept Ms Sheed's opinion that her 2014 card had an appreciable effect on the level of informal voting in Shepparton District.

Accordingly, the Deputy President affirmed the VEC's refusal to register the card. The Deputy President noted that the VEC and Ms Sheed were well advanced in negotiations on an alternative card that the VEC would register.

## Victoria: Court of Disputed Returns

The Act provides that a candidate for an election, a person entitled to vote at an election, or the VEC may dispute an election by means of a petition to the Court of Disputed Returns. The Supreme Court is the Court of Disputed Returns, which may be constituted by a single judge. The powers of the Court include the ability to overturn an election result, or to declare an election void.

There were two petitions to the Court of Disputed Returns following the 2018 State election.

the Act, to secure the Premier's support for Ms Michaela Settle, ALP candidate for Buninyong. The allegation of bribery related to the ALP's payment of some \$388,000 to the State Government following the publication of the Ombudsman's report on the use of some electorate officers employed by MPs as field organisers for the ALP in the campaign leading up to the 2014 State election.

Following a directions hearing on 14 February, Mr Eckel withdrew, stating that as an unrepresented individual he would have no chance of success. The petition was dismissed on 18 February 2019.

Santis was elected. The petition submitted that the counting activities undertaken by the VEC after the first count and distribution of preferences did not constitute a recount in accordance with section 120 of the *Electoral Act 2002 (Vic)*.

After a directions hearing on 7 February 2019, the petition was listed for hearing on 6 May.

### *Eckel v Andrews*

On 23 January 2019, Mr Brendan Eckel, an Independent candidate for Buninyong District, filed a petition with the Court seeking an Order to void the results of the election for Buninyong because of a bribe sought and obtained by Premier Andrews, breaching section 151(1) of the *Electoral Act 2002 (Vic)*, and the provision of a bribe by Samuel Rae, breaching section 151(2) of

### *De Santis v Staley and Victorian Electoral Commission*

On 22 January 2019, Ms Sarah De Santis, the ALP candidate for Ripon District, filed a petition with the Court seeking an Order that the VEC conduct a recount of all used ballot papers for the election for Ripon, and a declaration that Ms Louise Staley (the Liberal candidate and member for Ripon District) was not elected and that Ms De



# Contact Us



## Electoral Regulation Research Network

Melbourne Law School

The University of Melbourne, VIC 3010

E [law-errn@unimelb.edu.au](mailto:law-errn@unimelb.edu.au)

W [www.law.unimelb.edu.au/errn](http://www.law.unimelb.edu.au/errn)

ERRN Convenors & Editors:

ACT

Dr Peter Brent, Swinburne University

Dr Dominique Dalla-Pozza, ANU College of Law

Michael Maley, Electoral Process Specialist

Dr Damon Muller, Parliamentary Library

NSW:

Rachel McCallum, NSW Electoral Commission

Dr Paul Kildea, University of New South Wales

Professor Rodney Smith, University of Sydney

QLD:

Dr Tracey Arklay, Griffith University

SA/NT:

Professor Lisa Hill, University of South Australia

Dr Jonathon Louth, Flinders University

Dr Andrew Klassen, Charles Darwin University

TAS:

Professor Richard Eccelston, University of Tasmania

VIC:

Professor Brian Costar, Swinburne University

Dr Yee-Fui Ng, Monash University

Dr Zim Nwokora, Deakin University

Dr Paul Thornton-Smith, Victorian Electoral Commission

WA:

Dr Martin Drum, University of Notre Dame

Professor Alan Fenna, Curtin University

Justin Harbord, WA Electoral Commission

Associate Professor Sarah Murray, University of Western Australia

Working Papers Editor

Dr Aaron Martin, University of Melbourne

Newsletter Editor

James Murphy, Swinburne University

Legal Editor

Dr Yee-Fui Ng, Monash University