

***The Law of Politics: Elections, Parties and Money in Australia*, by Graeme Orr. Alexandria (NSW): The Federation Press, 2<sup>nd</sup> edition, 2019. pp. xxxi + 336. Paperback RRP \$89.95.**

**Andrew Geddis**

Professor, Faculty of Law, University of Otago.

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It seems safe to assume that I do not have to work overly hard to convince the readership of the *Australian Parliamentary Review* of the value and importance of a text analysing the what, how and why of Australia's electoral law. If any audience is primed to receive and value its content, then surely it is the present one. How that fact relates to its author's, University of Queensland Law School's Professor Graeme Orr, assertion that '[e]lectoral study has more than its share of anoraks and wonks' (p. 3) I leave for individual readers to decide.

This second edition of Professor Orr's text appears some 9 years after the first. Its basic purpose has not changed. Professor Orr sets about describing and explaining the legal rules that govern and shape the processes and practices of representative democracy in Australia, at least insofar as these identify 'elected' officials to govern. He describes this field of study as 'the law of politics', for reasons worth setting out in full:

[The term] is at once pragmatic and aspirational. The semi-synonymous term 'electoral law' is a bit narrow and dry. Conceiving of the field as the regulation of politics broadens its ambitions. It situates electoral democracy in the wider formal terrain of constitutional and administrative law, whilst drawing attention to the interdisciplinary insights provided by political science and democratic theory (p. 1).

In pursuit of his goal, Prof Orr's text covers the full range of issues involved in holding an election at the national and state level. He begins with boundary drawing in both a physical (how are electoral districts decided?) and a community (who gets to participate at the ballot box?) sense. How voters are formally placed on electoral rolls

is covered. The initiation of election contests and who gets to compete in them (both as individuals and as political parties) receives discussion. Controls on campaign methods in both the physical world and the electronic realm get due consideration. The actual voting process and methods of disputing the outcome of the vote are discussed, as is the vexed issue of regulating the necessary evil of money for electoral campaigning (variously termed 'political finance, party finance or election finance'). Finally, two separate chapters are devoted to the issues of electoral regulation at the local government level and the legal rules governing referendums and other forms of direct democracy. If there is a weakness to be found in the text as a whole, it perhaps is this newly included discussion of local government elections, which feels a little cursory and broad brush in comparison with the more granular and developed discussion of national and state electoral laws. Indeed, I would suggest that the range and variety of issues and their different resolution across various local government jurisdictions probably warrant a full stand-alone text rather than being shoe-horned into a chapter-length treatment.

While Prof Orr's general aims and approach are carried over from the text's first edition, the content of the second obviously has altered markedly in line with events of the past decade. Part of this changed content reflects Prof Orr's own work subsequent to the publication of the first edition; his *Ritual and Rhythm in Electoral Systems*<sup>1</sup> and (with Ron Levy) *The Law of Deliberative Democracy*<sup>2</sup> both deservedly receive citation throughout this text. It is one of the strengths of Prof Orr's work that he is able to weave deeper theoretical considerations with a more 'black letter' doctrinal analysis of the field. But changes to the second edition also take into account the sheer amount of electoral law material that the Australian political process has thrown up in recent times. To take but one example, fears around 'fake news' have led to amendments to the Commonwealth Electoral Act that impose what Prof Orr describes as 'a complicated, staged authorisation system for the communication of electoral matter'.<sup>3</sup> To take another, consider the various High Court cases stemming from the seemingly endless tit-for-tat allegations that various members of Parliament

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<sup>1</sup> Graeme Orr, *Ritual and Rhythm in Electoral Systems: A Comparative Legal Account*. Farnham: Ashgate, 2015.

<sup>2</sup> Ron Levy and Graeme Orr, *The Law of Deliberative Democracy*. London: Routledge, 2016.

<sup>3</sup> *The Law of Politics*, p. 177.

are disqualified from sitting due to what Prof Orr describes as ‘frankly, often obscure legal questions’ (p. 109).

At this point I am minded to steal from Tolstoy and note that every unhappy electoral process is unhappy in its own way. In my own text on New Zealand’s electoral laws, the issue of candidate eligibility warrants a mere two pages of explication.<sup>4</sup> It is a reflection on what is a very odd feature of Australian politics that Prof Orr needs to devote some 19 pages to the issue of candidate qualifications (or, more accurately, *disqualifications*), culminating in an exasperated plea to establish a ‘qualifications and ethics audit’ for newly elected representatives (p. 112). A perhaps naïve view from across the Tasman is that New Zealand’s *de minimis* rules regarding who can and cannot stand for election represent the preferable model; it frankly seems bizarre that a member of Parliament’s (and potential Prime Minister’s) right to remain as an elected representative ever hinged on how we characterise his family trust’s day care business’ receipt of parental subsidies from the Commonwealth.<sup>5</sup> Whatever the original intentions of Australia’s constitutional designers, elevating this sort of question to a matter of political crisis cannot have been it. The fact that the obvious solution—get rid of the section 44(v) and perhaps other disqualifying grounds—appears not to be a practically tenable one in Australia then says much about the desirability of constitutionalising detailed rules around elections.

This new edition of Prof Orr’s text is a compulsory addition to the shelf of anyone serious about the study of elections and political processes in Australia. It is not just a once-over-lightly revisiting of the first edition. Rather, it keeps the best of that text while strengthening and updating its approach. It is recommended unconditionally.

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<sup>4</sup> Andrew Geddis, *Electoral Law in New Zealand: Practice and Policy*. Wellington: LexisNexis NZ, 2nd edition, 2013.

<sup>5</sup> The case, of course, of Peter Dutton, which Prof Orr discusses at pp. 107-108 and proffers the ‘clearly better view that there was no “agreement” from which Dutton benefited’.