



HIGH COURT OF AUSTRALIA

13 August 2025

LAMING v ELECTORAL COMMISSIONER OF THE AUSTRALIAN ELECTORAL
COMMISSION
[2025] HCA 31

Today, the High Court by majority allowed an appeal from the Full Court of the Federal Court of Australia. The issue was whether s 321D(5) of the *Commonwealth Electoral Act 1918* (Cth), a civil penalty provision which requires a "notifying entity" to ensure that certain "particulars" are notified in "electoral matter", is contravened by a single failure to ensure that the particulars are notified provided the "electoral matter" is communicated to one person and irrespective of the number of people to whom the "electoral matter" is communicated or is contravened on each and every occasion the "electoral matter" is communicated to a person.

The appellant, Mr Andrew Laming, was elected as a member of the House of Representatives in the Commonwealth Parliament in 2016. He was a candidate in the federal election held on 18 May 2019. In the six months prior to that election, Mr Laming posted "electoral matter" on a Facebook page called "Redland Hospital: Let's fight for fair funding" on three occasions. On each occasion he failed to ensure that the required "particulars", comprising his name and the town or city in which he lived, were included in the post. Each such post was communicated to (meaning seen by) several people who viewed the Facebook page: six people in the case of the first post, eight people in the case of the second post, and 14 people in the case of the third post.

In a civil penalty proceeding brought against Mr Laming by the Electoral Commissioner in the Federal Court of Australia, the primary judge held that Mr Laming contravened s 321D(5) on three occasions (being the occasion of each post to Facebook by Mr Laming). The Electoral Commissioner appealed. The Full Court held that Mr Laming had contravened s 321D(5) on at least 28 occasions, being each occasion on which a post had been communicated (by being seen by a person).

Mr Laming was granted special leave to appeal to the High Court on the ground that the Full Court erred in finding that s 321D(5) was contravened on each occasion a person viewed a post published by him on Facebook rather than finding a contravention occurred when he caused a post to be made available for viewing.

The High Court by majority allowed the appeal. The primary judge's construction of s 321D(5) was correct. The correct construction, that s 321D(5) is engaged by any failure to ensure that required "particulars" are notified in "electoral matter" provided that the "electoral matter" is communicated to one person and otherwise irrespective of the number of people to whom the "electoral matter" is communicated, accords with the text, context and purpose of the provision in a manner which the construction adopted by the Full Court does not. On the proper construction, there was a contravention on each occasion Mr Laming caused a post to be published on Facebook, not on each occasion the posts were viewed.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.