

WITNESS

Ms Ann Birrell.

The CHAIR: We welcome Ann Birrell, who is here to present. We did receive the submission from you, Bronwen Feenstra, Phillip Walker, Tony Guttman and Bob Hale. And you have the honour of presenting on behalf of all of those submitters, so thank you for being here.

Before we begin I would like to note that a number of the submissions did raise matters relating to upper house voting and vote counting. The Committee, whilst recognising that these are very important matters, has decided to take evidence on these issues at a later date, rather than today.

All of the evidence taken by this Committee is protected by parliamentary privilege; therefore you are protected against any action for what you say here, but if you repeat the same things outside this hearing, including on social media, those comments may not be protected by this privilege.

Finally, all of the evidence given today is recorded by Hansard. You will be provided with a proof version of the transcript to check as soon as it is available, and verified transcripts will be placed on the Committee's website as soon as possible.

So with those few introductory remarks, again I say welcome, and I will open to you to make a brief, 5-minute presentation, and then the Committee will have some questions for you.

Ms BIRRELL: Thank you very much for the opportunity to speak and also for the important work of the Committee. I would like to just focus on misleading advertising and why we think the Committee should look again at this issue. I have four points.

First, again last year we saw again voters' strong dislike of misleading advertising, and I am sure the Committee is well aware of that. Our submission gives some examples of the public view and also makes reference to research which indicates overwhelming public support for reform. I also note that a number of the other submissions have also expressed support for reform.

My second point is that the problem of misleading advertising appears to be getting worse. Other submitters have commented on this, but I think the UK report *Doing Democracy Better*, which is referred to in our submission, articulates it well, and they refer to the dramatic rise in the concept of post-truth, the triumph of the deceptively simple over the honestly complex, the role of social media in making it harder to assess credibility, the manipulation of search engines to magnify misinformation, the lack of traditional media performing a mediating function between politicians and voters, and the decline of local and regional press.

We see in the VEC reports of 2014 and 2018 that there is a dramatic increase in complaints about electoral material. I note from the other submissions that it seems that administering the authorising provisions, which to some extent are integrity provisions, is becoming increasingly difficult. As Transparency International Australia board member Professor Brown, in Queensland, put it: reform is now increasingly needed, particularly due to rogue groups on social media.

So my third point really is: what can we do? Some on the Committee might feel weary of this topic and see no prospect of useful reform. Certainly the issue has been much discussed. There have been multiple reports and recommendations going in different directions. We even had, at the commonwealth level, legislation passed and then six months later repealed. The South Australian Act, which we referred to, has been the focus of a lot of the discussion, and for those who do not know, the key provision in that Act is that it is an offence to publish:

... a statement of fact that is inaccurate and misleading to a material extent.

Under that legislation the Electoral Commissioner can request that the advertiser withdraw the statement, publish a retraction and, if that does not work, can then go to the Supreme Court.

As you all know, in 2010 your Committee did a report on this, and they considered the South Australian legislation and they decided against it. They expressed a number of concerns. There was wariness about

uncertainty and unintended consequences, concern about long lead times, difficulties establishing truth, problems with opinions and predictions, the politicisation of the commissioner, the administrative burden, the involvement of the courts, the misuse of injunctions and, then the big one, curbs on freedom of speech.

So my fourth point is: why look at it again? A number of the reasons that your Committee gave were at that stage future concerns, and we suggest it is useful to now look at what a decade of experience of the South Australian legislation shows. We also, fortuitously, have the benefit of a very comprehensive March 2019 UK project, an international project, looking at improving democracy across the world. They took a very detailed look at the South Australian legislation. They looked at operability, that is how well it is working, perception, that is how it is received by the public, and impact, how effective it was. They found that the legislation was operable and well perceived. They did note that the South Australian legislation is limited and that it only applies where inaccuracy was unambiguous, so it does not deal with the more subtle misleading stuff. Nevertheless, it found that despite initial opposition and concern the reforms have achieved widespread support with the commissioner, the Attorney-General—who helps operate with it—across all political parties and with the public. They noted that:

... the opinion of experts and those with direct exposure ... appears universally to be that it is worth while.

The report also noted various government, academic and media support. For example, it ‘forces people to be a bit less strident’ and:

It makes the political operatives pause - we can't tell a ... lie.

The recent South Australian electoral report of 2018 seems to confirm this. It notes difficulties, but ultimately the only recommendation the commissioner made regarding section 113 was actually that the injunctive relief be extended to the how-to-vote card provisions. Interestingly the UK report also noted findings of a 2016 Australian election study that trust in government was higher in South Australia than any other state. They did not extrapolate, but they just noticed that. That study also found that Australia's voter satisfaction with democracy is at its lowest level since 1970 and trust in government is lower than in the 1970s.

I am sure all members of this Committee are aware of the seriousness of the issue. In fact I think politicians probably understand and experience it more than most. There have been many autobiographies from politicians across the parties talking about how they have to weigh up what will pay well in the media rather than what will best advance the public interest. Some may be pushed uncomfortably to go to the limits of what the law allows. Many good and thoughtful people who enter politics find themselves regarded with contempt. Regardless of all that, the issue is of such fundamental importance, undermining respect for our democracy, our Parliament and our institutions, that we ask that your Committee again look at the issue.

The CHAIR: Thank you. I will open it up for questions from the Committee.

Dr READ: Perhaps I will start with your interest in misleading electoral advertising. The hardest question I think with this is: how do you decide what is misleading? I have not studied the South Australian stuff, but I could quite easily run an advertisement that Bruce here would regard as misleading, and he could run one that I thought was misleading, and we would both be sincere in believing the ads we have run. I am wondering if you can offer some guidance as to how that might work.

Ms BIRRELL: The South Australian legislation is limited to facts, so opinion, future events and so on would not be considered. It is interesting reading the UK report and also your previous committee report. What the South Australian Electoral Commissioner at the time said was initially there were a number of cases where they tried to work it out, but people have established the boundaries, and in the interests of free speech and the free flow of discussion they have limited it to, one, it has to be facts and of course material. The commonwealth provision that was introduced in 1983 that lasted six months or so was a broader one, but the South Australian one is a sort of modest, middle-of-the-road, more limited provision.

Dr READ: I imagine we could talk about this for a week non-stop, but I am just wondering about one other thing: are there hundreds of complaints to the South Australian Electoral Commission every election, or is it fairly well observed?

Ms BIRRELL: No. I have got their last year's report. The *Doing Democracy Better* report summarises it well. In 2018 there were 35 complaints, and in six cases withdrawal or retraction was requested. In 1997 there were 40 complaints and six withdrawals requested. The electoral commissioner has never taken legal action; he has not had to. A lot of the concerns expressed by the Committee have not been realised. We have not seen—did I mention the injunctions? We have not seen a sort of huge increase in cases that the electoral commission has to take to court. They have acknowledged administrative difficulties, and it is difficult to choose that fine line to not be politicised, but they have managed to do it and they support it. The current Electoral Commissioner thinks it is a valuable reform.

Mr MEDDICK: Thank you, Ann. I am just wondering, just following on from the statistics you were reading out there in answer to the other question, of those withdrawals that were submitted, requests to withdraw, how many were realised? From my mind it speaks to the effectiveness of the legislation. So were there clear-cut breaches of that legislation and therefore it was enacted?

Ms BIRRELL: Sorry, I do not quite—

Mr MEDDICK: You mentioned that there were X complaints and X amount of requests for withdrawal. How many were realised in that respect? It says that there were complaints and that there were specific ones for requests for withdrawal of those particular posters, or whatever they might be. Did they direct them to withdraw them?

Ms BIRRELL: It says 'Cases where withdrawal or retraction requested'.

Mr MEDDICK: Did they actually have them—

Ms BIRRELL: Yes, I assume so. I assume so. I mean, the provision in the Act is that the next step is for the Electoral Commissioner to take legal action. Legal action has not been taken.

The CHAIR: So is it your view that the South Australian Act, whilst a moderate position, is sufficient, or would you be advocating for a stronger legislative response?

Ms BIRRELL: I think this could be a good first step, because there is a lot of concern about the sort of issues that Dr Read raised. I think the UK report is very comprehensive. It is quite interesting. It is a more exploratory, broader report. It does not just look at banning misinformation. How does it express it? I have got it here. They describe it as looking at 'distinct strategies for improving information and discourse', drawing on extensive research and practice around the democratic world. They look at confronting misinformation, banning misinformation, fact checking, transparency and promoting quality information. I would recommend that report to the Committee. I found it very interesting with lots of different ideas. Interestingly they did not ultimately recommend the South Australian model for England, and in the reasons they gave, one issue was scale. They thought that South Australia was a small politic and at the level of the political elite everybody knew everyone and that helped build trust and allowed rapid decision-making.

Then they had a much broader issue, which was interesting, in relation to political and media culture. They were surprised that in South Australia no political actor had sought to discredit the regulator. They thought that was essential to the operation of the system in South Australia, and they found it unimaginable that that would apply in the UK. They actually ended up recommending a new publicly funded independent entity to manage an information hub with material from diverse sources. It is quite complex, but it is very interesting seeing the examples from around the world and how they analysed it.

The CHAIR: So that is where they landed, on an information hub?

Ms BIRRELL: Yes.

The CHAIR: What does that do?

Ms BIRRELL: Well, there is an independent person to manage it, and they gather together materials from diverse sources. They talked about an 'information ladder' of procedural, factual, positional, comparative,

analytical and evaluative information. So it would combine some of the fact checking, as different authorities do here, but to get it all into one place and to make it easily accessible.

Mrs McARTHUR: Thank you very much, Ann. Most interesting. Given that we are always struggling with limited resources in this whole space and we are calling for more accessible polling places, perhaps longer hours, all sorts of things to enfranchise more voters et cetera, and given that you have told us that there were about 40 complaints—is that what you mentioned?—given the large number of people voting it would not seem to present as a major issue that would require obviously considerable expenditure to police all this. Would you say it is a priority over other areas of expenditure in the electoral process?

Ms BIRRELL: Well, I personally think it is. I think the damage done to our democracy and the respect for all sorts of institutions is so serious. You talk to a lot of people who are very disenchanted with the system, which is so out of line with what we really have and value in Australia, you know? So I would have thought this was a priority. It would be interesting to look at the resources needed in Victoria to manage the authorising provisions and the resources in South Australia and how they compare, and exactly whether the political culture in South Australia is better behaved than here. I cannot do that.

Mr ATKINSON: It would be, in proportion terms, relatively easy to police advertising and published brochures, but surely the real issue now, and the one that would be very difficult and very problematic, is social media.

Ms BIRRELL: Look, I agree, but the blatant, outright lying in published documents is still very demoralising.

Mr ATKINSON: Is it worse than social media? It is very often anonymous and you cannot tell who has actually received it, and therefore retractions are almost useless. The level of damage that social media can do is actually considerably higher.

Ms BIRRELL: I cannot answer that, but I think there are reasons to take the small steps as well. There are enough blatant lies in the published material. In fact it is almost worse in the published material because that has a certain legitimacy that social media does not, in a way. To see a billboard at the polling station that is an outright lie—

Mr ATKINSON: Worse if you get a text message on your telephone.

Ms BIRRELL: Look, I think that is bad too. I am not disagreeing with you.

Ms LOVELL: You obviously have a strong interest in people being fully and accurately informed. One of the things we have been exploring this morning is the extent of the pre-polling, where people are casting their ballot two weeks before the election and they are not fully informed of what each party is offering or what the state of the finances are, because parties do not release their costings until the very last couple of days. So I am just wondering if you have a view on the pre-poll and whether two weeks is too far out for people—

Ms BIRRELL: Did you say two weeks?

Ms LOVELL: It is two weeks at the moment, so people are casting their votes two weeks out before parties have even fully released all of their policies, let alone the costings, which are not released until the last few days.

Ms BIRRELL: Well, it does mean that parties will have to adjust the way they release information if they want those people to be informed.

Mr QUILTY: Maybe they would prefer that people are not informed.

Ms LOVELL: Sometimes the costings in particular could be about hiding things until the last minute, but policy release right up to election day is about keeping people engaged. If you finish releasing things two weeks out, people in casting votes two weeks later have forgotten.

Ms BIRRELL: I think it is a change, isn't it. Maybe it would not be a bad thing for things to come out earlier—give people more time for consideration. I am not sure.

Ms LOVELL: You think it is necessary to have two weeks of pre-poll, or do you think a shorter period would be—

Ms BIRRELL: My uninformed, member of the public personal view is that we want to limit it, really. I think it is expensive, and most people can get themselves organised. And if they cannot, there are other ways to vote. But I have not thought about it a lot.

Dr READ: I just want to raise something that I do not think was part of your submission, but just from the perspective of a voter, a lot of the people we have heard from today have virtually all been from political parties or organisations. I am interested in your perspective of the environment that you walk through to vote, when you have got party volunteers and Independent candidate volunteers handing out how-to-vote cards and so on. There have been a number of issues raised about these. From a voter's perspective to you feel as though you have got adequate space to walk through to get into a polling booth? Do you feel as though the process of being offered how-to-vote cards has been okay to contend with as a voter?

Ms BIRRELL: You do see people who are jostled, and that is not really acceptable. I should point out that I am actually in a political party; I am a member of the Greens. In the group that I represent I think one other is a member of the Greens, but the others are a mixed group. I do not think any of the others are in political parties, and I know they would have voted for all parties represented here. So my perspective is that I am very interested in politics, so perhaps I am not a good person to ask, but I do think the jostling is unfair and we should try to address that.

Mr QUILTY: Leaving the upper house aside, you have talked about the one vote, one whatever. Obviously in our lower house system we have a system of electorates electing single members, and it is designed to deliver a majority government even if those people do not necessarily get a majority of the vote. Do you think this is problematic? The current voting system, is it—

Ms BIRRELL: Yes, I think that the German and the New Zealand systems are gold standard, but I thought that would be talked about elsewhere.

Mr QUILTY: The lower house?

Ms BIRRELL: Yes, where you have both the local representation but you also have the parties properly represented, which is a problem here, because you have got the good local representation, but the party representation is quite disproportionate.

Mr QUILTY: I guess a result of that system, like New Zealand's, is that you do not get majority governments. Quite often you get coalitions of smaller parties. There is a trade-off involved with that.

Ms BIRRELL: Well, if you think it is a bad thing, yes. If you look at the Scandinavian and northern European governments, they are all coalitions. I personally think that that is quite good, because interest groups find it difficult to dominate one side of politics or both sides of politics the way they do in Australia, but I am just toying—those are my views; not necessarily of my group of friends. My friends all agree with me on the submission, but these are just my views.

The CHAIR: Thank you again for your submission and also for providing evidence to the Committee today. As mentioned earlier, you will get a proof of the Hansard transcript to have a look over before it is published. Thank you.

Ms BIRRELL: Thanks.

The CHAIR: That concludes our hearing for today.

Committee adjourned.