

ELECTORAL MATTERS COMMITTEE

Inquiry into the Impact of Social Media on Elections and Electoral Administration

Melbourne—Friday, 12 March 2021

MEMBERS

Mr Lee Tarlamis—Chair

Mrs Bev McArthur—Deputy Chair

Mr Enver Erdogan

Mr Matthew Guy

Ms Katie Hall

Ms Wendy Lovell

Mr Andy Meddick

Mr Cesar Melhem

Mr Tim Quilty

Dr Tim Read

WITNESSES

Mr Peter Wolf, Senior Expert on Electoral Processes, International IDEA.

The CHAIR: I declare open the public hearings for the Electoral Matters Committee Inquiry into the Impact of Social Media on Elections and Electoral Administration. I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us are gathered on today, and pay my respects to their ancestors and elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to our committee or who are watching this broadcast of the proceedings. I welcome Peter Wolf, Senior Expert on Electoral Processes from the International Institute of Democracy and Electoral Assistance. I am Lee Tarlamis, the Chair of the committee and Member for South Eastern Metropolitan Region. The other members of the committee here today are Bev McArthur, Deputy Chair and Member for Western Victoria; Enver Erdogan, Member for Southern Metropolitan; the Honourable Wendy Lovell, Member for Northern Victoria; Andy Meddick, Member for Western Victoria; Cesar Melhem, Member for Western Metropolitan; Dr Tim Read, Member for Brunswick, and there may be some other members joining us during the broadcast.

All evidence taken by this committee is protected by parliamentary privilege. Therefore you are protected against any action in Australia for what you say here today. However, if you repeat the same things outside this hearing, including on social media, those comments may not be protected by this privilege. While you are covered in Australia under parliamentary privilege for any comments you make today, you should note that Australian law cannot give you the same protection with respect to the publication of your evidence in the jurisdiction you are giving evidence from.

All evidence given today is being recorded by Hansard, and you will be provided with a proof version of the transcript for you to check as soon as it is available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible. I now invite you to commence with an opening statement introducing yourself and what you consider to be key issues. And to ensure enough time for discussion, please limit your opening statements to around 5 minutes. Thank you.

Mr WOLF: Thank you so much for this invitation to talk to this committee today. I would just like to briefly talk about International IDEA and what we do and then also give you those three points that are probably the main messages I would like to convey. First of all, International IDEA is an intergovernmental organisation. We have 33 member states—Australia is one of them and actually a founding member state of International IDEA—and the organisation has a mandate to support and promote sustainable democracy worldwide. We basically work at three different levels: we work at the global level, mostly from here, from head office in Stockholm. We have regional offices on each continent [Zoom dropout]. What we do is of course not only country work but also research, and additionally we do facilitate dialogues between electoral management bodies, regulators, academics and civil society representatives.

On this topic also we have worked with online platforms as interlocutors. Obviously in this work digitisation and online campaigning have been increasingly prominent in the last months and years. What I would like to share with you are mostly the findings of the exchanges with the various stakeholders that I mentioned. For myself, I am a senior adviser on ICTs, elections and democracy for IDEA, and that is why I was asked to join this committee—because that falls exactly within my area of expertise [Zoom dropout]. Unfortunately we had limited time only, so I think we had to put it together within one or two days. So in the meantime I had time to reflect a little bit on what would actually be the three main messages I would like to convey, and the first one actually has to do with something I am sure you are aware of already—regulating the online space. Regulating the online complaint space especially is very tricky, because it really deals with the right to hold opinions without interference and to make informed decisions in electoral processes but then also very importantly the right to freedom of expression and the right to free campaigning. So while you want to protect one right, you of course also do not want to create damage to the others, and that is why it is really important to always consider when regulating in this field that any regulations really have to be supported by convincingly established necessity as well. I think that is of course very important also for our own sake, for our own democracy's sake, but I think also in Western, stable democracies and with a global perspective it is really important to consider that we are sometimes also a role model for others. You probably know that in a more struggling democratic context exactly that kind of regulation can also be used in very problematic ways, so of course we do not ideally want to be a bad example for those countries as well.

The second point I wanted to share is that what I found quite striking talking to representatives from different countries about this topic is the different sense of urgency that various countries have. Some countries have seen a big exposure to some of the problematic elements of online campaigning already: the microtargeting—you know, the US campaign and the Brexit campaign had one. They really see an urgency in regulating this field. We have heard from other countries though, ‘In our country this is not a big problem at all. We’d actually really like to see, first, more evidence before we are ready to go ahead with regulation’. So there is quite a diverse spectrum. I am not sure exactly where Victoria is in this situation, but again oftentimes more evidence is still required for those regulators, and for this evidence of course it is important to have more research, more analysis, and that also needs more transparency around online advertising.

That is actually my second point: thinking about how fast the online space moves, getting regulation right in one big bang might be a really difficult thing to achieve, so it might actually be better to bring it in in phases—start slow, see how that works and then increase as needed. A really good starting point is this transparency that I was just talking about. It has the least risk of undesirable side-effects—you know, threatening some of the rights I was mentioning before. It is important for research, but it is also important for citizens to just understand better and have a chance to actually understand what is happening in this online environment around elections for them. And then of course—and I think this is another important part of your committee anyway—looking at non-regulatory measures is really important as well. Look at the possibilities that you have with codes of conduct, for example, guidelines around existing regulation, efforts around media literacy and fact-checking. Those are very important complementary measures.

The final, third, point I would like to make is also that you probably have two different targets of regulation that you might be considering. I guess one target could be the political parties, the candidates and regulating what they can do as part of a campaign, and the other target is obviously the online platforms. I think there is a big difference between the two of them. I guess regulating your local parties, will always have to follow the regulations that you are creating, right. That is their jurisdiction, and this is how they have to operate. And with the online platforms, I think there is a bit of a risk. It is a little bit different, and I would just like to highlight this with one story from a few years ago. Immediately after the big issues with the US elections 2016, Brexit and so on, when the big online platforms were actually touring fora of international election management bodies they just always gave the same presentation and said, ‘You know what, we’d really like to do something about this, so tell us what the rules should be but also make sure that the rules are the same for every country in the world’.

Of course that was a bit of a maybe naive wish, and the platforms have also learned a lot in the meantime. But the important element I think is, even for those big companies, it is really difficult to implement, for example, 200 different regulations for 200 different countries, or even more if you come to the subnational level. So I think trying to have regulation that is as far as possible in line at least I guess within Australia, for example—or even looking at similar initiatives in different countries, learning from those experiences and not creating this exotic regulatory island—would actually be a good idea. If the regulation becomes too peculiar for a certain country—and that is what we see a lot with small European countries; they are just really worried that either it will not be properly implemented or platforms will just decide, ‘Well, there are certain services we cannot provide for this market’, which might be an undesired side effect as well. So as much as possible aligning with initiatives out there might be a very useful approach.

I think this is where I will leave it for now and just open the floor for your questions, and I hope I will be able to answer them.

The CHAIR: Thank you very much. I might go to our Deputy Chair, Bev McArthur, for the first question.

Mrs McARTHUR: Thank you, Chair, and thank you very much for joining us today. I am interested in the conflict between freedom of expression, freedom of speech, and regulation. So how do you work to a compromise in your country?

Mr WOLF: For me the main point is everybody is still learning with this. There are of course quite a few advanced initiatives already. I think nobody has the perfect solution yet, but what you can see when you look across Europe is, again, transparency is the first starting point for everybody—just making more transparent, more clear, what is actually happening. That can mean how much you spend for online advertising, how exactly it is used—for example, targeting criteria that have been used, money that has been spent, the audiences that have been reached—and making this available also in a very consistent way, in the same way between different platforms, making it comparable, making it possible to aggregate all of this information. So that is a

really important first starting point: advertising archives, but then also creating transparency for voters so that they can also see, ‘That’s an ad, that’s why I see it, this is the background of the ad’, and so on.

Mrs McARTHUR: Sorry, how do you achieve transparency for voters?

Mr WOLF: So for voters it is mainly through—there are different terms used. Digital imprint is used in some jurisdictions. I think there is something similar in Australia; is it the authorisation of the ad? So basically you are providing that background information together with the ad, and that then of course has to look a bit different between different platforms. Sometimes this can almost be automatically added, depending on platform features. Sometimes it has to be inserted, for example into videos. But that is a very important measure for getting this transparency for the end users.

Mrs McARTHUR: No further questions, Chair.

The CHAIR: Thank you. Dr Read.

Dr READ: Thank you, and thank you very much for your submission and presentation. At one point you mentioned in your submission that fact-checking can backfire. I wonder if you could elaborate briefly on that.

Mr WOLF: Well, fact-checking of course, especially in the political domain, is always very difficult. Being the arbiter of truth between statements that are of course designed to be on the line between still correct but already leaning to a certain direction is just very difficult. The question always is: who should this fact checker be or who should have this role of in the end deciding what it is? I guess what we see a lot, especially with state agencies in Europe, is that a lot of them are just shying away and they just do not want to have control necessarily, because they are afraid in the end that they are just going to end up in kind of a political situation where they have to take decisions that are difficult to take.

But I guess then of course there are many models with having, you know, civil society and media fact checkers and so on. Then especially the European regulation is also going a lot in the direction of giving them the right space, maybe giving them privileged access to the online platforms as well, so if they find really violating content they also have possibilities for fast access to take this content down or down-prioritise it. That is roughly how the fact checkers can be fitting into this picture.

Dr READ: Thank you. Would you be able to single out maybe one or two countries where they are doing a particularly good job or have good initiatives in managing the impact of social media and online advertising on elections?

Mr WOLF: It is a good question, really, because again my sense is really it is an ongoing project everywhere. It is really interesting to see with every individual initiative that is taken. I mean, even Australia for me was really interesting to see with the media law now—what will happen and how that is playing out. And I think just every case—look at Canada, what they have done, what happened, how the platforms reacted—I am sure you know [Zoom dropout]. Also in Europe, for example, it is going to be really interesting to see how this Digital Services Act is going to play out, how the updates of the Code of Practice on Disinformation are going to play out. So I think it is really an evolving field where you can just basically learn as you go and follow those things.

Dr READ: Thank you.

The CHAIR: Mr Melhem.

Mr MELHEM: Thank you. I just have one question. I am interested in the approach the Argentinians have taken in relation to disclosure. How did that work in practice? Do they have a right of veto, if you got to lodge your social campaign with the electoral commission, or is it just basically that you have got to lodge it but they have no say on content? Can you sort of elaborate a bit more on that and how that worked in practice?

Mr WOLF: So unfortunately I do not know too much about the Argentinian case in practice, but basically there is a full disclosure requirement for the online campaign spending and the election management body plays an important role in also collecting all of this, which is quite different of course to what you have in many other countries where you still rely a lot on transparency mechanisms that are being provided by the platforms to just get a lot of this information, which of course is much more limited as well. Obviously with platforms you only

have what is literally a paid ad towards those platforms, while the Argentinian approach would be able then to go much further and really just go into all the wider campaign spending that is going online, not only the advertising costs directly.

The CHAIR: Just on that point, it is actually an interesting concept, because in Victoria we actually have a political donation system now that requires political parties, third-party campaigners and associated entities to have a campaign account that political expenditure is spent from and political donations go into. They already have a relationship with the electoral commission where that needs to be disclosed, so linking two systems together whereby political advertising that is expended from that fund and where it is required to be recorded in, say, an ad bank or an ad archive as a requirement that then basically fully discloses all microtargeting—all the data about age, who has been targeted, for how long, how many hits it has had, who has paid for it and all those sorts of things and possibly in real time—would provide a valuable mechanism about who has been targeted, who was saying what and provide an ability to counter that argument to that same cohort. It would also provide a valuable research tool as well going forward about who was doing what and when and those sorts of things for researchers to map out.

Mr WOLF: You just go beyond regular financial reporting and have like the ad content and a lot of metadata around it and also collect it in a very comparable way between different platforms, so it makes it a bit more platform independent. That is an interesting approach, to have the holistic picture. Oftentimes otherwise you need those intermediaries that are collecting all of this and consolidating it somehow, and every platform is working off different definitions. And of course that is something that is [inaudible].

The CHAIR: Ms Lovell.

Ms LOVELL: I did not really have a question, but just following up on what Lee was saying about the regulations in our state and our processes and things, they only cover the state of Victoria. But given the borderless world of the internet, how would you propose that something is regulated when someone could enter something from another state in our country or from another country altogether and still target audiences in Victoria and perhaps advertise heavily to those audiences?

Mr WOLF: Yes, so in part the problem might have already been solved by the platforms on their own initiatives. Most of the platforms that allow political advertising are now banning international advertising—I guess that is true for Australia as well—so they will only allow political ads if they are placed from within the jurisdiction. But of course that is still relying on the platforms to do it, right? So your regulation might as well put that in law and just make this a legal requirement. The other element with this of course has to do also with how you can enforce this. Platforms are international, so can you even enforce any sanctions that you might want to have? How can you even convince them to remove any problematic content? I think there is a clear trend towards having just a legal representative in the country that is really responsible for the platform, so having a mandatory representative in your country or in your jurisdiction—I do not know how this works exactly in Australia—to be legally responsible but then also a mandatory contact point where you then know, ‘This is where I go’. So if there is a problem at my contact point, they are responsible to react within very short notice to any complaints or any action that they are asked to take. So creating this legal presence of the platform officially and maybe making this mandatory is certainly a solution for tackling this international problem as well.

The CHAIR: Mr Meddick.

Mr MEDDICK: Thank you, Chair, and thank you, Peter. I just want to expand I suppose a little bit on what Mrs McArthur has said and also Ms Lovell. What does a model look like that allows political parties or individuals running in elections to be responsive? Often during elections there are quite dynamic situations that are occurring and topics or issues crop up during a campaign that will require opponents of particular people or parties to respond online quite often because, as you would be well aware, what some people term the mainstream media is in a real decline, and generationally it will not be too long before online media is really almost the only representation. How do you foresee that working—their ability to be able to respond and respond strongly without telling lies or attacking people personally or contravening any of those sorts of things? That, to me, is campaigning effectively. That ability to respond to a dynamic situation should still need to be able to occur. And just on what Ms Lovell was saying there and what your answer was there, do you feel that there is a space then for—and I am not sure; I am open to who would have to be feeding into this of course—an international code of conduct then that nations sign up to? Or is it strictly national? Do individual countries

need to take the lead and take control of their own affairs and judge that, like we saw with the federal government with their standing up to Facebook recently? Is it really just a national thing? Is an international code of conduct, for instance, completely pie in the sky and unenforceable, as it were?

Mr WOLF: I am not even sure. The enforcement might be easier when just coming to an international agreement about what exactly that should be, right? Because in detail it is of course really hard. You need to define exactly what do you mean—what is a political ad, who are the stakeholders you want to cover—especially then when it comes to issue ads. And when you look in detail at this, you will even notice that every platform now has their own definition. So you would need to come up with one definition that works for your jurisdiction, that works for Australia and that works, ideally, beyond.

I think the agreement on the side of the countries would be more difficult than having it implemented, because again, the platforms would like that. The more streamlined this could be, I mean, ideally for them everything would be the same. I think in reality it might be a bit in between, so as much as we can learn from each other's countries, take similar approaches and take successful ideas ahead in similar ways, I think that that would be probably the most realistic way.

But of course especially working on codes of conduct and all these kinds of voluntary commitments, I think there is always a lot of important scope for this internationally but also within the country. We have just actually negotiated a code of conduct for the Netherlands between political parties and the online platforms, and I think that is an interesting space between—not regulation, but still trying to establish also a common understanding of the issues and trying to have a bit of an ethical, moral, equal, level playing field as well. So I think there is a lot of possibility with the codes of conduct as well. But of course there will always be limitations for those codes of conduct as well, and that is I think where it is getting interesting, because that is where you might in some cases have to step in with regulation: whereas for the companies it gets about the business model, it gets to things that are also expensive to implement. This is where maybe the voluntary side ends, and then for the parties, of course, as well there are just different views on how far different parties want to agree to certain standards or not. But I think a lot can be achieved without heavy hitting with regulation.

The CHAIR: Mr Erdogan.

Mr ERDOGAN: Thank you, Mr Tarlamis. Thank you, Peter, for your submission. I had a question about your counter-speech mechanisms. You mentioned that as one way to allow multiple parties to target the same groups. How would that work in practice?

Mr WOLF: I just want to clarify, this is not an idea that is kind of mine or ours, but it is just what some civil society organisations are asking for. This has especially to do with a form of microtargeting. You know there is the general online advertising, but then there are specific and many concerns about microtargeting. It is having a lot of messages going to vary small groups. Maybe you do not even know to whom exactly they went, and then especially also how can you create counter speech. So some of the suggested solutions out there are to at least try to limit this microtargeting somehow—and then 'limit it to a human scale' is what is often said—so making sure that there is a maximum number of different ads that can be sent out and a minimum number of the audiences you are targeting, just to kind of get it a bit more under control so you can at least know what kind of messages are out. And then another next step could also be that for each of those messages, you know that was the audience and whoever wants to send an opposing message would also be able to send to the same audience their own messages or whatever their counterarguments are to the argument that has been presented. It is one of the ideas that is out there, mostly by civil society and expert organisations in this field. It is not in any regulatory approach that I would be aware of, but it is just one of the things that could also work.

Mr ERDOGAN: I just had one other question, actually, that I think touches on the points raised by a couple of others. It is the whole issue of, do you believe that governments need to, as we are terming it, self-regulate advertising or political advertising on their websites? Could that be misused to censor people and be seen as a form of censorship?

Mr WOLF: Absolutely, and if you curb even political advertising too much and for no proper reasons of course that could also be coming close to curbing the freedom of political speech. So that is exactly the balance that has to be found. I mean, I suppose you are all politicians, and many of them tell us, 'This is a really important tool for us to communicate with our voters as well, so it is really just damaging this', and taking those

tools away would certainly be a mistake. It is really just finding out where are the extremes, where is it really not helpful for meaningful communication anymore, where is communication getting so opaque that it is not really adding to public debate anymore and just maybe trying to cap both things rather than banning too much completely.

Mr ERDOGAN: No worries. Thank you, Peter.

The CHAIR: Thanks. And I think it is also about that level of transparency as well, because if you have transparency and accountability about what is being said, it is then about—you know what is out there and what is being said, and you can attribute a weighting to it, because you know who is saying it. And then you can determine what you then do with it as well. In terms of ad archives, are you aware of any jurisdictions that are utilising ad archives well—that could be considered or looked at as a model to build on?

Mr WOLF: So, first of all, I would say, yes, transparency helps. But of course if there is a flood of thousands and then hundreds of thousands of ads, it is even difficult to just keep track of what is going on. Then of course all the transparency is even difficult, and how would you then have a debate with so many messages out there?

One thing on the meaningful use of those archives is who are the target audiences of this? I think a lot of the target audiences can be media, for example, just figuring out what is going on, reporting on this. In the end I think it is always going to be a lot of work to make sense and track what is going on and bring it to the surface. But I think for that, media would be a very important consumer anywhere—academia of course as well, researchers. But then also we heard from several countries in Europe that the only way they can really track what is going on and see if there is any sort of consistency between the reporting and what happens in real life is they have to rely on those advertising archives as well and try to consolidate a bit and find, sometimes, all the notable discrepancies between what is going on there.

So I think those libraries are quite important, but again, often they are still mostly on the platforms' own initiatives, to their own standards. Of course you hear a lot of criticism as well that they are not capturing everything, which I will also give the platforms—it is really hard to catch everything, right. All of this involves a lot of human adjudication as well. There might be gaps.

So I think in the end regulation needs to tackle this a little bit from both sides—from the providers of goods, from the platforms that kind of provide those advertising spaces, but also from the parties to have certain transparency requirements that make sure they are also marking all of their campaigning online as such. So that was one of the elements for example we included in the Dutch code of conduct as well, that parties just said, 'Well, we are actually really going to mark everything that we are using. Every ad that we are placing online, we are also marking it as an ad'. So there it is no chance that it is slipping through and the platforms do not recognise it.

The CHAIR: And of course ad archives generally pick up on paid advertising. Do you have any ideas or suggestions around mechanisms or ways to look at unpaid electoral content?

Mr WOLF: Yes. Your approach that you suggested before, which Victoria might take, that is the only way you can do this, right. You cannot have it from on the side of the platforms. You have to include that as an obligation for political parties—that they are then disclosing all the spending that happens, because in the end, even if it is organic content, organic content looks for free to a platform, but of course it is not free for a party to produce if you have your people that are running a campaign online even if it is through their own posts or if it is just unpaid activities, if you pay an influencer to campaign for you or something like this. But that is really something of course that has to be tackled from the party side, from the buyer of those services and from the one who pushes out those messages.

The CHAIR: Are there any other questions that members have? Dr Read.

Dr READ: Thanks, Chair. You briefly touched on limits to expenditure in online advertising in campaigns. I think you mentioned Romania has—what was interesting was—a proportional limit. Correct me if I am wrong—they cannot spend more than a third of their total budget on online. Could you comment a little bit more on that or other mechanisms?

Mr WOLF: You have probably seen that there are very few countries that have any such limits, and sometimes this just falls under general campaign limits anyway. So Romania has that cap of 30 per cent. Of course how useful and how meaningful this is probably still has to be seen. Well, we know online advertising tends to be a lot cheaper than traditional advertising, so 30 per cent could actually be quite a sizeable chunk for the online space and what you can achieve there. So again, at the moment, there are few initiatives so far. I think there are only three in Europe and three or four in the Americas, or something like that. So yes, it is one of the attempts out there but not yet really in the mainstream.

Dr READ: Thank you. Thanks, Chair.

The CHAIR: And media literacy: are you aware of any media literacy programs that are being run in any jurisdictions that are effective or are models that could be looked at as being models to consider?

Mr WOLF: Unfortunately those two areas, fact-checking and media literacy, are things we have rarely worked on because, again, we were mostly dealing with the regulatory side. Of course we know how important it is—it is an important element—but I would not be able to give you a great initiative. But clearly that is key to addressing this, and people have to understand what is going on, but unfortunately I cannot give you a perfect example to the question.

The CHAIR: No worries. Thank you. Are there any other questions?

Mrs McARTHUR: Chair, the only thing I pose is: do you have a comment on who checks the regulator?

Mr WOLF: The regulating agency in the end?

Mrs McARTHUR: Yes. If we have regulators, in the end who checks the regulator?

Mr WOLF: Of course it goes into the [inaudible]. You need a trustworthy, independent election administration, and I am not sure what the model in Australia will be. Those roles would of course fall into some sort of a trusted, independent institution as well. But having said that, I know that many of those institutions are just worried that they might, in the end, end up—depending on what the regulation is, right? Sometimes they are clear-cut cases, right? If it is about spending, it is clear-cut spending. If it is about misleading campaigning and so on, this is where it is really becoming tricky, and there are few of those independent bodies that want to become these arbiters of truth, because they know exactly that it is going to politicise them and that is going to make the situation very tricky further down. Maybe that makes sense.

The CHAIR: All right. Are there any final questions? No. In that case, thank you, Mr Wolf, for your time today. It has been very valuable and a really good discussion, and it will help us in our deliberations. Thank you for your submission also. There may be some additional questions or follow-up questions. We would appreciate it if we could forward those on to you via the secretariat, if there are, and we would appreciate your support with those. Thank you for your time today.

Mr WOLF: Absolutely. Thank you very much for my being able to talk to you and for inviting me here. And of course if there are any more questions, please do forward them, and I will do my very best to answer them.

The CHAIR: Thank you very much. That ends this session of the hearing.

Witness withdrew.