

ELECTORAL MATTERS COMMITTEE

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

Melbourne—Thursday, 19 November 2020

(via videoconference)

MEMBERS

Mr Lee Tarlamis—Chair

Mrs Bev McArthur—Deputy Chair

Ms Lizzie Blandthorn

Mr Matthew Guy

Ms Katie Hall

Ms Wendy Lovell

Mr Andy Meddick

Mr Cesar Melhem

Mr Tim Quilty

Dr Tim Read

WITNESS

Mr Sven Bluemmel, Information Commissioner, Office of the Victorian Information Commissioner.

The CHAIR: I declare open the public hearing for the Electoral Matters Committee's 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 is gathered on today, and paying my respects to their ancestors, 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 the broadcast of these proceedings.

I welcome Sven Bluemmel, Information Commissioner, Office of the Victorian Information Commissioner. I am Lee Tarlamis, the Chair of the committee and a Member for South Eastern Metropolitan region. The other members of the committee here today are Bev McArthur, Deputy Chair and a Member for Western Victoria; Katie Hall, the Member for Footscray; the Honourable Wendy Lovell, a Member for Northern Victoria; Andy Meddick, a Member for Western Victoria; and Cesar Melhem, a Member for Western Metropolitan. Some other members of the committee may be joining shortly.

All evidence taken by this committee is protected by parliamentary privilege, therefore you are protected against any action in Australia for what you may 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. All evidence given today is being recorded by Hansard. 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 proceed with an opening statement, which will be followed by questions from the committee.

Mr BLUEMMELE: Great. Thank you very much, Chair, and thank you for the opportunity to be here today. I will be very brief in my opening statement. For a bit of context, my regulatory remit as Victorian Information Commissioner is three areas: freedom of information, information privacy and data security. That is of course in the Victorian state and local government context. So in that context I have made a written submission, which I believe is available to the committee. That includes quite a few references, so obviously I will not touch on any of that detail now. Probably the key point I would like to raise, and of course some of you have heard me raise this more recently in various committees and forums, is the importance of trust, and I see in my case all three areas of freedom of information, information privacy and information security are information rights or information obligations on certain bodies that I regulate that, if done well, have the opportunity to contribute to trust being earned—trust being earned by government, trust being earned by our public institutions.

What we are talking about here today of course—elections—goes to the very heart of our democracy. Now, I know I do not need to tell any of you that, but to me this is why this is a really important issue as well. Primarily of course today I expect that I will be referencing my jurisdiction in privacy. Now, it is important to note there that I do not regulate parties directly outside the Victorian state and local government contexts, so for today's purposes probably the most important ones therefore that I do not regulate are political parties and their contractors. That would normally be something that would potentially be regulated federally under the *Australian Privacy Act*. Currently of course political parties are exempt from that Act, but I just wanted to put that out there to make it clear that I currently have no regulatory jurisdiction over those bodies.

That is really all I wanted to say by way of introduction, leaving the maximum amount of time for questions. Thank you.

The CHAIR: Thank you very much. We will go straight to the Deputy Chair to start with the questioning, but before I do, can I just remind committee members if they are not asking questions to mute their microphones just to reduce the background noise also.

Mrs McARTHUR: Thank you, Chair, and thank you, Sven. In your submission you refer to the increasing use of targeted political advertising in modern elections as highlighting 'a current lack of ... regulation' in Victoria. In your submission you also particularly focus on Facebook advertising, submitting that it could even facilitate foreign interference. You are no doubt aware of Facebook's strict protocols to secure against this

possibility, including ID verification, restricting political advertisers in the country of citizenship and ‘paid for’ disclosures. So how does this system fall short in your opinion?

Mr BLUEMMEL: Look, again I stress that from my regulatory remit Facebook is not an organisation I would directly regulate. In fact my federal counterpart, the Australian Information Commissioner, is actually doing some work in this very space. But in terms of the question generally, I think what social media—and Facebook of course is a big and probably the single biggest example of that—allows to occur is just this targeting in a way that is often not apparent to the consumer or the social media user who or what is behind it. Now, of course with a lot of the nefarious things that we have seen in some recent high-profile elections—I am talking primarily outside Australia, and certainly outside Victoria—we have seen, and I reference this in my submission, a lot of the posts being made not actually even by human beings. They are made effectively by bots, by forms of various artificial intelligence that of course ultimately are let loose by people, and I think social media operators like Facebook and others themselves from a technological point of view are just always playing catch-up.

Now, again I want to be careful here about not straying outside my remit, so in terms of the regulation of social media generally beyond any sort of privacy context, while I certainly have got some insights from it for my regulatory work it is not something that is really in my remit, so it would be difficult for me I think to propose particular legislative approaches or remedies for that, because I think that would take me outside my jurisdiction. The reason I raise that in my written submission is because in our work, particularly working with other regulators in Australia, New Zealand and around the world, these sorts of things are becoming apparent to us in terms of what the technology can do, how tightly it can segment very thin slices of the population, so that is where that comment comes from.

Mrs McARTHUR: I will come back afterwards with another one, Chair. Thank you.

The CHAIR: Thank you, Mrs McArthur. Mr Meddick.

Mr MEDDICK: Thank you, Chair, and thank you, Sven. Look, in relation to specifically the 2018 state election in Victoria, did you—your office—receive any complaints about this targeted advertising? And if you did, I assume then that they were around privacy, but they may well have been around other areas as well if you received any. So if you did, can you expand on that? I guess in the other sense I am trying to look at: were there patterns observed in those complaints that might lead you to assuming that there is a type of behaviour that is coming out of this targeted advertising? And does that marry up with your counterparts overseas in what they have observed and the federal counterpart as well?

Mr BLUEMMEL: Look, the short answer about the 2018 Victorian election is no. I have not received complaints about that, but I would also not expect to receive complaints about that because the bodies or organisations that would be the ones against whom a complaint might be made would fall, I would expect, outside my remit, so they would be political parties, independent candidates, perhaps consultancies, data aggregators—those sorts of bodies. While I am certainly well aware of their use across the board, certainly across the political spectrum—I am aware of that—none of those bodies are directly regulated by me. I would only regulate bodies if they are state or local government in Victoria, and of course they themselves are not the—

While they might be the apparatus for the election—the electoral commission and so on—they are not the ones that would do the targeting themselves. So that would fall outside. And then in terms of the data aggregators and so on, they would then be engaged by those bodies outside my remit. So the answer is no, I have not, but obviously I am certainly aware in terms of dealing with my counterparts nationally and internationally of what those sorts of issues are. And of course one of the biggest ones in recent times, which is now some years old of course, is the Cambridge Analytica matter, which of course got a lot of interest, and we have been following that very, very closely of course.

Mr MEDDICK: Okay. Thank you very much.

The CHAIR: Mr Melhem.

Mr MELHEM: Thank you. Bear with me; I have got to get the question right. It relates to freedom of expression. Sven, thank you for your time again. We have had a number of submitters to this inquiry who were

concerned about intervention by the government and what can be said on social media and limiting people's freedom of expression et cetera and how it is bad for democracy. So how would you balance the need to prevent bad things happening online—there has been a fair bit of that in recent years—with the need to preserve freedom of speech as well? It is an open-ended question, but I am really interested in your thoughts on that as the privacy commissioner, because it is an issue we are going to struggle with for many, many decades to come.

Mr BLUEMMEL: Yes, I imagine it will be. The issue of obviously freedom of expression is a really important one, and of course in Australia we do not have sort of the equivalent of an express constitutional right to freedom of expression. There are certainly implied rights that have been read into it by the High Court nationally, but they are quite limited. However, what I would say—and I have noted this in my submission in part—is that the federal *Privacy Act*, which would be the place that I think you would look to from a privacy perspective in terms of regulating the data collection, use and disclosure by political parties and candidates, has an exemption for political parties. Now, quite a few commentators have said that there is not a strong basis for that and that it should be done away with. I would agree with that, but the way I would balance that with freedom of expression is that if political parties were subject to privacy legislation such as the commonwealth *Privacy Act*, that would not stop them from expressing themselves. It would not even stop them from targeting particular voters. What it would do is it would put certain obligations on them in terms of keeping information like that secure and secure from misuse. It would also put a lot more onus on them that when the information is collected, used and disclosed there has to be transparency about it. So when you are collecting information through a survey—those sorts of things—you are being told as a voter or as a citizen: who is collecting this; for what purpose are they collecting it; how is it going to be used and disclosed? If your purpose for collection is to build profiles of voters and potential voters to build a strategy for targeting them, I would not expect that bringing political parties into the *Privacy Act* would stop you from doing that. What it would do is it would require you to be transparent about what you are doing, how you are doing it and why you are doing it, and in my view none of that would actually limit the freedom of expression.

Mr MELHEM: A follow-up: would you change anything based on recent experience? Do we need to make any changes to make sure that balance is right?

Mr BLUEMMEL: Look, the only thing in my legislative remit that I would suggest changing—and I think I made reference to this in my written submission—is that currently, I think it is, section 12 of the Victorian *Privacy and Data Protection Act* basically provides that the Act does not apply to what is called 'publicly available information'. The idea is that, well, if it is public, it is not regulated even by me to the extent that it is handled by Victorian state and local government agencies or offices. So I would suggest that changing that would be highly desirable. The argument 'Look, it's out there, it's public and therefore it's fair game', I do not agree with that, and in any event even where an agency holds something that is public—say a published report or a survey or something like that—while it might not be confidential, privacy and information security are about more than confidentiality. They are also about being transparent about what you do and why, and they are also, in information security, about the integrity of the information to stop it from being manipulated by bad actors and so on. That is probably in the Victorian context, in my remit, what I would change. Obviously there is other legislation in terms of electoral matters and so on, but I think that I would not be the most appropriate witness to speak to that.

The CHAIR: Thank you. Ms Lovell.

Ms LOVELL: Thanks very much, Chair. Hi, Sven, again; this is the second committee hearing I have been in with you this week. I am going to follow on a little bit from Cesar's thing about how we do not actually want to stifle freedom of speech and freedom of expression, but what is the requirement on social media platforms to actually ensure that what is posted is true or that it is not breaching people's privacy, and who is responsible? Given that a newspaper will get legal opinions before they publish something because they are liable but anyone can put anything on Facebook, is Facebook responsible for those comments or is the person who publishes those responsible for the comments? The other side of things that I wanted to explore with you is the stifling of freedom of speech and expression. We are now starting to see some of these social media platforms putting commentary or badges to say 'We believe this is fake news' or 'Incorrect'. Is it their role to actually be the censor in this debate?

Mr BLUEMMEL: That is such an important question. I am happy to give you some thoughts on this, but again I would preface them by saying that none of that I think would be within my remit. I do not want to veer outside what Parliament has given me to do in my legislation. With that by way of preface, I would just say that certainly that issue of what are the platform's responsibilities versus the individuals who post the information versus the companies that then pay the platforms for insights and all of those sorts of things are really vexed questions. Certainly in the US, of course, many years ago there was a decision taken at a policy level that in order to allow the industry to flourish they should not be responsible for what is on their platforms in the same way as traditional media. I believe that was a decision taken for policy reasons to say that, 'This is an industry we want to grow, and if we make them liable for content, then they will be a publisher and the industry will not grow'. Much has been written about that by people far more qualified than me, but I certainly agree with you that those sorts of issues are really important.

Again, as to who decides what needs to be tagged and with what comment should it be tagged and how quickly and so on, I would say those issues are outside of my remit, but I will comment there on the privacy side of things where I think I can appropriately delve a bit deeper. I would say that it is important there from a privacy perspective to ensure that those bodies that do the collection, use and disclosure are transparent so that if you are a user, whether you are posting or reading, it is really clear who is behind things, and that I think is obviously something that we see in electoral advertising laws already.

Ms LOVELL: Thank you.

The CHAIR: Ms Hall.

Ms HALL: Thanks, Chair. I do not have anything further beyond Cesar's question.

The CHAIR: No worries. Well, I might ask a question, Sven. Do you think that truth-in-advertising laws, like those that exist in South Australia, would be a step in the right direction?

Mr BLUEMMEL: As a citizen, look, it is a really interesting issue, and as someone who realises the importance of trust in government, it is a really important issue, but I do not feel that as the privacy regulator that really comes within my remit. So if you do not mind, I might avoid that one, seriously, because I think I could be accused of going outside what Parliament asked me to do.

The CHAIR: No worries. I will try again with another one. Would you be supportive of the establishment of a publicly available archive where all paid advertisements were stored that basically included information about who paid for them, the targeting—so age, gender, all the targeting involved—how many hits were received and all those sorts of things in order for transparency to be there? Also would it prove to be an important tool for that sort of research to see how it is being targeted and all those sorts of things? If it was done in real time, it would also be able to kind of combat the sort of targeting that was going on, so that information could be combated if particular misinformation campaigns were being run or mischievous campaigns were being run.

Mr BLUEMMEL: Well, yes, consistent with my earlier point about privacy, in this context it would not be about stifling freedom of speech, it would just require our organisations to be open and honest and transparent about what they are doing with the information. I think, consistent with that, I would have to say that, yes, that would be well worth looking at. One of the other jurisdictions I administer, of course, is freedom of information, and from that perspective I can see that the information and access to information that people want, not just the information that government wants to give them, is really important in accountability. It is really important in building that trust that we have spoken about, and it is also really important in building that research, as you say. I mean, here we are in this committee grappling with these really difficult and fundamental issues, and it would be great that if in a year from now bodies like this committee or others anywhere in Australia or the world have more and more data about how things are actually developing, whether they are effective and what impact they are having. More information like that, in my respectful view, makes for better quality decision-making being available. So from a transparency perspective, again, I would say that that would be worth exploring.

The CHAIR: Thank you. Mrs McArthur, did you have another question?

Mrs McARTHUR: Thank you, Chair. Well, I just want to go to the data and algorithms issue, which is used to collect user data by social media platforms. Is this going to be difficult to stop, and do you think this data should be banned from being used in political advertising? Do you see any potential benefits of microtargeting in political advertising? Then there was the issue of cybersecurity risk with personal data. I mean, we have got so much data collected on us now. How are you going to sort of police all that?

Mr BLUEMMEL: Yes. Could any good come out of it? In terms of the political targeting, I would struggle to find examples of where there might be some good. I mean, if we even look at the commercial space, and we say, 'Would people rather have targeted advertising that might be relevant to them versus advertising that is more general?', I think the research on that varies. I think quite a few people would say, 'Yes, I would rather have ads that are relevant to me than ads that are completely irrelevant'. But I think equally you would have quite a lot of people that would say, 'Well, no, because when I get targeted ads I find that invasive and creepy'. Again, I think we should allow for both views to be heard and respected.

On the issue of whether any good can come of the technology, the insights, the artificial intelligence and so on, in a non-electoral context I would say yes, there can be plenty of good that could come from artificial intelligence as well as plenty of harm. So in a medical context, for example, there can be artificial intelligence in some areas that is now getting very effective at diagnoses from imaging and so on, which is fantastic in terms of scalability, especially in poorer countries or regions—wonderful stuff. Even in the online space, algorithms now which are primarily deployed for advertising and so on could also be very good at perhaps identifying people who are at risk of suicide or self-harm, from what they post online and so on. Now, would we as a society consider it would be a good and acceptable thing to use that for the basis of some preventative interventions? I am not saying the answer is yes; I am saying that those are questions that should be asked. It is not necessarily all bad or all good. I hope I have gone some way to answering your question.

Mrs McARTHUR: Finally, I mean, in the end, if somebody has got to police all of this online material, who would be best to do that?

Mr BLUEMMEL: I am afraid I cannot give you a specific answer there. If we are talking about the election context, I think in Australia and in Victoria we are in the fortunate position of course of having electoral commissions. So at least in terms of electoral advertising and so on, we have independent bodies that are able to do that and, I think most Australians would say, discharge their duties extremely well. So I think from an electoral perspective we already have those bodies. In terms of a broader issue of—

Mrs McARTHUR: I do not think they are very keen, from their evidence.

Mr BLUEMMEL: Well, it would be a big job, frankly. It would be a very big job and a difficult one—a really, really difficult one. So, yes, in some ways I probably do not blame them for that, but I would also suggest that from a citizen's point of view they would be a good starting point.

Mrs McARTHUR: [Zoom dropout]

Mr BLUEMMEL: Well, if I may, just on that, in all seriousness—say from a privacy perspective—absolutely privacy regulators are, in Australia in most jurisdictions, very well established and grapple with these sorts of issues. I think from a privacy perspective, that is already the case. For example, again, if political parties were subject to the commonwealth *Privacy Act*, then in my view the Australian information commissioner is already very well placed and very well respected in terms of being able to do that work. Of course it would be additional work requiring additional resources, but it is something that I think they could do extremely well. So my comment about electoral commissions there was more in the broader, beyond privacy, issues about political advertising and truth and so on, which again are outside my remit. But in terms of privacy and having political parties subject to the *Privacy Act*, there are existing regulators who I think could cope with that just fine, subject of course to appropriate resourcing.

The CHAIR: Well, thank you, Sven, both for your submission and for your time and insights today. We really appreciate that, and if we have any follow-up questions, we may call upon you for some additional insights as well. Thank you for your time today.

Mr BLUEMMEL: Thank you very much.

The CHAIR: That ends this session.

Witness withdrew.