

Electoral Matters Committee  
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13 October 2020

## **Inquiry into the Impacts of Social Media on Elections and Electoral Administration**

This submission responds to the invitation by the Electoral Matters Committee to comment on the impacts of social media on Victoria's elections and electoral administration.

Social media (aka digital platforms) is increasingly replacing traditional print and broadcast media as the primary source of information for many people about political issues and processes, including elections and law enforcement. It is often regarded by users as authoritative because it resonates with their fears or values and because it is perceived as authentic – by, from and for 'ordinary people' – rather than information from elites.

There is considerable uncertainty about the impact of social media on Australian elections, in particular misuse of social media to subvert electoral processes or foster disengagement from democracy. In essence we are dealing with 'known unknowns' and should proceed cautiously rather than relying on claims that are not substantiated.

Australian governments *do* have the ability to deepen trust and increase public understanding, thereby offsetting the pernicious aspects of social media and of highly partisan traditional media. Governments also have scope to require greater responsibility on the part of digital platforms. That action is consistent with the national Constitution and the state's Charter of Human Rights & Responsibilities.

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## **Submission: Inquiry into the impact of social media on Victorian elections and Victoria's electoral administration**

### **This submission**

The submission is made by Assistant Professor Dr Bruce Baer Arnold of Canberra Law School (University of Canberra).

It reflects research into state and private disinformation (aka fake news).<sup>1</sup> That research has been assisted by a grant from the Korea Foundation regarding political disinformation via digital platforms such as Twitter and Facebook, with a forthcoming major comparative study of fake news regulation in Australia and South Korea. The research has been reflected in several submissions, for example to the 2020 Senate Select Committee on Foreign Interference through Social Media,<sup>2</sup> consistent with work over the past decade regarding platform regulation and the implied freedom of political communication.

This submission also reflects recent and forthcoming publication about the sovereign citizen phenomenon, ie adherents of an ideology that claims individuals are not subject to law in Australia or another jurisdiction and are free to disregard/disrupt liberal democratic electoral processes and institutions such as local government councils and state parliaments. The ideology is increasingly propagated through digital platforms rather merely through word of mouth. Sovereign citizenship overseas is disquietingly associated with opposition to law enforcement and election disruption. In some instances it is merging into domestic terrorism.

The following pages address the specific terms of reference for the inquiry after contextualising those comments.

The submission does not represent what would be reasonably construed as a conflict of interest.

### **Basis**

In submissions to other inquiries I have highlighted four issues that are directly relevant to the current inquiry by the Electoral Matters committee –

- ongoing declines in the perceived legitimacy of government, in essence trust among people outside the ‘Canberra Bubble’ or ‘Spring Street Bubble’ in public administration and electoral processes at the local, state/territory and national levels;
- the boundaries of the implied freedom of political communication, often misunderstood as a comprehensive right of free speech;
- disregard by the owners of digital platforms such as Google, Facebook, TikTok and Twitter of regulation that reflects community expectations regarding the restriction of harms but would reduce the profitability of those overseas-based corporations; and

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<sup>1</sup> ‘Disinformation’ is false information created/disseminated with the intent of causing harm. In contrast ‘misinformation’ is information that is inaccurate but not created with the intent of causing harm.

<sup>2</sup> Two submissions by Dr Bruce Baer Arnold and Dr Wendy Bonython (Bond University) to the Legislative Assembly’s Legal and Social Issues Committee inquiry into the *Racial and Religious Tolerance Act 2001* (Vic) are also relevant.

- the partisan nature of Australia's dominant commercial media group, which directly and via redistribution on social media, seeks to determine electoral outcomes rather than merely inform.

### Legitimacy

Respect for legislatures and compliance with rules about electoral activity is dependent on community perceptions of the legitimacy of the liberal democratic system and electoral processes. It is not dependent on policing by electoral agencies and by integrity bodies, although such entities play a part in building trust and – as I discuss in relation to the Committee's third term of reference – and are important for strengthening public understanding of why there are rules rather than simply communicating that there are rules.

Community respect for elections, law-making and administration is fundamental in an environment of democratic deficit in which some parts of the community consider that parliaments, government agencies lack valid authority or should be opposed as inherently repressive. Those values have been evident in agitation in public places and on social media platforms during COVID-19, noted in a separate submission to the Victorian Legislative Assembly committee on Legal and Social Issues.

The ANU 2019 Australian Election Study reported that satisfaction with democracy is at its lowest level since the constitutional crisis of the 1970s, with trust in government having reached its lowest level on record. Just 25% of Australians believe people in government can be trusted, 56% believe government is run for 'a few big interests' and only 12% believe the government is run for 'all the people'. That disquiet is increasing, with for example a 27% decline since 2007 in stated satisfaction with how Australia's democracy is working. Overall trust in government has declined by nearly 20% since 2007; three quarters believe that people in government are looking after themselves.

That erosion of trust is unsurprising given

- a succession of media reports regarding infighting at the state/territory and national level within political parties (reflected in popular disquiet about the replacement of leaders and with leaked reports of what MPs say about members of their own party);
- indications of corruption at all levels of government;
- damning criticisms by courts of executive accountability, for example *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v PDWL* [2020] FCA 394 and *Brett Cattle Company Pty Ltd v Minister for Agriculture* [2020] FCA 732;
- disregard by Ministers of community expectations regarding probity, reflected in resignation of three South Australian ministers and the state's Legislative Council President over expenses, reporting by LNP MPs regarding their leader Deb Freckleton and condemnation of the NSW Premier for an undisclosed relationship with an MP who has been characterised as a 'bagman';
- a failure on the part of Governments to address damning reports such as the Australian National Audit Office *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999* report;
- the superficiality of 'Open Government' initiatives at the national, state/territory and local government levels, reflected in international corruption barometers and in the frequent deployment by state and Commonwealth departments of Freedom of Information legislation as a

weapon to deter transparency, rather than a supplementary tool in support of a default position of release of government information.

The erosion of trust in politicians, parliaments, elections and public administration is also unsurprising, although rarely noted, given the remorseless ‘pitbull’ approach of a highly partisan press that relentlessly attacks governments and individual politicians rather than merely reporting claims by political figures. As I note below, News Corp Australia appears to have a consistent editorial policy across its various platforms that is aimed at influencing elections and is not a matter of diversity in which a media conglomerate hosts a few provocateurs with diverse affiliations alongside responsible reporting.<sup>3</sup>

There is no single and immediate solution to an increasing democratic deficit, in which people respond by disengaging from conventional politics and the justice system (evident in the contemporary United States and the re-emergence of extremist fringe parties across the globe). However, education and prevention initiatives that are adequately resourced, sustained and vigorous will reinforce trust by the community and within the public sector.

### Political Communication

In considering questions about social use in relation to elections it is important to recognise that Australia does not have a comprehensive right of free speech.

That is salient because it means that the Commonwealth and state/territory legislatures can impose restrictions on a range of expression, typically because some speech causes substantive harms to individuals (for example defamation) and the community (for example under the Australian Consumer Law and under the Commonwealth *Broadcasting Services Act 1992*, *Commonwealth Electoral Act 1918*, the *NSW Electoral Act 2017*, the *Health Practitioner Regulation National Law* and the *Victorian Corrections Act 1986 or Racial and Religious Tolerance Act 2001*).

A comprehensive right is not found in the national Constitution or in the *Charter of Human Rights & Responsibilities Act 2006* (Vic). The Constitution has been read by the High Court as encompassing an implied freedom of political communication (as distinct from a broader right of free speech). That freedom is a restriction on legislative power rather than a personal right.

It can be appropriately and proportionately restricted, through for example restrictions on funding by/of candidates (recently tested in *Spence v State of Queensland* [2019] HCA 15), protests and other expression.<sup>4</sup>

Restriction **is** permissible under the Charter, subject to considerations of appropriateness and proportionately discussed below. The Victorian Parliament both can and should strengthen legislation and administration to build a ‘truth in elections’ regime, including restrictions on false claims in election advertising, more meaningful disclosure regarding political funding and work with other jurisdictions to provide a coherent national regime that draws on the Commonwealth’s telecommunications power.

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<sup>3</sup> Given recent criticisms of intervention by overseas political actors in elections in the United Kingdom, United States and elsewhere – typically identified as agencies of or proxies for Russia and the Peoples Republic of China – it is worth noting that Australia’s increasingly dominant commercial media group is controlled by a US citizen. Neither Rupert nor Lachlan Murdoch necessarily have Victoria’s best interests at heart.

<sup>4</sup> See for example *O’Flaherty v City of Sydney Council* [2013] FCA 344; *Kathleen Clubb v Alyce Edwards and Anor*; *John Graham Preston v Elizabeth Avery and Anor* [2019] HCA 11; *Man Horan Monis v The Queen & Anor* and *Amirah Droudis v The Queen & Anor* [2013] HCA 4; and *Attorney-General for the State of South Australia v Corporation of the City of Adelaide & Ors* [2013] HCA 3.

## Social media platforms as amplifiers

A succession of overseas and Australian reports have highlighted the increasing dominance of digital platforms such as Google, YouTube, Facebook and Twitter that operate on a global basis, have audiences and revenue that dwarf 'old media' (see below) and are dismissive of regulation because complying with external rules is both likely to reduce their very large profits and contrary to an ideology in which control of code overrides control by an elected legislature.<sup>5</sup>

Those platforms are the primary mechanisms for social media, more significant than the communication of facts, falsity and opinion through SMS/MMS (texting) on mobile phones. They are engines for the dissemination of advertisements prior to and during elections. They are also engines for the dissemination of claims that are intended or likely to influence elections. They reproduce what is published through 'old media'. They may be very influential given that many people with a 'wisdom of the crowd' belief trust what is reiterated by their peers. That reiteration is perceived as 'authentic' because it comes 'from people like us' rather than from perceived authority figures such as the politicians and experts who, as noted above, are perceived as corrupt, selfish, elitist and grossly out of touch with the realities of life at Hoppers Crossing, Wonthaggi, Morwell and Broadmeadows. It is at odds with polished statements by state bureaucrats or long sentences by law academics.

In commenting on the bipartisan 2020 McKinnon study Simon Crean stated

approximately one-third of all Australians don't consume news directly from credible news sources, which presents an enormous issue for democracy. This is even more prevalent in young people, as more than half of young Australians are either consuming no news or relying on curated feeds from social media platforms.<sup>6</sup>

Social media is open to abuse by domestic/overseas actors in disinformation campaigns,<sup>7</sup> which have gained increasing scholarly and other attention in the past three years following claims of intervention in US and UK elections involving bodies such as Cambridge Analytica.<sup>8</sup>

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<sup>5</sup> See for example the Australian Competition & Consumer Commission 2019 *Digital Platforms* report, responses by the platforms to proposals for revenue sharing and this month's major US Congress *Investigation of Competition in the Digital Marketplace* report. Note also the 2020 Australian Communications & Media Authority *Misinformation and news quality on digital platforms* report.

<sup>6</sup> The McKinnon Prize for Political Leadership, 'Despite strong gains in 2020 Australians remain disengaged with politics' (2020). <http://www.mckinnonprize.org.au>.

<sup>7</sup> Evelyn Douek, 'The Free Speech Blind Spot: Foreign Election Interference on Social Media' by Evelyn Douek in *Combating Election Interference: When Foreign Powers Target Democracies* (Oxford University Press, 2020); and Renee Diresta, Carly Miller, Vanessa Molter, John Pomfret and Glenn Tiffert, *Telling China's Story: The Chinese Communist Party's Campaign to Shape Global Narratives, a joint white paper* (Stanford Internet Observatory and the Hoover Institution, 2020).

<sup>8</sup> See for example the European Parliament 2018 'Computational propaganda techniques' briefing at [https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628284/EPRS\\_ATA\(2018\)628284\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628284/EPRS_ATA(2018)628284_EN.pdf); Sam Woolley and Phil Howard (eds) *Computational Propaganda: Political Parties, Politicians, and Political Manipulation on Social Media* (Oxford University Press, 2018); Carl Miller and Chloe Colliver, *Developing a Civil Society Response to Online Manipulation* (Institute for Strategic Dialogue, 2019); European Parliament 'Foreign influence operations in the EU' briefing at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625123/EPRS\\_BRI\(2018\)625123\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625123/EPRS_BRI(2018)625123_EN.pdf); Rose Marie Santini, Larissa Agostini, Carlos Eduardo Barros, Danilo Carvalho, Rafael Centeno de Rezende, Debora G. Salles, Kenzo Seto, Camyla Terra and Giulia Tucci, 'Software Power as Soft Power. A Literature Review on Computational Propaganda Effects in Public Opinion and Political Process' (2018) 11(2) *Partecipazione e Conflitto* 332; Anthony Nadler, Matthew Crain and Joan Donovan, *Weaponizing the Digital Influence Machine: The Political Perils of Online Ad Tech* (Data & Society Research Institute, 2018); European Commission High Level Expert Group on Fake News and Online

It is important to recognise that abuse in relation to elections takes two forms. The first, which typically attracts most attention, is effort to shape policy and even determine the outcome of elections. The second risk, which we consider is both more subtle and more important, is to foster disengagement of the community – in particular disadvantaged parts of the community – from political processes and the justice system. Such disengagement favours extremist (aka fringe) political parties or populist parties that are in essence the vehicles for the commercial interests of their leaders. Disengagement also fosters phenomena such as the ‘sovereign citizens’ noted above, people who think that elections are a shame, law enforcement is wrong and a fictive right under Magna Carta or some other document entitles them to break the law.

Misplaced community perceptions that what is communicated through social media is anonymous, unenforceable or merely outside Australian law remain common despite an increasing body of court rulings. Those judgments can and should be reinforced through electoral education directed at voters, candidates and political parties (discussed below in relation to the Committee’s third term of reference).<sup>9</sup> Importantly, that reinforcement should encompass education at the primary and secondary school levels.

It has been traditional for the operators of social media platforms to assert that they are incapable of restricting speech on those platforms and that Australian law is irrelevant, for example because US law – which they read as giving a very wide protection on the basis of free speech – appropriately overrides law in France, Germany, Australia and elsewhere that seeks to restrict hate-speech (saliently expressions of antisemitism such as Holocaust Denial), defamation and fake health news.<sup>10</sup>

Claims that they are outside Australian law are demonstrably incorrect, highlighted for example in the landmark 2001 *Purple Plates* and 2002 *Gutnick* judgments and in a large body of Australian and overseas judgments regarding vilification, investment scams, defamation and promotion of harmful medical products.<sup>11</sup>

Claims by the platform operators that restriction of false or otherwise harmful content is technologically impossible are also demonstrably incorrect. The emptiness of those claims has been strongly illustrated by the action of the operators in recent months in response to COVID, with for example Facebook and Twitter seeking to pre-empt regulation through a succession of statements indicating that they have excluded specific mongers of hate-speech such as Alex Jones and – following community calls to ‘now do more’ – and filtering fake health news and Holocaust Denial content.

The platforms clearly **can** restrict harmful content. Their self-regulation has been very belated, unsystematic and self-interested.<sup>12</sup> It has been obfuscated by devices such as the misnamed Facebook Oversight Board. There are no signs that there is a genuine commitment

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Disinformation, *A multi-dimensional approach to disinformation: Final Report* (2018); and <https://comprop.oii.ox.ac.uk>.

<sup>9</sup> Yasmin Dawood, ‘Protecting Elections from Disinformation: A Multifaceted Public-Private Approach to Social Media and Democratic Speech’ (2020) 16 *Ohio State Technology Law Journal* 1; Carl Miller and Chloe Colliver, *Developing a Civil Society Response to Online Manipulation* (Institute for Strategic Dialogue, 2019); and Frank Fagan, ‘Optimal Social Media Content Moderation and Platform Immunities’ (2020) *European Journal of Law and Economics* (forthcoming)

<sup>10</sup> R Craufurd-Smith, ‘Fake News, French Law and Democratic Legitimacy: Lessons for the United Kingdom?’ (2019) 11 *Journal of Media Law* 152; and Natali Helberger, ‘The Political Power of Platforms: How Current Attempts to Regulate Misinformation Amplify Opinion Power’ (2020) 8(6) *Digital Journalism* 842.

<sup>11</sup> *Australian Competition & Consumer Commission v Purple Harmony Plates Pty Ltd* [2001] FCA 1062; and *Dow Jones & Company Inc v Gutnick* [2002] HCA 56. 210 CLR 575; 77 ALJR 255; 194 ALR 433. The High Court judgment in *Gutnick* resulted from rulings in the Victorian Supreme Court.

<sup>12</sup> See for example Bridget Barrett, Daniel Kreiss and Madhavi Reddi, *Enforcers of Truth: Social Media Platforms & Misinformation* (UNC Center for Information, Technology & Public Life, 2020).

to sustained self-regulation. Regulation under Australian law, alongside the emerging European Union framework, is therefore necessary and appropriate. Neither the Commonwealth nor Victorian legislatures should be frightened by Facebook's threat to walk away from Australia, something that is not going to happen given that we are a lucrative market and departure would reinforce vigilance by overseas regulators. We should hold the platform operators to account and the Committee – along with the State Government – should be prepared to endorse the warning by the ACCC chair that we will not be frightened into submission by pervasive Google advertisements about denial of choice (ie a fabulously wealthy corporation having to share some revenue with ailing commercial media groups).

That sharing is salient because the digital platforms disseminate content from 'old media', whether directly or through tweets, posts, blogs and other online material by individuals, business and non-commercial entities.

### Partisan 'Old Media' interacts with social media

The Committee is concerned with social media. What has been characterised as 'old' media is however relevant.

That is because what Australians encounter in print/online versions of news and opinion from the commercial and non-commercial broadcast and print groups gets disseminated online through their presence on the digital platforms and through linking, excerpting or comment by individuals and other entities that are active on the digital platforms. It is also relevant because 'old' media sets the tone for public discourse, in other words gives people a sense of what is acceptable in communication about policies, parties and individuals. That function is increasingly being taken by 'new media', something that fosters old media engaging in a race to the bottom.<sup>13</sup>

A partisan press legitimates fear, hatred and misunderstanding. It coexists with and drives what happens in social media rather than operating on a separate plane. It cannot be disregarded in thinking about fake political news and other harmful communication on social media platforms.<sup>14</sup>

Two aspects are relevant. The first is the ongoing incapacitation of the national broadcaster, marked this month by the loss of yet more of its most expert trusted staff. Radical budget cuts for a high performing and trusted organisation contrast with what the Australian National Audit Office and independent experts have noted as system project management failures on billion dollar plus government initiatives such as the \$80bn submarine program. It is deeply disquieting that the ABC and ANAO are being punished for speaking truth to power, with that punishment leaving a vacuum occupied by pernicious speech in social media.

The second aspect is inadequate self-regulation by commercial media, which in the words of a famous conservative politician reflects the proprietors' desire for "power without responsibility – the prerogative of the harlot through the ages". In thinking about use/misuse of social media and old media in elections it is pertinent to recall the assessment by two media experts -

newspapers are businesses. They exist to make money. At the same time newspapers also report the news, 'act as watchdogs' and 'unearth scandals'. But newspapers do these things to succeed in business.

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<sup>13</sup> Mike Ananny, 'Making Up Political People: How Social Media Create the Ideals, Definitions, and Probabilities of Political Speech' (2020) 4 *Georgetown Law Technology Review* 351.

<sup>14</sup> Julie E Cohen, 'Tailoring Election Regulation: The Platform Is the Frame' (2020) 4 *Georgetown Law Technology Law Review*

Along the way they publish inaccurate, misleading and distorted information which is rarely corrected and, when it is, even more rarely with due prominence. Not only this, the press, while free to be partisan, ought to distinguish clearly between comment, conjecture and fact. This ‘obligation’ is routinely treated with contempt.<sup>15</sup>

It is unsurprising that one former News Corp journalist characterised that group as a vendor of “fetid mean partisan trash”. Before expressing alarm about vilification in social media and the unwillingness of proprietors such as Mark Zuckerberg to effectively filter deceptions the Committee should bear in mind the recurrent failure of both the Australian Communications & Media Authority and corporate executives to effectively address ‘pay for play’ statements or egregious personal and ethno-religious vilification by Australian shock jocks who construe free speech as the property of those with a broadcasting licence.

**Reference 1) the impact of social media technologies on the Victorian electoral process, focusing on how social media platforms are used for political communication and whether current regulations regarding the authorisation of political content on social media are appropriate**

The impact of social media technologies on the Victorian electoral process – and more broadly on public administration and law – is a matter of known unknowns. I suggest that the Committee should be cautious about drawing strong conclusions.

There is considerable anecdotal information about activity involving candidates, advocacy groups and members of the public. There are uncertainties about activity among specific cohorts (for example Melbourne’s Chinese, Middle Eastern & North African and East African communities) where communication may not be in English, occurring outside Facebook and Twitter. There are uncertainties about what occurs in ‘private’ (aka closed) groups in social media, as distinct from in social media fora that are visible to the world at large. Importantly, much of what is communicated in private fora is visible to the social media platform operators and is thus susceptible to regulation by those corporations. Expressions of ethno-religious vilification and calls for violent protests or subversion of elections are significant, irrespective of whether they are communicated to the world at large.

I have referred to known unknowns because we know that we do not have a strong sense, based on comprehensive data, of the *impact* of social media in relation to elections and other political processes. Research over the past thirty years regarding the impact of old and new media features disagreements. It often sits uncomfortably with claims by media organisations, social media platform operators, advertising agencies and political campaign consultants. Those entities have a vested interest in claiming that social media campaigns – like traditional broadcast and print campaigns – are particularly effective in shaping the values and decisions of voters, whether directly or by persuading ‘influencers’ (parents, clergy, teachers, celebrities). There is little agreement that campaigns are in fact effective in determining voting decisions across the population as a whole, in much the same way that marketers ruefully agree much spending on advertisements for consumer products is wasted. Unsurprisingly given the Hayne Royal Commission on systemic misbehaviour in the finance sector a succession of ‘warm, fuzzy n generous’ advertisements has not led most Australians to love the banks and we remember ‘oh what a feeling’ but do not all drive Toyota. Some campaigns – for example centred on the harms of smoking – do seem to be effective and exclusion of advertisements for tobacco products is a legitimate useful tool for strengthening public health.

Overall social media is unlikely to shift fundamental political affiliations across the community. At a more granular level, consistent with the dictum that for many undecided voters ‘all politics is local’, it may however influence choices on an electorate by electorate

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<sup>15</sup> Ray Finkelstein and Rodney Tiffen, ‘When Does Press Self-Regulation Work?’ (2015) 38(3) *Melbourne University Law Review* 944.

basis. Social media is likely to reinforce attitudes and choices among believers. In the health space we see that adherents of homeopathy and anti-vaxxers are receptive to social media messaging about 5G networks and COVID-19 as a manmade virus propagated by bankers. Some fundamentalist adherents of Donald Trump appear to disregard his problematical relationship with truth and contempt for Christian values. In Australia political spam, billboard advertising and social media communication by Clive Palmer – including lies about a 20% Death Tax – appears to further alienate people who were not going to vote for him but resonates among voters who are resentful of elites and disregard the Queensland Nickel controversy, missing or interpreting news about ASIC prosecution as a matter of ‘them’ targeting ‘us’.

The salient impact of social media in Victorian elections may accordingly have two facets.

The first is the dissemination of falsehoods, unmediated by editors and by the legal advisors of media organisations who on occasion say ‘no: there will be consequences if this goes to air/print’. Fake news in social media is often disseminated on a viral basis: it is spread quickly on an exponential basis while truth is still getting its boots on.

The second facet is a matter of framing, the same framing that makes relentless partisan expression by old media of concern. People who are reliant on social media for their understanding of politics are likely to exist within a ‘social media bubble’ in which their contacts and sources iteratively validate specific claims and values while excluding contrary information (ie news and interpretation).

In a liberal democratic state we cannot force people to think in a particular way and to rely on particular sources of news and analysis. We can however address falsehoods and ‘bubbles’ through a range of mechanisms and should actively do so, rather than leaving political processes to Google, Twitter, Facebook, TikTok and their peers. Some of those mechanisms are discussed below.

We should also get a better sense of the impacts of social media through work at the state and national levels. In Victoria that work could draw on expertise in the state’s universities, albeit the Commonwealth’s radical budget cuts substantially erode research capacity.

## **Reference 2) whether online electoral advertising is appropriately regulated in Victoria**

Prior submissions to the Committee have engaged with questions about the shape of the state’s electoral advertising regime, online and offline. I offer two comments to supplement those submissions.

The first is that social media is a global rather than purely state phenomenon. It necessitates forward-looking regulation at the national and international levels. As noted above, national and regional regulators, such as the ACCC and European Commission, have expressed increasing concern regarding the denial of responsibility by digital platform operators and are having some success in holding the operators to account. COVID-19 has seen platform operators seek to pre-empt government regulation by emphasising self-regulation – including automated/manual removal of harmful content and mechanisms such as Facebook’s Oversight Board – while vigorously campaigning against government regulation relating to taxation, hate-speech, privacy and revenue-sharing. Victoria does not have the authority to comprehensively regulate overseas-based social media platforms. Alongside the other states and territories it *does* however have scope to persuade the Commonwealth to provide more effective regulation at the national level under the Commonwealth’s corporations and telecommunications powers.

Victoria does have scope for nuanced restriction of malicious statements by and/or about candidates and matters of public concern, for example ethno-religious vilification. It does have the authority to restrict non-digital election advertising and should emulate the Australian Capital Territory and South Australia in restricting untruthful paid-for political advertising and promotional material (including advertisements on Facebook and Google, and tweets by candidates/parties on Twitter).

Such a restriction requires adequate funding of an independent complaints entity with the authority to –

- impose a meaningful financial penalty,
- prohibit further dissemination by the author/authoriser and
- require a public correction.

The second comment is that appropriate regulation has three facets: necessity, proportionality and effectiveness. It is axiomatic that governments should not do something just because they can and because they need to be seen to be doing something. Research by the Australia Institute and other bodies indicates that many people regard election advertising – in particular untruthful scare campaigns – with distaste. Parties, candidates and associated entities should act responsibly. Party leaders should not hesitate to call out candidates who engage in falsehood. Such condemnation is likely to regain the trust that is rapidly eroding.

### **Reference 3) how social media and new communications technologies are used by the Victorian Electoral Commission and the Parliament to engage Victorians and improve knowledge of electoral processes.**

The state's Electoral Commission, and to a much lesser extent the Parliament, is commendably engaging with the general community regarding electoral processes. Overall several Victorian agencies such as the Office of the Victorian Information Commissioner have a strong social media presence in terms of systematic dissemination of pertinent information to non-specialist audiences and to entities that serve as 'influencers'.

I suggest however that the Committee looks beyond the performance of the Electoral Commission and the Parliament to consider whether that communication about electoral processes is reaching much of the population, given that many people appear to be living within a social media bubble that excludes information that is not of interest, filters information that is contrary to the values of the people with whom the individual associates online, and thereby affirms the individual's views.

Given the distrust noted above and disengagement among young people from traditional media it is necessary to build knowledge of electoral processes and their significance (ie what they mean rather than simply how/when to vote) through a range of mechanisms on an ongoing basis. Use of social media by the Commission and Parliament is simply one tool for public engagement, along with civics education in primary and secondary schools, higher ethical standards among politicians and media organisations, and strengthening of critical thinking through the state education system. Voters are less likely to embrace fake news in social media and in old media if they have been equipped with the skills to differentiate between opinion, facts and lies.

### **Responses**

This submission suggests that there are a number of responses to the problems underlying fake news in social media (in particular communication designed to give an advantage to a candidate or to erode support for democratic processes in the interests of overseas governments).

a) Education

The most effective response to fake news, in particular foreign interference and advantage-seeking by entrepreneurs, is a vigorous and well-resourced education system that builds the capacity of all Australians to identify and evaluate claims in old and new media. In essence the Victorian Government both can and should ensure that critical thinking is a core feature of the state's education system.

The Government should further encourage the other jurisdictions to build capacity among young people through a uniform curriculum that encourages students to understand the bases of false claims and to differentiate between opinion, facts and lies in relation to politics, health and other matters in social media, broadcasts, print and face to face contact.

A smart society in which individuals take responsibility has little to fear from foreign/domestic interference with the electoral system.

b) Monitoring

The scholarly literature indicates that misuse of social media in elections and more broadly in politics is a matter of 'unknowns' but is likely to increase. In developing effective proportionate responses, including for example criminalisation of particular activities, it is necessary for governments and other stakeholders to have a stronger sense of what is happening, including emerging trends with interference.

On that basis the state's Electoral Commission alongside other electoral bodies such as the Australian Electoral Commission should be tasked with and appropriately resourced to track the misuse of social media, thereby enabling more informed decision-making by governments.

The Commissions should be able to draw on independent research expertise, for example in Victoria's universities (one reason that the Commonwealth's radical cuts to the social sciences are deplorable).

c) Enforcement

There is little sense among the Australian community and among specific stakeholders that abuse in social media and other fora such as print and billboard advertising is effectively held to account. There needs to be timely investigation of complaints by candidates and other entities alongside scope under election statutes for an integrity watchdog to issue an order that communication of a false statement be immediately discontinued and that a correction notice be issued by the author/sponsor of that statement.

Truth takes a long time to put on its boots and chase a falsehood and, given the withering of capacity at non-partisan bodies such as the ABC, we cannot confidently rely on 'fact checking' during campaigns. In the emerging world of social media it is regrettably necessary to rethink enforcement.

d) Cooperative platform accountability

The digital platforms – vastly profitable overseas-based corporations – do have the ability to address malicious communication and to restrict harmful communication that for example embodies vilification against ethno-religious or other minorities. The willingness of the platforms to do so has been grudging and disingenuous. The platforms benefit from a very powerful social licence.

A condition of enjoying that licence (and the return on investment evident in their operation alongside opportunities to influence governments) must be that they act more responsibly in addressing concerns regarding hate-speech, vilification, fake health news, consumer scams, privacy and other matters.

The Victorian government should work with other jurisdictions in Australia (for example endorsing action recommended in the ACCC *Digital Platforms* report) and overseas to ensure that the platform operators meet community expectations regarding corporate responsibility.

e) Media accountability and capability

As noted above, ‘old media’ (print and broadcast) is an integral part of understanding social media and by extension inappropriate behaviour – and community expectations – regarding elections/democratic processes. Australia’s media groups enjoy considerable freedoms, highlighted in the Finkelstein report. Regrettably the dominant commercial media group, which is controlled by US citizens, has increasingly conducted ongoing highly partisan campaigns that represent an ideology (notably Climate Denial) and seek an advantage. That behaviour is indeed deserving of Baldwin’s condemnation of proprietors seeking power without responsibility.

Given the reluctance of the commercial groups – in particular News Corp – to behave responsibly it is appropriate to revisit the Finkelstein inquiry through a royal commission into the media sector, including examination of media concentration, political interference and capacity. Capacity is an issue given the uncertain economic base of several groups (particularly those reliant on ‘community newspapers’) and the incapacitation of the national broadcaster through savage budget cuts on governance changes.

Electoral processes require independent media – prepared to speak truth to power – and media diversity, for example a recognition of different views rather than a reiteration of ‘Dictator Dan’.

f) Rebuilding trust

This submission began by highlighting community distrust of government, distaste for politicians and disengagement from democratic processes. Politicians need to rebuild trust in public administration and democratic processes rather than engaging in a race to the bottom in the legislature and on social media.

That rebuilding requires a commitment for leaders to call out misbehaviour by MPs (and for parties to swiftly disendorse candidates and MPs for integrity issues). It requires greater accountability in public administration, through for example well-resourced Freedom of Information, Audit and Integrity Commission regimes.

It requires transparency about interests and lobbying at the local, state/territory and national levels.

Given the severity of public mistrust and the influence buying evident in electoral spending by Clive Palmer it requires consideration of changes to electoral funding. That consideration should include exploration of funding caps and restrictions on funding by particular sectors (directly or through proxies) such as gambling, tobacco and property development. It should also include exploration of a shift from private to public funding of elections, addressing the inappropriateness of an entrepreneur spending a reported \$80 million to fund the election of family members and employees.