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### **Inquiry the impact of social media and online advertising on elections and electoral administration**

Thank you for the opportunity to make a submission to this inquiry. It is becoming more and more apparent that there is significant and wide-spread political 'misinformation' circulating not only on social media, but in traditional media—particularly Murdoch media.

This issue is so multi-faceted it is difficult to know where to begin or how to tackle it, but I believe that some good, initial steps would be to address:

1. Misleading and deceptive content
2. Campaign advertising content requirements
3. The role of the media and social media platforms
4. Foreign interference
5. Community education

### **Recommendation**

As a potential method for addressing the above, I refer to Submission 43 for this Inquiry from *newDEMOCRACY* which recommends that the Committee “conduct a trial in democratic innovation and give this question to a citizens’ jury. Where the Parliament lacks capacity to operate and fund, we offer underwriting to operate this project as a chance for parliamentarians to experience a jury and decide if it assists their work.”

Given the complexity of this issue, I believe it would be beneficial to facilitate a discussion that is broader than a Committee Inquiry process with written submissions and public hearings. I would like to second the recommendation of a citizens’ jury for this issue and I hope that the Committee at least requests *newDEMOCRACY* to appear at a hearing to explore the opportunity in more detail.

### **1 – Misleading and deceptive content**

#### **The issue**

1. The 2019 Federal Election was a perfect example of the need for prohibition on deceptive and misleading advertising. The campaign was marred by widespread misleading and deceptive information designed to influence voters, votes and the outcome of the election. This content was circulated by political parties and candidates (including incumbents), as well as third parties.
2. The Australian Electoral Commission (AEC) received approximately 500 complaints about election advertising. Of these complaints, no matter how egregious the conduct appeared, only 87 cases were found to be unlawful and in breach of the narrow federal election laws. This meant the AEC was not in a position to act on the vast majority.
  - i. For example, there were a string of false claims in election commentary and advertising, including that Labor would introduce a death tax. This was an outright lie and yet the AEC found it did not breach the Electoral Act so was unable to take action.
3. Misleading and deceptive conduct is now so widespread that it is not only affecting the ability to hold free and fair elections in Australia, it is also causing deep division both in the Victorian community and more broadly. To ensure we deliver efficient and high integrity electoral events, this needs to change.

#### **Comparative law and provisions in state and territory electoral acts**

##### **Australian Consumer and Australian Corporate Law**

4. Victorians have protection from misleading and deceptive conduct by business under Australian consumer law and Australian corporate law. It is a significant gap that there is no prohibition on

misleading and deceptive conduct by political parties, candidates and third parties during elections, or by the media that are reporting and commenting on elections.

5. Consumers are protected from misleading and deceptive conduct: *Competition and Consumer Act 2010 (Cth)*, Schedule 2 (Aus Consumer Law) Section 18 states “A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.”
6. Corporations are prohibited from misleading and deceptive conduct: *Corporations Act 2001 (Cth)* section 1041H states “A person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service that is misleading or deceptive or is likely to mislead or deceive.”

#### Electoral Acts

7. Section 113(1) of the *South Australian Electoral Act* is the only provision currently in force that might be called a truth in political advertising provision. There are laws in every other Australian jurisdiction that make it an offence to mislead an elector in relation to the casting of his or her vote. However, these all refer to statements in electoral matter with very narrow provisions.

#### Recommendation

8. It must be made illegal for political parties, candidates and third parties to misinform or deceive (deliberately or otherwise) the people of Victoria in the casting of their vote. This is fraud and an issue of the utmost seriousness.
9. Victorians should not be required, and often are not able, to determine whether election material is misleading and deceptive. It is imperative that voters can easily make a properly informed choice, without having to separate fiction from fact, on who would be their most appropriate representative in the Victorian Parliament.
10. For Victoria, this could be achieved by inserting a new section in relation to misleading or deceptive electoral conduct into either the *Australian Consumer Law and Fair Trading Act 2012 (Vic)* (the Fair Trading Act) or the *Electoral Act 2002 (Vic)*.
11. If including this provision under the Fair Trading Act meant that the law could also be applied to advertising in Victoria for federal elections, then it would be preferable to use this approach given the lack of regulations at the federal level.
12. Arguments that misleading or deceptive advertising standards cannot reasonably be applied are not accepted in the context of commercial advertising and they should not be accepted in the context of electoral advertising. Political players can and must be held to account for misleading and deceptive conduct in the same manner as businesses are.
13. Further to a prohibition on misleading and deceptive conduct or advertising during election campaigns, a ‘Truth in Government’ law is required, similar to the Competition and Consumer Act, and the Corporations Act, to ensure accountability for such behaviour during the term of Government.

## 2 – Campaign advertising content requirements

### The issue

14. Election advertising in Australia is now overwhelmingly about insulting and deriding other candidates and parties. Most Australian citizens are sick and tired of these combative ads that bear no relevance to how a party would run the country if it were to win Government. Genuine policy discussion has gone missing in Australia and Australians have become disengaged with politics<sup>1</sup>.
15. Further, with the rise of social media, it has become extremely easy for anyone to spread misleading and deceptive information at a rapid rate through a variety of platforms. It’s possible that the ‘victim’ won’t even know that misinformation has been circulated until well after the damage has been done.
16. Information can be ‘doctored’ to look like official advertising or it may be a meme designed to sew a particular seed of thought with just a glance. Once information like this is circulated it’s almost impossible to withdraw.

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<sup>1</sup> Research shows that satisfaction with democracy is at its lowest level since the 1970s. Satisfaction has dropped from 86% in 2007 to 59% in 2019. Sarah Cameron and Ian McAllister, *The 2019 Australian Federal Election: Results from the Australian Election Study*, The Australian National University School of Politics and International Relations, Canberra, 2019 pp. 3, 15.

## Recommendation

### Regulation of advertising content

17. To return policy discussion to the fore, one option would be to apply a ratio to advertising that requires, for example, that candidates and parties advertise their own policies 70% of the time, with advertising on the policies of other parties being restricted to no more than 30%.
18. Advertising designed purely to deride or insult a party or a politician, or simply to 'scare' voters should be banned altogether.
19. This approach would mean the majority of advertising would relate to a party's own policies, driving the focus from personal insults and scaremongering, back to policy debate.
20. Further, if electoral advertising that is designed to deride an individual or a party is banned and advertising must factually relate to party policy, it would be far easier for Victorians to identify derogatory advertising on social media as being the work of trolls and bots. It wouldn't resolve the issue entirely, but it would be a significant step in the right direction.

### Fact checking

21. During the 2019 Federal Election, it became very clear that party authorisation is no longer a sufficient 'guarantee of accuracy' in advertising. Consideration should be given to establishing or supporting genuinely independent, trustworthy organisations that can fact-check claims or identify misinformation. Ideally this would somehow be linked to a mechanism that triggers processes for withdrawal of content that is misleading or deceptive, or that has the potential to mislead or deceive.
22. I would also request that the Committee consider how to severely curtail the ability to make sweeping public statements and accusations without substance; for example, those made by Clive Palmer in advertising for his party during the 2019 Federal Election.

## 3 – The role of the media and social media platforms

### The issue

#### Traditional media

23. Media organisations must be held to account for supporting or spreading false or misleading information. Many articles appear in the media which have no basis in fact, particularly in Murdoch media. Headlines regularly lead readers to believe the exact opposite of what is supported by the facts in the article it heads up—I have no doubt this practise is directed at the many people who skim headlines only, rather than read the actual articles.
24. Frequently politicians make statements which are at best inaccurate. Regularly journalists seem to not only accept what the politician is saying, but repeat it without question in print or online. What they should be doing is holding our politicians to account in such instances.
25. Journalists are in a better position than anyone to fact check and should be doing so as a matter of routine. There should be penalties for publishing misinformation and using misleading headlines as 'click bait', or for re-printing potentially misleading or deceptive statements from politicians without making the reader aware of this.

#### Social media

26. An effective democracy relies on citizens having at least some exposure to people with a different set of beliefs to their own and to issues of society more broadly. However, social media encourages people to speak only to others like themselves and to focus on issues that only matter to them and their friends. It has evolved to create a political discourse that is dominated by outrage and prejudice at the expense of understanding.
27. Another concern is that people are starting to listen to people who know little or nothing about an issue, or who are peddling propaganda, in preference to listening to people with expertise on an issue.
28. It has now become apparent that social media is being used by a range of parties both nationally and internationally, to spread deceptive and inflammatory information designed to subvert political dialogue, and possibly democracy itself, in Australia<sup>2</sup>.

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<sup>2</sup> Refer to ABC 'Media Watch' #DictatorDanCampaign <https://www.facebook.com/ABCMediaWatch/videos/366605834477969>

29. A forum where it is easy for the original intent of a message to be taken out of context, social media requires people to engage by producing, commenting on and sharing opinions if it is to survive. Such engagement is triggered by outrage and controversy, a perfect storm for spreading misinformation.
30. Unfortunately once misinformation has been spread, particularly on social media, it is very difficult to change any resulting wide-spread misconception. Although not specifically related to Victoria, a very good example of this was the aforementioned deliberate spread of misinformation during the 2019 Federal Election campaign about a death tax to be introduced by the Labor Party if it formed government. This was not Labor Party policy, but it didn't matter how many times the Labor Party refuted it, a significant portion of Australians still believed it to be true. The same lie resurfaced through social media, initiated by Clive Palmer, during the recent Queensland state election.
31. Although social media platforms are not directly in control of what content is published, their whole purpose is to encourage sharing and responding by as many people as possible. These organisations hire very clever technicians to ensure algorithms are developed for whatever purpose they need, for example, collecting our data to deliver us targeted advertising. I have no doubt they could develop similar technology or algorithms for removing inappropriate posts quickly and with relative ease.
32. I believe the problem is that social media organisations have no interest in doing this firstly because it costs money and secondly because posts that are inappropriate are generally the type of posts that will cause outrage and 'go viral'. Outrage is the bread and butter of the 'attention business' and social media organisations may need a regulatory 'incentive' to do the right thing.

### Recommendation

33. We cannot have a healthy democracy with free and fair elections if the fourth estate does not do its job in holding politicians to account, or worse, acts as a 'mouthpiece' for a political party. Murdoch media has done untold damage to Australian democracy and there has to be a way to curtail such misleading and deceptive conduct. Although regulation of traditional media in Victoria may be complex, there must be things that can be done to reduce the amount of misleading and deceptive content in traditional media.
34. We cannot have a healthy democracy with free and fair elections if content on social media platforms is not able to be regulated in some form, or if companies such as Facebook and Twitter simply refuse to do the ethical thing.
35. We cannot have a healthy democracy with free and fair elections if foreign interests continue to endeavour to manipulate or interfere in our democracy through social media as mentioned in the *#DictatorDanCampaign* story on Media Watch (refer to **footnote 2**).
36. I acknowledge that this is a highly complex issue and it may be that some issues cannot be resolved. However, I would encourage the Committee to explore all possible options that would help mitigate the multitude of issues associated with social media and foreign interference. There must be a way of at least reducing the amount of misinformation Victorians read, see and hear in social media.
37. I believe there would also be benefit in providing some form of community education about the:
  - prevalence of misinformation and people who peddle propaganda
  - tell-tale signs of propaganda
  - need for fact-checking before sharing and how to go about it
  - importance of sourcing information from reliable sources.
38. I again urge the Committee to request that *newDEMOCRACY* appear at a hearing to explore, genuinely, the opportunity of a citizen's jury in more detail. I believe solutions to the intricate complexities of the issue are far more likely to be found through a discussion that is broader than a Committee Inquiry.

Regards,

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