

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



In a democracy, knowledge is power.¹

Summary

The potential for social media and online advertising to interfere in democratic elections via the dissemination of false information and the use of strategies such as micro-targeting has been thrown into sharp relief by the 2016 US Presidential election, the 2016 Brexit referendum, the 2017 French and German elections, and even the 2019 Australian federal election.

Without appropriate regulation aimed at achieving transparency and accountability of online political advertising, the integrity of Victoria's elections and electoral administration are at risk. Although measures adopted voluntarily by social media platforms – and resourced and maintained by them at their pleasure – can go some way towards redressing the current situation, Silverstone's conclusion that "the media are too important to be left to the media" is axiomatic and appropriate regulation is imperative.²

We therefore make the following recommendations, noting that they are predicated on the existence of a well-resourced regulator with a mandate to vigorously enforce its powers:

1. Urgent action be taken to protect Victoria's democracy through regulation in respect of political advertising expenditure and truth in political advertising;
2. Consideration be given to whether the transparency and accountability of political advertising online and via social media in Victoria could be promoted by:
 - maintaining advertisement repositories;
 - requiring parties to disclose how they use data.
 - regulating the use of personal data for political campaigning; and
 - considering the definition of digital campaigning.
3. The existing media blackout regulations under the *Broadcasting Services Act 1992* (Cth) be evaluated for their continuing relevance and, if it is found that they remain relevant, their application be extended to social media and online advertising.

Beyond this, we recommend that a holistic approach be taken to ensuring the right of Victoria's constituents to participate freely in their State's democratic processes: specifically, a rejuvenated civics education, emphasis on the development of language

¹ Jennifer Jerit, Jason Barabas and Toby Bolsen, 'Citizens, Knowledge, and the Information Environment' (2006) 50(2) *American Journal of Political Science* 266, 266.

² Roger Silverstone, *Media and Morality: On the Rise of the Mediapolis* (2007) Cambridge: Polity, 167 cited in Tarleton Gillespie *Custodians of the Internet: platforms, content moderation and the hidden decisions that shape social media* (2018) New Haven: Yale University Press, 211.

analysis and evaluation skills, as well as digital literacy skills, should reduce the vulnerability of the State's population to online manipulation.

Because regulation of social media is a nascent field, we further recommend that the Committee be adequately resourced to continually investigate innovative regulatory approaches globally and report regularly on its findings to the Parliament.

I. How social media is changing elections

In recent years a great deal of research has begun to emerge documenting the pernicious impact of social media on elections (doubtless a consequence of increasing evidence globally of precisely that).³

The principal ways in which social media and online advertising appear to be changing elections are as follows:

- Permitting – and even facilitating – the harvesting of data which enables the manipulation of voters; and
- Enabling the dissemination of false information in such a way that it is becoming increasingly difficult for consumers of information to be able to distinguish between the veracious and the mendacious.

The risks this presents to the integrity of democratic elections is substantial, given the inextricable link between the information environment and democracy. As Delli Carpini and Keeter concluded in their study of Americans' knowledge of politics:

*If factual knowledge about politics is a critical component of citizenship, one that is essential if citizens are to discern their real interests and take effective advantage of the civic opportunities afforded them.... Knowledge is a keystone to other civic requisites. In the absence of adequate information neither passion nor reason is likely to lead to decisions that reflect the real interests of the public.*⁴

³ Some of the many excellent contributions include the UK House of Commons, Digital, Culture, Media and Sport Committee 'Disinformation and fake news: Final Report', 18 February 2019 <<https://publications.parliament.uk/pa/cm201719/cmselect/cmcmumeds/1791/1791.pdf>> accessed 14 September 2020; the European Commission's Joint Research Centre's 'The digital transformation of news media and the rise of disinformation and fake news' (April 2018) <<https://ec.europa.eu/jrc/sites/jrcsh/files/jrc111529.pdf>> accessed 2 September 2020; Chris Tenove, Jordan Buffie, Spencer McKay and David Moscrop, 'Digital Threats to Democratic Elections: How Foreign Actors Use Digital Techniques to Undermine Democracy' 16 January 2018, Centre for the Study of Democratic Institutions, University of British Columbia, <<http://dx.doi.org/10.2139/ssrn.3235819>> accessed 25 August 2020; John Brummette, Marcia DiStaso, Michail Vafeiadis, and Marcus Messner, 'Read All About It: The Politicization of "Fake News" on Twitter' (2018) *Journalism and Mass Communication Quarterly* 95(2) 497.

⁴ Michael Delli Carpini and Scott Keeter, *What Americans Know About Politics and Why It Matters* (1996) New Haven CT: Yale University Press (3,5) cited in Jennifer L Hochschild 'If Democracies need informed voters, how can they thrive while expanding enfranchisement' (2010) 9(2) *Election Law Journal: Rules, Politics and Policy* 111, 111.

II. Problems with social media and online advertising around elections

The myriad, wide-ranging problems relating to social media and online advertising around elections have been extensively documented elsewhere.⁵ Primarily, they include the micro-targeting of voters (including via Facebook "Dark" posts) – which may amount to manipulation –⁶ and the dissemination of misinformation.

i. *Micro-targeting*

Micro-targeting is a marketing technique involving the harvesting of personal data to create a user profile which can be targeted with personalised political messaging (the most infamous example of this to date is the Cambridge Analytica scandal⁷). Concerns have been raised that transparency and accountability of micro-targeted messaging is highly problematic insofar as the algorithms are complex and proprietary and messages are hidden from public view.⁸

ii. *False information*

The dissemination of false information (whether in the form of misinformation or disinformation⁹) has enormous potential to cause harm. Some key findings about the interference of false information in democratic elections are set out below:

- The dissemination of misinformation may be perpetrated by individuals, groups, or even state actors (state actor-sponsored are believed to have been involved in the dissemination of misinformation in the US 2016 presidential election, as well as the 2017 German federal election).¹⁰
- A study of all verified true and false news stories on Twitter from 2006 to 2017 found that:

*[f]alsehood diffused significantly farther, faster, deeper, and more broadly than the truth in all categories of information, and the effects were more pronounced for false political news than for false news about terrorism, natural disasters, science, urban legends, or financial information.*¹¹
- Facebook users engaged more with fake news stories than the news stories of credible news outlets in the 2016 US presidential election.¹²

⁵ See above n 3.

⁶ 'Manipulation' occurs where "an actor uses deceptive means to induce changes in people's thoughts or behaviors, in ways that people would not have endorsed had they been aware of the deception": Tenove et al (2018) citing Robert E. Goodin (1980) *Manipulatory Politics*. New Haven, CT: Yale University Press.

⁷ The conduct of data firm Cambridge Analytica has been extensively examined elsewhere (though it is fair to say that the true extent of its meddling in democratic processes around the globe remains unknown). The case reveals the potential for social media to be used for nefarious ends in elections, with it being reported that the data breach affected 87 million Facebook users, including 310,000 Australians.

⁸ Tenove et al (2018) have examined comprehensively the ways in which micro-targeting can facilitate the manipulation of voters (20-22).

⁹ UNESCO, *'Fake News' and Disinformation: A Handbook for Journalism Education and Training* (2018) <<https://en.unesco.org/fightfakenews>> accessed 14 September 2020, 7.

¹⁰ Tenove et al (2018) 24-25.

¹¹ Soroush Vosoughi, Deb Roy and Sinan Aral, 'The spread of true and false news online' (2018) *Science* 359 (6380) 1146, 1146.

¹² John Brummette, Marcia DiStaso, Michail Vafeiadis, and Marcus Messner, 'Read All About It: The Politicization of "Fake News" on Twitter' (2018) *Journalism and Mass Communication Quarterly* 95(2) 497, 501.

False information campaigns also marred the conduct of Australia's 2019 Federal election:

- The Liberal Party used Facebook to disseminate false information that Labor would, if elected, create a "car tax". It specifically targeted owners and fans of particular car manufacturers, leading to Toyota distancing itself from advertisements.¹³
- False information was also disseminated regarding Labor's intention to institute a "death tax". Notwithstanding Labor's requests that the misleading content be removed, Facebook did not remove it.¹⁴

This situation (combined with an atomised news landscape) has been described as leaving consumers of information "confused and disoriented, unable to distinguish between types of news, the credibility of individual news items and the relative importance of news items".¹⁵ This clearly poses an enormous risk to the conduct of democratic elections, which depends upon voters being able to make an informed decision about how to cast their votes.

III. What actions have you seen governments take in relation to social media/online advertising and elections? What results have been achieved by these actions?

Actions taken by governments in relation to social media/ online advertising and elections centre on a number of common themes:

- preventing the dissemination of false information and limiting its influence;
- regulating election expenditure; and
- preventing foreign interference in elections.

In 2017 Germany passed its *Network Enforcement Act*, with the purpose of combating hate speech and false information in social networks by requiring platforms to – amongst other things – take down or block access to manifestly unlawful content.¹⁶ A year later, the European Union introduced a Code of Practice on Disinformation: what its

¹³ Paul Karp and Nick Evershed 'Toyota distances itself from Liberal ads falsely claiming Labor wants to tax cars', *The Guardian* (online, 10 April 2019) <<https://www.theguardian.com/australia-news/2019/apr/10/liberal-party-facebook-ads-falsely-claim-labor-wants-to-tax-cars>> accessed 26 August 2020.

¹⁴ Katharine Murphy 'Labor calls for Facebook investigation after 'death tax' election campaign', *The Guardian* (online, 21 September 2019) <<https://www.theguardian.com/australia-news/2019/sep/21/labor-calls-for-facebook-investigation-after-death-tax-election-campaign>> accessed 26 August 2020.

¹⁵ Derek Wilding, Peter Fray, Sacha Molitorisz and Elaine McKewon, '*The Impact of Digital Platforms on News and Journalistic Content*' (2018), Centre for Media Transition, University of Technology Sydney <<https://www.accc.gov.au/system/files/ACCC%20commissioned%20report%20-%20The%20impact%20of%20digital%20platforms%20on%20news%20and%20journalistic%20content%2C%20entre%20for%20Media%20Transition%20%28%29.pdf>> accessed 1 September 2020, at 33.

¹⁶ Germany's Federal Ministry of Justice and Consumer Protection, '*Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act, NetzDG)*' - *Basic Information (2017)* <https://www.bmjuv.de/DE/Themen/FokusThemen/NetzDG/NetzDG_EN_node.html> accessed 8 September 2020.

impact will be unclear, given that adherence is voluntary and the Code's provisions with respect to political advertising and issue-based advertising appear weak.¹⁷

In 2017 Canada enacted its *Elections Modernization Act*, with the Act becoming fully operational in June 2019. Amongst other things it includes prohibitions on the making of "false statements about a candidate for the purpose of influencing the outcome of an election", as well as on the use of foreign funds by third parties for partisan purposes.¹⁸ Canada is also investing in digital literacy programs to combat disinformation, and has released a Declaration on Electoral Integrity Online (to which Facebook, Microsoft and Google signed up in the lead-up to the country's 2019 election).¹⁹

In 2018 France enacted new legislation to combat the dissemination of false information online and on social media.²⁰ This law requires platforms to take measures to prevent the dissemination of false information and to improve the transparency of political information on the internet; like the Canadian law, it also provides for education in relation to the navigation, analysis and evaluation of information.²¹ In May 2020 the French Parliament passed legislation requiring platforms to remove certain illegal content within specific time limits: breach of the requirements is punishable by fines of up to €1.25 million.²²

Closer to home, the ACT has adopted truth in political advertising provisions and WA has proposed election expenditure caps (these are considered further below).

Insofar as it is too early to know the results of these regulatory developments, we would recommend that the Committee be appropriately resourced to monitor them and determine their applicability to Victoria.

IV. What are the most effective ways to address any problems with social media and online advertising around elections?

In our view, improving regulatory frameworks and appropriately resourcing the Victorian Electoral Commission is the only way forward – especially in circumstances where the relevant platforms have to date shown themselves unable or unwilling to properly confront the problems. Even the positive steps they have taken have so far proven to be

¹⁷ EU Code of Practice on Disinformation (2018) available at <<https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>> accessed 12 September 2020.

¹⁸ *Elections Modernization Act*, SC 2018, c. 31, c. 61, c. 349.02.

¹⁹ Government of Canada 'Online Disinformation' <<https://www.canada.ca/en/canadian-heritage/services/online-disinformation.html>> accessed 15 September 2020; Government of Canada, 'Canada Declaration on Electoral Integrity Online' <<https://www.canada.ca/en/democratic-institutions/services/protecting-democracy/declaration-electoral-integrity.html>> accessed 15 September 2020; Joan Bryden, 'Several tech giants sign onto Canadian declaration on electoral integrity' *Global News* (online, 27 May 2019) <<https://globalnews.ca/news/5323084/tech-giants-electoral-integrity/>> accessed 17 September 2020.

²⁰ French Government, 'Against Information Manipulation' <<https://www.gouvernement.fr/en/against-information-manipulation>> accessed 15 September 2020.

²¹ Nicholas Boring, 'Government Responses to Disinformation on Social Media Platforms: France' (September 2019) United States Library of Congress <https://www.loc.gov/law/help/social-media-disinformation/france.php#_ftnref29> accessed 17 September 2020.

²² Hadas Gold, Ya Chun Wang and Benjamin Berteau, 'French parliament passes law requiring social media companies delete certain content within an hour' *CNN Business* (online, 14 May 2020) <<https://edition.cnn.com/2020/05/13/tech/french-hate-speech-social-media-law/index.html>> accessed 17 September 2020.

of limited impact: for example, Facebook has introduced political authorisation rules requiring political advertisers to verify their identities, but that did not prevent mining conglomerate Glencore from using the platform to run a covert pro-coal campaign in the lead-up to the 2019 federal election.²³

i. More appropriate regulation of political advertising

The most obvious and practical way of addressing some of the problems posed by social media and online advertising for the conduct of democratic elections, is to better regulate expenditure on political advertising – through both public funding and, potentially, distribution of advertising space, and capped expenditure – and truth in political advertising provisions.²⁴

a. Regulation of political advertising expenditure

- Public funding and distribution of advertising space, and capped expenditure

The Centre for Public Integrity recommends that political advertising in the online space be regulated through public funding (and potentially distribution) of advertising space, and capped expenditure.²⁵

The former could be achieved by a model whereby the Department of Treasury and Finance purchases advertising space within the election period and the Victorian Electoral Commission distributes it in alignment with principles similar to the UK model (described below), or whereby funds specifically for advertising are provided directly to qualifying parties or candidates.

In the UK, qualifying parties are allocated free airtime during election periods in the form of party election broadcasts, with broadcast time divided between candidates based on an advertising code administered by the Office of Communications. In NZ, public funding is provided for election advertising on radio, television and the internet. The provision of public funding is regulated by Part 6 of the *Broadcasting Act 1989*, and the amount of money appropriated by New Zealand's Parliament for the 2020 general election totalled \$4,145,750 (including GST).²⁶

Caps on electoral spend exist in both the UK and the NZ. In the UK, political parties and candidates for the House of Commons are subject to capped campaign expenditure;²⁷ in

²³ Christopher Knaus, 'Authorities can do nothing about pro-coal ads linked to Glencore campaign', *The Guardian* (online, 12 March 2019) <<https://www.theguardian.com/australia-news/2019/mar/12/authorities-can-do-nothing-about-pro-coal-ads-linked-to-glencore-campaign>> accessed 26 August 2020.

²⁴ In the absence of capped advertising expenditure, regulation of political fundraising should also be considered in order to democratise elections and reduce the ability of well-resourced candidates and parties to flood online channels with advertisements. Though it is the Centre for Public Integrity's view that political fundraising should be regulated regardless of whether caps on advertising expenditure exist, in the context of this Inquiry's objectives regulation of political fundraising would only be of benefit if there were no caps on advertising expenditure and it has therefore not been examined further here.

²⁵ We note that some public funding is provided for under the *Electoral Act 2002* (Vic), but this is limited and not provided specifically for advertising.

²⁶ New Zealand Electoral Commission, '2020 Broadcasting Allocation Decision Released' (29 May 2020) <<https://elections.nz/media-and-news/2020/2020-broadcasting-allocation-decision-released/>> accessed 14 September 2020.

²⁷ BBC News, 'General election 2019: How much can parties spend?' (4 November 2019) <<https://www.bbc.com/news/election-2019-50170067>> accessed 15 September 2020.

NZ, candidates, parties and third-party promoters are subject specifically to caps on political advertising expenditure,²⁸

Western Australia's Government has also proposed laws capping election expenditure.²⁹

In Victoria, the funding (and possible distribution) of online advertising space should be combined with capped electoral expenditure, as well as capped advertising expenditure, by political parties, candidates, associated entities and third parties.

Such reforms would render the political advertising landscape more equitable, effectively democratising elections: for example, it has been suggested that the enormous digital spend of Clive Palmer's United Australia Party in 2019 increased the prices of taking out and boosting digital ads, with the consequence that the ability of less well-resourced parties to access space was impeded.³⁰

- **Reporting and auditing requirements**

The introduction of caps on electoral expenditure and political advertising expenditure would only be meaningful if accompanied by robust reporting and auditing requirements, and a regulator (presumably the VEC) sufficiently resourced to enforce them.

b. Truth in political advertising

As the Supplementary Explanatory Statement to the ACT's new truth in political advertising provisions points out, "*liln Australia there is no shortage of examples of false or misleading electoral advertising*".³¹

In our view Victoria therefore urgently needs to adopt truth in political advertising legislation modelled on that of South Australia and the ACT.³²

²⁸ Currently, these caps are as follows: \$28,200 for candidates; \$1,199,000 for registered political parties if they contest the party vote plus \$28,200 for each electorate candidate for the party; \$338,000 for registered third-party promoters and \$13,600 for unregistered third-party promoters: New Zealand Electoral Commission, '*About election advertising*', <<https://elections.nz/guidance-and-rules/for-voters/about-election-advertising/>> accessed 14 September 2020. We note that these limits are different from those set out in the following source: New Zealand Parliament, '*Limits on election-related spending begin*' (27 May 2020) <<https://www.parliament.nz/mi/visit-and-learn/parliament-in-election-year/limits-on-election-related-spending-begin/>> accessed 14 September 2020.

²⁹ Government of Western Australia, '*McGowan Government delivers on electoral reform commitments*' (25 June 2020) <<https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/06/McGowan-Government-delivers-on-electoral-reform-commitments.aspx#:~:text=This%20Bill%20will%20deliver%20expenditure,district%20or%20region%20being%20contested>> accessed 10 September 2020.

³⁰ Natasha Gillezeau, 'Election advertising blackout rules are outdated', *Financial Review* (online, 15 May 2019) <<https://www.afr.com/politics/federal/election-advertising-blackout-rules-are-outdated-20190514-p51n4z>> accessed 16 September 2020; Centre for Public Integrity, '*Eliminating the undue influence of money in politics*' <<https://publicintegrity.org.au/wp-content/uploads/2019/09/Eliminating-undue-influence.pdf>> accessed 26 August 2020. It has been reported that Palmer spent \$83.6 million on his failed election bid: Tom McIlroy and Edmund Tadros, 'Clive Palmer spent \$83m on failed election bid', *Financial Review* (online, 3 Feb 2020) <<https://www.afr.com/politics/federal/clive-palmer-spent-83-million-on-failed-election-bid-20200203-p53x4j>> accessed 17 September 2020.

³¹ Supplementary Explanatory Statement (as moved by Caroline Le Couteur MLA), Electoral Amendment Bill 2018 (ACT), 2.

³² For completeness, we note that defamation law does not offer not adequate protection against the dissemination of misinformation insofar as it is privately enforced. We also note that there appears to be

- **South Australia**

South Australia regulates truth in political advertising under s 113(1) of the *Electoral Act 1985* (SA), which makes it an offence to publish any election material containing inaccurate or misleading statements that are purported to be statements of fact. Contravention attracts fines of \$5,000 for an individual and \$25,000 for body corporates. The Electoral Commissioner may request a withdrawal and retraction of offending material,³³ and the Court of Disputed Returns may void the election if satisfied on the balance of probabilities that the result was affected by misleading advertising.³⁴

- **ACT**

On 28 August 2020 the ACT became the second Australian jurisdiction to enact truth in political advertising regulations, via the *Electoral Amendment Act 2020* (ACT).³⁵ This amends the *Electoral Act 1992* (ACT) and prohibits the dissemination of any advertisement containing electoral matter where the advertisement contains "a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent". Contravention of the provisions risks fines of up to \$8,000 for individuals and \$40,500 for corporations.³⁶ In certain circumstances the ACT's Electoral Commissioner may ask the person not to disseminate the information again, and/or publish a retraction; s/he may also apply to the Supreme Court for enforcement of such a request.³⁷

The Bill's Supplementary Explanatory Statement succinctly explains the reasons for the enactment of these provisions, as well as their intended ambit:

The proposed new offence for misleading electoral advertising is based on a similar provision that has operated in South Australia since 1985. In Australia there is no shortage of examples of false or misleading electoral advertising. At the 2019 Federal election, for example, the Liberal Party claimed that the Labor Party had "secret plans" to introduce a death tax. The One Nation party also made similar claims in its electoral advertising.

This amendment is not designed stamp out [sic] political debate. Further, it relates only to statements of fact that are inaccurate and misleading to a material extent. For example, if a political candidate claimed that they were the kindest person in the world, or their opponent the nastiest, such a statement would not fall foul of this provision. However, if a candidate claimed that their opponent wanted to introduce a specific policy or tax when there was no evidence that their opponent had ever indicated they would, then they would breach this proposed new offence.

The amendment only applies to electoral material of the kind that is already required to be authorised. It will not apply, for example, to an opinion piece

some possibility that s 84 of the *Electoral Act 2002* (Vic) could function as an effective truth in advertising provision, but in the absence of certainty we recommend that a clearly effective provision be enacted

³³ Subsection 113(4) of the *Electoral Act 1985* (SA).

³⁴ Subsection 107(5) of the *Electoral Act 1985* (SA).

³⁵ The Act does not come into force until 1 July 2021: s 2 of the *Electoral Amendment Act 2020* (ACT).

³⁶ Subsections 297A(1) of the *Electoral Amendment Act 2020* (ACT) and 133(2) of the *Legislation Act 2001* (ACT).

³⁷ Subsections 297A(3) and (5) of the *Electoral Amendment Act 2020* (ACT).

published in a newspaper, or a social media post from an individual (provided the post is not authorised political advertising).³⁸

- **The Victorian case**

Section 84 of the Electoral Act 2002 (Vic) prohibits the printing, publication or distribution of any matter or thing that is likely to mislead or deceive an elector in relation to the casting of the vote of the elector. The High Court has previously held that the words "in or in relation to the casting of his vote" in s 161(e) of the Commonwealth Electoral Act 1918 (Cth) (now s 329(1) of the same Act) are limited to "the act of recording or expressing the political judgment which the elector has made rather than to the formation of that judgment",³⁹ and Professor George Williams had concluded that if the Victorian provision were interpreted in the same way as its Commonwealth counterpart, it would relate only to "statements that affect the actual physical casting of a person's vote and not to statements that affect the formation of a political judgment by the elector".⁴⁰

We consider that Victoria should urgently adopt provisions equivalent to those enacted in South Australia and the ACT in spite of any enforceability considerations which might militate against their adoption. Specifically, we concur with Professor Williams' conclusion that:

Although any provision mandating truth in political advertising will be difficult to enforce, its wider impact upon the political culture should not be discounted. Such legislation has the potential to have a powerful impact in shaping political ethics and campaigning practices in Australia.⁴¹

- **Constitutional considerations**

While the Australian Constitution says little directly about political funding and disclosure, a number of High Court cases in recent years have affected the scope of the system. Implications are that any absolute bans on political advertising would likely be seen as unconstitutional, but restrictions on electoral spending or political advertising that potentially infringes the implied freedom of political communication is valid if it serves a legitimate purpose in doing so and is proportional, or reasonably appropriate and adapted, to that legitimate purpose.⁴²

ii. **Additional considerations**

A number of additional regulatory innovations could help achieve the objectives of transparency and accountability of political advertising in the age of social media:

³⁸ Supplementary Explanatory Statement (as moved by Caroline Le Couteur MLA), Electoral Amendment Bill 2018 (ACT), 2.

³⁹ *Evans v Crichton-Browne* (1981) 147 CLR 169 at 208.

⁴⁰ Professor George Williams, 'Truth in Political Advertising Legislation in Australia' (Research Paper 13 1996-97)

<https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9697/97rp13#CONCLUSION> accessed 3 September 2020.

⁴¹ Professor George Williams, 'Truth in Political Advertising Legislation in Australia' (Research Paper 13 1996-97)

<https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9697/97rp13#CONCLUSION> accessed 3 September 2020.

⁴² These considerations are set out in more detail here: Centre for Public Integrity, 'The regulation of electoral expenditure and political advertising' <<https://publicintegrity.org.au/wp-content/uploads/2020/02/edited-Political-advertising-briefing-paper.docx.pdf>> accessed 10 September 2020.

- **Maintenance of advertisement repositories**

Companies including Google, Facebook and Twitter have recently begun maintaining libraries collecting the advertisements running across their platforms: these provide information including who funded an advertisement, a range of how much that entity spent, and the reach of an advertisement across multiple demographics.

We consider these libraries to be a necessary way of improving the transparency of political advertising on social media, but they are in no way sufficient for the achievement of this objective: according to Neudert and Howard, researchers have concluded that Facebook's library is "inadequate for meaningful analysis", and they advocate for social media companies to be archiving all advertisements, and for political parties to archive the ads they buy.⁴³

The only way to achieve this is likely by regulation. To this end the UK House of Commons Digital, Culture, Media and Sport Committee (**'the DCMS Committee'**) has recommended that:

Political advertising items should be publicly accessible in a searchable repository – who is paying for the ads, which organisations are sponsoring the ad, who is being targeted by the ads – so that members of the public can understand the behaviour of individual advertisers. It should be run independently of the advertising industry and of political parties.⁴⁴

We consider that the VEC should be given the requisite powers and appropriately resourced to maintain such a database/

- **Data disclosure requirements**

Political parties and candidates should be required to disclose the provenance of data they acquire, as well as the profiling tools and analytics software they employ to process data and infer personal information.⁴⁵

- **Code of Practice governing the use of personal information in political campaigning**

The DCMS Committee concurred with the recommendation by the country's Information Commissioner that a Code of Practice highlighting the use of personal information in political campaigning should be codified in primary legislation.⁴⁶ We believe that such an innovation would also be of benefit in Victoria.

⁴³ Lisa-Maria Neudert and Phil Howard, 'Online politics needs to be cleaned up – but not just by Facebook and Twitter' *The Guardian* (online, 12 November 2019), <<https://www.theguardian.com/commentisfree/2019/nov/11/online-politics-facebook-twitter-social-media-political-parties>> accessed 10 September 2020.

⁴⁴ UK House of Commons, Digital, Culture, Media and Sport Committee 'Disinformation and fake news: Final Report' (18 February 2019) <<https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/1791/1791.pdf>> accessed 14 September 2020 at 93.

⁴⁵ Lisa-Maria Neudert and Phil Howard, 'Online politics needs to be cleaned up – but not just by Facebook and Twitter' *The Guardian* (online, 12 November 2019), <<https://www.theguardian.com/commentisfree/2019/nov/11/online-politics-facebook-twitter-social-media-political-parties>> accessed 10 September 2020.

⁴⁶ UK House of Commons, Digital, Culture, Media and Sport Committee "Disinformation and fake news: Final Report" (18 February 2019)

- **Consideration of the definition of digital campaigning**

The DCMS Committee further recommended that consideration be given to how digital campaigning should be defined by law, including what constitutes online political advertising (for example, they suggest attention be given to agreed types of words that arise frequently in advertisements not sponsored by a particular political party).⁴⁷

iii. **Blackout laws**

The provisions that create a media blackout in respect of State, Territory, and federal Parliament elections under s 3A of Schedule 2 of the *Broadcasting Services Act 1992* (Cth) apply to television and radio broadcasters rather than online and print media.

Insofar as some television networks have begun using their online streaming services to avoid the blackout period,⁴⁸ the current laws should be evaluated to determine whether their purpose remains relevant and beneficial: if it does, then the blackout should apply to all forms of media.

Conclusion

As the UK's House of Lords Select Committee on Communications has concluded, regulation of the digital world has not kept pace with its ever-increasing role in our lives.⁴⁹ However, with its next elections not due until 2022 Victoria has an opportunity to remedy the existing lacunae and safeguard its democracy now.

There are likely also actions that could be taken at a federal level to "rebalance the relationship between news providers and social media platforms", and which may have an ancillary positive impact on citizens' consumption of legitimate sources of information.⁵⁰ In this respect, we note the promising development of the federal Government proposing a code of conduct to regulate the relationship between Australian news providers and Google and Facebook.⁵¹ We also believe that there may be value in considering whether some of the innovations recommended by the Australian Competition and Consumer Commission in its 2019 Digital Platforms Report could be of benefit in Victoria: for example, the provision of direct grants to support local

<<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/1791/1791.pdf>> accessed 14 September 2020, at 93.

⁴⁷UK House of Commons, Digital, Culture, Media and Sport Committee "*Disinformation and fake news: Final Report*" (18 February 2019)

<<https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/1791/1791.pdf>> accessed 14 September 2020, at 92.

⁴⁸ Danielle Long, 'Australia TV networks to stream political advertising online during election black out', 13 May 2019, *The Drum* < <https://www.thedrum.com/news/2019/05/13/australia-tv-networks-stream-political-advertising-online-during-election-blackout>> accessed 8 September 2020.

⁴⁹ UK House of Lords, Select Committee on Communications 'Regulating in a digital world' (March 2019) < <https://publications.parliament.uk/pa/ld201719/ldselect/ldcomuni/299/299.pdf>> accessed 14 September 2020, at 3.

⁵⁰ *Cairncross Review: a sustainable future for journalism* (12 February 2019)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf> accessed 14 September 2020, at 90.

⁵¹ This follows the Cairncross Review's conclusion that there has been a market failure in the supply of public-interest news, and public intervention may be the only solution: *Cairncross Review: a sustainable future for journalism* (12 February 2019)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf> accessed 14 September 2020, at 7.

reporting (which the ACCC defined as "original journalistic coverage of matters relevant to local and regional communities").⁵²

Unfortunately, the scale of the challenge we face is so significant that none of the above measures alone will be sufficient to achieve transparency and accountability of political advertising. Instead, we require a comprehensive regulatory framework, a well-resourced and nimble regulator, an ongoing commitment to adapting regulation in the face of evolving technology, and a recognition of the importance of a holistic approach to ensuring the right of citizens to engage with their information environment in a meaningful way.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Tony Fitzgerald AC QC, the Hon David Ipp AO QC, the Hon Stephen Charles AO QC, the Hon Anthony Whealy QC, Professor George Williams AO, Professor Joo Cheong Tham and Geoffrey Watson SC. More information at www.publicintegrity.org.au.

⁵² Australian Competition and Consumer Commission, *Digital Platforms Inquiry Final Report* (June 2019) <<https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>> accessed 14 September 2020, at 20.