



20 September 2019

Committee Secretary
Joint Standing Committee on Electoral Matters
em@aph.gov.au

Dear Committee,

The Australia Institute welcomes the opportunity to make a submission to the Joint Standing Committee on Electoral Matters' inquiry into the 2019 federal election.

The Australia Institute has conducted research into truth in political advertising over the past three years alongside our broader Accountability Project to improve confidence in Australian government and administration.ⁱ

Advertising and promotion in the 2019 election

A key part of the conduct of any election is advertising by political parties, candidates and third parties. In the 2019 election, some advertising and promotion issues that attracted particular attention were:

- The amount of money spent by Clive Palmer and the United Australia Party on advertising (figures between \$55 million and \$80 million have been named).ⁱⁱ
- Signs in Chinese language that "mimicked the purple theme of the Australian Electoral Commission", which have given rise to a challenge in the Court of Disputed Returns.ⁱⁱⁱ
- Facebook's procedure of "demoting" (but not deleting) false content, and its policy of not fact-checking posts from politicians and parties.^{iv}

Social media was used in the 2019 election to an extent not previously seen, and The Australia Institute expects that trend to continue. Notable aspects of social media advertising in the 2019 election include:

- The "narrowcasting" of customised Facebook ads based on specific preferences, like ads that feature a make of car the viewer is known to be interested in.^v
- The Australian debut of the Facebook Ad Library (albeit in a much more limited form than in some other countries), making publicly available any political ads that were running on Facebook at the time.
- The use of the Guardian's Australian election database, for the first time in a federal election, which archives political Facebook ads for future reference.^{vi}
- Widespread political advertising on the Chinese social media app WeChat, including some "fake news".^{vii}

Truth in political advertising

Truth in political advertising has been a live and unresolved issue since the 2016 election. At the time, then Prime Minister Malcolm Turnbull said he would have “a very close look” at such laws.^{viii}

“Truth in advertising” was included in the terms of reference for the JSCEM inquiry into the 2016 election,^{ix} although it did not end up being addressed – at least in those terms.

The 2016 inquiry did look extensively at misleading content, but through the lens of digital technology and “cyber manipulation” of elections. Examples include “astroturfing”, social media posting by bots, false information presented as news articles, international actors pretending to be domestic and “micro-targeting” using personal data.^x These are important considerations, and naturally overlap with truth in political advertising issues to some extent. However, truth in advertising warrants full consideration as its own issue.

Since the 2019 election, the ACCC has released its Digital Platforms Inquiry calling for an industry code of conduct for digital platforms to combat disinformation “presented as news and journalism”. ACCC chair Rod Sims identified misleading political advertising on Facebook as being suitable for such regulation.^{xi}

Politicians have also been pursuing truth in political advertising following the election. In a response to a question from Independent MP Zali Steggall, Prime Minister Scott Morrison said that JSCEM’s inquiry is the appropriate place for truth in political advertising matters to be addressed, and the government and the parliament will consider the committee’s findings.^{xii}

Australia Institute report

Attached is The Australia Institute’s detailed report on truth in political advertising to supplement this submission. *We can handle the truth* was published in August, and reflects on the 2019 election specifically as well as truth in political advertising generally. It outlines several models for truth in advertising that show that regulating truth is feasible, beneficial and constitutional.

Jurisdictions are already successfully regulating for truth in political advertising

South Australia has legislation that makes it an offence to cause to be published electoral advertisements that are materially inaccurate and misleading.

As well as demonstrating that truth in political advertising can be successfully legislated and administered, the fact that South Australia has had truth in political advertising regulation for decades provides a wealth of case studies of how the law is applied and what effects it has. Concerns about how certain difficult cases could be resolved may be addressed in existing case studies from South Australia in the report.

Examples of successful private regulation also exist. Free TV Australia (then called FACTS) checked political advertisements for truthfulness until 2001, and in New Zealand the Broadcasting Standards Authority has done so since 1989.

Facebook is adopting new policies and creating a new internal team to address misinformation about the 2020 Census in the US. It has already carved out exceptions to its general rule of keeping misinformation online, by banning white nationalist and white separatist content.

The Australian public support truth in political advertising reforms

We can handle the truth also shows the national appetite for truth in political advertising, with new national polling showing that 84% of Australians support new truth in political advertising laws that would make it illegal for political parties and candidates to publish ads that are inaccurate and misleading.

Most Australians support three potential penalties for misleading advertising: fines and other financial penalties, being forced to publish retractions at own expense and losing some or all public funding.

Those polled were roughly evenly divided between three adjudication options: electoral commissions, magistrates and judges or industry bodies. Other adjudication options exist, including a separate body like an Elections Complaints Authority or the suggestion by academic Graeme Orr for a special panel of former politicians.

The polling also reveals Australian attitudes to other truth in political advertising issues, including that most Australians think the media should take responsibility for the ads that they run and that political ads should be required to be submitted to a public archive.

Our research shows that the time is ripe for a nationally consistent approach to truth in political advertising that is constitutional and upholds free speech, but also brings a measure of fairness and accountability to the process. There are several existing, successful regulatory systems that legislators could draw upon.

The Institute would welcome the opportunity to discuss research findings in further detail at any committee hearing, should there be one.

Regards,

Bill Browne
Researcher
The Australia Institute

ⁱ The Australia Institute (2019) *Accountability Project*, <https://www.tai.org.au/content/accountability-project>

ⁱⁱ Bolger (2019) *“The end of Clive”: How Palmer’s \$60 million campaign failed to net a single seat*, <https://www.sbs.com.au/news/the-end-of-clive-how-palmer-s-60-million-campaign-failed-to-net-a-single-seat>

ⁱⁱⁱ Karp (2019) *Independent Oliver Yates to challenge Liberals’ Chinese election signs*, <https://www.theguardian.com/australia-news/2019/jul/26/independent-oliver-yates-to-challenge-liberals-chinese-election-signs>; Knaus & Karp (2019) *“Designed to deceive”: how do we ensure truth in political advertising?*, <https://www.theguardian.com/australia-news/2019/may/27/designed-to-deceive-how-do-we-ensure-truth-in-political-advertising>

^{iv} Murphy & Knaus (2019) *Facebook says it was “not our role” to remove fake news during Australian election*, <https://www.theguardian.com/technology/2019/jul/31/facebook-says-it-was-not-our-role-to-remove-fake-news-during-australian-election>

^v Elton (2019) *Mitsubishi Tritons and the modern warfare of tailored election ads*, <https://www.abc.net.au/news/2019-04-12/the-modern-warfare-of-tailored-election-ads/10998426>

^{vi} Evershed & Ball (n.d.) *Australian election campaign: database of political Facebook advertising*, <http://www.theguardian.com/australia-news/ng-interactive/2019/may/01/australian-election-campaign-database-of-political-facebook-advertising>

^{vii} Cannane & Hui (2019) *Federal election 2019: Anti-Labor scare campaign targets Chinese-Australians*, <https://www.abc.net.au/news/2019-05-03/federal-election-scare-campaign-targets-chinese-australians/11073514>

^{viii} Sales (2016) *Interview: Prime Minister Malcolm Turnbull*, <https://www.abc.net.au/7.30/interview:-prime-minister-malcolm-turnbull/7639624>; The Australian (2016) *Truth-in-advertising laws needed*, p. <http://www.theaustralian.com.au/opinion/editorials/truthinadvertising-laws-needed-for-political-parties/news-story/abcf95dd079ad418c51af6644d520f1e>

^{ix} Parliament of Australia (2016) *2016 election inquiry: Terms of reference*, sec. 1(b), https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Terms_of_Reference

^x Joint Standing Committee on Electoral Matters (2018) *Report on the conduct of the 2016 federal election and matters related thereto*, pp. 157–182, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/2016_election_report

^{xi} ACCC (2019) *Digital Platforms Inquiry: Final report*, pp. 370–372, <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>; Murphy (2019) *Facebook could tackle fake news but chooses not to, regulator says*, <https://www.theguardian.com/australia-news/2019/aug/14/facebook-could-tackle-fake-news-but-chooses-not-to-regulator-says>

^{xii} Hansard (2019) *House of Representatives*, 25 July, p. 1053, https://www.aph.gov.au/Parliamentary_Business/Hansard?wc=25/07/2019