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Select Committee on Foreign Interference through Social Media
Department of the Senate
PO Box 6100
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Submission: Foreign Interference through Social Media

This submission responds to the invitation by the Senate Select Committee to comment on the risk posed to Australia's democracy by foreign interference through social media.

Summary

Social media platforms such as Facebook and Twitter are now significant mechanisms for the dissemination and perceived validation of information about politicians, public policy issues and political processes. They provide opportunities for foreign and Australian interests to seek an immediate advantage and, as importantly, to foster community distrust and disengagement from both mainstream political parties and fundamental institutions such as the judicial system. The extent to which foreign interests (especially those from non-democratic states such as Russia, Syria, Saudi Arabia and the People's Republic of China) are engaged in substantive and illicit use of Australian social media is unknown and is unlikely to be fully identified. There is little solid research regarding interference among ethnic communities and more broadly among the overall Australian population. In our submission we highlight specific concerns and contextualise the Committee's examination of risks by noting the impact of highly partisan domestic media, likely to have a greater impact than interference by foreign state/other actors. We suggest mechanisms that complement recommendations by the Australian Competition & Consumer Commission in its *Digital Platforms* report. Those mechanisms are low cost, administratively achievable and consistent with the Australian Constitution.

Basis

This submission reflects expertise regarding several aspects of social media, regulation and political processes. In particular it draws on research regarding the 'fake political news' phenomenon in Australia and overseas.

The submission does not represent what would be reasonably construed as a substantive conflict of interest. It is made on an independent basis. We are happy to address any of the Committee's specific concerns or particular issues in more detail.

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the risk posed to Australia's democracy by foreign interference through social media

This submission responds to the invitation by the Senate Select Committee on Foreign Interference through Social Media to assist the Committee's investigation of the risk posed to Australia's democracy by foreign interference through social media.

The following paragraphs reflect work by Dr Arnold and Dr Sheehy regarding the regulation of digital platforms (in particular consumer protection), free speech and the phenomenon of 'fake political news' in Australia and overseas.

We offer an analysis of foreign and domestic erosion of Australian democracy through social media.

We also offer recommendations, based on our research, about how that erosion might be minimised.

1. Basis

The following paragraphs reflect the authors' activity as a scholars of consumer protection, charity regulation, telecommunications and privacy law at the University of Canberra over the past decade and as authors of numerous scholarly/practitioner publications relevant to the current inquiry.

The following pages reflect Dr Arnold's submission to the Senate Standing Committees on Environment & Communications regarding the *Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019* (Cth), construed as a 'truth in political communication' statute.

They also reflect work by Dr Arnold and Dr Sheehy on research funded by the Korea Foundation on fake political news in Australia and South Korea. That research, led by Associate Professor Sheehy, examines legal frameworks in Australia, South Korea and elsewhere regarding the impacts and regulation of 'fake news', including quantification of how political falsehoods are propagated across social networks.

This submission is consistent with submissions to a range of parliamentary committees, law reform commissions and the Australian Communications & Media Authority over past decade, including comment on the performance of the *Spam Act 2003* (Cth), identity crime and misuse of the Integrated Public Number Database.

2. Introduction

As an introduction to our responses to the specific terms of reference we offer a short analysis regarding the nature of social media and fake political news. We contextualise that analysis through reference to the dissemination of and perceived validation of information about politicians, public policy issues and political processes through mainstream media, a communication sector that is an unprecedented crisis.

Social Media

Social media platforms such as Facebook, Twitter, TikTok, eBay and Instagram are now significant mechanisms for the dissemination of information in Australia about political

parties and individual politicians, public policy issues and local/international events. Their significance has four bases –

- Social nature
- Replacement of mainstream media
- Weak regulation and lack of editorial control
- Validation.

The first base is that they are ‘**social**’, ie embraced by many Australians and perceived by those individuals as channels for sharing *between* peers rather than for dissemination of ‘authorised’ opinion from a handful of publishers to public at large or to specific communities.

They are thus more trusted by an indeterminate but large number of Australians who have disengaged from ‘official’ sources. That disengagement is discussed below and is one aspect of the broader disengagement of many Australians from mainstream political parties/processes.

We note that social media platforms are often viewed as uniform. In reality there are a wide range of platforms, some of which have strong participation (and potentially major influence) within particular communities but are disregarded and indeed largely unknown by the overall Australian population.

The second base is that they are **replacing** mainstream media, which is withering as a result of fundamental structural changes to commercial media models (notably migration of advertising from print and commercial broadcast groups to venues such as Google, Bing and Facebook that have larger audiences with lower advertising costs) and misplaced strategic decision-making by executives or corporate owners.¹ We expect that replacement to continue, a conclusion that results in several of our recommendations in parts 4 and 7 of this submission.

In part that replacement is a function of social media ostensibly being free (in contrast to subscription charges or the cover price for electronic access to for example the *Sydney Morning Herald* or a print issue of that publication). In reality, as observers have been reminded by incidents such as the Cambridge Analytica scandal (very belatedly and quite inadequately addressed by Facebook), social media platforms are founded on monetising the participation of consumers, whether through selling data harvested by the platform operator or by exposing consumers to advertisements that might involve deception, vilification or other harms.

The third base for the significance of social media is weak national and absent international **regulation** of social media platforms, predicated on an assumption that social media corporations such as Facebook and ByteDance (aka TikTok) will conscientiously and effectively self regulate. That assumption, as highlighted in a succession of overseas and Australian reports (for example the Australian Competition & Consumer Commission’s 2019 *Digital Platforms* report), is naïve.

The major platforms operate globally, are driven by commercial imperatives and – as evident in responses to consumer protection and other regulators in Europe and North America – are dismissive of attempts by national/local regulators to hold them accountable. The platforms have recurrently stated a commitment to being responsible and minimising harms through propagation of hate-speech, promotion of fraudulent goods and services, defamation and propagation of misleading information (such as anti-vaccination propaganda) that influences

¹ Private equity in particular is reaping the consequences of under-investment and an associated emphasis on ongoing radical cost-cutting that erodes both the quality and diversity of publications and thereby results in loss of viewers, readers and advertisers.

behaviour and harms vulnerable people. They typically have not given effect to that commitment, either responding very idiosyncratically and belatedly on an instance by instance rather than generic basis or not responding. Non-responsiveness is often couched in terms of ‘internet exceptionalism’ (a claim that law, especially Australian law, is neither relevant nor feasible in cyberspace) or reference to a ‘free speech’ regime modelled on that in the United States. The leading platforms have failed to self-police and viewed over the past decade have sought to minimise their accountability in relation to taxation, vilification, consumer protection and defamation law. That failure exacerbates problems with disinhibition: people will often express extreme views online in the belief that they are anonymous and thus unaccountable or because they cannot see and thus experience an empathy gap in bullying or misrepresentation of another online participant.

The fourth base is that participants in social media platforms often construe their beliefs and actions as being **validated** because they are endorsed by and echoed by their online peers. At a crude level that validation might be a matter of ‘likes’ in response to a statement by an individual participant or criticism, on occasion a manifestation of the online bullying known as mobbing, of a statement by someone with a divergent view. At a more subtle level the validation is a function of the ‘bubble’ phenomenon, ie many people in social media platforms are able to associate only with the like-minded and screen out disquieting contrary views. That phenomenon may be particularly significant for Australian fringe groups, such as ‘anti-vax’ enthusiasts or radical separatists who believe it is necessary to stockpile arms ahead of a Family Court dispute.

Fake Political News

There is increasing government, civil society and academic interest in what has been dubbed ‘fake news’, in particular fake political news.

Such news might appear in mainstream print/broadcast media, whether because it reflects the agenda of media proprietors and editors or because (reflecting the withering noted above, with a loss of expert journalists and editors) it is accepted as truthful or because a media organisation considers that an item ‘has legs’ (eg is the basis for a headline). It might instead appear in social media platforms.

On those platforms it has sometimes been characterised as computational propaganda, in other words ‘the use of algorithms, automation, and human curation to purposefully distribute misleading information over social media networks’.²

As such it has attracted the attention of overseas legislatures concerned with covert subversion of public policy and political processes, with the European Parliament for example considering what it described as ‘influence campaigns’.³ We note that efforts by foreign governments and domestic stakeholders to shape policy and strengthen/erode democratic processes are not new. They were a feature of the Cold War and of action in Australia, the United States, South Africa and South America in the late 1930s and early 1940s on behalf of the United Kingdom,

² 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); 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; and <https://comprop.oii.ox.ac.uk>.

³ See for example the 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).

Nazi Germany, Soviet Union and Fascist Italy. Influence *per se* is not necessarily repugnant and can, we consider, be usefully addressed through mechanisms such as

- timely and comprehensive mandatory reporting of the personal interests of members of parliament and senior officials
- real time public disclosure of funding of political organisations, including beyond the campaign period
- publication of the appointment diaries of ministers, senior officials and senior advisors
- strengthening of the national and state/territory Freedom of Information (FOI) regimes, noted below
- effective whistleblower protection
- a robust and independent press, prepared to investigate and critique.

We discuss the risks to Australian democracy of foreign and domestic interference through social media in part 2 of this submission, which addresses a specific Term of Reference for work by the Committee.

We have specifically referred to ‘domestic’ interference for three reasons. The first is that if Parliament is concerned with risks to democracy it needs to consider those risks on a holistic basis, rather than concentrating on foreign actors to the exclusion of likely harms at home. The second is that we perceive dangers through misuse of Australian law regarding telecommunications, social media and electoral material by figures such as Clive Palmer (an egregious exploitation of inadequacies in law through mass ‘political spamming’ at the latest Federal election) and misleading posters/flyers in recent election campaigns. The third reason is the increasingly partisan nature of some media groups that offer a consistently slanted view of public policy and public figures, unsurprisingly leading one former News journalist to characterise 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, in our view, 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.

2. Risks to democracy

We see two risks to Australian democracy from action by foreign interests or domestic interests that seek to exploit social media.

The first risk, 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. It also fosters phenomena such as ‘sovereign citizens’, ie groups who deny the legitimacy of Australian law and institutions such as courts, the police and revenue agencies.

There is no authoritative comprehensive study of large scale foreign interference in Australian politics by foreign actors, whether state or state proxies. We commend the establishment of the Select Committee as a way of bringing together insights about the nature, extent and

impact of that interference within the online population at large or specific ethno-religious communities, for example adherents of Islam. We note that our work regarding fake political news in South Korea and Australia indicates that assessment of such interference involves three elements: identification of true/false statements and expressions of opinion, evaluation of falsity and or intent, and questions of accountability.

The latter involves responses by the social media platform operator (potentially systematic filtering of a false statement to prevent recurrent propagation and/or blocking of an ‘author’) and the scope for a corrective statement, something that might be made automatically in relation to matters such as social media posts endorsing Holocaust denial, fake cancer cures and anti-vaccination propaganda.

We consider that disengagement can be addressed through mechanisms that we outline below.

3. Use of social media for purposes that undermine Australia’s democracy and values, including the spread of misinformation

We are unaware of an authoritative large-scale study that identifies and evaluates use of social media to undermine Australia’s democracy. Our assessment is that a comprehensive mapping of misuse of social media and the impact of that misuse is unachievable. In practice such mapping is not necessary.

We suggest instead that there is value in more specific studies, such as that underway at the University of Canberra, that offer a comparative view looking at regulatory mechanisms (including tensions regarding the implied freedom of political communication) or that provide an in-depth analysis of specific claims/interferences.

We caution that there are significant difficulties in proving ‘ownership’ of interference in social media in instances where fake news is sophisticated. We also caution that viewer awareness of fake news must be contextualised. Australians are more likely to embrace false claims and malicious interpretations when the behaviour of politicians, political parties and government institutions in controversies such as ‘SportsRorts’ and ‘TaylorGate’ lead to distrust. The same can be said of the behaviour of leading nongovernment institutions, where for example the damning conclusions of the Hayne Royal Commission on the Financial Sector resonate with the personal experience of many Australian consumers and the unwillingness of major religious entities to acknowledge pervasive wrongdoing by clergy in sexual abuse cases has led many people to differentiate ‘the church’ (and its leaders) from their faith.

We reiterate concerns regarding the influence of particular media figures and media organisation, seeking personal/corporate advantage and in the words of UK Prime Minister Stanley Baldwin wanting “Power without responsibility — the prerogative of the harlot throughout the ages” in highly partisan campaigns of vilification and climate change denial

4. Responses to mitigate the risk posed to Australia’s democracy and values, including by the Australian Government and social media platforms

In preceding pages of this submission we have noted overseas government and academic studies regarding risks and their mitigation. Drawing on our work regarding regulation and the research project mentioned above we suggest that there are several viable responses.

Platform Accountability

It is axiomatic that platform operators, alongside any other corporation, be held responsible for their activity. Irrespective of whether they are located in the United States (or more specifically directed from the United States while being formally located in a low/zero tax haven offshore) they both gain a benefit from participation by Australian consumers and have an effect on Australian consumers. They are not neutral philanthropic bodies. They accordingly should and can be induced to comply with a regulatory framework that addresses concerns regarding taxation, defamation, privacy, ethno-religious vilification, propagation of claims that are contrary health protection under the Australian Consumer Law and (egregiously inadequate) health products advertising law, and so forth.

We accordingly suggest that the Committee note the salience and cogency of recommendations by the Australian Competition & Consumer Commission (ACCC) in its recent *Digital Platforms* report and thence strongly encourage the Commonwealth Government to both fund the ACCC for enforcement action and adopt the report's recommendations.

Community Education

We consider that it is neither feasible nor necessary to interdict every foreign or domestic interference via social media. It is instead viable to emphasise community self-help, with participants in social media platforms being alert to the likelihood of misrepresentation and equipped to discern that statements are malicious.

Self-help is not a panacea. It should be accompanied by action from a vigorous, technology-savvy and well-resourced Australian Electoral Commission and Australian Communications & Media Authority, alongside the ACCC. Self-help must be founded on community education, something that involves both the teaching of critical thinking across the education system (an effort that many students can discern as entertaining and relevant if there is astute curriculum development) and use of exemplary action by regulators alongside exposes or 'explainers' by media organisations. The 'explainers' and 'Fact Checking' by the ABC are models that should be embraced.

We are sceptical about the impact of institutions such as the Museum of Australian Democracy as mechanisms for informing community understanding about political processes and critical thinking about policy issues.

We draw the Committee's attention to the success of community education in jurisdictions such as Finland and Estonia that have featured in recurrent disinformation and other interference campaigns by Russia. Ultimately a savvy Australian population – with access to information through a public transparency regime – is the best defence against foreign interference and misbehaviour by domestic actors, something that involves both education and transparency about political processes and public administration.

Strengthening Public Sector Broadcasting

We have highlighted concerns regarding the ongoing erosion of capacity in Australian commercial media, something that is fostering both a relentless search for sensation (on occasion manifest in substantial defamation damages) and a partisanship that might lead an observer to perceive a 'Miranda Devine Bubble', an 'Alan Jones Bubble' or a 'News group Bubble'.

Given that withering of capacity and consequent weakening of self-regulation we note the increasing importance of the Australian Broadcasting Corporation as an independent media

group that has gained and retained the trust of many Australians for nonpartisan coverage, depth of reporting, spread of coverage (non-parochial and from football to theology) and excellence in investigative journalism. Maintenance of an independent and vibrant ABC is a key bulwark against both foreign interference in Australian politics and propagation of harmful claims such as anti-vaccination propaganda. It is worth remembering that per capita the ABC costs only a few cents per day. That is a cheap price for defending democracy in the age of fake news.

5. international policy responses to cyber-enabled foreign interference and misinformation

There are two key international responses to interference through social media.

The first is a concerted effort by regulators in all leading jurisdictions, acting in concert, to hold the social media platform operators to account. We consider that Australia, as in the past regarding action across borders and harmonisation of the international consumer protection regime, can take a leading and effective role in working with peers to build a coherent international regime that does not foster regulatory arbitrage and does not exclude Australians from the benefits of participation in social media platforms.

The second is for nations to call out interference, something that on occasion will require Australia to speak truth to power in expressly condemning interference at a national or sectoral level by countries such as China and Saudi Arabia.

6. The extent of compliance with Australian laws

As noted above, social platform operators have been reluctant to embrace responsibilities under Australian law. We do not propose a regime that results in a balkanised internet. We consider that it is extremely unlikely that if Facebook is held responsible it will give effect to speculation that it will abandon the Australian market. (That is particularly the case if there is corresponding regulation in Europe, Canada, New Zealand and other jurisdictions).

We do however consider that there is scope for more responsible self-regulation by all social media platform operators (especially as particular corporations operate multiple platforms) underpinned by a statutory framework that provides formal responsibilities and is given effect through action by both regulatory agencies such as the ACCC and tort action by consumers.

Given our comments above a corollary is a clear statement by the national Government that media groups will behave responsibly. Such responsibility is in essence good business, given indications that the sort of abuses that led to the demise of the *News of the World* (inadequately acknowledged by News group) alienate customers and other stakeholders such as journalists and advertisers. We draw the Committee's attention to the report of the Finkelstein inquiry into Australian media, a noteworthy effort to grapple with difficult questions about freedoms and responsibilities.

In a subsequent *Melbourne University Law Review* article Finkelstein and Tiffen noted that

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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.

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.

The proposal in the Finkelstein Inquiry report aimed to establish a forum independent of both government and industry that would provide redress to those injured by the press. It did so in ways that enlarged – and did not restrict – the flow of information, and through procedures with no financially punitive sanctions on either side beyond public exposure. The successful hostility of the press to having a statutory basis for such procedures means that for the foreseeable future, beyond the rule of statutes and torts, such as defamation and contempt of court, the main means of accountability will continue to be voluntary self-regulation.

7. **Any related matters**

One response to concerns about foreign interference and risks to democracy lies very close to home. That response is for federal, state/territory and local government politicians to behave with more integrity. Such behaviour is achievable.

There are recurrent indications that Australians, irrespective of economic circumstances or education, distrust politicians and are disengaging from political processes. That disengagement includes the derisory number of people who are active members of political parties. ‘Politician’ for many Australians is synonymous with self-interested, dishonest and even corrupt. Unsurprisingly politicians rank far below nurses, ambulance and fire crew, veterinarians and primary school teachers in ranking of trust or respect. That disregard *can* be addressed.

Anti-Corruption Agency

One action, readily achievable, is the establishment of a properly resourced and active independent anti-corruption commission with both the power and will to address perceived abuses involving members of parliament, officials and third parties.

Accountability through transparency

A second action is stronger resourcing of the Australian National Audit Office, a body that is stymied by both under-resourcing and disregard – both by Parliament and Ministers – of its findings.

One corollary for that action is meaningful action regarding Open Government (given that successive Open Government initiatives have emphasised form rather than substance) and embracing the stated objectives in the national FOI Act, bizarrely dismissed by a recent Public Service Commissioner and recurrently disregarded by the Department of Home Affairs and other parts of the Commonwealth bureaucracy. Ultimately sunlight is the best cure for both administrative misbehaviour and substantive/perceived foreign interference. Such transparency fosters trust and is an enabler of community education.

A further corollary is the strengthening of Australia’s national and state/territory whistleblowing regimes, which like FOI are meant to provide accountability on the part of those in power – government or otherwise – but are inadequate.

Justiciable rights

A third action is establishment of constitutionally enshrined Bill of Rights.

Such a Bill will not provide a lawyer’s picnic or cripple public administration. It is a feature of most liberal democratic states. It goes to the heart of what differentiates Australia from autocratic regimes. It has been cogently analysed by figures such as Dr Bede Harris. We draw the Committee’s attention to his lucid discussion in *A New Constitution For Australia* (Cavendish, 2002).

Walking the talk about integrity

A final action is for the chief minister in every jurisdiction to walk the talk about integrity. If the Committee wants democracy to thrive it is incumbent on the Parliament to not tolerate egregious abuses such as the SportsRorts scandal or what has been described as Taylorgate.
