



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Jeremy Hanson MLA (Chair), Dr Marisa Paterson (Deputy Chair), Ms Jo Clay MLA

Submission Cover Sheet

Inquiry into 2020 ACT Election and the Electoral Act

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2020 ACT Election and the Electoral Act: Submission

No reason to delay truth in political advertising laws

Bill Browne

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Thank you for the opportunity to make a submission to the Standing Committee on Justice and Community Safety's Inquiry into 2020 ACT Election and the Electoral Act. We would welcome the opportunity to elaborate on this submission if the committee had any further questions.

The Australia Institute has been conducting research on truth in political advertising laws and regulations since 2016, including a landmark report, *We can handle the truth*, that was cited extensively by the Joint Standing Committee on Electoral Matters in its report into the 2019 federal election.¹

The Institute has vigorously made the case for truth in political advertising laws across Australia, and coordinated an open letter from prominent Australians to members of the ACT Legislative Assembly on this issue. In August 2020, the Assembly voted unanimously to adopt truth in political advertising laws. Polling by the Australia Institute shows that 89% of Canberrans also support truth in political advertising laws.²

The ACT's new laws are closely based on the existing laws in South Australia, which have operated successfully since 1985 (in their current form since the mid-1990s).

¹ Browne (2019) *We can handle the truth: Opportunities for truth in political advertising*, <https://australiainstitute.org.au/report/we-can-handle-the-truth-opportunities-for-truth-in-political-advertising/>; JSCEM (2020) *Report on the conduct of the 2019 federal election and matters related thereto*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2019FederalElection/Report

² The Australia Institute (2020) *Majority of Canberrans Want Truth in Political Advertising Laws*, <https://australiainstitute.org.au/post/majority-of-canberrans-want-truth-in-political-advertising-laws/>

Timing

The Australia Institute was concerned by reporting that ACT electoral commissioner Damian Cantwell has asked for the implementation of truth in political advertising laws to be delayed.³

When the *Electoral Act* was amended in August 2020, the commencement date for the new truth in political advertising provisions was set for 1 July 2021.⁴ This ensured that the laws would not come into force for the 2020 ACT election, given that the election period had already begun and it would be unfairly onerous on candidates, parties and Elections ACT to implement the laws so close to the election day.

By 1 July 2021, candidates, political parties and Elections ACT will have had 10 months to consider the new provisions and implement any changes needed. Elections ACT have received advice from the Electoral Commission of South Australia (ECSA), and are seeking additional funding for their increased responsibilities.

We note that Mr Cantwell did not propose an extension, but when committee chair Jeremy Hanson asked if Elections ACT needed more time, Mr Cantwell took the question on notice while saying a delay would be “very useful”.⁵

While the truth in political advertising laws are not limited to the election period, it is nonetheless the case that truth in political advertising complaints mostly occur in the proximity to elections – which for the ACT, is not now until 2024.

Nor are resourcing requirements for misleading advertising complaints likely to be onerous even during an election period. ECSA has outlined its staffing requirements during 2014, a period which included a state election and two by-elections. For handling complaints (only half of which concerned misleading advertising), ECSA used one permanent employee and one employed on a short-term basis, supported by legal advisors in the Crown Solicitor’s Office and staff seconded from within ECSA during peak times.⁶

This committee also heard that the voting period for the ACT Aboriginal and Torres Strait Islander Elected Body election comes just after the laws are due to come into

³ Bladen (2021) *Electoral commissioner calls to delay truth in advertising laws*, <https://www.canberratimes.com.au/story/7259414/electoral-commissioner-calls-to-delay-truth-in-advertising-laws/>

⁴ ACT (2020) *Electoral Amendment Act 2020*, sec. 2, <http://www.legislation.act.gov.au>

⁵ Standing Committee on Justice and Community Safety (2021) *Hansard, 19 May*, pp. 13–14, <http://www.hansard.act.gov.au/hansard/2021/comms/jacs03.pdf>

⁶ Electoral Commission SA (2014) *2014 State Election Report*, p. 54, <https://ecsa.sa.gov.au/about-ecsa/publications/publications-state-election-and-by-election-reports>

force.⁷ Presumably, Elections ACT have alerted the candidates for this election to their obligations under what is legislated for 1 July 2021. It would be inappropriate to change course at this late date.

Mr Cantwell made clear that he views the “difficult” coming truth in political advertising laws with “some trepidation”, and that he would “rather not be involved in” them. However, he did not identify problems with the legislation itself that a delay could be used to address. As he said, “we need to get to grips with this at some point”.⁸

The Australia Institute supports adequate funding for Elections ACT, and their budget bid of two additional staff seems appropriate for the work they are being asked to take on. Nonetheless, they have had 10 months to implement these changes, and have had the benefit of ECSA’s expert advice and decades of experience.

The Australia Institute cannot see a justification for delaying the commencement of the ACT’s truth in political advertising laws.

Further notes

Committee members may be interested in the Australia Institute’s growing body of work on truth in political advertising.

We can handle the truth, our 2019 submission to the Joint Standing Committee on Electoral Matters, making the case for truth in political advertising laws and outlining the models available. <https://australiainstitute.org.au/report/we-can-handle-the-truth-opportunities-for-truth-in-political-advertising/>

Polling showing that nine in 10 ACT residents (89%) agree that the ACT should pass truth in political advertising laws. <https://australiainstitute.org.au/post/majority-of-canberrans-want-truth-in-political-advertising-laws/>

Our submission to the Victorian Parliament’s Inquiry into the Impact of Social Media on Elections and Electoral Administration, which considered truth in political advertising. <https://australiainstitute.org.au/report/impact-of-social-media-on-elections-and-electoral-administration-submission/>

Open letter from 29 prominent Australians calling for national truth in political advertising laws by the next (federal) election.

⁷ Standing Committee on Justice and Community Safety (2021) *Hansard*, 19 May, pp. 14–15

⁸ Standing Committee on Justice and Community Safety (2021) *Hansard*, 19 May, pp. 13–15

<https://australiainstitute.org.au/post/29-prominent-australians-call-for-truth-in-political-advertising-laws-by-next-election/>

Ebony Bennett's opinion piece for the *Canberra Times* before the historic vote in the Legislative Assembly, "**ACT should lead way on truth in political advertising**".

<https://australiainstitute.org.au/post/act-should-lead-way-on-truth-in-political-advertising/>

Ben Oquist's opinion piece for the *Canberra Times* reflecting on the importance of truth in political advertising laws for strengthening our democracy, "**Now more than ever we should be strengthening democracy. We're not.**"

<https://australiainstitute.org.au/post/now-more-than-ever-we-should-be-strengthening-democracy-were-not/>