

The Senate

Finance and Public
Administration References
Committee

Administration of the referendum into an
Aboriginal and Torres Strait Islander Voice

June 2023

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List of recommendations

Recommendation 1

5.53 The committee recommends that the Australian Government immediately establish and authorise 'Yes' and 'No' campaign entity bodies.

Recommendation 2

5.54 The committee recommends that the Australian Government introduce amendments to remove the current limitation on spending imposed by section 11(4) of the Referendum (Machinery Provisions) Act 1984 and to include provisions that ensure spending is directed in equal proportions to the 'Yes' and 'No' campaigns.

Recommendation 3

5.55 The committee recommends that the Australian Government introduce amendments to the Referendum (Machinery Provisions) Act 1984 to require the Australian Electoral Commission to maintain a register of campaign bodies, similar to Part XI of the Commonwealth Electoral Act 1918.

Abbreviations

3PFC	Independent third-party fact-checking
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ACPDM	Australian Code of Practice on Disinformation and Misinformation
AEC	Australian Electoral Commission
AGD	Attorney-General's Department
AMAN	Australian Muslim Advocacy Network
ANU LRSJ Research Hub	Australian National University Law Reform and Social Justice Research Hub
ASIO	Australian Security Intelligence Organisation
ASPI	Australian Strategic Policy Institute
committee	Senate Finance and Public Administration References Committee
CALD	Culturally and Linguistically Diverse
DSA	European Union Digital Services Act
EIAT	Electoral Integrity Assurance Taskforce
EIIF	Electoral Integrity Intelligence Forum
Electoral Act	<i>Commonwealth Electoral Act 1918</i>
eSafety	eSafety Commissioner
IPA	Institute of Public Affairs
JSCEM	Joint Select Committee on Electoral Matters
NSWCCL	NSW Council for Civil Liberties
Referendum Act	<i>Referendum (Machinery Provisions) Act 1984</i>
The bill	Referendum (Machinery Provisions) Bill 2022

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Chapter 1

Introduction

- 1.1 In the Australian federal political context, the word ‘referendum’ describes a vote to change the Australian Constitution (the Constitution). Constitutional changes express a fundamental revision of the institutional and governmental arrangements of the country. While elected politicians propose a law to alter the constitution, approval of the proposed amendments is reserved for the Australian people, through a referendum. In this regard, the Constitution is the Australian people's document and a vote to amend it will be one of the most significant votes most people will make in their lifetime.
- 1.2 The question to be put to the Australian people at the 2023 referendum will be:
A Proposed Law: to alter the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice.
Do you approve this proposed alteration?
- 1.3 This will be Australia’s first referendum in 22 years, and it has come about in an age where disinformation and misinformation are ubiquitous. With the vast uptake of social media across the world, and the increased likelihood that foreign actors may seek to interfere online, it has become more difficult for people to find fair and honest coverage that does not already affirm their convictions.
- 1.4 The Australian public, no matter where they live or how they access information, need to have confidence that the information available to them is credible and evidence-base.
- 1.5 For an undertaking as important as a referendum, communication with the public, the independence of the media, the countering of foreign interference, and freedom from misinformation are key to a sustainable, democratic outcome.
- 1.6 Australians deserve to have confidence that the referendum to be conducted later this year has been conducted with integrity and appropriate governance and oversight. This necessitates a commitment to a referendum with structures that are fair, open, and transparent; that deal with foreign interference; and that provide an avenue for scrutiny.
- 1.7 Preparations for the upcoming referendum are well-progressed. The Referendum (Machinery Provisions) Bill 2022 has been passed by the Parliament, and the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 is currently before Parliament.
- 1.8 It is now appropriate to ask: how can Australian electors be assured of the integrity and fairness of the procedures and debate regarding the upcoming referendum?

Referral

- 1.9 On 28 March 2023, the Senate referred the following inquiry to the Finance and Public Administration References Committee (the committee) for inquiry and report by 9 June 2023:
- 1.10 The administration of the referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution through an Aboriginal and Torres Strait Islander Voice, with particular reference to:
- (a) protections against the potential for foreign actors to seek to influence the outcome or public debate on the referendum question;
 - (b) the detection, mitigation, and obstruction of potential dissemination of misinformation and disinformation, including via social media or technology platforms;
 - (c) the potential application of the Foreign Influence Transparency Scheme to the referendum and its participants;
 - (d) the potential application and administration of foreign donation laws to the referendum and its participants;
 - (e) the application of authorisation requirements to the referendum and its participants;
 - (f) the ongoing integrity and assurance processes of the Australian Electoral Commission; and
 - (g) any other related matters.

Conduct of the inquiry

- 1.11 The committee agreed to open submissions on 29 March 2023 and set 24 April 2023 as the closing date. The committee wrote to a range of key stakeholder groups, organisations and individuals, drawing their attention to the inquiry and inviting them to make a written submission.
- 1.12 The committee received 22 public submissions, which are available on the committee's webpage and listed at Appendix 1.
- 1.13 The committee held two public hearings for the inquiry: on 4 May 2023, in Melbourne; and on 10 May 2023 in Canberra. A list of witnesses who gave evidence at the hearings is available at Appendix 3 of this report.
- 1.14 The committee thanks all those who contributed to the inquiry by making submissions and speaking before the committee at the public hearings.

Report structure

- 1.15 The committee does not intend for this report to function as an exhaustive assessment of the administration of the upcoming referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution, or, indeed, any future referendum.

- 1.16 Many matters considered by the committee have established avenues for inquiry such as the Joint Standing Committee on Electoral Matters and the Senate Select Committee on Foreign Interference through Social Media.
- 1.17 The committee considers the final report of the Joint Standing Committee on Electoral Matters' inquiry into the Referendum (Machinery Provisions) Amendment Bill 2022 to be a thorough evaluation of the provisions on the bill. The first two recommendations contained in the report constitute sensible, well-considered measures that clearly encourage Aboriginal and Torres Strait Islander engagement with the referendum. That said, the committee reserves some comments on the amendments for this report.
- 1.18 The committee also notes the Australian Consumer and Competition Commission's ongoing Digital Platforms Inquiry, which has been considering the competition and consumer impacts of digital platforms since 2017. The ongoing nature of that inquiry has allowed it to comprehensively consider aspects of digital platform use, including those that may be relevant to this inquiry.
- 1.19 Given this, the committee has chosen to focus on the following key issues that arose throughout the inquiry, structured as follows:
- Chapter 2 discusses the conduct of the referendum as prescribed by the *Referendum Machinery Provisions Act 1984*;
 - Chapter 3 discusses the risk of foreign interference in the referendum;
 - Chapter 4 discusses the challenges of administering the referendum debate online; and
 - Chapter 5 contains the committee's view and recommendations.

Chapter 2

The Referendum Machinery Provisions - The 'Yes' and 'No' campaigns

Introduction

2.1 This chapter discussed the conduct of a referendum as prescribed by the *Referendum (Machinery Provisions) Act 1984*, namely the:

- 'yes' and 'no' case pamphlet;
- 'yes' and 'no' case campaigns, specifically the establishment of official campaign entities and government funding for said campaigns; and
- regulation of 'referendum entities'.

Conduct of a referendum

2.2 Section 128 of the Constitution sets out the provisions for altering the Constitution. It requires:

- a law be passed by an absolute majority of each House of Parliament (that is, more than half of all the members of each chamber), or under certain conditions, a law be passed by a majority of either House twice within three months;
- the proposal be put to the electors qualified to vote in elections for the House of Representatives between two and six months after the passage of the law; and
- a majority of Australians vote to approve the change, as a total and in a majority of the six states (referred to as a 'double majority').¹

2.3 It further states that 'when a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes.'²

2.4 Accordingly, Parliament prescribed this in the *Referendum (Constitution Alteration) Act 1906*, later superseded by the *Referendum (Machinery Provisions) Act 1984*, which is currently in force. Parliament, therefore, has set out, over more than a century, the conduct by which a referendum is to be held.

Referendum (Machinery Provisions) Act 1984

2.5 The *Referendum (Machinery Provisions) Act 1984* (Referendum Act) sets out the procedures and provisions for the conduct, administration, and regulation of referendums. Like the *Commonwealth Electoral Act 1918* (Electoral Act), it

¹ Dr Damon Muller, Constitutional referendums in Australia: a quick guide, *Research Paper Series 2022–23*, Parliamentary Library, Canberra, 8 May 2023, p. 1.

² *Australian Constitution*, s. 128.

includes provisions for pre-polling, telephone and postal voting, authorisation of advertisements, and a process for appealing results.

- 2.6 Section 11 of the Referendum Act contains provisions relating to the 'distribution to electors of arguments for and against proposed law' and has 4 subsections.
- 2.7 Subsections 11(1), 11(2) and 11(3) provide for the production and distribution of an 'official pamphlet' containing an essay for both the 'Yes' and 'No' cases for constitutional amendment in a referendum. The Parliament is responsible for producing the 'Yes' and 'No' case essays, which must not exceed 2 000 words each. The Australian Electoral Commission (AEC) is responsible for 'the typesetting, printing, and distribution of the pamphlet to addresses on the electoral roll'. The Referendum Act provides that the pamphlet is to be distributed to the Australian public no later than 14 days before the voting day for the referendum.
- 2.8 Subsection 11(4) provides that the 'Commonwealth shall not expend money in respect of the presentation of the argument in favour of, or the argument against, a proposed law' except for the costs of distribution of the official pamphlet. Suspension of Subsection 11(4) allows the government to provide funding for the provision of information related to the referendum, such as an education program on the proposed constitutional amendment and its implications, or official 'Yes' and 'No' campaigns.³

Amendments to the Referendum Act

- 2.9 On 1 December 2022, the Referendum (Machinery Provisions) Amendment Bill 2022 (the bill) was introduced to the House of Representatives with the stated purpose to 'modernize the legislation that will govern how this referendum will be conducted'.⁴ The bill was referred to the Joint Select Committee on Electoral Matters (JSCEM) for inquiry, which reported its findings on 13 February 2023. The bill was passed by the Senate on 22 March 2023.⁵
- 2.10 Key amendments introduced with the passing of the bill, relevant to the terms of reference of this inquiry, included:
- the temporary disapplication of aspects of Section 11;
 - establishment of a simplified financial disclosure and foreign donation restriction framework for referendums consistent with Part XX of the Electoral Act; and
 - an update of authorisation requirements to align with the Electoral Act.

³ *Referendum (Machinery Provisions) Act 1984*, s. 11.

⁴ *House of Representatives Hansard*, 1 December 2022, p. 13.

⁵ *Senate Hansard*, 22 March 2023, p. 127.

2.11 These are discussed in detail below.

The 'Yes' and 'No' pamphlet

2.12 The government stated that the amendments, as a whole, would address the fact that the Referendum Act 'does not reflect modern delivery and communications methods.' Regarding the pamphlet, the government said:

Modern technology allows parliamentarians to express their views to voters directly and regularly through a wide variety of sources, such as television, email and social media, that did not exist when the pamphlet was introduced in the early 20th century.⁶

2.13 The bill originally proposed to temporarily suspend all of Section 11 of the Referendum Act during the upcoming referendum, meaning a pamphlet would not be produced or distributed.

2.14 This proposal attracted significant criticism from stakeholders.⁷ As such, the bill was amended to remove the provisions that would have resulted in the temporary suspension of the requirement for the distribution of a pamphlet and was passed accordingly.⁸

Establishment and funding of 'Yes' and 'No' campaign bodies

2.15 Amendments to disapply section 11(4) were passed. However, the disapplication of section 11(4) would only be for the purpose of funding a neutral civic education campaign and activity. The government did not establish or commit to fund formal 'Yes' and 'No' campaign bodies.

2.16 Upon the introduction of the bill, the Minister for Indigenous Australians, the Hon. Linda Burney MP, provided a rationale for the decision not to provide public funds to campaign bodies, stating:

⁶ The Hon. Mark Dreyfus KC MP, Attorney-General, Senator the Hon. Don Farrell, Minister for Trade and Tourism and Special Minister of State, the Hon. Linda Burney MP, Minister for Indigenous Australians, and Senator Patrick Dodson, Special Envoy for Reconciliation and the Implementation of the Uluru Statement from the Heart, 'Next steps towards Voice Referendum', *Media release*, 1 December 2022, <https://ministers.ag.gov.au/media-centre/next-steps-towards-voice-referendum-01-12-2022> (accessed 2 June 2023).

⁷ Institute of Public Affairs, *Australians Support A Free And Fair Debate On Voice: A Review Of Submissions On The Federal Government's Voice Referendum Amendment Proposals*, 10 February 2023, <https://ipa.org.au/ipa-today/australians-support-a-free-and-fair-debate-on-voice-a-review-of-submissions-on-the-federal-governments-voice-referendum-amendment-proposals> (accessed 2 June 2023).

⁸ Referendum (Machinery Provisions) Amendment Bill 2022, *Supplementary Explanatory Memorandum*, p. 7.

‘we believe those campaigns can raise their own money through private means.’⁹

- 2.17 On 22 March 2023, during the debate on the bill, the Special Minister of State, Senator the Hon. Don Farrell stated that it was the government’s intention for the referendum to be conducted in a ‘civil fashion’ in which ‘each side will have an opportunity to progress its arguments through civil society’.¹⁰ When asked if the government would reconsider its opposition to formalizing a ‘Yes’ and ‘No’ case, Minister Farrell responded ‘no’.¹¹
- 2.18 Precedents exist for the establishment and funding of ‘Yes’ and ‘No’ campaign bodies.
- 2.19 During the 1999 referendum, Subsection 11(4) was disapplied to allow the government to fund ‘Yes’ and ‘No’ case committees and a neutral public education campaign. \$7.5 million was allocated to both committees to adequately equip both sides to present their cases.¹² The Government’s role was contained to ensuring that each committee’s proposals met the standards set for ‘the activities to be covered by the public funding’ and monitoring the use of the funds. The then-Attorney-General, the Hon. Daryl Williams MP, and then-Special Minister of State, Senator the Hon. Chris Ellison, stated that:

Public funding for the committees will allow robust public debate on the arguments for and against change. As with the provision of public funding in election campaigns, the purpose is to ensure that the alternative views can be presented directly to the voters.¹³

- 2.20 In December 2009, the House Standing Committee on Legal and Constitutional Affairs tabled its report for its inquiry into the machinery of referendums. The committee was chaired by the current Attorney-General, the Hon. Mark Dreyfus QC MP. The report stated:

The committee therefore supports equal funding of the Yes and No cases, irrespective of their Parliamentary support. This is in line with the original

⁹ Josh Butler, ‘Indigenous Voice vote: Foreign donations expected to be banned and campaigns forced to raise own cash’, *The Guardian*, 1 December 2022, <https://www.theguardian.com/australia-news/2022/dec/01/indigenous-voice-to-parliament-referendum-vote-foreign-donations-banned-and-campaigns-forced-to-raise-their-own-cash> (accessed 28 May 2023).

¹⁰ Senator the Hon. Don Farrell, Minister for Tourism and Trade and Special Minister of State, *Senate Hansard*, 22 March 2023, p. 95.

¹¹ Senator the Hon. Don Farrell, Minister for Tourism and Trade and Special Minister of State, *Senate Hansard*, 22 March 2023, p. 101.

¹² House of Representatives Standing Committee on Legal and Constitutional Affairs, *A Time for Change: Yes/No? Inquiry into the Machinery of Referendums*, 11 December 2009, p. 21.

¹³ The Hon. Daryl Williams MP, Attorney-General, *House of Representatives Hansard*, 11 March 1999, p. 3761.

intention of the Yes/No pamphlet as well as consistent with democratic ideals of informed debate.¹⁴

Alignment with the Electoral Act

- 2.21 The Referendum Machinery bill introduced provisions to replicate current electoral machinery provisions into the referendum context. This included establishing a simplified financial disclosure and foreign donation restriction framework for referendums consistent with Part XX of the Electoral Act, and the authorisation of referendum matter.
- 2.22 Under the new financial disclosure provisions, ‘referendum entities’ are required to report to the AEC the amount they spend on referendum campaigning, details of donations valued above the disclosure threshold and the total value of all donations received, including aggregated smaller donations below the disclosure threshold.
- 2.23 ‘Referendum entities’ do not have to formally register with the AEC. Instead, they will be ‘captured’ under the legislation if they incur ‘referendum expenditure’¹⁵ over the disclosure threshold of \$15, 200 during the referendum expenditure period.¹⁶
- 2.24 The Referendum Act was also amended to prohibit foreign donations of \$100 or more for referendum campaigning and prohibit foreign campaigners from fundraising or directly incurring ‘referendum expenditure’ in a financial year equal to or more than \$1000, consistent with the Electoral Act. The Referendum Act has not previously required any financial disclosure for donations that are used for referendum expenditure.¹⁷
- 2.25 Finally, the Referendum Act was amended to include a scheme for the authorisation of ‘referendum communications’—that is, paid advertisements, print communications and communications by a ‘disclosure entity’ where the

¹⁴ House of Representatives Standing Committee on Legal and Constitutional Affairs, *A Time for Change: Yes/No? Inquiry into the Machinery of Referendums*, 11 December 2009, p. 65.

¹⁵ Referendum expenditure is expenditure incurred for the dominant purpose of creating or communicating referendum matter. For further information see: https://www.aec.gov.au/referendum_disclosure/files/referendum-matter-and-expenditure-fact-sheet.pdf.

¹⁶ Australian Electoral Commission, *Referendum disclosure*, 15 May 2023 https://www.aec.gov.au/Parties_and_Representatives/referendum_disclosure/#:~:text=Referendum%20expenditure%20is%20expenditure%20incurred,creating%20or%20communicating%20referendum%20matter (accessed 28 May 2023).

¹⁷ Dr Damon Muller, Referendum (Machinery Provisions) Amendment Bill 2022, *Bills Digest No. 45*, 2022–23, Parliamentary Library, Canberra, 22 December 2022, p. 15.

‘dominant purpose’ is to expressly support or oppose the proposed law for the alteration of the Constitution.¹⁸

2.26 Notably, the amendments did not include provisions for a registry of referendum entities, such as those found in Part XI of the Electoral Act that deals with the registration of political parties.

Views on the amendments to the Referendum Machinery Act

2.27 This section considers evidence received in relation to the amendments to the Referendum Act.

2.28 The committee received little evidence on the substance of the provisions and how the inclusion, or omission, of certain provisions would impact the conduct of the referendum. Given the importance of the referendum framework, the committee has, where appropriate, drawn evidence from proceedings from the Joint Select Committee on Electoral Matters inquiry into the bill and Budget Estimates 2023–24.

The pamphlet

2.29 Submitters to the inquiry welcomed the decision to keep the pamphlet. Many considered the pamphlet to be a longstanding component of Australia’s referenda and a formally authorised publication to inform Australian electors.

2.30 For example, the Institute of Public Affairs (IPA) noted that the pamphlet has been a feature of Australian political tradition dating back to 1912 and acts to ‘safeguard the right of all electors to read the arguments for and against a proposed constitutional change’.¹⁹

2.31 Similarly, the Samuel Griffith Society described the pamphlet as an ‘important resource that will underpin a rigorous and well-informed public discourse’.²⁰

2.32 The Australian National University Law Reform and Social Justice Research Hub (ANU LRSJ Research Hub) submitted that to prevent the spread of misinformation, it ‘is imperative the voting public has access to an official pamphlet that is truthful and accurate, and which is not misleading’.²¹

2.33 In evidence to the committee, Dr Scott Prasser, Senior Fellow at the Centre for Independent Studies, considered the distribution of the pamphlet to be ‘very important’:

¹⁸ A ‘disclosure entity’ is defined in section 110A of the *Referendum (Machinery Provisions) Act 1984*.

¹⁹ Institute of Public Affairs, Submission 13 to the *Joint Select Committee on Electoral Matters, Inquiry into Referendum (Machinery Provisions) Amendment Bill 2022*, p. 4.

²⁰ The Samuel Griffith Society, *Submission 16*, p. [3].

²¹ Australian National University Law Reform and Social Justice Research Hub, *Submission 15*, p. [2].

I think it's very important that there be approved by parliament a 'yes' case of 2,000 words and a 'no' case of 2,000 words, because this is coming—it's been approved by Parliament and it's coming from government—and, on any referendum issue, there are often lots of views and arguments, and I think it's very important that electors get in their mailbox or in an email to them, which is how it's done these days, something which is officially sanctioned and has been approved on both sides.²²

- 2.34 Submitters also commented on the accessibility of the pamphlet. Mr Tom Rogers, the Electoral Commissioner, noted that while the ways in which the public engages with AEC electoral material had evolved, the public still extensively refer to print material:

The research we do shows that 40 per cent of people still use the householder guide that we send out at election time as a primary source of information about the electoral process.²³

- 2.35 The NSW Council for Civil Liberties submitted that 'education materials should be made available in plain English and in Aboriginal languages':

For some First Nations people, particularly in remote communities, English may be their second, third or fourth language...Research has shown that informal voting is higher in remote Indigenous communities, with language barriers and literacy levels being among the contributing factors.²⁴

- 2.36 Mr Rogers emphasised that the AEC was alert to such accessibility needs, stating that the pamphlet will be translated into '34 Culturally and Linguistically Diverse (CALD) languages and over 20 Indigenous languages'. However, Mr Rogers stated that this was a primary production challenge for the AEC:

The translation process itself isn't a straight translation process for some of those languages; it is actually a translation of the concept rather than the actual words behind it. So we have a few weeks to engage, translate those, quality control it in great detail and then distribute that information in time for citizens to make an informed choice.²⁵

- 2.37 While acknowledging that the pamphlet itself is important in informing voters, some submitters contended that the drafting process for the essays contained within the pamphlet lacks oversight. For example, ANU LRSJ argued:

there is no regulation, input or oversight for the arguments drafted by the subject members of Parliament, so misleading or exaggerated claims may be

²² Dr Scott Prasser, Senior Fellow, Centre for Independent Studies, *Proof Committee Hansard*, 4 May 2023, p. 7.

²³ Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, the *Joint Select Committee on Electoral Matters, Inquiry into Referendum (Machinery Provisions) Amendment Bill 2022*, *Proof Committee Hansard*, 19 December 2022, p. 21.

²⁴ NSW Council for Civil Liberties, *Submission 8*, p. 8.

²⁵ Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, *Proof Committee Hansard*, 4 May 2023, pp. 43–44.

included in the official pamphlet. This leaves open the possibility for the arguments to contain information that is deceptive, misleading or factually incorrect.²⁶

2.38 The NSW Council for Civil Liberties (NSWCCL) noted that Professor Megan Davis, co-chair of the Uluru Statement, had expressed concern that the official pamphlet will not be factchecked and could spread ‘misinformation and fabrication and racist messaging’ to voters. NSWCCL urged for the pamphlet to be factchecked to ‘reduce the risk of misinformation being spread to voters’.²⁷

2.39 Asked if he had any advice as to how the process of formalising the ‘Yes’ and ‘No’ case essays might occur in the absence of formal ‘Yes’ and ‘No’ campaign bodies, Dr Prasser said the government ought to show ‘some leadership’ and ‘ensure that there is a process of input, compilation and formalisation’. Dr Prasser was concerned that the government had not already set out the process:

And I'm a little bit unclear why that process has not been articulated or developed. We've got five or six months to go—or whatever it is—and one would think this should have been resolved by now. There should be a clear process of putting together these cases to reflect the legislation so that that information goes out, rather than what we're getting, which is information by drips, dripping down on us—sort of bits and pieces.²⁸

Lack of authoritative organisations

2.40 Evidence to the committee was critical of the decision not to establish authorised ‘Yes’ and ‘No’ campaign bodies, and concerned about the implications that this may have on the conduct of the referendum.

2.41 For example, Dr Prasser told the committee that not all Australians have a good or detailed knowledge of constitutional practice, and with so much ‘contrary and differing information’, having central bodies to refer to is important:

It's really devaluing democracy if we don't have this process, if we're only getting what certain organisations are saying, if we don't get something that has at least some official sanctioning and some clarity about the viewpoints.²⁹

2.42 Similarly, the Samuel Griffith Society argued that the ‘significant’ lack of awareness by the public underscored the need for official campaign bodies that would ‘act as authoritative sources of information throughout the referendum

²⁶ Australian National University Law Reform and Social Justice Research Hub, *Submission 15*, p. [2].

²⁷ NSW Council for Civil Liberties, *Submission 8*, p. 9.

²⁸ Dr Scott Prasser, Senior Fellow, Centre for Independent Studies, *Proof Committee Hansard*, 4 May 2023, p. 10.

²⁹ Dr Scott Prasser, Senior Fellow, Centre for Independent Studies, *Proof Committee Hansard*, 4 May 2023, pp. 7–8.

debate'.³⁰ It provided the committee with the following statistics on the public's understanding of the purpose of the referendum to support its claim:

- one in three Australians had 'little to no' awareness of the proposed constitutional amendment (Samuel Griffith Society, November and December 2022);
- 13 per cent of voters are confident they understand the plan for constitutional change (Resolve Strategic, January 2023);
- 63 per cent of voters desire more information about the proposal than is currently available (Resolve Strategic, February 2023); and
- 49 per cent of voters say that they do not have sufficient information [to make an informed decision], and need more.' (Freshwater Strategy, April 2023).³¹

2.43 As noted by Professor Anne Twomey in her submission to the JSCEM bill inquiry, a centralised and official case for 'Yes' or 'No' will decrease the risk of the public being misled by malign actors:

Care should be taken to ensure that there is an authoritative and trustworthy site that can be accessed by voters who wish to be better informed upon the issues...

A vacuum should not be left by the removal of the Yes/No case, as this will be filled by those who seek to mislead and manipulate.³²

Lack of public funding for 'yes' and 'no' campaigns

2.44 As established by the amendments to the Referendum Act, and subsequently confirmed by the government, public funding will not be provided for either a 'Yes' or a 'No' campaign, regardless of established bodies.³³ Submitters and witnesses to the inquiry encouraged the government to reconsider this approach.

2.45 For example, the Samuel Griffith Society submitted that the government should 'not hesitate' to use public funds to support official 'Yes' and 'No' campaign bodies as was done in 1999. It argued that this approach 'allowed Australians to benefit from a more comprehensive and effective national debate'.³⁴

³⁰ Samuel Griffith Society, *Submission 16*, p. [3].

³¹ Samuel Griffith Society, *Submission 16*, p. [3].

³² Professor Anne Twomey, Submission 5 to the *Joint Select Committee on Electoral Matters, Inquiry into Referendum (Machinery Provisions) Amendment Bill 2022*, p. [2].

³³ For example, the Assistant Minister to the Prime Minister, the Hon. Patrick Gorman MP, stated in the bill's second reading speech that 'the government has no intention of funding 'yes' and 'no' campaigns'. The Hon. Patrick Gorman MP, Assistant Minister to the Prime Minister, *House of Representatives Hansard*, 1 December 2022, p. 4026.

³⁴ Samuel Griffith Society, *Submission 16*, p. [3].

- 2.46 George Williams submitted to the JSCEM inquiry that the absence of such funding means it will be difficult to hold the government to account regarding its commitment not to fund campaign bodies.³⁵
- 2.47 The IPA agreed. Mr Daniel Wild, Executive Director, recommended that the government should ‘ensure total funding—government, corporate and philanthropic—is equal for both cases’.³⁶
- 2.48 The committee heard that, if the government were to ensure equality of funding, neither side of the debate would be denied the opportunity to adequately put their case to the public. The lack of proper investment in campaign bodies from the outset of the referendum increases the risk that there appears to be only one legitimate side to the debate.³⁷ Furthermore, the absence of allocated funding risks a dependence on private funding from vested interests.³⁸
- 2.49 The IPA submitted that this is what it has observed in the referendum debate so far. An analysis of documents by the IPA from the Australians Charities and Not-for-profits Commission revealed that a pro-Voice organisation, Reconciliation Australia Limited, received \$30.3 million in funding from state and federal government between 2017 and 2022. While the money was not specifically dedicated to a ‘Yes’ campaign, in practice it has been used to support it.³⁹
- 2.50 The Cape York Institute, a pro-Voice entity which sponsors the ‘From the Heart’ campaign, the stated purpose of which is to build ‘a positive case for a constitutionally-enshrined Voice to Parliament and build more support for a successful referendum’, received \$11 million in public funding. Therefore, the IPA argued:

It has been publicly funded bodies, over many years, that have been the driving force behind constitutional recognition. The “Yes” campaign organisations have been well funded for years and ready to start campaigning as soon as the referendum proposal was announced last year. The “No” campaign has had to rely solely on private funds. The funding arrangements by successive federal governments have in reality been

³⁵ Professor George Williams, Joint Select Committee on Electoral Matters, *Inquiry into Referendum (Machinery Provisions) Amendment Bill 2022, Submission 1*, p. [2].

³⁶ Mr Daniel Wild, Executive Director, the Institute of Public Affairs, *Proof Committee Hansard*, 4 May 2023, p. 2.

³⁷ Institute of Public Affairs, *Submission 21*, p. 10.

³⁸ Samuel Griffith Society, *Submission 23 to the Joint Select Committee on Electoral Matters, Inquiry into Referendum (Machinery Provisions) Amendment Bill 2022*, p. 3.

³⁹ Institute of Public Affairs, *Submission 21*, p. 10.

grossly uneven for years, undermining the present claim of funding neutrality.⁴⁰

Referendum entities

2.51 A key purpose of the amendments to the Referendum Act was to streamline it with the Electoral Act. As outlined, this included amendments imposing financial disclosure, foreign donation limitations and authorisation requirements upon 'referendum entities'.

2.52 Clarification as to what will constitute a 'referendum entity', how they will be regulated, and what penalties would apply to non-compliant entities was sought from the AEC during the Finance and Public Administration Legislation Committee's Budget Estimates public hearing on 23 May 2023.

2.53 Mr Rogers explained that due to the heightened 'emotional involvement' that a referendum attracts, a larger number of individuals and organisations typically participate in a referendum than a general election:

A referendum, regardless of what the topic is, tends to be a once in a generation, so you can get a larger number of entities that might participate in a referendum than a general electoral event, which might mean that for many people it might be a once-off.⁴¹

2.54 Many of these participants could be considered a 'referendum entity' under the legislation, as demonstrated in the following exchange between Senator the Hon. Jane Hume and Ms Joanne Reid, Assistant Commissioner, Disclosure, Party Registration and Redistribution Branch, AEC:

Senator Hume: What's the threshold, from the AEC's perspective, for being a referendum entity?

Mr Rogers: ...any entity that's been formed for the purpose of campaigning at a referendum is a referendum entity. Obviously that's a threshold. But, if you're going to be campaigning and spend money campaigning, that is going to make you very likely to be a referendum entity.

Ms Reid: The disclosure threshold for the referendum will be \$15,200. If you have referendum expenditure or donate above that amount, then you incur the obligation to disclose.

Senator Hume: So a football club might be a referendum entity?

Ms Reid: It could be, yes.

Senator Hume: A political party could be a referendum entity?

Ms Reid: It could be.

Senator Hume: And an individual could also be a referendum entity?

⁴⁰ Institute of Public Affairs, *Submission 21*, p. 10.

⁴¹ Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, Senate Finance and Public Administration Legislation Committee, *Proof Committee Hansard*, 23 May 2023, p. 47.

Ms Reid: Yes.⁴²

2.55 The committee were informed that some of these entities may have ‘never been involved in this process before’ and may be unaware of their reporting obligations.⁴³

2.56 To address this, Mr Rogers outlined the AEC’s educational measures, including its commencement of a ‘comprehensive education campaign’ designed to inform those who may have referendum disclosure obligations. This has included ads on social media and in print media, and working with other peak bodies and organisations, such as the Australian Charities and Not-for-profits Commission, to provide additional information and contact organisations directly where necessary.⁴⁴

2.57 Ultimately, however, Mr Rogers stated that it is an ‘individual responsibility’ for organisations to comply with these obligations:

Knowing those obligations absolutely is an individual responsibility for citizens and entities to comply with the electoral laws, at referendum and at election time. We do go the extra mile to make sure that people are aware of what those obligations are.⁴⁵

2.58 The AEC was asked about transparency measures being enacted for the referendum. Unlike the Electoral Act, under which ‘electoral entities’ are required to formally register with the AEC, it confirmed that there will not be a register of referendum entities.⁴⁶

2.59 However, Mr Rogers told the committee that the AEC will publish returns for referendum entities:

The only information that we’ll be providing will be after the event at the appropriate time through the transparency register, after entities have lodged their returns with us, well after the event, in accordance with the legislation...Twenty-four weeks after referendum day—polling day—we will then release that information. But prior to that it would be impossible

⁴² Ms Joanne Reid, Assistant Commissioner, Disclosure, Party Registration and Redistribution Branch, Australian Electoral Commission, Senate Finance and Public Administration Legislation Committee, *Proof Committee Hansard*, 23 May 2023, p. 57.

⁴³ Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, Senate Finance and Public Administration Legislation Committee, *Proof Committee Hansard*, 23 May 2023, p. 45.

⁴⁴ Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, Senate Finance and Public Administration Legislation Committee, *Proof Committee Hansard*, 23 May 2023, p. 36.

⁴⁵ Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, Senate Finance and Public Administration Legislation Committee, *Proof Committee Hansard*, 23 May 2023, p. 68.

⁴⁶ The Electoral Act provides for three types of entities to be registered by the AEC: political parties, significant third parties and associated entities, see Australian Electoral Commission, *Which entities need to be registered?*, 22 February 2023 https://www.aec.gov.au/parties_and_representatives/financial_disclosure/who-needs-to-register.htm (accessed 2 June 2023).

to have an updated list of 'yes' or 'no' campaigners because entities may decide at a drop of a hat to campaign or not to campaign. So there'll be no centralised list—unless there's another agency. I should be accurate: we're not going to be keeping a list. There may well be another entity doing so.⁴⁷

2.60 On the penalties that would apply to non-compliant entities, Mr Rogers said:

There's no punishment if you don't register as an entity with us. There's no registration. Where that may become tricky is after the event. If you don't meet your obligations for reporting after the event, that's a separate issue. There'll be a potential punishment, at the end of a long process of education, to make sure that people adhere to their obligations....

The second part that you're talking about is the financial disclosure scheme. That's why we're doing education right now to make sure people are aware of their obligations. But just like at election time, returns for elections are submitted well after the election itself and we don't take action until after the election. The system is built that way. That will be the same for the referendum.⁴⁸

⁴⁷ Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, Senate Finance and Public Administration Legislation Committee, *Proof Committee Hansard*, 23 May 2023, p. 59.

⁴⁸ Mr Tom Rogers, Electoral Commissioner, Australian Electoral Commission, Senate Finance and Public Administration Legislation Committee, *Proof Committee Hansard*, 23 May 2023, p. 60.

Chapter 3

The risk of foreign interference

Introduction

- 3.1 Australia faces grave challenges from espionage and foreign interference.¹ Malign foreign actors have previously interfered in Australian electoral events. More broadly, research by the Australian Strategic Policy Institute (ASPI) in 2020 identified 41 elections and seven referendums between January 2010 and October 2020 where cyber-enabled foreign interference was reported, encompassing both cyber operations targeting the electoral system and online information operations.² ASPI's data showed that Russia was the most prolific state actor engaging in online interference, followed by China whose cyber-enabled foreign interference activities had significantly increased over this period, in addition to Iran and North Korea which have also attempted to influence foreign elections in recent years.
- 3.2 In the context of the referendum, therefore, it is pertinent to ask: why might a foreign actor wish to interfere in a domestic referendum into an Aboriginal and Torres Strait Islander Voice to Parliament, and how might foreign interference activities take place?
- 3.3 It is not necessarily the case that a foreign actor would interfere in this referendum because they have a particular interest in either the 'Yes' or 'No' result prevailing. Rather, it is more likely that a malign foreign actor would seek to profit by exacerbating existing tensions within Australian society as a means of undermining social cohesion and national unity, and of harming Australia's democratic institutions and processes in the eyes of the public.
- 3.4 In recent years, foreign actors have 'taken advantage of the digitisation of election systems, election administration and election campaigns to interfere in foreign elections and referendums'.³ Therefore, there is a clear risk that this referendum could be used as another vehicle to subvert Australia's democracy.
- 3.5 To that end, this chapter begins by considering the nature and the risk of foreign interference in electoral events such as the upcoming referendum. The chapter then looks at existing measures to combat foreign interference. The chapter then

¹ Australian Security Intelligence Organisation, *Director-General's Annual Threat Assessment*, 21 February 2023, <https://www.asio.gov.au/director-generals-annual-threat-assessment-2023> (accessed 28 May 2023).

² Sarah O'Connor, Fergus Hanson, Emilia Currey and Tracy Beattie, Australian Strategic Policy Institute, *Cyber-enabled foreign interference in elections and referendums*, Report No. 41/2020, p. 4.

³ Sarah O'Connor, Fergus Hanson, Emilia Currey and Tracy Beattie, Australian Strategic Policy Institute, *Cyber-enabled foreign interference in elections and referendums*, Report No. 41/2020, p. 1.

examines whether the government has instigated any additional protective measures for the upcoming referendum.

Foreign interference in Australia's electoral events

3.6 The Electoral Integrity Assurance Agency (EIAT) is a cross-departmental taskforce comprised of the following federal agencies:

- Australian Electoral Commission (co-chair);
- Department of Finance (co-chair);
- Department of the Prime Minister and Cabinet;
- Department of Infrastructure, Transport, Regional Development, Communications and the Arts;
- Department of Home Affairs;
- Attorney-General's Department;
- Australian Federal Police;
- Australian Signals Directorate; and the
- Office of National Intelligence.

3.7 The EIAT describes foreign interference as:

...activities carried out by, or on behalf of, a foreign actor, and is coercive, corrupting, deceptive or clandestine, and contrary to Australia's sovereignty, values and national interests.⁴

3.8 Mr Tom Sear, a researcher at the University of New South Wales, submitted that the referendum is a 'high value target for a hostile state interference campaign'. The aim of such a campaign would be to reduce the quality of debate, 'muddy the waters', and sow confusion not only about the debate but about the broader value of democracy itself.⁵

3.9 In this context, it is useful to draw a distinction between 'misinformation' and 'disinformation'. The EIAT uses the following definitions of misinformation and disinformation, to which the committee refers:

- misinformation is false information that is spread due to ignorance, or by error or mistake, without the intent to deceive; and
- disinformation is knowingly false information designed to deliberately mislead and influence public opinion or obscure the truth for malicious or deceptive purposes.⁶

⁴ Electoral Integrity Assurance Taskforce, *Foreign Interference Factsheet*, 29 July 2023, https://www.aec.gov.au/About_AEC/files/eiat/eiat-foreign-interference-factsheet.pdf (accessed 3 May 2023).

⁵ Mr Tom Sear, *Submission 21*, p. 1.

⁶ Electoral Integrity Assurance Taskforce, *Disinformation and Misinformation*, https://www.aec.gov.au/About_AEC/files/eiat/eiat-disinformation-factsheet.pdf (accessed 29 May 2023).

- 3.10 The Department of Foreign Affairs and Trade warns that social media has become a haven for disinformation and misinformation:

The increasing ubiquity of cyberspace and social media platforms as a source of information and for personal engagement on a wide range of social and community issues has made them a key venue for the dissemination and amplification of disinformation and misinformation.⁷

- 3.11 Similarly, the Department of Home Affairs (Home Affairs) identified social media as a primary mechanism by which foreign actors may choose to spread disinformation:

Social media platforms provide unique opportunities for foreign actors to amplify information operations at low cost and with anonymity. Social media is a channel for foreign actors to obtain: personal information, spread disinformation, undermine democratic processes and institutions, silence dissent, and limit free speech.⁸

- 3.12 The Australian Security Intelligence Organisation (ASIO) has warned of the unprecedented threat of foreign interference to Australia's interests. On 21 February 2023, Mr Mike Burgess, Director-General of ASIO, delivered ASIO's annual threat assessment for 2023. In it, the Director-General stated that:

Australia is facing an unprecedented challenge from espionage and foreign interference and I'm not convinced we, as a nation, fully appreciate the damage it inflicts on Australia's security, democracy, sovereignty, economy and social fabric.

Multiple nations are using espionage and foreign interference to advance their interests and undermine Australia's.

They are using espionage to covertly understand Australia's politics and decision-making, our alliances and partnerships, and our economic and policy priorities.⁹

- 3.13 The government has publicly stated that it is abreast of the risk that foreign interference poses to Australia. In an address to the National Security College at the Australian National University on 14 February 2023, the Minister for Home Affairs, the Hon. Clare O'Neil MP outlined how malign actors might seek to interfere and what impact that might have on Australia:

We see it too, on social media, where foreign governments covertly try to sow division around political issues that are felt deeply within the Australian community. They are trying to deliberately deteriorate our social

⁷ Department of Foreign Affairs, *Disinformation & Misinformation*, <https://www.internationalcybertech.gov.au/our-work/security/disinformation-misinformation> (accessed 30 May 2023).

⁸ Department of Home Affairs, *Submission 5*, p. 2.

⁹ Australian Security Intelligence Organisation, *Director-General's Annual Threat Assessment*, 21 February 2023.

fabric and cause conflict and painful rifts between neighbours who have lived peacefully together for many years...

Foreign interference is not hypothetical. It is not merely something that lies in our future. It is happening today, and we need to do more to tackle it, today.¹⁰

3.14 As well as seeking to manipulate community discourse and understanding of social issues, malign actors may also seek to undermine trust in public institutions. The Australian Electoral Commission (AEC) submitted that:

The spread of disinformation is an increasing problem for electoral administrators globally. Malign actors constantly attempt to warp the broad electoral information ecosystem as a means of misleading voters and undermining democratic processes (thereby weakening community confidence in electoral outcomes).¹¹

3.15 Instances of attempted foreign interference in Australian electoral events have occurred. The lead up to the 2019 Federal Election is one such example. The ASPI reported in 2019:

On 18 February 2019, Australian Prime Minister Scott Morrison confirmed that a hacker group had targeted the Liberal, Labor and National parties and accessed the servers at Parliament House. The Prime Minister has noted that the breach, which occurred on 8 February 2019, was the work of a 'sophisticated state actor'. While the Australian Government hasn't specified which state was suspected of carrying out the operation, many commentators publicly identified China as the most likely.¹²

3.16 Other democratic nations have experienced similar attacks. In March 2023, the media reported that leaked intelligence reports from the Canadian Security Intelligence Service advised that disinformation campaigns made undisclosed donations to support preferred candidates in Canada's 2021 federal election. Alleged objectives attributed to these actors were not just a specific outcome in that election but division and disunity and the undermining of national cohesion.¹³

Current preventative arrangements

3.17 Several pieces of legislation and supporting arrangements, put in place by successive governments, provide Australia's electoral processes with

¹⁰ The Hon. Clare O'Neil MP, Minister for Home Affairs, *Foreign interference in Australia – ANU Address*, 14 February 2023, <https://minister.homeaffairs.gov.au/ClareONeil/Pages/foreign-interference-in-australia.aspx> (accessed 29 May 2023).

¹¹ Australian Electoral Commission, *Submission 3*, p. 1.

¹² Fergus Hanson, Sarah O'Connor, Mali Walker and Luke Courtois, Australian Strategic Policy Institute, *Hacking democracies: Cataloguing cyber-enabled attacks on elections*, Report No. 16/2019, p. 26.

¹³ Leyland Cecco, 'Canada roiled by leaked intelligence reports of Chinese election 'meddling'', *The Guardian*, 7 March 2023, <https://www.theguardian.com/world/2023/mar/07/canada-china-election-meddling-leaked-intelligence-reports> (accessed 29 May 2023).

protections against foreign interference. Some exist alongside electoral legislation, such as the financial disclosure arrangements contained in the Electoral Act, described in chapter 2.

- 3.18 However, as noted in the Interim Report of the Senate Select Committee on Foreign Interference through Social Media, ‘while several pieces of legislation apply to social media and the online environment more generally...none specifically address the problem of foreign interference through social media’.¹⁴ The social harm that may arise from the spread of misinformation via social-media is considered in chapter 4.
- 3.19 The committee received limited evidence on two measures that may help protect the integrity of the referendum process, namely the Foreign Influence Transparency Scheme (FIT Scheme), and the Electoral Integrity Assurance Taskforce. These are covered below.

Foreign Influence Transparency Scheme

- 3.20 The Foreign Influence Transparency Scheme is administered by the Attorney-General’s Department (AGD). The AGD described it as a ‘key transparency measure to provide visibility of the nature, level and extent of foreign influence in Australia’s political and governmental processes’.¹⁵
- 3.21 Under the FIT scheme, individuals and entities are required to register certain activities ‘for the purpose of influencing a political or governmental process or decision on behalf of a foreign principal’.¹⁶
- 3.22 A ‘foreign principal’ includes a foreign government, a foreign political organisation, a foreign government related entity and a foreign government related individual. Registerable activities include parliamentary lobbying, general political lobbying, communications activities and financial disbursement activities.¹⁷

Electoral Integrity Assurance Taskforce

- 3.23 As a cross-departmental taskforce, the EIAT provides a mechanism for sharing information between relevant agencies on potential threats to electoral integrity

¹⁴ Senate Select Committee on Foreign Interference through Social Media, *Interim Report*, December 2021, p. 65.

¹⁵ Attorney-General’s Department, *Submission 1*, p. 2.

¹⁶ Attorney-General’s Department, *Submission 1*, p. 2.

¹⁷ See also Attorney-General’s Department, *Foreign Influence Transparency Scheme commences today*, *Media Release*, 10 December 2018.

such as disinformation campaigns, foreign interference, and cyber intrusions. When required, the EIAT is also supported by intelligence agencies.¹⁸

3.24 Mr Scott Dilley, First Assistant Secretary, Governance Division, Department of Finance, described the EIAT as the ‘primary mechanism by which [the departments] coordinate and share information, including with the intelligence agencies’.¹⁹

Foreign interference in the referendum

3.25 With respect to the risk of foreign interference in the referendum, the following sections consider:

- the extent of the advice sought by the executive government on the risk of foreign interference;
- the Government’s own understanding of the risk;
- the adequacy of the federal response; and
- the government’s interaction with social media platforms.

Extent of advice sought by the government

3.26 The Special Minister of State, Senator the Hon. Don Farrell, is the minister responsible for the successful delivery of the referendum. Prior to the start of this inquiry, Minister Farrell was questioned on the government’s awareness of, and preparation for, foreign interference in the referendum.

3.27 On 22 March 2023, during Senate proceedings, Senator James Paterson asked Minister Farrell if the government had received any advice about the risk of foreign interference in the upcoming referendum.²⁰

3.28 Minister Farrell responded: ‘I’m not aware of any specific advice that we have received in relation to foreign interference in the referendum. But, as always, I’m sure the AEC will monitor these issues.’²¹

3.29 When pressed, Minister Farrell further stated:

I’m very confident, Senator Paterson, that the AEC are dealing with any issues that might relate to foreign interference in exactly the same way they deal with them at general elections—that is, very competently. If there were any issues that I needed to be made aware of, I’m sure the AEC would have done that. As I said, I was in conversation with the commissioner only

¹⁸ Australian Electoral Commission, Electoral Integrity Assurance Taskforce, 29 July 2023, https://www.aec.gov.au/about_aec/electoral-integrity.htm (accessed 3 May 2023).

¹⁹ Mr Scott Dilley, First Assistant Secretary, Governance Division, Department of Finance, *Proof Committee Hansard*, 4 May 2023, p. 23.

²⁰ Senator James Paterson, *Senate Hansard*, 22 March 2023, p. 29.

²¹ Senator the Hon. Don Farrell, Minister for Trade and Tourism, Special Minister of State and, Deputy Leader of the Government in the Senate, *Senate Hansard*, 22 March 2023, p. 29.

yesterday afternoon. He certainly didn't raise with me any issues in relation to foreign interference.²²

3.30 Senator Paterson pointed out that the Attorney-General, the Hon. Mark Dreyfus MP, had publicly mentioned the risk of foreign interference in the referendum. Senator Paterson asked Minister Farrell to clarify his answer and provide information on whether he or any government minister had met with any social media tech platforms about the risk of foreign interference in the referendum. Minister Farrell endeavoured to come back to Senator Paterson with an answer later that day.²³

3.31 Minister Farrell subsequently tabled a statement which read, in part:

- I understand at the National Press Club, the Attorney-General last year expressed concern about overseas funding of campaigning in the upcoming referendum, and that he was referring to foreign donations.
- I also understand that he did not refer to 'advice'.²⁴

3.32 The tabled document did not answer whether the government had met with the social media tech platforms.

3.33 Senator Paterson asked again whether the government had sought advice about the risk of foreign interference in the referendum. After an exchange, Minister Farrell responded, 'I can talk for myself, and the answer to that is no'.²⁵

3.34 On the way the government intends to address instances of foreign interference in the referendum, Minister Farrell said:

We're going to apply the foreign interference regulations that apply to a general election. We think that is the appropriate course of action to deal with any potential sources of foreign influence. If we find that there is foreign interference, we will ensure that it's dealt with in the same way that it would be dealt with in respect of a general election.²⁶

3.35 Following this exchange with Minister Farrell, Senator Paterson submitted two written questions on notice²⁷ through the Senate to the Attorney-General and the Minister for Home Affairs, asking if either minister's department or agencies

²² Senator the Hon. Don Farrell, Minister for Trade and Tourism, Special Minister of State and, Deputy Leader of the Government in the Senate, *Senate Hansard*, 22 March 2023, p, 29.

²³ Senator the Hon. Don Farrell, Minister for Trade and Tourism, Special Minister of State and, Deputy Leader of the Government in the Senate, *Senate Hansard*, 22 March 2023, p, 29.

²⁴ The Hon. Don Farrell, Minister for Trade and Tourism, Special Minister of State and Deputy Leader of the Government in the Senate (tabled 22 March 2023).

²⁵ The Hon. Don Farrell, Minister for Trade and Tourism, Special Minister of State and Deputy Leader of the Government in the Senate, *Senate Hansard*, 22 March 2023, p. 97.

²⁶ The Hon. Don Farrell, Minister for Trade and Tourism, Special Minister of State and Deputy Leader of the Government in the Senate, *Senate Hansard*, 22 March 2023, p. 98.

²⁷ Senate written questions on notice no 1714 and no 1715, asked on 30 March 2023.

had identified any foreign interference risks in the proposed referendum; whether the ministers had sought advice from their departments or agencies on the risk of foreign interference in the proposed referendum; whether the departments or agencies in the ministers' portfolios had offered to provide advice to government on the foreign interference risks; whether the departments or agencies had been directed by their ministers to monitor foreign interference and undertake planning to prevent foreign interference; and whether the ministers or their departments or agencies had consulted with technology and social media platforms on the risk of foreign interference in the proposed referendum.

- 3.36 The answers by both the Attorney-General and the Minister for Home Affairs unfortunately confirmed that the government is adopting a passive, business-as-usual approach to the foreign interference risks in this referendum.
- 3.37 In their answers, the Ministers pointed to the work being conducted by the EIAT which, while important, is reflecting a regrettable level of complacency as the government is not being proactive in identifying and mitigating foreign interference risks in the referendum.
- 3.38 Both ministers confirmed that they had not consulted with social media platforms—with the sole exception of one meeting that took place on 31 March 2023 with Deputy Secretary Andrew Kefford PSM, National Counter Foreign Interference Coordinator at the Department of Home Affairs with Tencent (owner of WeChat), just one day after Senator Paterson's question on notice was submitted—but even that meeting was limited to a discussion of the role of the EIAT and its support to the upcoming referendum.
- 3.39 From the above exchange, and the responses to Senator Paterson's questions on notice, it is clear that the government is regrettably complacent about the likelihood of foreign interference in the referendum.

Government understanding and assessment of the risk

- 3.40 Given the exchange between Senator Paterson and Minister Farrell on 22 March 2023, the committee sought to clarify whether a risk assessment had been undertaken by the government in relation to the referendum.
- 3.41 In evidence at the public hearing on 4 May 2023, government departments were asked to provide their assessment of the likelihood of, or the risk of, foreign interference in relation to the referendum.
- 3.42 Mr Anthony Coles, First Assistant Secretary, and Deputy Coordinator, Counter Foreign Interference Coordination Centre, Department of Home Affairs, told the

committee that such an assessment was ‘a matter for intelligence agencies’, but that the EIAT had received security advice from ASIO.²⁸

3.43 The committee was unable to ask ASIO directly as it declined both the committee’s invitation to provide a submission to the inquiry, and to give evidence at a public hearing. Other departmental representatives did not provide an answer.

3.44 In an answer to Senator Paterson’s question on notice about the Department of Home Affairs’ assessment on the likelihood of foreign interference in the upcoming referendum, the Department declined to be forthright with the committee by only stating:

ASIO is always considering the foreign interference threat to Australia’s political systems and process in line with its legislated role and this of course extends to the proposed referendum.

If ASIO identifies foreign interference targeting the proposed referendum, it would work quickly with its partners to address the threat. In accordance with long standing practice that is necessary to protect its methods and capabilities, ASIO does not talk about operational matters publicly.²⁹

Adequacy of the federal response

3.45 AGD submitted that it would be supporting the referendum through its administration of the FIT Scheme.³⁰ It pointed to its conduct during the 2022 federal election, stating:

As it did during the 2022 federal election, the department will consider any allegations that arise to determine whether any registrable activities are being undertaken, and work with government counterparts to assess whether any obligations under the Scheme apply to the material to ensure the integrity of the referendum.³¹

3.46 The committee heard that the EIAT was the other established framework in place to address risks to the integrity of electoral processes. Mr Dilley from the Department of Finance described the operation of the EIAT:

It is an information sharing and advisory body ultimately to the Electoral Commissioner, and so it can consider issues and the crossover and the boundaries of those issues, but then it would fall to individual entities, whether that was an intelligence agency or a law enforcement or perhaps a

²⁸ Mr Anthony Coles, First Assistant Secretary, and Deputy Coordinator, Counter Foreign Interference Coordination Centre, Department of Home Affairs, *Proof Committee Hansard*, 4 May 2023, p. 22.

²⁹ Department of Home Affairs, answers to questions taken on notice, 4 May 2023 (received 17 May 2023).

³⁰ Attorney-General’s Department, *Submission 1*, p. 1.

³¹ Attorney-General’s Department, *Submission 1*, p. 3.

civil response or a communications response, a regulatory response. The appropriate response would fall to the relevant agency or agencies to pursue under their relevant powers and legislation.³²

3.47 Mr Coles from Home Affairs added that structures in place under the EIAT allow the government to identify issues that may affect the integrity of the election, including foreign interference.³³

3.48 In addition, the committee heard that an ‘associated subgroup’, the Electoral Integrity Intelligence Forum (EIIF), co-chaired by Home Affairs and the Office of National Intelligence, would be in operation during the referendum. Mr Coles said of the EIIF:

The purpose is to bring that intelligence capability to bear in an appropriate way to support the Electoral Commissioner through the structure of the EIAT on matters that may go to the integrity of an electoral process.

It would use intel capability to do the detection piece, and then anything that was identified within that group would be passed to the EIAT for consideration and assessment.³⁴

3.49 The committee sought to clarify whether any specific measures had been put in place by the government in addition to those normally in operation or implemented for the purpose of a general election. None of the departments gave evidence to suggest that they had been instructed to enact any procedures above and beyond their normal operations.

3.50 Mr Dilley stated that the Department of Finance’s engagement had concerned the amendments of the *Referendum (Machinery Provisions) Act 1984*:

Some of the changes [to the Act], you would be familiar with, were to prevent foreign persons and entities from authorising referendum material, to restrict gifts and donations from foreign donors, and to prevent expenditure and fundraising by foreign persons and entities.³⁵

3.51 Mr Parker Reeve, Transparency and Administrative Law Branch, Integrity Frameworks Division, at AGD, said:

the department is a member of the EIAT and is actively engaged in supporting the integrity of the referendum through that process. The

³² Mr Scott Dilley, First Assistant Secretary, Governance Division, Department of Finance, *Proof Committee Hansard*, 4 May 2023, p. 27.

³³ Mr Anthony Coles, First Assistant Secretary, and Deputy Coordinator, Counter Foreign Interference Coordination Centre, Department of Home Affairs, *Proof Committee Hansard*, 4 May 2023, p. 24.

³⁴ Mr Anthony Coles, First Assistant Secretary, and Deputy Coordinator, Counter Foreign Interference Coordination Centre, Department of Home Affairs, *Proof Committee Hansard*, 4 May 2023, pp. 25–26.

³⁵ Mr Scott Dilley, First Assistant Secretary, Governance Division, Department of Finance, *Proof Committee Hansard*, 4 May 2023, pp. 23–24.

department has not otherwise received a direct request from the Attorney-General outside of those established channels.³⁶

3.52 Other departments also deferred to the EIAT as the primary mechanism by which the threat of foreign interference was being addressed. Mr Simon Gordon, Acting Group Manager, Empowerment and Recognition, National Indigenous Australians Agency, told the committee:

We have not had specific requests or exchange of advice with our minister. I think the broader position there is that the other agencies with responsibility and those baseline settings that you referred to, such as the EIAT, were the appropriate mechanisms for considering this.³⁷

Government interaction with social media platforms

3.53 Given social media is a key mechanism through which foreign interference occurs, the committee sought to clarify and assesses the effectiveness of current departmental arrangements and cooperation activities occurring with social media platforms.

3.54 The committee heard that relevant members of the EIAT had met with representatives from major tech platforms. An answer to a question on notice showed that between 3 February and 31 March 2023, ten meetings between the EIAT and major tech platforms had occurred, including Meta, Google, Snapchat, Tik Tok, Twitter, Microsoft, Tencent and Reddit.³⁸

3.55 According to Mr Matthew Haigh, Assistant Commissioner, Electoral Integrity and Communications Branch, Australian Electoral Commission, the purpose of the meetings was to build on existing relationships with the tech platforms and inform them of the differences between a referendum and a general election.³⁹

3.56 Other federal departments did not indicate any direct engagement with the social media platforms. Mr Dilley, for example, said that the Department of Finance did not meet directly with any tech platforms.⁴⁰

3.57 Meta (the parent company of Facebook, Instagram and WhatsApp) appeared before the committee on 10 May 2023. In his evidence, Mr Josh Machin, Head of Policy, outlined that in preparation for the referendum, Meta had met with the

³⁶ Mr Parker Reeve, Transparency and Administrative Law Branch, Integrity Frameworks Division, Attorney-General's Department, *Proof Committee Hansard*, 4 May 2023, p. 24.

³⁷ Mr Simon Gordon, Acting Group Manager, Empowerment and Recognition, National Indigenous Australians Agency, *Proof Committee Hansard*, 4 May 2023, p. 24.

³⁸ Electoral Integrity Assurance Taskforce, answers to questions taken on notice, 4 May 2023 (received 18 May 2023).

³⁹ Mr Matthew Haigh, Assistant Commissioner, Electoral Integrity and Communications Branch, Australian Electoral Commission, *Proof Committee Hansard*, 4 May 2023, p. 39.

⁴⁰ Mr Scott Dilley, First Assistant Secretary, Governance Division, Department of Finance, *Proof Committee Hansard*, 4 May 2023, p. 29.

EIAT and had close engagement with the intelligence and law enforcement agencies.⁴¹

3.58 In relation to any processes Meta would be undertaking specific to the referendum, Mr Machin said that Meta understood that the government intended to ‘mirror processes’ that were in place during the 2022 election:

Primarily, it's about having discussions about the pathways for agencies to send us any material on our services that they're concerned about during the election campaign. As you'll appreciate, the AEC, for example, will send us material that they're concerned might breach the Commonwealth Electoral Act. So we have fairly well established processes in place, and we appreciate the close and constructive working relationship with the AEC that mirrors what we've had for the last federal election.⁴²

3.59 Asked what specific measures Meta were taking to identify and mitigate instances of foreign interference, Mr Machin explained that, amongst other things, Meta:

- have strict verification requirements relating to paid advertisements in line with the authorisation requirements under the Referendum Act;
- fund research in this space as well so people can track trends in foreign interference and improve our preparedness to address it;
- support an extensive team that detects ‘coordinated inauthentic behaviour’ networks (for example, detecting four such networks during the 2019 federal election); and
- produce quarter transparency reports.⁴³

External views

3.60 Mr Sear argued that a coordinated, cohesive response is required to address Australia’s ‘imminent vulnerability’. He submitted that Australia has benefited from analogue processes ‘such as paper voting’, but that Australia’s current ‘operational focus, resourcing and legislative powers remain insufficient’ to address modern risks. To that end, Mr Sear recommended resourcing the intelligence and security agencies sufficiently to enable them to ‘commence an operational effort to detect and advise upon any hostile state influence campaign regarding the referenda in the Australian online sphere’.⁴⁴

3.61 Mr Daniel Wild, Executive Director of the Institute of Public Affairs took a firm view, submitting that the government has ‘failed’ to implement any protection

⁴¹ Mr Josh Machin, Head of Policy, Meta, *Proof Committee Hansard*, 10 May 2023, p. 2.

⁴² Mr Josh Machin, Head of Policy, Meta, *Proof Committee Hansard*, 10 May 2023, p. 2.

⁴³ Mr Josh Machin, Head of Policy, Meta, *Proof Committee Hansard*, 10 May 2023, pp. 4–5.

⁴⁴ Mr Tom Sear, *Submission 21*, p. 2.

against foreign actors who seek to use social media platforms to influence the public debate on the referendum.⁴⁵

- 3.62 While not inclined to pass an assessment on how well the government is currently engaging with the risk of foreign interference, Ms Alice Dawkins, Executive Director of Reset.Tech Australia, did encourage the government to 'act proactively'.⁴⁶

⁴⁵ Institute of Public Affairs, *Submission 21*, p. 3.

⁴⁶ Ms Alice Dawkins, Executive Director, Reset.Tech Australia, *Proof Committee Hansard*, 4 May 2023, p. 12

Chapter 4

Challenges in the online referendum debate

Introduction

- 4.1 The preceding chapters have focused on the conduct of the referendum in terms of official information given to the public, and foreign actors who might seek to interfere in the referendum. This chapter considers challenges arising in the civil debate itself, and particularly the online referendum debate.
- 4.2 Critical to any successful electoral event and the proper conduct of a civil debate in a liberal democracy is the dissemination of factual, relevant, and reliable information to the voting public. As discussed in chapter two, the official ‘Yes’ and ‘No’ case pamphlet distributed to every Australian ahead of the referendum will be a vital piece of information for voters. However, this is just one source of information on which Australian voters will be able to base their decision.
- 4.3 The Australian public increasingly accesses information and news websites via digital platforms.¹ Further, it appears that substantial numbers of people are concerned about the quality of news and journalism they are consuming.²
- 4.4 While the use of propaganda and the spread of misinformation is not a new trend during electoral events, a mechanism to spread misinformation so effectively has never existed before. Social media in the 21st century has dramatically increased the risks of misinformation and disinformation proliferating in online debate.
- 4.5 This chapter discusses the challenges of administering the online referendum debate, and the harm that may arise from the proliferation of misinformation. It begins by summarising the current regulatory arrangements. Next, the key issues arising from misinformation are outlined, namely the manipulation of community discourse and understanding of the referendum question, and the harassment of Aboriginal and Torres Strait Islander people. The chapter finishes by outlining gaps in the regulatory framework followed by some suggestions for improvement.

Current regulatory arrangements

- 4.6 Conduct on social media platforms is regulated by government agencies, empowered by relevant legislation, and co-regulatory and self-regulatory

¹ See, for example, Australia Competition & Consumer Commission, *Digital Platforms Inquiry, Final Report*, June 2019, p. 55.

² See, for example, Australia Competition & Consumer Commission, *Digital Platforms Inquiry, Final Report*, June 2019, p. 355.

schemes. The following section outlines some of the measures currently in operation.

Australian Electoral Commission

4.7 During electoral periods, the Australian Electoral Commission (AEC) undertakes some actions to address online content, such as:

- enforcement of the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984*, which requires electoral/referendum communications to be authorised by the publisher;
- administration of the 'Stop and Consider' campaign which encourages people to consider the source of electoral advertising and material; and
- maintaining a 'Disinformation Register', which actively monitors and reports upon factually incorrect electoral related social media content.³

eSafety Commissioner

4.8 The eSafety Commissioner (eSafety) is Australia's independent regulator for online safety. eSafety's legislative functions are provided for by the *Online Safety Act 2021*, which include:

- coordinating online safety activities across the Australian Government;
- supporting and conducting educational and community awareness programs;
- administering regulatory complaints and investigations schemes, including cyberbullying of children, cyber abuse of adults, the non-consensual sharing of intimate images, and illegal or restricted online content; and
- regulation of social media platforms' broader systems and processes.⁴

4.9 Online material is considered cyber abuse by eSafety if it is:

...posted on a service such as a social media service, if it targets a particular Australian adult, if it is intended to cause serious harm, and if it is menacing, harassing or offensive in all the circumstances.⁵

Australian Communications and Media Authority

4.10 The Australian Communications and Media Authority (ACMA) is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications and telecommunications in Australia. Many of ACMA's functions and powers are conferred by the *Broadcasting Services Act 1992*

³ Australian Electoral Commission, *Submission 3*, p. 1.

⁴ eSafety Commissioner, *Submission 10 to the Senate Select Committee on Foreign Interference through Social Media*, p. 1.

⁵ Senate Select Committee on Foreign Interference through Social-Media, eSafety Commissioner, *Submission 10*, p. 1.

(BSA Act). The BSA Act sets out the regulatory environment for the traditional television and radio broadcasting industry in Australia.

4.11 However, ACMA's remit also includes aspects of online content regulation. The ACMA 'monitors digital platforms' activities under the voluntary Australian Code of Practice on Disinformation and Misinformation (the ACPDM), including in response to coordinated campaigns by foreign actors'.⁶

4.12 In January 2023, the Government announced it will consult on new legislation that would provide the ACMA with new regulatory powers to formally oversee the activities of digital platforms with respect to mis- and disinformation. Proposed new powers for the ACMA include:

- formal information-gathering powers (including powers to make record keeping rules) to oversee digital platforms (for the purposes of incentivising greater transparency), including the ability to request certain data on the effectiveness of measures to address disinformation and misinformation; and
- powers to register an enforceable industry code and a standard (should industry self-regulation measures prove insufficient in addressing the threat posed by misinformation and disinformation). This graduated set of powers includes measures to protect Australians, such as stronger tools to empower users to identify and report relevant cases.⁷

Australian Code of Practice on Disinformation and Misinformation

4.13 Commencing in 2021, the Australian Code of Practice on Disinformation and Misinformation is a voluntary code of conduct designed to reduce the risk of online misinformation causing harm to Australians. The ACPDM contains a range of best practice commitments by signatory platforms that are targeted at protecting Australians participating in democratic policy making processes from harmful misinformation and disinformation such as voter fraud, voter interference, and voting misinformation, while also ensuring that signatories give due regard to human rights such as the need to protect citizens freedom of speech. The code currently has eight signatories: Adobe, Apple, Google, Meta, Microsoft, Redbubble, TikTok and Twitter.⁸

⁶ Australian Communications and Media Authority, Submission 6, to the *Senate Select Committee on Foreign Interference through Social Media*, p. 1.

⁷ The Hon Michelle Rowland MP, Minister for Communications, 'New ACMA powers to combat harmful online misinformation and disinformation', *Media Release*, 20 January 2023.

⁸ Digital Industry Group Inc, Australian Code of Practice on Disinformation and Misinformation, <https://digi.org.au/disinformation-code/> (accessed 2 June 2023).

ACMA review

4.14 In June 2021, ACMA published its report on the adequacy of digital platforms' disinformation and news quality measures. It found that the scope of the ACPDM is limited by the threshold where both 'serious' and 'imminent' harm must be reached before action is required:

The effect of this is that signatories could comply with the code without having to take any action on the type of information which can, over time, contribute to a range of chronic harms, such as reductions in community cohesion and a lessening of trust in public institutions.⁹

4.15 ACMA also recommended that:

- the ACPDM should include private messaging due to increasing concern about the propagation of disinformation and misinformation through these services, particularly when used to broadcast to large groups;
- a clear and transparent measurement framework be developed; and
- that ACMA undertake an additional review on the ACPDM by the end of the 2022–23 financial year as the code administration framework was not yet completed.¹⁰

Platform policies

4.16 Each of the major social media platforms have internal policies or guidelines regarding what standard or content is accepted on its platform.

4.17 For example, Meta provided the committee with an outline of its policies on misinformation. Meta's policies on misinformation state that it will:

- remove misinformation that could directly contribute to the risk of imminent physical harm, interference with the functioning of political processes, and certain highly deceptive manipulated media; and
- reduce the spread of misinformation that is identified and verified as false by independent third-party fact-checkers.¹¹

4.18 These policies are guided by Meta's Community Standards, which outline what content is and is not allowed on Meta's services.¹²

4.19 To increase political, electoral and social issue ad transparency, Meta requires all advertisers of social issue, electoral and political ads in Australia to complete

⁹ Australian Communications and Media Authority, *Report on digital platform measures*, June 2021, p. 3.

¹⁰ Australian Communications and Media Authority, *Report on digital platform measures*, June 2021, pp. 3–4.

¹¹ Meta, *Submission 13*, pp. 14–19.

¹² Meta, *Community Standards*, <https://www.facebook.com/communitystandards> (accessed 29 May 2023).

a number of steps to confirm their authenticity and enhance transparency.¹³ Advertisers of such ads must provide identification and be authorised by Meta prior to running the ad. Advertisers must also include a ‘paid for by’ disclaimer on their ad, and have their ads stored in Meta’s publicly available Ad Library for seven years, even if the page that posted them is no longer operational.¹⁴

Independent third-party fact-checking

4.20 Some social media platforms, such as Meta, have commercial agreements with independent third-party fact-checking (3PFC) organisations. These organisations ‘identify, review and rate viral misinformation’.¹⁵

4.21 Meta submitted that it has agreements with ‘90 fact checking partners covering more than 60 languages’. It provided a description of how 3PFC functions:

An Australian user will see a warning label on content that has been fact-checked by an international factchecking partner. Content found to be false by our international fact-checking partners will be demoted in an Australian user’s Feed, meaning there is less chance of them seeing it.

Once a third-party fact-checking partner rates a post as ‘false’, we apply a warning label that indicates it is false and shows a debunking article from the fact-checker. It is not possible to see the content without clicking past the warning label.¹⁶

Key issues arising from misinformation

4.22 Submitters and witnesses pointed to two issues that may be exacerbated by online misinformation:

- manipulation of community discourse and understanding of the referendum question; and
- the harassment of Aboriginal and Torres Strait Islander people.

4.23 The following section outlines these concerns.

Manipulation of the referendum question

4.24 The Australia Institute contended that the referendum topic was at real risk of becoming subject to misinformation:

Exaggerated claims have been a feature of many earlier referendums. Constitutional experts warn that misinformation could distort how people

¹³ Josh Machin, ‘Expanding transparency around social issue ads in Australia’, *Meta Australia Blog*, 18 June 2021, <https://medium.com/meta-australia-policy-blog/expanding-transparency-around-social-issue-ads-inaustralia-c71f8e26d407> (accessed 29 May 2023).

¹⁴ Meta, *Ad Library*, https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=AU&media_type=all (accessed 29 May 2023).

¹⁵ Meta, *Meta’s Third-Party Fact-Checking Program*, 2023, <https://www.facebook.com/formedia/mjp/programs/third-party-fact-checking> (accessed 2 June 2023).

¹⁶ Meta, *Submission 13*, p. 17.

vote and factchecking has already found some claims made in relation to the Voice were incorrect or misleading. Vitriolic comments are already being anticipated, given the ugly and hyperbolic statements made by some opponents of the same-sex marriage plebiscite. The impact of misinformation will be amplified on social media.¹⁷

- 4.25 The RMIT Factlab stated it had already identified an increase in misinformation and disinformation relating to the referendum, spread through multiple forms of content. It provided a list of several ‘Voice-related debunks’ that it had discovered online thus far in the referendum campaign.¹⁸
- 4.26 Ms Dawkins, Executive Director of Reset.Tech Australia argued that the increased use of social media to access news has resulted in ‘intense audience fragmentation’—that is, the separation of audience groups from the mass audience due to specialised, personalised content created because of social media applications. She warned that audience fragmentation amplified ‘extraneous or extreme views which distort from this essential question of ‘yes’ or ‘no’ and separate the public from a common understanding of the world.¹⁹
- 4.27 RMIT Factlab described this phenomenon as ‘information disorder’ and considered it inextricably linked to the ease at which ‘information can be uploaded, shared and reshared on social media’.²⁰
- 4.28 Dr Shumi Akhtar, Associate Professor at the University of Sydney, submitted that in the context of the referendum ‘there is no limit to rumours and false and misleading information’.²¹

Online abuse of Aboriginal and Torres Strait Islanders

- 4.29 The potential for misinformation to create online space for racial abuse emerged as a key concern in evidence to the inquiry. Mr Toby Dagg, Acting Chief Operating Officer, eSafety Commissioner told the committee that there had been an increase in racially abusive material online:

We have seen some uptick in complaints that centre on material posted relevant to the Voice that seeks to denigrate or insult or threaten or otherwise abuse those who identify as Aboriginal and Torres Strait Islander and some of those who are expressing support for either position, either yes or no.²²

¹⁷ The Australia Institute, *Submission 18*, pp. 1–2.

¹⁸ RMIT Factlab, *Submission 17*, pp. [1–2].

¹⁹ Ms Alice Dawkins, Reset.Tech Australia, *Proof Committee Hansard*, 4 May 2023, p. 12.

²⁰ RMIT Factlab, *Submission 17*, p. [3].

²¹ Dr Shumi Akhtar, *Submission 6*, p. 2.

²² Mr Toby Dagg, Acting Chief Operating Officer, eSafety Commissioner, *Proof Committee Hansard*, 4 May 2023, p. 32.

4.30 Mr Dagg noted that the abuse eSafety had observed was primarily directed at individuals in their own capacity, rather than the position on the Voice the individual is maintaining:

Part of that, I think, is because some of the quality of debates online is coarsening. It seems to me, based on some of what I see during complaint review and some of what I notice myself on social media, that people tend to be a lot more ready to employ personal ad hominem attacks and threats in order to make a point online.²³

4.31 A similar increase in online abuse toward Aboriginal and Torres Strait Islander people is observed 'reliably' each year during the annual AFL Indigenous Round. The eSafety Commissioner submitted data quantifying this increase:

- An average of 5 per cent of all cyber abuse complaints to the eSafety Commissioner are made by Indigenous Australian adults.
- During the 2022 AFL Indigenous Round, 27 May to 3 June, 13.2 per cent of all adult cyber abuse complaints were made by Indigenous Australian adults.²⁴

4.32 Similarly, the Australian Muslim Advocacy Network (AMAN) submitted that it had observed an increase in campaigns aimed at 'dehumanising and demonising' Indigenous people in the lead up to the referendum.²⁵

4.33 AMAN stressed the importance of such rhetoric being stamped out, stating:

When dehumanising discourse becomes more socially acceptable, discrimination, disrespect and violence toward Indigenous people also becomes more acceptable: 'dehumanisation moves out-group members into a social category in which conventional moral restraints on how people can be treated do not seem to apply.'²⁶

4.34 However, in terms of reducing the presence of abusive material, the eSafety Commissioner's powers are 'remedial in nature' and 'not designed to achieve system change'.²⁷ For example, the informal assistance that the eSafety Commissioner provided to the AFL during the Indigenous Round events in 2020 and 2021 consisted mainly of making informal removal requests to social media

²³ Mr Toby Dagg, Acting Chief Operating Officer, eSafety Commissioner, *Proof Committee Hansard*, 4 May 2023, p. 32.

²⁴ eSafety Commissioner, answers to questions taken on notice, 4 May 2023 (received 18 May 2023).

²⁵ Australian Muslim Advocacy Network, *Submission 19*, p. 4.

²⁶ Australian Muslim Advocacy Network, *Submission 19*, p. 4; AMAN's working definitions for this harm followed a review of genocide prevention research, social psychological research, international case law and its own observations of discourse online, as outlined at Attachment A of its submission.

²⁷ Mr Toby Dagg, Acting Chief Operating Officer, eSafety Commissioner, *Proof Committee Hansard*, 4 May 2023, p. 32.

providers in cases where eSafety believed specific material may breach relevant terms of service.²⁸

4.35 Mr Dagg stated that, while it is not in eSafety's remit to 'generally patrol' for instances of abusive content, it was monitoring complaints data related to the Voice referendum.²⁹

Gaps in the regulatory framework and consequences

4.36 In its 2019 Digital Platforms Inquiry, the Australian Competition and Consumer Commission (ACCC) found that almost none of the regulations and codes that apply to traditional media (that is, newspapers, television, and radio) apply to the social media platforms. These include journalistic codes of ethics, broadcasting licensing conditions, telecommunications regulations and co-regulatory schemes.³⁰

4.37 This evidence about gaps in the regulatory framework was put to the committee by multiple witnesses.

4.38 For example, Ms Dawkins stated that traditional media is subject to independent oversight, but the digital platforms, 'who act as powerful digital media distributors' are not.³¹

4.39 AMAN noted:

- the *Broadcasting Services Act 1992* does not capture online material;
- the *Online Safety Act 2021* only addresses cyberbullying and abuse directed at individuals, not groups based on race; and
- the Australian Code of Practice on Misinformation and Disinformation is self-regulatory and has an unclear enforcement mechanism.³²

4.40 Reset.Tech argued that the ACPDM is inadequate, firstly because its 'industry-led drafting creates sub-standard levels of protection' and, secondly, because of its voluntary nature.³³

²⁸ eSafety Commissioner, answers to questions taken on notice, 4 May 2023 (received 18 May 2023).

²⁹ Mr Toby Dagg, Acting Chief Operating Officer, eSafety Commissioner, *Proof Committee Hansard*, 4 May 2023, pp. 31 & 33.

³⁰ Australian Consumer and Competition Commission, *Digital Platforms Inquiry, Final report*, June 2019, p. 15.

³¹ Ms Alice Dawkins, Reset.Tech Australia, *Proof Committee Hansard*, 4 May 2023, p. 12.

³² Australian Muslim Advocacy Network, *Submission 19*, p. 6.

³³ Reset.Tech Australia, *Submission 4*, p. 2.

- 4.41 The RMIT Factlab commented that there is no evidence to suggest that the ACPDM has generated any significant reduction in the rate of the spread of misinformation.³⁴
- 4.42 The Australia Institute's Centre for Responsible Technology argued that this is due to signatories to the ACPDM having 'failed to take the meaningful and material actions that would properly address the severity and influence of mis- and disinformation'.³⁵
- 4.43 This means that the social media platforms' adherence to the Code, or other regulatory schemes, is heavily reliant on internal organisational circumstances, as opposed to externally enforced obligations. Any pivot away from internal safety policies or measures may have the effect of amplifying mis- and disinformation. The decline of Twitter's internal trust and safety team was highlighted as a recent example of the failure to prevent harm:
- These teams are crucial for mitigating risk and preventing harm in environments such as referenda and the campaign. Again, this is the issue with self-imposed regulation. We are incredibly reliant on platforms' cautionary investments. We are, in Twitter's example, seeing the opposite of a cautionary investment.³⁶
- 4.44 Further, the self-regulatory nature of the ACPDM, and the framework itself, has led to significant variation between the operation of the major platforms.³⁷ Ms Jabri Markwell observed:
- There's a huge amount of variation between the different platforms and what they're doing...I think some companies are keen for regulation because they see it as creating a more even playing field for those companies that really are doing nothing and those companies that are doing something.³⁸
- 4.45 Ms Dawkins pointed out that most of the harm-reduction features that have been rolled out on Twitter and Facebook are the result of external pressure.³⁹
- 4.46 Ms Jabri Markwell from AMAN reasoned that the gaps caused the regulatory system to be 'reactive'. She explained that while the social media companies

³⁴ RMIT Factlab, *Submission 17*, pp. [4].

³⁵ RMIT Factlab, *Submission 17*, pp. [1-2].

³⁶ Ms Alice Dawkins, Executive Director, Reset.Tech Australia, *Proof Committee Hansard*, 4 May 2023, p. 13.

³⁷ The Australian Competition and Consumer Commission defined self-regulation as follows: 'self-regulation refers to when an industry sets its own standards of conduct and is supervised by an industry body representing the interests of its members'.

³⁸ Ms Rita Jabri Markwell, Adviser, Australian Muslim Advocacy Network, *Proof Committee Hansard*, 10 May 2023.

³⁹ Ms Alice Dawkins, Executive Director, Reset.Tech Australia, *Proof Committee Hansard*, 4 May 2023, p. 13.

adhere to Australian hate speech legal standards, they will only do so 'when a community or a person brings a legal action under our vilification and discrimination laws and has a court finding against that content'. Further, most targeted communities are not collectively organised to have resources dedicated to monitoring and compiling complaints to tech companies.⁴⁰

4.47 In sum both AMAN and Reset.Tech Australia argued that the current regulatory framework for social media platforms is failing to prevent the proliferation of misinformation and online abuse because the framework is 'neither comprehensive nor rigorous enough to address the threats posed by electoral mis and disinformation, including threats likely to emerge in the upcoming Voice referendum'.⁴¹

Suggestions to improve the regulatory framework

4.48 The committee received some suggestions for more comprehensive regulation.

4.49 Reset.Tech argued that broader regulatory requirements are 'urgently required to hold platforms accountable for exhibiting misinformation and disinformation, as well as requirements for transparency to enable effective independent oversight'. Ms Dawkins recommended proactive platform engagement in the short term. However, in the medium to long term, she suggested a comprehensive framework like the EU's *Digital Services Act* was required to raise standards.⁴²

4.50 The EU's *Digital Services Act* (DSA) entered into force on November 16, 2022. It places transparency and accountability obligations on platforms who disseminate misinformation and disinformation. It creates specific obligations to:

- conduct a systematic risk assessment of their platform at least once a year (for Very Large Online Platforms). Very large online platforms will have to mitigate against these risks, or face action from regulators;
- requirements around transparency and to allow 'vetted' independent researchers to access data. This should additionally allow independent verification of platform's risk assessments; and
- enable user appeals, through an internal complaints mechanism and an additional out-of-court settlement process.⁴³

⁴⁰ Ms Rita Jabri Markwell, Adviser, Australian, Australian Muslim Advocacy Network, *Proof Committee Hansard*, 10 May 2023, p. 9.

⁴¹ Reset.Tech Australia, *Submission 4*, p. ii; Australian Muslim Advocacy Network, *Submission 19*, p. 6.

⁴² Ms Alice Dawkins, Executive Director, Reset.Tech Australia, *Proof Committee Hansard*, 4 May 2023, p. 14; see also Dr Shumi Akhtar, *Submission 6*, p. 2.

⁴³ Reset.Tech Australia, *Submission 4*, p. 4.

- 4.51 Ms Kelly Mudford, Manager, Content and Platform Projects, Australian Communications and Media Authority, stated that whilst the aspects of the DSA are promising such as mandatory compliance and auditing requirements, it is too early to comment upon its effectiveness.⁴⁴
- 4.52 AMAN argued that regulation was needed to address the public harm of dehumanising speech and discourse enabled by social media companies and certain news outlets.⁴⁵ In terms of proactive steps to address abusive material online, Ms Jabri Markwell suggested:

I do think we need to look at asking social media companies to grant researchers access to the data to evaluate how their algorithms are ranking content, because we know from everything else that has been published that their algorithms tend to rank the lowest quality content. Therefore, initiatives such as fact-checker initiatives et cetera are piecemeal solutions to a much bigger, systemic problem, which we could shed some light on through granting researcher access to data, and that could even possibly be considered as part of legislation.⁴⁶

⁴⁴ Ms Kelly Mudford, Manager, Content and Platform Projects, Australian Communications and Media Authority, *Proof Committee Hansard*, p. 19.

⁴⁵ Ms Rita Jabri Markwell, Adviser, Australian Muslim Advocacy Network, *Proof Committee Hansard*, 10 May 2023, p. 11.

⁴⁶ Ms Rita Jabri Markwell, Adviser, Australian Muslim Advocacy Network, *Proof Committee Hansard*, 10 May 2023, p. 11.

Chapter 5

Committee view and recommendations

5.1 In this inquiry into the adequacy of current administrative arrangements for the upcoming referendum into an Aboriginal and Torres Strait Islander Voice to Parliament, the committee considered three key aspects:

- the implications of the government's amendments to the Referendum Act;
- the risk of foreign interference in the referendum; and
- challenges in the online referendum debate.

5.2 The committee's views on each issue are set out below.

Implications of the government's amendments to the Referendum Act

5.3 The conduct of the Voice referendum is provided by the *Referendum (Machinery Provisions) Act 1984*.

5.4 The government stated that its amendments to the Referendum Act had the express purpose of supporting transparency and accountability in the referendum.

5.5 However, the committee considers that the government has failed to substantially and sufficiently update the Referendum Act to reflect the modernisation of Australia's federal electoral framework, let alone the other challenges that Australia now faces.

5.6 The committee sets out three concerns with the Referendum Act below.

Establishment of official campaign entities

5.7 First, Australian electors require access to authoritative, reliable information to inform their vote. And yet, the government has failed to provide for the establishment of official 'Yes' or 'No' campaign entities for the upcoming referendum and in doing so, the government is leaving an information vacuum that bad actors will seek to fill for their own ends which seek to profit from division within our society.

5.8 As a result, the government is ignoring the real risk that foreign governments and potential adversaries will seek to use the Voice Referendum to fuel existing tensions within our society, undermine our social cohesion and national unity and do harm to our democratic institutions in the eyes of the public.

5.9 There is ample evidence to suggest that multiple disparate campaigns will diminish the capacity of Australian voters to access authoritative and reliable information.

5.10 In questioning government officials, Senator Paterson highlighted feedback he had received from across the tech platforms industry that it would have been

helpful if there had been an official Yes case and an official No case because that would provide an authoritative source of information that they could refer to if there are disputes about misinformation or disinformation or foreign interference in the referendum.¹

- 5.11 Unfortunately, the government has had very limited consultation with the tech platforms in the drafting of its legislation to update the machinery of government legislation for the upcoming referendum, and the government has made a deliberate policy choice to not establish an official Yes and No campaign entities, the corollary of which means that tech platforms will be in a more difficult position than necessary in combating foreign interference operations on their platforms.
- 5.12 The absence of authoritative bodies increases the risk that proxy organisations claiming to be official bodies will be able to spread misinformation or disinformation in the lead up to and during the referendum, making it difficult for voters to distinguish information from malign sources of influence and legitimate public debate.
- 5.13 Therefore, the committee is firmly of the view that official 'Yes' and 'No' campaign entities would act as reliable and trustworthy sources of information about the proposed changes to the Constitution and would help to counteract the influence of misinformation. As such, the committee considers that it would be preferable to have one official campaign for 'Yes' and another for 'No'.

Funding of official campaign entities

- 5.14 The second area of concern is the government's decision not to allocate public funding to either the 'Yes' or the 'No' campaign, regardless of the establishment of formal campaign entities.
- 5.15 The government has suggested that the decision not to fund either campaign means both campaigns will start on an even playing field.
- 5.16 However, the committee received evidence suggesting the lack of public funding will result in a situation where the campaigns become dependent on private funding to adequately promote their view. Further, the arrangements promoted by the government may encourage the perception that one campaign outcome is preferable to the other.
- 5.17 The committee notes that precedents exist for the funding of campaign entities. In the 1999 referendum, 'Yes' and 'No' campaign entities were established and \$15 million was allocated to be divided equally between the entities.

¹ Senator James Paterson, *Proof Committee Hansard*, 4 May 2023, pp. 29–30.

5.18 In defending the measures contained in the government's Referendum (Machinery Provisions) Amendment Bill 2022, the Attorney-General Mark Dreyfus KC MP told the House of Representatives:

I acknowledge that the opposition continues to argue that the government should be using taxpayers' money to fund official 'yes' and 'no' cases. The [Bill] does not provide for public funding of 'yes' or 'no' campaigns, let alone establish official campaign vehicles. And this government does not intend to move amendments to change this. As the Prime Minister has said, taxpayers should not be funding 'yes' or 'no' campaigns.²

5.19 What the Attorney-General has failed to mention is the fact that the position he has expressed on behalf of the Government is at odds with the very position he emphatically expressed as a recently elected backbencher during the Rudd Labor Government.

5.20 As Chair of the House of Representatives Standing Committee on Legal and Constitutional Affairs in 2009, Mr Dreyfus was tasked with inquiring into the machinery of referendums, with specific reference to the processes for preparing the Yes and No cases for referendum questions, provisions providing for the public dissemination of the Yes and No cases and limitations on the purposes for which money can be spent in relation to referendum questions.

5.21 As Chair of that Committee, Mr Dreyfus recommended in his final report, among other things, that the government 'should introduce amendments to remove the current limitation on spending imposed by section 11(4) of the Referendum (Machinery Provisions) Act 1984 (Cth) and to include provisions to ensure that spending is directed to referendum education and to **equal promotion of the Yes/No arguments**' (emphasis added).³

5.22 As Chair of that committee report, Mr Dreyfus articulated that it is important to ensure that 'the same principles of equality and fairness continue to apply once this limitation on spending is removed' and that there should be 'equal funding of the Yes and No cases, irrespective of their Parliamentary support'. Mr Dreyfus noted that this was 'in line with the original intention of the Yes/No pamphlet as well as **consistent with democratic ideals of informed debate**' (emphasis added).⁴

5.23 Additionally, the position the Attorney-General has adopted for this Voice referendum is at odds with the former Labor government's position in introducing the *Referendum (Machinery Provisions) Amendment Act 2013* for the

² The Hon Mark Dreyfus KC MP, Attorney-General, *House of Representatives Hansard*, 6 March 2023, p. 110.

³ House of Representatives Standing Committee on Legal and Constitutional Affairs, *A Time for Change: Yes/No?, Inquiry into the Machinery of Referendums*, December 2009, p. 65.

⁴ House of Representatives Standing Committee on Legal and Constitutional Affairs, *A Time for Change: Yes/No?, Inquiry into the Machinery of Referendums*, December 2009, pp. 65–66.

proposed 2013 referendum on the recognition of local government in the Constitution (which did not proceed). As the then Attorney-General, Mr Dreyfus noted that the 2013 bill would implement recommendation 11 of the 2009 report to lift the current limitation on spending because that restriction on Commonwealth expenditure is ‘a barrier to the development of [a] better and more effective referendum process’, and he recognised ‘the need to ensure that electors are as informed as possible...[this] is what the lifting of this current limitation on spending is directed to’.⁵

- 5.24 It is disappointing that as a leading cabinet minister of a government that is taking carriage of the first referendum Australia has had in over 20 years, Mr Dreyfus is going against his better instincts on the funding of the Yes and No cases of a referendum. The 2009 report demonstrated support for equal taxpayer funding of the Yes and No cases of a referendum because doing so would maximise public participation and democratic debate and ensure that Australians are fully informed on the merits or otherwise of constitutional change.
- 5.25 In today’s context, in which the proliferation of social media now has a significant influence over the way voters digest political information and participate in our democracy, it is the view of this committee that the equal funding of the official Yes and No campaign entities would guard against the unprecedented foreign interference risks our country is facing which threaten to undermine the referendum process and our social cohesion.
- 5.26 As acknowledged by the Attorney-General in the debate of the 2013 referendum bill, this would be consistent with the provisions adopted by the Howard government in the 1999 republic referendum.
- 5.27 Given the above, the committee regards the government’s decision not to provide public funding to campaign entities—even when pressed to do so by the Opposition—as seriously imprudent and regrettable.

Regulation of referendum entities

- 5.28 Third, the Referendum Act was amended to align it with recent changes to the *Commonwealth Electoral Act 1918*.
- 5.29 The committee considers new provisions such as the donation and disclosure regime to be appropriate and necessary additions to the referendum machinery. However, the committee retains some concerns regarding the implementation and enforcement of such regimes.

⁵ The Hon. Mark Dreyfus QC MP, Attorney-General, Minister for Emergency Management, Minister for the Public Service and Integrity and Special Minister of State, *House of Representatives Hansard*, 14 May 2013, pp. 3122–3123.

- 5.30 The Electoral Commissioner indicated that the referendum would attract many inexperienced, one-time participants who are unfamiliar with their obligations under the *Referendum (Machinery Provisions) Act 1984*, and many of whom may be unknowingly in breach of those obligations.
- 5.31 Further, the Electoral Commissioner stated that the Australian Electoral Commission will not keep a register of campaign entities throughout the referendum campaign. This is in stark contrast to the provisions under the *Commonwealth Electoral Act 1918* for a general election.
- 5.32 Given the above, the committee is gravely concerned that the government appears to have abdicated any responsibility for the fact that many inexperienced, one-time participants may unknowingly be in breach of their obligations under the Referendum Machinery Act. Further, it seems entirely unreasonable to saddle the Australian Electoral Commission with the responsibility for oversighting and educating a plethora of inexperienced, one-time participants.
- 5.33 In addition, the committee observes that the only information provided by the Australian Electoral Commission on referendum entities disclosure requirements will be 28 weeks after the conclusion of the referendum. This undoubtably has the potential to undermine the integrity of the referendum, as instances of referendum fraud and the capacity for sanctions would only occur after the result.
- 5.34 The committee emphasises that it does not doubt the ability of the Australian Electoral Commission to perform its assigned duties. Indeed, the committee reiterates its respect for, and appreciation of, the ongoing work of the Australian Electoral Commission. Nevertheless, the committee retains concerns that the current regulatory regime will not allow the Australian Electoral Commission to operate effectively as an administrator and auditor of the referendum.
- 5.35 Therefore, the committee reiterates its preference for the establishment of official campaign entities.

Government complacency on the risk of foreign interference

- 5.36 As the government has already acknowledged, there is a risk of foreign interference in the upcoming referendum campaign.
- 5.37 Given that foreign interference is covert, the committee recognises that there may be sound reasons for government departments and agencies to take appropriate care in not revealing the exact nature of the measures taken to counteract foreign interference to a public inquiry such as that conducted by this committee.
- 5.38 That being acknowledged, it is entirely appropriate for the committee to seek to establish in a public forum whether the government has adequately considered, and is appropriately responding to, the threat of foreign interference. This is the

bare minimum in terms of assuring the Australian public that the federal government has taken the threat seriously and has put appropriate mechanisms in place.

- 5.39 Yet, it seems to be the government's view that the existing arrangements are sufficient for guarding against the risk of foreign interference in the upcoming referendum. It is not clear to the committee how the government could have formed that view, given evidence to the inquiry suggests the government has not sought or received any advice from federal agencies about the risk of foreign interference, nor sought the feedback of social media and tech platforms about their concerns on the risks of foreign interference and what actions government could take to mitigate those risks.
- 5.40 In this regard, the committee notes that representatives of the relevant federal departments could not identify any additional steps taken to combat foreign interference in the lead up to the referendum. For example, the Attorney-General's Department noted that the Foreign Influence Transparency Scheme would be operating as it did during the 2022 federal election.
- 5.41 It would be naive to think that foreign actors will not seek to interfere in the referendum on the Voice. The committee points to recent reporting about foreign interference in the Canadian elections where content has been weaponised on social media platforms with the goal of undermining social cohesion and national unity.
- 5.42 The committee considers that the risk of malign foreign interference is exacerbated by the government's policy choice not to provide for formal 'Yes' or 'No' campaign entities. Further, the responsibility on campaign entities to self-police is at odds with the government's stated goal of minimising foreign interference.
- 5.43 The committee has therefore formed the view that the government is not taking the risk of foreign interference in the upcoming referendum sufficiently seriously. Priority must be given to improving the institutional architecture needed to respond effectively and proactively to the threat of foreign interference.

Challenges in the online referendum debate

- 5.44 The proper conduct of civil debate and the dissemination of factual, relevant, and reliable information to the voting public underpins any successful electoral event in a liberal democracy.
- 5.45 The committee recognises that much of the current referendum debate will occur in a lightly and predominantly self-regulated online environment.
- 5.46 Evidence to the committee indicated that the current online regulatory framework is insufficient to prevent the heightened dissemination of

misinformation, disinformation, and racially abusive material during the referendum campaign.

- 5.47 The committee is concerned by evidence that indicates online racial abuse directed at Aboriginal and Torres Strait Islanders appears to be increasing in the lead up to the referendum.
- 5.48 While not part of the committee's initial terms of reference, the committee considers that it would be useful for the government to commission a review into the current online regulatory framework noting that few of the regulations and codes that apply to traditional media apply to the social media platforms.

Concluding remarks

- 5.49 A decision to change the Australian Constitution is a significant national event.
- 5.50 Taken together, the committee does not consider that the regulatory framework in which this referendum will take place is sufficient to safeguard against the interrelated issues of the dissemination of misinformation and disinformation, the risk of malign foreign interference, and the increase in social harm and polarisation.
- 5.51 The committee notes that many of the above concerns have been raised repeatedly since the introduction of the Referendum (Machinery Provisions) Amendment Bill 2022 in December 2022. This suggests the government has either not properly considered the potential implications of such arrangements or, more alarmingly, has considered them but not deemed them important enough to be acted on for the upcoming referendum.
- 5.52 Therefore, the committee puts forward three key recommendations that will contribute to a referendum in which voters are empowered to make informed decisions, the integrity of the referendum process is upheld, and the risk of malign foreign interference is reduced.

Recommendation 1

- 5.53 **The committee recommends that the Australian Government immediately establish and authorise 'Yes' and 'No' campaign entity bodies.**

Recommendation 2

- 5.54 **The committee recommends that the Australian Government introduce amendments to remove the current limitation on spending imposed by section 11(4) of the *Referendum (Machinery Provisions) Act 1984* and to include provisions that ensure spending is directed in equal proportions to the 'Yes' and 'No' campaigns.**

Recommendation 3

5.55 The committee recommends that the Australian Government introduce amendments to the *Referendum (Machinery Provisions) Act 1984* to require the Australian Electoral Commission to maintain a register of campaign bodies, similar to Part XI of the *Commonwealth Electoral Act 1918*.

Senator the Hon Richard Colbeck
Chair

Government Senators' Dissenting Report

- 1.1 This Committee was tasked by the Senate with conducting an inquiry into the administration of the referendum into an Aboriginal and Torres Strait Islander Voice, with particular reference to (among other things) protections against foreign interference, misinformation and disinformation and other threats to the integrity of the referendum process.
- 1.2 Opposition members have made three recommendations in their report, two of which go to the establishment, and public funding, of official 'Yes' and 'No' campaign entities. This echoes a proposal put forward by the Opposition prior to the passage of the Referendum (Machinery Provisions) Amendment Bill 2022 earlier this year.
- 1.3 For the reasons outlined by the Government earlier this year, the proposal to establish publicly funded 'Yes' and 'No' campaign entity bodies in the *Referendum (Machinery Provisions) Act 1984* (Machinery Provisions Act) should not be supported. The Government believes that non-government organisations should lead the campaigns, and that no public funding should be allocated to either campaign.
- 1.4 Opposition Senators have also recommended that the Machinery Provisions Act be amended to require the Australian Electoral Commission to maintain a register of campaign bodies.
- 1.5 The amendments that were made to the Machinery Provisions Act earlier this year included a range of integrity and transparency measures in relation to referendums, including a new financial disclosure framework and a prohibition on foreign donations. These changes to the Machinery Provisions Act were the subject of a comprehensive inquiry by the Joint Standing Committee on Electoral Matters. They were also the subject of a lengthy parliamentary and public debate.
- 1.6 Labor members are not persuaded that the proposal put forward by Coalition Senators in Recommendation 3 would enhance or build on the carefully considered integrity and transparency measures that the Parliament enacted only a few months ago and which Coalition Senators supported.
- 1.7 Recommendation 3 should not be supported.
- 1.8 The Government take threats posed by foreign interference, misinformation and disinformation to the integrity of electoral processes, including referendum processes very seriously. This was borne out by the considerable amount of evidence the Committee received from a range of government agencies about the measures that are currently in place to address these threats.

- 1.9 Labor members would like to take this opportunity to commend Government agencies, including security and intelligence agencies, for the important work they do to protect the integrity of Australia's electoral processes from the threat of foreign interference. Labor members would also like to thank government departments and agencies, and members of the public, for their contributions to this inquiry.

Senator Louise Pratt
Deputy Chair

Senator Jana Stewart
Member

Appendix 1

Submissions

- 1 Attorney-General's Department
- 2 Google Australia
- 3 Australian Electoral Commission
- 4 Reset.Tech Australia
- 5 Department of Home Affairs
- 6 Dr Shumi Akhtar
- 7 Internet 2.0
- 8 New South Wales Council for Civil Liberties
- 9 First Nations Media Australia; News Media Research Centre
- 10 GetUp
- 11 SBS
- 12 eSafety Commissioner
- 13 Meta
- 14 Mr David Booth
- 15 ANU Law Reform and Social Justice Research Hub
- 16 The Samuel Griffith Society
- 17 RMIT FactLab
- 18 The Australia Institute
- 19 Australian Muslim Advocacy Network
- 20 Confidential
- 22 Mr Tom Sear

Appendix 2

Additional Information

Additional Information

- 1 Clarification of evidence given at a public hearing on 10 May 2023 provided by the Australian Muslim Advocacy Network (received on 11 May 2023).
- 2 Correction of evidence given at a public hearing on 4 May 2023 provided by the Australian Electoral Commission (received on 18 May 2023).

Answer to Question on Notice

- 1 Australian Communications Media Authority – answers to questions taken on notice – public hearing, 4 May 2023, Melbourne (received 17 May 2023)
- 2 Department of Home Affairs – answers to questions taken on notice – public hearing, 4 May 2023, Melbourne (received 17 May 2023)
- 3 Electoral Integrity Assurance Taskforce – answers to questions taken on notice – public hearing, 4 May 2023, Melbourne (received 18 May 2023)
- 4 eSafety Commissioner – answers to questions taken on notice – public hearing, 4 May 2023, Melbourne (received 18 May 2023)
- 5 Attorney-Generals Department – answers to questions taken on notice – public hearing, 4 May 2023, Melbourne (received 19 May 2023)
- 6 Reset.Tech Australia – answers to questions taken on notice – public hearing, 4 May 2023, Melbourne (received 19 May 2023)

Tabled Documents

- 1 Senator James Paterson – Rolling Stone article titled ‘Pro-China Internet Trolls Just Got Busted for Doing Something Wild’ published on 3 May 2023, tabled at a public hearing in Melbourne, 4 May 2023

Appendix 3

Public Hearings

Thursday, 4 May 2023
Hotel Grand Chancellor
131 Lonsdale Street
Melbourne VIC 3000

Institute of Public Affairs

- Mr Daniel Wild, Deputy Executive Director
- Mr John Storey, Director, Legal Rights Program

Centre for Independent Studies

- Dr Scott Prasser, Senior Fellow

Reset.Tech Australia

- Ms Alice Dawkins

Australian Communications and Media Authority

- Ms Creina Chapman, Deputy Chair
- Ms Kelly Mudford, Manager, Content and Platform Projects

Australian Signals Directorate

- Ms Abigail Bradshaw, Head of Australian Cyber Security Centre

Department of Home Affairs

- Mr Anthony Coles, First Assistant Secretary, Counter Foreign Interference Coordination Centre

Attorney-General's Department

- Mr Parker Reeve, A/g Assistant Secretary, Transparency and Administrative Law Branch, Integrity Frameworks Division

Department of Prime Minister and Cabinet

- Ms Genevieve Quilty, First Assistant Secretary, Social Policy Division

National Indigenous Australians Agency

- Mr Simon Gordon, Acting Group Manager, Empowerment and Recognition

Department of Finance

- Mr Scott Dilley, First Assistant Secretary, Governance Division

eSafety Commission

- Mr Toby Dagg, Acting Chief Operating Officer and General Manager

Australian Electoral Commission

- Mr Tom Rogers, Electoral Commissioner
- Ms Kath Gleeson, First Assistant Commissioner, Service Delivery Group

- Mr Andrew Johnson, Chief Legal Officer, Legal Services Branch
- Mr Matthew Haigh, Assistant Commissioner, Electoral Integrity and Communications Branch
- Ms Tracey Vassallo, A/g Assistant Commissioner, Disclosure, Party Registration and Redistribution Branch

Electoral Integrity Assurance Taskforce

- Mr Peter Rush, A/g First Assistant Secretary, Department of Prime Minister and Cabinet
- Ms Kathryn McMullan, First Assistant Director General Analytical Capabilities, Office of National Intelligence
- Mr Scott Dilley, First Assistant Secretary, Governance Division, Department of Finance
- Ms Pauline Sullivan, First Assistant Secretary, Online Safety, Media and Platforms Division, Department of Infrastructure, Transport, Regional Development, Communications and the Arts
- Mr Parker Reeve, A/g Assistant Secretary, Transparency and Administrative Law Branch, Integrity Frameworks Division, Attorney-General's Department
- Det Supt Anita van Hilst, Superintendent Special Investigations, Australian Federal Police
- Ms Abigail Bradshaw, Head of Australian Cyber Security Centre
- Ms Stephanie Crowe, First Assistant Director-General Cyber Security Resilience, Australian Signals Directorate

Wednesday, 10 May 2023

Committee Room 2S3

Parliament House, Canberra

Meta

- Mr Josh Machin, Head of Policy
- Ms Mia Garlick, Director of Policy

Australian Muslim Advocacy Network

- Ms Rita Jabri Markwell, Advisor