

# Commonwealth Electoral Amendment (Stop the Lies) Bill 2022

## Frequently Asked Questions

### Why is this Bill needed now?

Australia has had no shortage of examples of misleading and deceptive advertising campaigns. The 'Mediscare' and 'Death Tax' campaigns sought to mislead electors about alternative policies. The 2019 election also saw signs in Chinese that mimicked the purple theme of the Australian Election Commission, claiming that preferencing the Liberal Party is the "correct way to vote". These prominent examples are the tip of the iceberg. The advent of social media and the ability to micro target advertisements to particular audiences increases the need for minimum standards to apply to political advertising and misleading and deceptive content.

In Australia, numerous laws, regulations and codes already regulate against publishing misleading and deceptive content. There are strict laws governing financial advice, pharmaceutical manufacturers cannot say their product cures cancer, food companies cannot claim that sugary foods are good for children, and lawyers cannot guarantee that they will win every personal injury case. The public deserves the same standard, if not a higher one, from MPs and political parties.

This Bill prohibits authorised political advertising that is misleading or deceptive. It empowers the Electoral Commissioner to investigate possible breaches, order retractions, and publish corrections.

This Bill fills a vulnerability in Australia's electoral law. Existing protections against false political advertising are insufficient.

Extensive research shows that false political advertising is corrosive to our democracy, elections, and referenda. Without truth in political advertising regulations, disinformation may pollute the Voice referendum—as it did the Marriage Equality plebiscite.

Political advertisements that are deceptive and misleading interfere with the public's ability to make informed decisions. Without action and regulation, we risk a democratic crisis in which election campaigns and referenda are increasingly battlegrounds of competing disinformation campaigns, eroding public trust in institutions and democracy itself.

The main purpose of the Bill is to address the volume of misleading and deceptive political advertising that occurs during Federal elections and referenda. Each election, a number of advertisements and claims by candidates, their parties and associated campaign groups, are published that are untrue and designed to mislead or deceive the voter about the position or platform of an opposing candidate. The result of this has been an erosion of trust in political advertising and in politicians generally.

This Bill is designed to implement safeguards in Australia against misleading and deceptive advertising. Australia has often been a leader in democratic innovation, and this legislation is a genuine step towards improving the functionality of our democracy. This Bill does not constrain political expression, rather it improves the efficiency of free political communication by seeking to constrain the flow of disinformation around elections.

Campaigners argue that scare tactics and campaigns built on fear, work. However, as a result, the public trust of politicians and the political system is being eroded. We also know the community is fed up with it. According to polling conducted by the Australia Institute, 87% of people support truth in political advertising laws.

### ***What kind of ads will the Bill capture?***

The Bill makes it an offence to publish misleading or deceptive content, in which ‘publish’ is to communicate by any means, including by print, radio, television, internet or telephone.

### ***Who would have responsibility for regulating it?***

The Bill establishes the Australian Electoral Commission as the responsible body for regulation. This has been done for several reasons. The AEC is an established and trusted body that already has a role in regulating elections and advertising related to elections. Similar truth in political advertising laws in South Australia and the Australian Capital Territory have given their electoral commissions the power to regulate – the *Stop The Lies Bill* continues that precedent.

Anybody can make a complaint to the Commissioner, and complaints can also be escalated to the courts.

### ***What are the consequences of breaching the proposed laws? Are there fines or infringements involved for parties that use blatant lies in advertising?***

If the Electoral Commissioner is satisfied that the proposed Act has been breached, then they can direct the person to not further publish or spread the misleading material further. The Commissioner can also require a correction to be published by the person or group that first breached the law.

A financial penalty may also apply.

### ***Doesn't the Electoral Act already cover this?***

The *Electoral Act 1918* only makes it an offence to mislead or deceive an elector in relation to the physical mechanics of how to cast a valid vote by filling in a ballot paper. This is an important and necessary law and will not be affected by the passage of the *Stop The Lies Bill*.

### ***Does it infringe on political expression or free speech? Is it Constitutional?***

The *Stop The Lies Bill* safeguards the ability of Australians to engage in political debate. The marketplace of ideas only functions properly when the flow of information is true.

Dis/misinformation impacts upon the efficiency of the marketplace of ideas, reducing our ability to engage constructively and to make informed decisions.

While it hasn't been tested in the High Court of Australia, the SA Supreme Court has ruled that truth in political advertising laws in South Australia are within the bounds of the Constitution.

### ***How can you regulate the truth?***

In Australia, numerous laws, regulations and codes already regulate the truth, and whether or not someone can publish misleading and deceptive content.

Australian consumer laws do not permit businesses to make incorrect statements, or those “likely to create a false impression”, even if the business’s intention is not to mislead.

Companies cannot make claims about their products that they cannot substantiate or make misleading claims that could harm consumers. There are strict laws governing financial advice, pharmaceutical manufacturers cannot say their product cures cancer, food companies cannot claim that sugary foods are good for children, and lawyers cannot guarantee that they will win every personal injury case.

The public deserves the same standard, if not a higher one, from MPs and political parties as they get from businesses. But across most of Australia it is perfectly legal to lie in a political ad.

While election campaigning by its very nature will always be strong and robust, it should not be legal to lie in a political advertisement.

#### ***Would 'Mediscare' be allowed to happen?***

In the 2016 federal election, the Australian Labor Party sent bulk text messages to Australians stating "Mr Turnbull's plans to privatise Medicare will take us down the road of no return." The texts appeared at first glance to have been sent from 'Medicare'. The 'Mediscare' campaign is an Australian example of advertising which offended the sensibilities of the electorate in the way it passed itself off as being issued by a government department. While the Mediscare campaign is now prohibited by amendments to the Criminal Code, the offence is limited to conduct which purports to be on behalf of a Commonwealth body - a candidate or political party would not be protected from impersonation. The *Stop The Lies Bill* amends the Commonwealth Electoral Act to expressly prohibit the production and distribution of material that impersonates or passes-off as being another election participant.

#### ***Would the 'Death Tax' scare campaign be allowed to happen?***

In the lead up to the 2019 Federal election, Josh Frydenberg announced via a press release that a 'death tax' was likely under a Shorten Labor Government, a claim that was then repeated on social media by other Coalition MPs as well as appearing on mobile Liberal party billboards. The claim was false, however it quickly morphed into a social media campaign with a life of its own, spreading widely on private messaging platforms as well as Facebook.

The 'Death Tax' campaign is an example of a blatantly false political statement that undermined trust and egregiously misrepresented the position of a political party.

The *Stop The Lies Bill* amends the Commonwealth Electoral Act to expressly prohibit content that is misleading or deceptive to a material extent, or likely to mislead or deceive to a material extent.

#### ***Would Clive Palmer's leaflets and newspaper ads be covered?***

Leaflets, newspaper advertisements and online advertising are covered by the Bill and may be forced to be retracted should the Electoral Commissioner find the ads to be misleading or deceptive to a material extent.

This would apply to advertisements placed by Mr Palmer, Craig Kelly, and the United Australia Party, as it would apply to all political parties, candidates and associated entities.

#### ***What about his texts?***

Texts sent by the United Australia Party to Australians have recently sparked debate about whether spam text messages should be legal. Under this Bill, if the content of the text messages is misleading or deceptive to a material extent, or is likely to mislead or be deceptive, then the same rules would apply, and a retraction and correction may be forced. The Bill does not address the exemptions under the *Spam Act 2003* that enables political actors to send bulk text messages in general, regardless of content. However, we are actively investigating the potential for legislative options that may address this issue.

#### ***How is social media and digital technology impacted by this Bill?***

Advertising on social media and through other digital means should be treated no differently to advertising on TV or in a newspaper. The *Stop The Lies Bill* expressly prohibits content that is misleading or deceptive to a material extent, or likely to mislead or deceive to a material extent – regardless of how it is distributed.

***What about emerging technologies, like deep fakes?***

A deep fake is a video or voice recording of a person in which their face or body has been digitally altered so that they appear to be someone else, typically used maliciously or to spread false information. It could include the use of a candidate's image, a political party's colours or logos, or other insignia in a way which is misleading and confuses the electorate as to the origin of the advertisement.

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***How are publishers affected by this Bill?***

The laws are limited to electoral material that requires authorisation, and do not burden publishers any more than existing rules about defamation or offensive material do. This is in line with existing laws on truth in political advertising in South Australia and the ACT.

***What is the maximum fine someone could face under the Bill?***

The fine is set at up to 50 penalty units. As at 1 July 2021 a penalty unit is \$222. The maximum fine is equal to \$11,100.

***Is there a precedent for legislating to ensure truth in political advertising?***

Yes! Both South Australia and the Australian Capital Territory have truth in political advertising laws, and South Australia's laws have been in place since the 1980s.

SA's *Electoral Act 1985* makes it an offence to authorise or cause to be published electoral advertisements that are materially inaccurate and misleading. The SA Electoral Commissioner can request such advertisements be withdrawn from further publication and a retraction published; they can also apply to the Supreme Court to enforce withdrawal and/or retraction.

The ACT passed laws in 2020, based on South Australia's laws, and did so with unanimous political support in the Legislative Assembly from Labor, Liberal and Greens MLAs. The laws came into effect in July 2021 and will govern political advertising in the next ACT election. The laws establish an offence for misleading political advertising and give the ACT Electoral Commissioner the power to request that advertisements are retracted and not further disseminated.

Both SA and the ACT still have competitive election campaigning and vigorous free speech.