



# **Electoral and Other Legislation Amendment Act 2017**

**No. 99, 2017**

**An Act to amend legislation relating to electoral  
and broadcasting matters, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Electoral and Other Legislation Amendment Act 2017

No. 99, 2017

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## **An Act to amend legislation relating to electoral and broadcasting matters, and for related purposes**

[Assented to 14 September 2017]

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Electoral and Other Legislation Amendment Act 2017*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	15 September 2017
2. Schedule 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	14 March 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Authorising electoral, referendum and political matter**

### **Part 1—Amendments of electoral legislation**

#### *Commonwealth Electoral Act 1918*

##### **1 Subsection 4(1)**

Insert:

*carriage service provider* has the meaning given by section 87 of the *Telecommunications Act 1997*.

*civil penalty provision* has the meaning given by the Regulatory Powers Act.

##### **2 Subsection 4(1) (at the end of the definition of *electoral matter*)**

Add:

Note: See also subsection (9).

##### **3 Subsection 4(1)**

Insert:

*listed carriage service* has the meaning given by section 16 of the *Telecommunications Act 1997*.

*Regulatory Powers Act* means the *Regulatory Powers (Standard Provisions) Act 2014*.

##### **4 Subsection 4(9)**

Repeal the subsection, substitute:

- (9) Without limiting the definition of *electoral matter* in subsection (1), matter is taken to be intended or likely to affect voting in an election if:
- (a) it contains an express or implicit comment on:
    - (i) the election; or

- (ii) a political party, a branch or division of a political party or a candidate or group of candidates in the election; or
  - (iii) an issue submitted to, or otherwise before, the electors in connection with the election; and
- (b) except in Part XXA—it contains an express or implicit reference to:
- (i) the election; or
  - (ii) a political party, a branch or division of a political party or a candidate or group of candidates in the election; or
  - (iii) an issue submitted to, or otherwise before, the electors in connection with the election.

Note: An example of electoral matter is matter that contains a comment on the current or a previous Government or Opposition in relation to an issue in an election.

### **5 Paragraph 308(1)(e)**

Repeal the paragraph, substitute:

- (e) the communicating of any electoral matter (not being matter referred to in paragraph (a), (b) or (c)):
  - (i) for which particulars are required to be notified under section 321D; and
  - (ii) that is communicated during the election period; or

### **6 Subparagraph 314AEB(1)(a)(ii)**

Omit “in an election”, substitute “that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election)”.

### **7 Subparagraph 314AEB(1)(a)(iii)**

Repeal the subparagraph, substitute:

- (iii) the communicating of any electoral matter (not being matter referred to in subparagraph (i) or (ii)) for which particulars are required to be notified under section 321D;

### **8 Subparagraph 314AEB(1)(a)(iv)**

After “political matter”, insert “(not being matter referred to in subparagraph (iii))”.



## **9 Subparagraph 314AEB(1)(a)(v)**

After “an election”, insert “(whether or not a writ has been issued for the election)”.

## **10 After Part XX**

Insert:

# **Part XXA—Authorisation of electoral matter**

## **Division 1—Preliminary**

### **321B Definitions**

In this Part:

**address** of a natural person or entity means:

- (a) for a natural person—a full street address and suburb or locality at which the person can be contacted; or
- (b) for an entity:
  - (i) if the entity has a principal office—a full street address and suburb or locality of the office; or
  - (ii) if the entity does not have a principal office, but does have premises—a full street address and suburb or locality of the premises; or
  - (iii) in the case of any other entity that authorised the communication of electoral matter—a full street address and suburb or locality at which the natural person who was responsible for giving effect to the authorisation can be contacted.

**ancillary contravention** of section 321D means a contravention of that section as a result of section 92 of the Regulatory Powers Act (ancillary contravention of civil penalty provisions).

**authorises**: a person authorises the communication of electoral matter if:

- (a) if the content of the matter is approved before the matter is communicated—the person approves the content of the matter; or
- (b) otherwise—the person communicates the matter.

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**Part 1** Amendments of electoral legislation

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Examples: In the case of a call centre, the person who was originally responsible for approving the content of the phone calls from the call centre is the person who authorises the communication. In the case of an email whose content has not previously been approved, the person who sends the email authorises the communication.

**by-election** means an election of a member of the House of Representatives that is not part of a general election.

**communicate**: a carriage service provider does not **communicate** electoral matter merely because the carriage service provider supplies the listed carriage service used to communicate the matter.

**conduct** means an act or an omission to perform an act.

**disclosure entity**: a person or entity is a **disclosure entity** at a particular time if the person or entity is any of the following at that time:

- (a) a registered political party;
- (b) an associated entity (within the meaning of Part XX);
- (c) a senator or a member of the House of Representatives;
- (d) a candidate in an election or by-election;
- (e) a person who was a candidate in:
  - (i) an election or by-election of a member of the House of Representatives in the previous 4 years; or
  - (ii) an election of Senators for a State or Territory in the previous 7 years;
- (f) a group of 2 or more candidates nominated for election to the Senate who have their names grouped in the ballot papers in accordance with section 168;
- (g) a person who is or will be required to provide a return under section 305A, 305B or 314AEB (except a return provided solely under subparagraph 314AEB(1)(a)(v)) for the financial year in which the time occurs;
- (h) a person who, based on conduct in previous financial years, may be required to provide a return under section 305A, 305B or 314AEB (except a return provided solely under subparagraph 314AEB(1)(a)(v)) for the financial year in which the time occurs.

Note: Sections 305A, 305B and 314AEB require returns relating to gifts to candidates and political parties, and political expenditure.

***election*** means a general election or an election of Senators for a State or Territory.

***primary contravention*** of section 321D means a contravention of that section that is not an ancillary contravention of that section.

***relevant town or city*** of an entity that authorised the communication of electoral matter means:

- (a) if the entity has a principal office—the town or city in which the office is located; or
- (b) if the entity does not have a principal office, but does have premises—the town or city in which the premises are located; or
- (c) otherwise—the town or city in which the natural person who was responsible for giving effect to the authorisation lives.

### **321C Objects of this Part**

- (1) The objects of this Part are to promote free and informed voting at elections by enhancing the following:
  - (a) the transparency of the electoral system, by allowing voters to know who is communicating electoral matter;
  - (b) the accountability of those persons participating in public debate relating to electoral matter, by making those persons responsible for their communications;
  - (c) the traceability of communications of electoral matter, by ensuring that obligations imposed by this Part in relation to those communications can be enforced.
- (2) This Part aims to achieve these objects by doing the following:
  - (a) requiring the particulars of the person who authorised the communication of electoral matter to be notified if:
    - (i) the matter is an electoral advertisement, all or part of whose distribution or production is paid for; or
    - (ii) the matter forms part of a specified printed communication; or
    - (iii) the matter is communicated by, or on behalf of, a disclosure entity;
  - (b) ensuring that the particulars are clearly identifiable, irrespective of how the matter is communicated.

- (3) This Part is not intended to detract from:
- (a) the ability of electoral matters to be communicated to voters;  
and
  - (b) voters' ability to communicate with each other on electoral matters.

## **Division 2—Authorisation of certain electoral matter**

### **321D Authorisation of certain electoral matter**

- (1) This section applies in relation to electoral matter that is communicated to a person if:
- (a) all of the following apply:
    - (i) the matter is an electoral advertisement;
    - (ii) all or part of the distribution or production of the advertisement was paid for;
    - (iii) the content of the advertisement was approved by a person (the ***notifying entity***) (whether or not that person is a person who paid for the distribution or production of the advertisement); or
  - (b) both of the following apply:
    - (i) the matter forms part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card;
    - (ii) the content of the matter was approved by a person (the ***notifying entity***); or
  - (c) the matter is communicated by, or on behalf of, a disclosure entity (the ***notifying entity***) (and the matter is not an advertisement covered by paragraph (a), nor does the matter form part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card).

Note 1: For paragraph (1)(c), matter may be communicated on behalf of an entity whether or not the entity pays for the communication of the matter.

Note 2: Examples of matters that may be covered by this section include internet advertisements, bulk text messages and bulk voice calls containing electoral matter.

Note 3: For the geographical application of this section, see section 321E.

Note 4: For the meaning of ***communicate*** for carriage service providers, see the definition of that term in section 321B.

- (2) For the purposes of subsection (1), if:
- (a) electoral matter is communicated by an individual who is a disclosure entity; and
  - (b) the matter is communicated on behalf of another disclosure entity; and
  - (c) the content of the matter is approved by the other disclosure entity before the matter is communicated;
- the other disclosure entity (and not the individual) is the **notifying entity**. However, if the content of the matter is not approved by the other disclosure entity before the matter is communicated, the individual (and not the other disclosure entity) is the **notifying entity**.

*Exceptions*

- (3) However, this section does not apply in relation to electoral matter:
- (a) if the matter forms part of clothing or any other item that it is intended to be worn on the body; or
  - (b) if the matter forms part of a communication, or in any other circumstances, determined under subsection (7) for the purposes of this paragraph.
- (4) This section also does not apply in relation to electoral matter referred to in paragraphs (1)(b) and (c) if the matter forms part of:
- (a) the reporting of news, the presenting of current affairs or any editorial content in news media; or
  - (b) a communication communicated solely for genuine satirical, academic or artistic purposes; or
  - (c) an opinion poll or research relating to voting intentions at an election or by-election; or
  - (d) a communication communicated for personal purposes; or
  - (e) an internal communication of a notifying entity; or
  - (f) a communication at a meeting of 2 or more persons if the identity of the person (the **speaker**) communicating at the meeting, and any disclosure entity on whose behalf the speaker is communicating, can reasonably be identified by the person or persons to whom the speaker is speaking; or
  - (g) a live communication of a meeting covered by paragraph (f), but not any later communication of that meeting; or

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(h) a communication communicated solely for the purpose of announcing a meeting.

*Notifying particulars*

(5) The notifying entity must ensure that the particulars set out in the following table, and any other particulars determined under subsection (7) for the purposes of this subsection, are notified in accordance with any requirements determined under that subsection.

<b>Required particulars</b>		
<b>Item</b>	<b>If ...</b>	<b>the following particulars are required ...</b>
1	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card authorised by a disclosure entity that is not a natural person	(a) the name of the entity (as included in the most recent return given in relation to the entity under Part XX, if a return has been given in relation to the entity under that Part); (b) the address of the entity; (c) the name of the natural person responsible for giving effect to the authorisation; (d) the name of the printer who printed the communication; (e) the address of the printer
2	the communication is any other communication authorised by a disclosure entity that is not a natural person	(a) the name of the entity (as included in the most recent return given in relation to the entity under Part XX, if a return has been given in relation to the entity under that Part); (b) the relevant town or city of the entity; (c) the name of the natural person responsible for giving effect to the authorisation
3	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or	(a) the name of the person; (b) the address of the person; (c) the name of the printer who

<b>Required particulars</b>		
<b>Item</b>	<b>If ...</b>	<b>the following particulars are required ...</b>
	how-to-vote card authorised by a disclosure entity who is a natural person	printed the communication; (d) the address of the printer
4	the communication is any other communication authorised by a disclosure entity who is a natural person	(a) the name of the person; (b) the town or city in which the person lives
5	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card authorised by an entity that is not a disclosure entity or a natural person	(a) the name of the entity; (b) the address of the entity; (c) the name of the printer who printed the communication; (d) the address of the printer
6	the communication is any other communication authorised by an entity that is not a disclosure entity or a natural person	(a) the name of the entity; (b) the relevant town or city of the entity
7	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card authorised by a natural person who is not a disclosure entity	(a) the name of the person; (b) the address of the person; (c) the name of the printer who printed the communication; (d) the address of the printer
8	the communication is any other communication authorised by a natural person who is not a disclosure entity	(a) the name of the person; (b) the town or city in which the person lives

Note 1: This provision is a civil penalty provision which is enforceable under the Regulatory Powers Act (see section 384A of this Act).

Note 2: A person may contravene this subsection if the person fails to ensure that particulars are notified or if the particulars notified are incorrect.

Note 3: For the application of this provision to a notifying entity that is not a legal person, see subsection (6).

Civil penalty: 120 penalty units.

*Application of civil penalty to entities that are not legal persons*

- (6) For the purposes of this Act and the Regulatory Powers Act, a contravention of subsection (5) that would otherwise have been committed by a notifying entity that is not a legal person is taken to have been committed by each member, agent or officer (however described) of the entity who, acting in his or her actual or apparent authority, engaged in the conduct or made the omission constituting the contravention.

*Legislative instrument*

- (7) The Electoral Commissioner may, by legislative instrument, determine:
- (a) communications or circumstances for the purposes of either or both of the following:
    - (i) paragraph (3)(b) of this section;
    - (ii) paragraph 110C(3)(c) of the *Referendum (Machinery Provisions) Act 1984*; and
  - (b) requirements or particulars for the purposes of any one or more of the following:
    - (i) subsection (5) of this section;
    - (ii) subsection 110C(5) of the *Referendum (Machinery Provisions) Act 1984*;
    - (iii) subsection 79A(2) and paragraph 79A(6)(b) of the *Australian Broadcasting Corporation Act 1983*;
    - (iv) paragraph 1(2)(b) and subclause 4(2) of Schedule 2 to the *Broadcasting Services Act 1992*;
    - (v) subsection 70A(2) and paragraph 70A(6)(b) of the *Special Broadcasting Service Act 1991*.

Note: Requirements or particulars may be determined by reference to classes of communications, and different requirements or particulars may be determined for different classes of communications (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

**321E Extended geographical application of section 321D**

- (1) A person does not contravene section 321D unless:
- (a) the conduct constituting the alleged contravention occurs:
    - (i) wholly or partly in Australia; or



- (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
- (b) the conduct constituting the alleged contravention occurs wholly outside Australia and a result of the conduct occurs:
  - (i) wholly or partly in Australia; or
  - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
- (c) the conduct constituting the alleged contravention occurs wholly outside Australia and at the time of the alleged contravention, the person is:
  - (i) an Australian citizen; or
  - (ii) a resident of Australia; or
  - (iii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
- (d) all of the following conditions are satisfied:
  - (i) the alleged contravention is an ancillary contravention of section 321D;
  - (ii) the conduct constituting the alleged contravention occurs wholly outside Australia;
  - (iii) the conduct constituting the primary contravention of section 321D, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

*Exception—foreign entities engaging in legal conduct wholly in foreign countries*

- (2) A person does not contravene section 321D if:
  - (a) the conduct constituting the alleged contravention occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
  - (b) for an ancillary contravention of section 321D—the conduct constituting the primary contravention of that section, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
  - (c) the person is neither:
    - (i) an Australian citizen; nor

- (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
- (d) there is not a law creating an offence or contravention that corresponds to section 321D in force in the foreign country, or the part of the foreign country, where:
  - (i) the conduct constituting the primary contravention occurs; or
  - (ii) for an ancillary contravention of section 321D—a result of the conduct constituting the primary contravention occurs.

### **Division 3—Information-gathering powers**

#### **321F Electoral Commissioner may obtain information and documents from persons**

- (1) This section applies to a person if the Electoral Commissioner has reason to believe that the person has information or a document that is relevant to assessing compliance with section 321D.
- (2) The Electoral Commissioner may, by written notice given to the person, require the person:
  - (a) to give to the Commissioner, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the Commissioner, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the Commissioner, within the period and in the manner specified in the notice, those copies.

#### *Matters to which regard must be had before giving notice*

- (3) Before giving a person a notice under subsection (2), the Electoral Commissioner must have regard to the costs, in complying with any requirement in the notice, that would be likely to be incurred by the person.
- (4) Subsection (3) does not limit the matters to which regard may be had.

*Content of notice*

- (5) A notice given to a person under this section must set out the effect of sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

*Copying documents—reasonable compensation*

- (6) A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph (2)(c).

**321G Copies of documents**

- (1) The Electoral Commissioner may inspect a document or copy produced under section 321F and may make and retain copies of such a document.
- (2) The Electoral Commissioner may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 321F(2)(c).

**321H Retention of documents**

- (1) The Electoral Commissioner may take, and retain for as long as is necessary, possession of a document produced under section 321F.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Electoral Commissioner to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Electoral Commissioner must, at such times and places as he or she thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of the document.

**11 Sections 328 to 328B**

Repeal the sections.

## 12 Sections 331 and 334

Repeal the sections.

## 13 Subsection 351(5)

Omit “name and address appears at the top, bottom or end of any matter as the person who authorised the matter under section 328, 328A or 328B”, substitute “name is notified under section 321D in relation to electoral matter as the person who authorised the communication of the matter”.

## 14 Before subsection 383(1)

Insert:

*Restraining injunctions*

## 15 Before subsection 383(2)

Insert:

*Performance injunctions*

## 16 After subsection 383(2)

Insert:

*Injunctions relating to section 321D—carriage service providers*

(2A) Without limiting subsection (1), if:

- (a) an injunction could be granted under subsection (1) or (2) in relation to a contravention or proposed contravention by a person (the *notifying entity*) of section 321D in relation to an electoral matter; and
- (b) a carriage service provider supplies, or is to supply, a listed carriage service to the notifying entity; and
- (c) the listed carriage service is to be used solely for making bulk voice calls or sending bulk text messages;

the Federal Court may, on the application of:

- (d) if the conduct relates to an election—a candidate in the election; or
- (e) in any case—the Electoral Commission;

grant an injunction restraining the carriage service provider from supplying the listed carriage service to the notifying entity.

Note: Section 321D requires the name of the person who authorised the communication of certain electoral matter to be notified.

*Injunctions relating to section 321D—broadcasters*

(2B) Without limiting subsection (1), if an injunction could be granted under subsection (1) or (2) in relation to a contravention or proposed contravention by a person (the **notifying entity**) of section 321D in relation to an electoral matter, the Federal Court may, on the application of:

- (a) if the conduct relates to an election—a candidate in the election; or
- (b) in any case—the Electoral Commission;

grant an injunction restraining a broadcaster from broadcasting the matter.

*Interim injunctions*

**17 Subsection 383(3)**

After “subsection (1)”, insert “, (2A) or (2B)”.

**18 Subsection 383(3)**

Omit “that subsection”, substitute “subsection (1), or restraining the carriage service provider or broadcaster as referred to in subsection (2A) or (2B),”.

**19 Before subsection 383(4)**

Insert:

*Discharging and varying injunctions*

**20 Subsection 383(4)**

Omit “subsection (1), (2) or (3)”, substitute “this section”.

**21 Before subsection 383(5)**

Insert:

*Court not required to consider past and future conduct*

**22 Subsection 383(5)**

After “grant of an injunction”, insert “under subsection (1)”.

**23 Subsection 383(6)**

After “grant of an injunction”, insert “under subsection (1) or (2)”.

**24 After subsection 383(6)**

Insert:

- (6A) If an application is made to the Federal Court for the grant of an injunction under subsection (2A) or (2B) restraining a carriage service provider or broadcaster as referred to in that subsection, the power of the Federal Court to grant the injunction may be exercised:
- (a) if the Federal Court is satisfied that the notifying entity has contravened section 321D—whether or not it appears to the Federal Court that the notifying entity intends to contravene or continue to contravene that section; or
  - (b) if it appears to the Federal Court that, in the event that an injunction is not granted, it is likely that the notifying entity will contravene section 321D—whether or not the notifying entity has previously contravened that section.

*No undertakings as to damages*

**25 Before subsection 383(10)**

Insert:

*This section does not limit other powers of the Federal Court*

**26 At the end of section 383**

Add:

*Definitions*

(11) In this section:

***broadcaster*** means:

- (a) a broadcaster within the meaning of subclause 4(1) of Schedule 2 to the *Broadcasting Services Act 1992*; or
- (b) the Australian Broadcasting Corporation; or
- (c) the Special Broadcasting Service Corporation.

**bulk text message** means an electronic message (within the meaning of section 5 of the *Spam Act 2003*) that is sent, in bulk, to electronic addresses in connection with telephone accounts.

**bulk voice call** means a call or calls that send in bulk a pre-recorded message to standard telephone services.

## **27 After section 384**

Insert:

### **384A Application of Regulatory Powers Act**

#### *Application of Parts 4 and 6*

- (1) Section 321D is enforceable under Parts 4 and 6 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision. Part 6 of that Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

#### *Authorised applicant and relevant court*

- (2) For the purposes of Parts 4 and 6 of the Regulatory Powers Act:
  - (a) for Part 4—the Electoral Commissioner is an authorised applicant; and
  - (b) for Part 6—the Electoral Commissioner is an authorised person; and
  - (c) for Parts 4 and 6—the Federal Court of Australia is a relevant court;in relation to section 321D of this Act.

## **28 Section 385A**

Repeal the section, substitute:

### **385A Evidence of authorship or authorisation of material**

In proceedings for an offence against, or a contravention of a civil penalty provision in, this Act:

- (a) a communication of electoral matter that includes a name purporting to be the author's name is admissible as evidence that the person named is the author of the communication; and
- (b) a communication of electoral matter that includes a statement that it was authorised by a specified person is admissible as evidence of that fact; and
- (c) a communication of electoral matter that includes a statement that a specified person was the printer of the communication is admissible as evidence of that fact.

### ***Referendum (Machinery Provisions) Act 1984***

#### **29 Subsection 3(1)**

Insert:

***carriage service provider*** has the meaning given by section 87 of the *Telecommunications Act 1997*.

***civil penalty provision*** has the meaning given by the Regulatory Powers Act.

***listed carriage service*** has the meaning given by section 16 of the *Telecommunications Act 1997*.

***Regulatory Powers Act*** means the *Regulatory Powers (Standard Provisions) Act 2014*.

#### **30 After Part VIII**

Insert:



## **Part IX—Authorisation of referendum matter**

### **Division 1—Preliminary**

#### **110A Definitions**

In this Part:

**address** of a natural person or entity means:

- (a) for a natural person—a full street address and suburb or locality at which the person can be contacted; or
- (b) for an entity:
  - (i) if the entity has a principal office—a full street address and suburb or locality of the office; or
  - (ii) if the entity does not have a principal office, but does have premises—a full street address and suburb or locality of the premises; or
  - (iii) in the case of any other entity that authorised the communication of referendum matter—a full street address and suburb or locality at which the natural person who was responsible for giving effect to the authorisation can be contacted.

**ancillary contravention** of section 110C means a contravention of that section as a result of section 92 of the Regulatory Powers Act (ancillary contravention of civil penalty provisions).

**authorises**: a person authorises the communication of referendum matter if:

- (a) if the content of the matter is approved before the matter is communicated—the person approves the content of the matter; or
- (b) otherwise—the person communicates the matter.

Examples: In the case of a call centre, the person who was originally responsible for approving the content of the phone calls from the call centre is the person who authorises the communication. In the case of an email whose content has not previously been approved, the person who sends the email authorises the communication.

**communicate:** a carriage service provider does not **communicate** referendum matter merely because the carriage service provider supplies the listed carriage service used to communicate the matter.

**conduct** means an act or an omission to perform an act.

**disclosure entity:** a person or entity is a **disclosure entity** at a particular time if the person or entity is any of the following at that time:

- (a) a registered political party (within the meaning of the *Commonwealth Electoral Act 1918*);
- (b) an associated entity (within the meaning of Part XX of that Act);
- (c) a person who is or will be required to provide a return under section 314AEB of that Act (except a return provided solely under subparagraph 314AEB(1)(a)(v) of that Act) for the financial year in which the time occurs;
- (d) a person who, based on conduct in previous financial years, may be required to provide a return under section 314AEB of that Act (except a return provided solely under subparagraph 314AEB(1)(a)(v) of that Act) for the financial year in which the time occurs;
- (e) a person who:
  - (i) has incurred expenditure in the period of 12 months before the day the writ for the referendum is issued; or
  - (ii) expects to incur expenditure;  
exceeding the amount referred to in paragraph 314AEB(1)(b) of that Act, in relation to referendum matter relating to the referendum;
- (f) a senator or a member of the House of Representatives.

Note: Section 314AEB of the *Commonwealth Electoral Act 1918* requires returns relating to political expenditure.

**primary contravention** of section 110C means a contravention of that section that is not an ancillary contravention of that section.

**referendum matter** means matter intended or calculated to affect the result of a referendum.

**relevant town or city** of an entity that authorised the communication of referendum matter means:

- (a) if the entity has a principal office—the town or city in which the office is located; or
- (b) if the entity does not have a principal office, but does have premises—the town or city in which the premises are located; or
- (c) otherwise—the town or city in which the natural person who was responsible for giving effect to the authorisation lives.

### **110B Objects of this Part**

- (1) The objects of this Part are to promote free and informed voting at referendums by enhancing the following:
  - (a) the transparency of the electoral system as it relates to referendums, by allowing voters to know who is communicating referendum matter;
  - (b) the accountability of those persons participating in public debate relating to referendum matter, by making those persons responsible for their communications;
  - (c) the traceability of communications of referendum matter, by ensuring that obligations imposed by this Part in relation to those communications can be enforced.
- (2) This Part aims to achieve these objects by doing the following:
  - (a) requiring the particulars of the person who authorised the communication of referendum matter to be notified if:
    - (i) the matter is an advertisement relating to a referendum, all or part of whose distribution or production is paid for; or
    - (ii) the matter forms part of a specified printed communication; or
    - (iii) the matter is communicated by, or on behalf of, a disclosure entity;
  - (b) ensuring that the particulars are clearly identifiable, irrespective of how the matter is communicated.
- (3) This Part is not intended to detract from:
  - (a) the ability of referendum matters to be communicated to voters; and
  - (b) voters' ability to communicate with each other on referendum matters.

## Division 2—Authorisation of certain referendum matter

### 110C Authorisation of certain referendum matter

- (1) This section applies in relation to referendum matter that is communicated to a person if:
- (a) all of the following apply:
    - (i) the matter is an advertisement relating to a referendum;
    - (ii) all or part of the distribution or production of the advertisement was paid for;
    - (iii) the content of the advertisement was approved by a person (the *notifying entity*) (whether or not that person is a person who paid for the distribution or production of the advertisement); or
  - (b) both of the following apply:
    - (i) the matter forms part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card;
    - (ii) the content of the matter was approved by a person (the *notifying entity*); or
  - (c) the matter is communicated by, or on behalf of, a disclosure entity (the *notifying entity*) (and the matter is not an advertisement covered by paragraph (a), nor does the matter form part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card).
- Note 1: For paragraph (1)(c), matter may be communicated on behalf of an entity whether or not the entity pays for the communication of the matter.
- Note 2: Examples of matters that may be covered by this section include internet advertisements, bulk text messages and bulk voice calls containing referendum matter.
- Note 3: For the geographical application of this section, see section 110D.
- Note 4: For the meaning of *communicate* for carriage service providers, see the definition of that term in section 110A.
- (2) For the purposes of subsection (1), if:
- (a) referendum matter is communicated by an individual who is a disclosure entity; and
  - (b) the matter is communicated on behalf of another disclosure entity; and

(c) the content of the matter is approved by the other disclosure entity before the matter is communicated;

the other disclosure entity (and not the individual) is the **notifying entity**. However, if the content of the matter is not approved by the other disclosure entity before the matter is communicated, the individual (and not the other disclosure entity) is the **notifying entity**.

*Exceptions*

- (3) However, this section does not apply in relation to referendum matter:
- (a) if the matter forms part of clothing or any other item that it is intended to be worn on the body; or
  - (b) if the matter is communicated by or on behalf of a State, a Territory or an authority of a State or Territory; or
  - (c) if the matter forms part of a communication, or in any other circumstances, determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this paragraph.
- (4) This section also does not apply in relation to referendum matter referred to in paragraphs (1)(b) and (c) if the matter forms part of:
- (a) the reporting of news, the presenting of current affairs or any editorial content in news media; or
  - (b) a communication communicated solely for genuine satirical, academic or artistic purposes; or
  - (c) an opinion poll or research relating to voting intentions at an election or by-election; or
  - (d) a communication communicated for personal purposes; or
  - (e) an internal communication of a notifying entity; or
  - (f) a communication at a meeting of 2 or more persons if the identity of the person (the **speaker**) communicating at the meeting, and any disclosure entity on whose behalf the speaker is communicating, can reasonably be identified by the person or persons to whom the speaker is speaking; or
  - (g) a live communication of a meeting covered by paragraph (f), but not any later communication of that meeting; or
  - (h) a communication communicated solely for the purposes of announcing a meeting.

**Schedule 1** Authorising electoral, referendum and political matter  
**Part 1** Amendments of electoral legislation

*Notifying particulars*

- (5) The notifying entity must ensure that the particulars set out in the following table, and any other particulars determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this subsection, are notified in accordance with any requirements determined under that subsection.

<b>Required particulars</b>		
<b>Item</b>	<b>If ...</b>	<b>the following particulars are required ...</b>
1	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card authorised by a disclosure entity that is not a natural person	(a) the name of the entity (as included in the most recent return given in relation to the entity under Part XX of the <i>Commonwealth Electoral Act 1918</i> , if a return has been given in relation to the entity under that Part); (b) the address of the entity; (c) the name of the natural person responsible for giving effect to the authorisation; (d) the name of the printer who printed the communication; (e) the address of the printer
2	the communication is any other communication authorised by a disclosure entity that is not a natural person	(a) the name of the entity (as included in the most recent return given in relation to the entity under Part XX of that Act, if a return has been given in relation to the entity under that Part); (b) the relevant town or city of the entity; (c) the name of the natural person responsible for giving effect to the authorisation
3	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or	(a) the name of the person; (b) the address of the person; (c) the name of the printer who

<b>Required particulars</b>		
<b>Item</b>	<b>If ...</b>	<b>the following particulars are required ...</b>
	how-to-vote card authorised by a disclosure entity who is a natural person	printed the communication; (d) the address of the printer
4	the communication is any other communication authorised by a disclosure entity who is a natural person	(a) the name of the person; (b) the town or city in which the person lives
5	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card authorised by an entity that is not a disclosure entity or a natural person	(a) the name of the entity; (b) the address of the entity; (c) the name of the printer who printed the communication; (d) the address of the printer
6	the communication is any other communication authorised by an entity that is not a disclosure entity or a natural person	(a) the name of the entity; (b) the relevant town or city of the entity
7	the communication is a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card authorised by a natural person who is not a disclosure entity	(a) the name of the person; (b) the address of the person; (c) the name of the printer who printed the communication; (d) the address of the printer
8	the communication is any other communication authorised by a natural person who is not a disclosure entity	(a) the name of the person; (b) the town or city in which the person lives

Note 1: This provision is a civil penalty provision which is enforceable under the Regulatory Powers Act (see section 140AAA of this Act).

Note 2: A person may contravene this subsection if the person fails to ensure that particulars are notified or if the particulars notified are incorrect.

Note 3: For the application of this provision to a notifying entity that is not a legal person, see subsection (6).

Civil penalty: 120 penalty units.

*Application of civil penalty to entities that are not legal persons*

- (6) For the purposes of this Act and the Regulatory Powers Act, a contravention of subsection (5) that would otherwise have been committed by a notifying entity that is not a legal person is taken to have been committed by each member, agent or officer (however described) of the entity who, acting in his or her actual or apparent authority, engaged in the conduct or made the omission constituting the contravention.

**110D Extended geographical application of section 110C**

- (1) A person does not contravene section 110C unless:
- (a) the conduct constituting the alleged contravention occurs:
    - (i) wholly or partly in Australia; or
    - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
  - (b) the conduct constituting the alleged contravention occurs wholly outside Australia and a result of the conduct occurs:
    - (i) wholly or partly in Australia; or
    - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
  - (c) the conduct constituting the alleged contravention occurs wholly outside Australia and at the time of the alleged contravention, the person is:
    - (i) an Australian citizen; or
    - (ii) a resident of Australia; or
    - (iii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
  - (d) all of the following conditions are satisfied:
    - (i) the alleged contravention is an ancillary contravention of section 110C;
    - (ii) the conduct constituting the alleged contravention occurs wholly outside Australia;
    - (iii) the conduct constituting the primary contravention of section 110C, or a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.



*Exception—foreign entities engaging in legal conduct wholly in foreign countries*

- (2) A person does not contravene section 110C if:
- (a) the conduct constituting the alleged contravention occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
  - (b) for an ancillary contravention of section 110C—the conduct constituting the primary contravention of that section, or a result of that conduct, occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
  - (c) the person is neither:
    - (i) an Australian citizen; nor
    - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
  - (d) there is not a law creating an offence or contravention that corresponds to section 110C in force in the foreign country, or the part of the foreign country, where:
    - (i) the conduct constituting the primary contravention occurs; or
    - (ii) for an ancillary contravention of section 110C—a result of the conduct constituting the primary contravention occurs.

### **Division 3—Information-gathering powers**

#### **110E Electoral Commissioner may obtain information and documents from persons**

- (1) This section applies to a person if the Electoral Commissioner has reason to believe that the person has information or a document that is relevant to assessing compliance with section 110C.
- (2) The Electoral Commissioner may, by written notice given to the person, require the person:
- (a) to give to the Commissioner, within the period and in the manner and form specified in the notice, any such information; or

- (b) to produce to the Commissioner, within the period and in the manner specified in the notice, any such documents; or
- (c) to make copies of any such documents and to produce to the Commissioner, within the period and in the manner specified in the notice, those copies.

*Matters to which regard must be had before giving notice*

- (3) Before giving a person a notice under subsection (2), the Electoral Commissioner must have regard to the costs, in complying with any requirement in the notice, that would be likely to be incurred by the person.
- (4) Subsection (3) does not limit the matters to which regard may be had.

*Content of notice*

- (5) A notice given to a person under this section must set out the effect of sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

*Copying documents—reasonable compensation*

- (6) A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph (2)(c).

**110F Copies of documents**

- (1) The Electoral Commissioner may inspect a document or copy produced under section 110E and may make and retain copies of such a document.
- (2) The Electoral Commissioner may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 110E(2)(c).

**110G Retention of documents**

- (1) The Electoral Commissioner may take, and retain for as long as is necessary, possession of a document produced under section 110E.

- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Electoral Commissioner to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Electoral Commissioner must, at such times and places as he or she thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of the document.

### **31 Sections 121, 121A and 124**

Repeal the sections.

### **32 Before subsection 139(1)**

Insert:

*Restraining injunctions*

### **33 Before subsection 139(2)**

Insert:

*Performance injunctions*

### **34 After subsection 139(2)**

Insert:

*Injunctions relating to section 110C—carriage service providers*

- (2A) Without limiting subsection (1), if:
- (a) an injunction could be granted under subsection (1) or (2) in relation to a contravention or proposed contravention by a person (the **notifying entity**) of section 110C in relation to a referendum matter; and
  - (b) a carriage service provider supplies, or is to supply, a listed carriage service to the notifying entity; and
  - (c) the listed carriage service is to be used solely for making bulk voice calls or sending bulk text messages;

the Federal Court may, on the application of the Electoral Commission, grant an injunction restraining the carriage service provider from supplying the listed carriage service to the notifying entity.

Note: Section 110C requires the name of the person who authorised the communication of certain referendum matter to be notified.

*Injunctions relating to section 110C—broadcasters*

- (2B) Without limiting subsection (1), if an injunction could be granted under subsection (1) or (2) in relation to a contravention or proposed contravention by a person (the *notifying entity*) of section 110C in relation to a referendum matter, the Federal Court may, on the application of the Electoral Commission, grant an injunction restraining a broadcaster from broadcasting the matter.

*Interim injunctions*

**35 Subsection 139(3)**

After “subsection (1)”, insert “, (2A) or (2B)”.

**36 Subsection 139(3)**

Omit “that subsection”, substitute “subsection (1), or restraining the carriage service provider or broadcaster as referred to in subsection (2A) or (2B),”.

**37 Before subsection 139(4)**

Insert:

*Discharging and varying injunctions*

**38 Subsection 139(4)**

Omit “subsection (1), (2) or (3)”, substitute “this section”.

**39 Before subsection 139(5)**

Insert:

*Court not required to consider past and future conduct*

**40 Subsection 139(5)**

After “grant of an injunction”, insert “under subsection (1)”.

**41 Subsection 139(6)**

After “grant of an injunction”, insert “under subsection (1) or (2)”.

**42 After subsection 139(6)**

Insert:

- (6A) If an application is made to the Federal Court for the grant of an injunction under subsection (2A) or (2B) restraining a carriage service provider or broadcaster as referred to in that subsection, the power of the Federal Court to grant the injunction may be exercised:
- (a) if the Federal Court is satisfied that the notifying entity has contravened section 110C—whether or not it appears to the Federal Court that the notifying entity intends to contravene or continue to contravene that section; or
  - (b) if it appears to the Federal Court that, in the event that an injunction is not granted, it is likely that the notifying entity will contravene section 110C—whether or not the notifying entity has previously contravened that section.

*No undertakings as to damages*

**43 Before subsection 139(10)**

Insert:

*This section does not limit other powers of the Federal Court*

**44 At the end of section 139**

Add:

*Definitions*

(11) In this section:

***broadcaster*** means:

- (a) a broadcaster within the meaning of subclause 4(1) of Schedule 2 to the *Broadcasting Services Act 1992*; or
- (b) the Australian Broadcasting Corporation; or
- (c) the Special Broadcasting Service Corporation.

**bulk text message** means an electronic message (within the meaning of section 5 of the *Spam Act 2003*) that is sent, in bulk, to electronic addresses in connection with telephone accounts.

**bulk voice call** means a call or calls that send in bulk a pre-recorded message to standard telephone services.

## **45 After section 140**

Insert:

### **140AAA Application of Regulatory Powers Act**

#### *Application of Parts 4 and 6*

- (1) Section 110C is enforceable under Parts 4 and 6 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision. Part 6 of that Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

#### *Authorised applicant and relevant court*

- (2) For the purposes of Parts 4 and 6 of the Regulatory Powers Act:
  - (a) for Part 4—the Electoral Commissioner is an authorised applicant; and
  - (b) for Part 6—the Electoral Commissioner is an authorised person; and
  - (c) for Parts 4 and 6—the Federal Court of Australia is a relevant court;in relation to section 110C of this Act.

## **46 Section 140AA**

Repeal the section, substitute:

**140AA Evidence of authorship or authorisation of material**

In proceedings for a contravention of a civil penalty provision in this Act:

- (a) a communication of referendum matter that includes a name purporting to be the author's name is admissible as evidence that the person named is the author of the communication; and
- (b) a communication of referendum matter that includes a statement that it was authorised by a specified person is admissible as evidence of that fact; and
- (c) a communication of referendum matter that includes a statement that a specified person was the printer of the communication is admissible as evidence of that fact.

## Part 2—Amendments of broadcasting legislation

### *Australian Broadcasting Corporation Act 1983*

#### **47 Subsection 79A(2)**

Repeal the subsection, substitute:

##### *Announcing required particulars*

- (2) If the Corporation broadcasts political matter at the request of another person, the Corporation must, in accordance with any requirements determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this subsection:
- (a) if the matter was broadcast by radio—ensure that the required particulars in relation to the matter are announced; or
  - (b) if the matter was televised:
    - (i) ensure that the required particulars in relation to the matter are announced; and
    - (ii) ensure that all the required particulars in relation to the matter are transmitted in the form of images of words.

Note: The Corporation is taken to have ensured that required particulars are announced in certain circumstances (see subsection (7)).

##### *Keeping records*

#### **48 Before subsection 79A(4)**

Insert:

##### *Meaning of **authorises***

#### **49 Before subsection 79A(5)**

Insert:

##### *Definitions*

#### **50 Subsection 79A(5)**

Insert:

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**disclosure entity** has the meaning given by:

- (a) section 321B of the *Commonwealth Electoral Act 1918*; or
- (b) paragraph (e) of the definition of **disclosure entity** in section 110A of the *Referendum (Machinery Provisions) Act 1984*.

**relevant town or city** of an entity that authorised the broadcast of political matter means:

- (a) if the entity has a principal office—the town or city in which the office is located; or
- (b) if the entity does not have a principal office, but does have premises—the town or city in which the premises are located; or
- (c) otherwise—the town or city in which the natural person who was responsible for giving effect to the authorisation lives.

### **51 Subsection 79A(5) (definition of *required particulars*)**

Repeal the definition, substitute:

**required particulars** has the meaning given by subsection (6).

### **52 At the end of section 79A**

Add:

*Meaning of required particulars*

- (6) The **required particulars** are:
  - (a) the particulars set out in the following table; and
  - (b) any other particulars determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this paragraph.

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<b>Required particulars</b>		
<b>Item</b>	<b>If ...</b>	<b>the <i>required particulars</i> are the following ...</b>
1	the broadcast is authorised by a disclosure entity that is not a natural person	(a) the name of the entity (as included in the most recent return given in relation to the entity under Part XX of the <i>Commonwealth Electoral Act</i> )

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**Schedule 1** Authorising electoral, referendum and political matter  
**Part 2** Amendments of broadcasting legislation

<b>Required particulars</b>		
<b>Item</b>	<b>If ...</b>	<b>the required particulars are the following ...</b>
		1918, if a return has been given in relation to the entity under that Part); (b) the relevant town or city of the entity; (c) the name of the natural person responsible for giving effect to the authorisation
2	the broadcast is authorised by a disclosure entity who is a natural person	(a) the name of the person; (b) the town or city in which the person lives
3	the broadcast is authorised by an entity that is not a disclosure entity or a natural person	(a) the name of the entity; (b) the relevant town or city of the entity
4	the broadcast is authorised by a natural person who is not a disclosure entity	(a) the name of the person; (b) the town or city in which the person lives

*Particulars taken to be announced*

- (7) The Corporation is taken to have ensured that required particulars are announced in relation to a political matter that it broadcasts if:
- (a) particulars were announced in relation to the matter for the purposes of this Act; and
  - (b) those particulars purported to be particulars referred to in item 3 or 4 of the table in subsection (6); and
  - (c) as a result of steps taken by the Corporation, it was reasonable for the Corporation to rely on the particulars that were provided for the purposes of this Act.

- Note: An example of steps that may be taken by the Corporation include:
- (a) notifying a person wanting to broadcast political matter that the name of the person required to be announced as having authorised the broadcast depends on whether the person is a disclosure entity; and
  - (b) seeking a verification from that person that the person is or is not a disclosure entity.

## ***Broadcasting Services Act 1992***

### **53 Clause 1 of Schedule 2**

Before “In this Schedule”, insert “(1)”.

### **54 Clause 1 of Schedule 2**

Insert:

***disclosure entity*** has the meaning given by:

- (a) section 321B of the *Commonwealth Electoral Act 1918*; or
- (b) paragraph (e) of the definition of ***disclosure entity*** in section 110A of the *Referendum (Machinery Provisions) Act 1984*.

***relevant town or city*** of an entity that authorised the broadcast of political matter means:

- (a) if the entity has a principal office—the town or city in which the office is located; or
- (b) if the entity does not have a principal office, but does have premises—the town or city in which the premises are located; or
- (c) otherwise—the town or city in which the natural person who was responsible for giving effect to the authorisation lives.

### **55 Clause 1 of Schedule 2 (definition of *required particulars*)**

Repeal the definition, substitute:

***required particulars*** has the meaning given by subclause (2).

### **56 At the end of clause 1 of Schedule 2**

Add:

*Meaning of required particulars*

- (2) The ***required particulars*** are:
  - (a) the particulars set out in the following table; and
  - (b) any other particulars determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this paragraph.

**Schedule 1** Authorising electoral, referendum and political matter  
**Part 2** Amendments of broadcasting legislation

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<b>Required particulars</b>		
<b>Item</b>	<b>If ...</b>	<b>the required particulars are the following ...</b>
1	the broadcast is authorised by a disclosure entity that is not a natural person	(a) the name of the entity (as included in the most recent return given in relation to the entity under Part XX of the <i>Commonwealth Electoral Act 1918</i> , if a return has been given in relation to the entity under that Part); (b) the relevant town or city of the entity; (c) the name of the natural person responsible for giving effect to the authorisation
2	the broadcast is authorised by a disclosure entity who is a natural person	(a) the name of the person; (b) the town or city in which the person lives
3	the broadcast is authorised by an entity that is not a disclosure entity or a natural person	(a) the name of the entity; (b) the relevant town or city of the entity
4	the broadcast is authorised by a natural person who is not a disclosure entity	(a) the name of the person; (b) the town or city in which the person lives

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**57 Before subclause 4(1) of Schedule 2**

Insert:

*Meaning of broadcaster*

**58 Subclause 4(2) of Schedule 2**

Repeal the subclause, substitute:

*Announcing required particulars*

- (2) If a broadcaster broadcasts political matter at the request of another person, the broadcaster must ensure that the required particulars in relation to the matter are announced in accordance with any requirements determined under subsection 321D(7) of the

*Commonwealth Electoral Act 1918* for the purposes of this subclause.

Note: A broadcaster is taken to have ensured that required particulars are announced in certain circumstances (see subclause (5)).

*Keeping records*

## **59 Before subclause 4(4) of Schedule 2**

Insert:

*Meaning of authorises*

## **60 At the end of clause 4 of Schedule 2**

Add:

*Particulars taken to be announced*

- (5) A broadcaster that broadcasts political matter is taken to have ensured that required particulars are announced if:
- (a) particulars were announced in relation to the matter for the purposes of this Act; and
  - (b) those particulars purported to be particulars referred to in item 3 or 4 of the table in subclause 1(2); and
  - (c) as a result of steps taken by the broadcaster, it was reasonable for the broadcaster to rely on the particulars that were provided for the purposes of this Act.

Note: An example of steps that may be taken by the broadcaster include:

- (a) notifying a person wanting to broadcast political matter that the name of the person required to be announced as having authorised the broadcast depends on whether the person is a disclosure entity; and
- (b) seeking a verification from that person that the person is or is not a disclosure entity.

## ***Parliamentary Proceedings Broadcasting Act 1946***

### **61 Section 16 (heading)**

Repeal the heading, substitute:

## 16 Broadcasting obligations inapplicable

### 62 Section 16

After “*Broadcasting Services Act 1992*”, insert “, section 321D of the *Commonwealth Electoral Act 1918*, section 110C of the *Referendum (Machinery Provisions) Act 1984*”.

## *Special Broadcasting Service Act 1991*

### 63 Subsection 70A(2)

Repeal the subsection, substitute:

#### *Announcing required particulars*

- (2) If the SBS broadcasts political matter at the request of another person, the SBS must, in accordance with any requirements determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this subsection:
- (a) if the matter was broadcast by radio—ensure that the required particulars in relation to the matter are announced; or
  - (b) if the matter was televised:
    - (i) ensure that the required particulars in relation to the matter are announced; and
    - (ii) ensure that all the required particulars in relation to the matter are transmitted in the form of images of words.

Note: The SBS is taken to have ensured that required particulars are announced in certain circumstances (see subsection (7)).

#### *Keeping records*

### 64 Before subsection 70A(4)

Insert:

#### *Meaning of **authorises***

### 65 Before subsection 70A(5)

Insert:

*Definitions*

**66 Subsection 70A(5)**

Insert:

***disclosure entity*** has the meaning given by:

- (a) section 321B of the *Commonwealth Electoral Act 1918*; or
- (b) paragraph (e) of the definition of ***disclosure entity*** in section 110A of the *Referendum (Machinery Provisions) Act 1984*.

***relevant town or city*** of an entity that authorised the broadcast of political matter means:

- (a) if the entity has a principal office—the town or city in which the office is located; or
- (b) if the entity does not have a principal office, but does have premises—the town or city in which the premises are located; or
- (c) otherwise—the town or city in which the natural person who was responsible for giving effect to the authorisation lives.

**67 Subsection 70A(5) (definition of *required particulars*)**

Repeal the definition, substitute:

***required particulars*** has the meaning given by subsection (6).

**68 At the end of section 70A**

Add:

***Meaning of required particulars***

- (6) The ***required particulars*** are:
  - (a) the particulars set out in the following table; and
  - (b) any other particulars determined under subsection 321D(7) of the *Commonwealth Electoral Act 1918* for the purposes of this paragraph.

**Schedule 1** Authorising electoral, referendum and political matter  
**Part 2** Amendments of broadcasting legislation

<b>Required particulars</b>		
<b>Item</b>	<b>If ...</b>	<b>the required particulars are the following ...</b>
1	the broadcast is authorised by a disclosure entity that is not a natural person	(a) the name of the entity (as included in the most recent return given in relation to the entity under Part XX of the <i>Commonwealth Electoral Act 1918</i> , if a return has been given in relation to the entity under that Part); (b) the relevant town or city of the entity; (c) the name of the natural person responsible for giving effect to the authorisation
2	the broadcast is authorised by a disclosure entity who is a natural person	(a) the name of the person; (b) the town or city in which the person lives
3	the broadcast is authorised by an entity that is not a disclosure entity or a natural person	(a) the name of the entity; (b) the relevant town or city of the entity
4	the broadcast is authorised by a natural person who is not a disclosure entity	(a) the name of the person; (b) the town or city in which the person lives

*Particulars taken to be announced*

- (7) The SBS is taken to have ensured that required particulars are announced in relation to a political matter that it broadcasts if:
- (a) particulars were announced in relation to the matter for the purposes of this Act; and
  - (b) those particulars purported to be particulars referred to in item 3 or 4 of the table in subsection (6); and
  - (c) as a result of steps taken by the SBS, it was reasonable for the SBS to rely on the particulars that were provided for the purposes of this Act.

Note: An example of steps that may be taken by the SBS include:

- (a) notifying a person wanting to broadcast political matter that the name of the person required to be announced as having



- authorised the broadcast depends on whether the person is a disclosure entity; and
- (b) seeking a verification from that person that the person is or is not a disclosure entity.
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*[Minister's second reading speech made in—  
House of Representatives on 30 March 2017  
Senate on 7 September 2017]*

(75/17)

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