



Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018

No. 147, 2018

An Act to amend the *Commonwealth Electoral Act 1918*, 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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An Act to amend the *Commonwealth Electoral Act 1918*, and for related purposes

[Assented to 30 November 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018*.

No. 147, 2018 *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* 1

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	30 November 2018
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	1 December 2018
3. Schedule 1, Part 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 January 2019 (F2018N00190)

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Electoral funding and disclosure reform

Part 1—Registration of political campaigners and associated entities and the Transparency Register

Division 1—Amendments

Commonwealth Electoral Act 1918

1 Subsection 4(1)

Insert:

civil penalty order has the meaning given by subsection 82(4) of the Regulatory Powers Act.

1A Subsection 4(1)

Insert:

election and ballot matters means matters relating to Parliamentary elections, elections, ballots under the *Fair Work Act 2009* or the *Fair Work (Registered Organisations) Act 2009*, and referendums.

1B Subsection 4(1) (definition of *electoral matter*)

Repeal the definition, substitute:

electoral matter has the meaning given by section 4AA.

1C Subsection 4(1)

Insert:

political entity means any of the following:

- (a) a registered political party;
- (b) a State branch (within the meaning of Part XX) of a registered political party;

- (c) a candidate (within the meaning of that Part) in an election (including a by-election);
- (d) a member of a group (within the meaning of that Part).

Note: For candidates and groups, see subsection 287(9).

1D Subsection 4(9)

Repeal the subsection.

1E After section 4

Insert:

4AA Meaning of *electoral matter*

- (1) ***Electoral matter*** means matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election (a ***federal election***) of a member of the House of Representatives or of Senators for a State or Territory, including by promoting or opposing:
 - (a) a political entity, to the extent that the matter relates to a federal election; or
 - (b) a member of the House of Representatives or a Senator.

Note: Communications whose dominant purpose is to educate their audience on a public policy issue, or to raise awareness of, or encourage debate on, a public policy issue, are not for the dominant purpose of influencing the way electors vote in an election (as there can be only one dominant purpose for any given communication).

- (2) For the purposes of subsection (1), each creation, recreation, communication or recommunication of matter is to be treated separately for the purposes of determining whether matter is electoral matter.

Note: For example, matter that is covered by an exception under subsection (5) when originally communicated may become electoral matter if recommunicated for the dominant purpose referred to in subsection (1).

Rebuttable presumption for matter that expressly promotes or opposes political entities etc.

- (3) Without limiting subsection (1), the dominant purpose of the communication or intended communication of matter that expressly promotes or opposes:
- (a) a political entity, to the extent that the matter relates to a federal election; or
 - (b) a member of the House of Representatives or a Senator, to the extent that the matter relates to a federal election;
- is presumed to be the purpose referred to in subsection (1), unless the contrary is proved.

Matters to be taken into account

- (4) Without limiting subsection (1), the following matters must be taken into account in determining the dominant purpose of the communication or intended communication of matter:
- (a) whether the communication or intended communication is or would be to the public or a section of the public;
 - (b) whether the communication or intended communication is or would be by a political entity or political campaigner (within the meaning of Part XX);
 - (c) whether the matter contains an express or implicit comment on a political entity, a member of the House of Representatives or a Senator;
 - (d) whether the communication or intended communication is or would be received by electors near a polling place;
 - (e) how soon a federal election is to be held after the creation or communication of the matter;
 - (f) whether the communication or intended communication is or would be unsolicited.

Exceptions

- (5) Despite subsections (1) and (3), matter is not **electoral matter** if the communication or intended communication of the matter:
- (a) forms or would form part of the reporting of news, the presenting of current affairs or any genuine editorial content in news media; or

- (b) is or would be by a person for a dominant purpose that is a satirical, academic, educative or artistic purpose, taking into account any relevant consideration including the dominant purpose of any other communication of matter by the person; or
- (c) is or would be a private communication by a person to another person who is known to the first person; or
- (d) is or would be by or to a person who is a Commonwealth public official (within the meaning of the *Criminal Code*) in that person's capacity as such an official; or
- (e) is or would be a private communication to a political entity (who is not a Commonwealth public official) in relation to public policy or public administration; or
- (f) occurs or would occur in the House of Representatives or the Senate, or is or would be to a parliamentary committee.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

1F Section 5 (definition of *electoral matters*)

Repeal the definition.

1G Paragraph 7(1)(b)

Omit "electoral matters" (wherever occurring), substitute "election and ballot matters".

1H Paragraph 7(1)(c)

Omit "electoral and Parliamentary matters", substitute "election and ballot matters, and Parliamentary matters".

1J Paragraphs 7(1)(d) and (e)

Omit "electoral matters", substitute "election and ballot matters".

1K Paragraphs 91A(1A)(aa) and (2)(aa)

Omit "electoral matters", substitute "election and ballot matters".

1L Subsection 120(2) (at the end of the table)

Add:

- 14 A decision under section 287S or 302H (anti-avoidance) to give a notice to a person or entity.

1M Section 125

Omit “The Electoral Commission shall”, substitute “(1) The Electoral Commissioner must”.

1N At the end of section 125

Add:

- (2) The Register may be included on the Transparency Register under section 287N.

1P Paragraphs 189B(4)(b) and (5)(b)

Omit “electoral matters”, substitute “election and ballot matters”.

1Q Subsection 193(4) (definition of *Commonwealth country*)

Omit “political entity” (wherever occurring), substitute “body politic”.

3 Subsection 287(1) (definition of *associated entity*)

Repeal the definition, substitute:

associated entity means an entity that is registered as an associated entity under section 287L.

Note: See section 287H for when an entity is required to be registered as an associated entity.

4 Subsection 287(1)

Insert:

Australian resident means a person who holds a permanent visa under the *Migration Act 1958*.

candidate has a meaning affected by subsection (9).

credit card means:

- (a) any article of a kind commonly known as a credit card; or
- (b) any similar article intended for use in obtaining cash, goods or services on credit;

and includes any article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit.

disclosure threshold means \$13,800.

Note: This amount is indexed under section 321A.

electoral expenditure has the meaning given by section 287AB.

foreign donor has the meaning given by section 287AA.

foreign public enterprise has the meaning given by section 70.1 of the *Criminal Code*.

5 Subsection 287(1) (definition of gift)

Omit “otherwise than by will,”.

6 Subsection 287(1) (at the end of the definition of gift)

Add:

- ; or (c) any visit, experience or activity provided for the purposes of a political exchange program.

6A Subsection 287(1) (at the end of the definition of group)

Add:

Note: The meaning of **group** is affected by subsection (9).

7 Subsection 287(1)

Insert:

head office of an entity means the place of business where central management and control of the entity are exercised.

loan means any of the following:

- (a) an advance of money;
- (b) a provision of credit or any other form of financial accommodation;

- (c) a payment of an amount for, on account of, on behalf of or at the request of, a person or entity, if there is an express or implied obligation to repay the amount;
- (d) a transaction (whatever its terms or form) which in substance effects a loan of money.

Note: For loans on credit cards, see subsection (10).

political campaigner means a person or entity that is registered as a political campaigner under section 287L.

Note 1: See also subsection (8) and section 287C (entities that have branches or are not incorporated).

Note 2: See section 287F for when a person or entity is required to be registered as a political campaigner.

scheme (except in section 287E) means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

third party: a person or entity (except a political entity or a member of the House of Representatives or the Senate) is a ***third party*** during a financial year if:

- (a) the amount of electoral expenditure incurred by or with the authority of the person or entity during the financial year is more than the disclosure threshold; and
- (b) the person or entity is not required to be, and is not, registered as a political campaigner under section 287F for the year.

Note: See also subsection (8) and section 287C (entities that have branches or are not incorporated).

Transparency Register means the Register of that name established and maintained under section 287N.

7A Subsection 287(7)

Repeal the subsection.

8 At the end of section 287

Add:

Branches of political campaigners and third parties

- (8) A political campaigner or third party that has branches is, for the purposes of this Part, to be treated as a single political campaigner or third party.

Note: See also section 287C (entities that are not incorporated).

When a person is a candidate or part of a group

- (9) For the purposes of this Part:
- (a) a person who is a candidate in an election is taken to begin to be a candidate on the earlier of the following days:
 - (i) the day the person announced that the person would be a candidate in the election;
 - (ii) the day the person nominated as a candidate in the election; and
 - (b) a group is taken to begin to be a group in an election on the day the members of the group make a request under section 168 for their names to be grouped in the ballot papers for the election;

and the candidate or group ceases to be a candidate or group at the end of 30 days after the polling day in the election.

Loans on credit cards

- (10) For the purposes of this Part, if credit is provided on a credit card in respect of card transactions, the credit is to be treated as a separate loan for each transaction.

9 After section 287

Insert:

287AA Meaning of *foreign donor*

Each of the following is a ***foreign donor***:

- (a) a body politic of a foreign country;
- (b) a body politic of a part of a foreign country;

- (c) a part of a body politic mentioned in paragraph (a) or (b);
- (d) a foreign public enterprise;
- (e) an entity (whether or not incorporated) that does not meet any of the following conditions:
 - (i) the entity is incorporated in Australia;
 - (ii) the entity's head office is in Australia;
 - (iii) the entity's principal place of activity is, or is in, Australia;
- (f) an individual who is none of the following:
 - (i) an elector;
 - (ii) an Australian citizen;
 - (iii) an Australian resident;
 - (iv) a New Zealand citizen who holds a Subclass 444 (Special Category) visa under the *Migration Act 1958* (or if that Subclass ceases to exist, the kind of visa that replaces that Subclass).

287AB Meaning of *electoral expenditure*

Dominant purpose of creating or communicating electoral matter

- (1) ***Electoral expenditure*** means expenditure incurred for the dominant purpose of creating or communicating electoral matter, except to the extent that:
 - (a) the expenditure is, or is to be, paid or reimbursed by the Commonwealth (except under Division 3 (election funding)) to or in relation to a person who is or was a member of the House of Representatives, a Senator or a Minister, because that person is or was such a member, Senator or Minister; or
 - (b) the expenditure is incurred by a person or entity (the ***service provider***):
 - (i) in providing a communication service or communication platform that is used to create or communicate electoral matter; or
 - (ii) in providing a service for another person or entity that engaged the service provider, on a commercial basis, to create or communicate electoral matter.

Schedule 1 Electoral funding and disclosure reform
Part 1 Registration of political campaigners

Note 1: For example, expenditure incurred in relation to the communication of electoral matter for which particulars are required to be notified under section 321D is electoral expenditure.

Note 2: Expenditure by a person who creates matter that is covered by an exception under subsection 4AA(5) is not electoral expenditure. However, as each creation or communication of matter is treated as separate matter under subsection 4AA(2), expenditure incurred by another person who communicates the same matter for the dominant purpose referred to in subsection 4AA(1) may be electoral expenditure.

Note 3: For deemed electoral expenditure for political campaigners, see section 287J.

- (2) Expenditure may be electoral expenditure whether the expenditure is incurred for the dominant purpose of creating or communicating particular electoral matter or electoral matter generally.

Expenditure in relation to an election

- (3) In addition, any expenditure incurred by or with the authority of a political entity, a member of the House of Representatives or a Senator in relation to an election is **electoral expenditure**, except to the extent that the expenditure is, or is to be, paid or reimbursed by the Commonwealth (except under Division 3 (election funding)) to or in relation to a person who is or was a member of the House of Representatives, a Senator or a Minister, because that person is or was such a member, Senator or Minister.

287AC Implied freedom of political communication

This Part does not apply to a person or entity to the extent that any constitutional doctrine of implied freedom of political communication would be infringed if this Part were to apply to the person or entity.

10 At the end of Division 1 of Part XX

Add:

287C Entities that are not incorporated

For the purposes of this Act and the Regulatory Powers Act:

- (a) expenditure is taken to be incurred by or with the authority of an entity that is not a legal person if the expenditure is incurred by or with the authority of any member, agent or officer (however described) of the entity who, acting in his or her actual or apparent authority, incurred the expenditure; and
- (b) a contravention of:
 - (i) section 287F (requirement to register as a political campaigner) that would otherwise have been committed by an entity that is not a legal person; or
 - (ii) any other provision of this Part that would otherwise have been committed by a political campaigner that is not a legal person;is taken to have been committed by the financial controller of the entity or campaigner; and
- (c) a contravention of a provision of this Part that would otherwise have been committed by an entity (except a political entity or a political campaigner) 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 that person's actual or apparent authority, engaged in any conduct or made any omission contributing to the contravention.

Note: See also subsection 287(8) (political campaigners and third parties that have branches).

11 After Division 1 of Part XX

Insert:

Division 1A—Registration of political campaigners and associated entities and the Transparency Register

Subdivision A—Simplified outline of this Division

287D Simplified outline of this Division

A political campaigner or associated entity must be registered as such under this Division. A person or entity may be liable to a civil

penalty if the person or entity incurs electoral expenditure without being appropriately registered.

Generally, whether a person or entity is a political campaigner depends on the amount of electoral expenditure that the person or entity incurs.

Associated entities are entities that have some kind of connection with registered political parties (such as being controlled by or operating for the benefit of a registered political party).

The Electoral Commissioner maintains the Transparency Register under this Division.

The Transparency Register contains details reported to the Electoral Commission under this Part, and other public information.

287E Object of this Division

The object of this Division is to provide for the registration of certain persons or entities that are not registered political parties or candidates in elections, and to provide for the Transparency Register, in order to support the transparency of:

- (a) the scheme established by Division 3A relating to donations; and
- (b) the schemes established by Divisions 4, 5 and 5A relating to the disclosure of donations or electoral expenditure, and annual returns; and
- (c) the scheme established by Part XXA in relation to the authorisation of electoral matter.

Subdivision B—Requirement to register as a political campaigner or associated entity

287F Requirement to register as a political campaigner

- (1) A person or entity (except a political entity, a member of the House of Representatives or a Senator) must be registered for a financial

year as a political campaigner, in accordance with subsection (2), if:

- (a) the amount of electoral expenditure incurred by or with the authority of the person or entity during that or any one of the previous 3 financial years is \$500,000 or more; or
- (b) the amount of electoral expenditure incurred by or with the authority of the person or entity:
 - (i) during that financial year is \$100,000 or more; and
 - (ii) during the previous financial year was at least two-thirds of the revenue of the person or entity for that year.

Note: A person or entity might be taken to have incurred electoral expenditure in a financial year if the person or entity was required to be registered as a political campaigner for a previous financial year but was not so registered (see section 287J).

- (2) The person or entity must be registered before the end of 90 days after becoming required to be registered.
- (3) A person or entity that is required to be registered under subsection (1) for a financial year must not incur further electoral expenditure in that financial year if the person or entity is not registered as a political campaigner.

Note: The financial controller of an entity may contravene this subsection if the entity is not a legal person (see section 287C).

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of electoral expenditure incurred in contravention of this subsection—3 times that amount.

287H Requirement to register as an associated entity

- (1) An entity (except a political entity) must be registered for a financial year as an associated entity, in accordance with subsection (2), if any of the following apply in that year:

- (a) the entity is controlled by one or more registered political parties;
 - (b) the entity operates wholly, or to a significant extent, for the benefit of one or more registered political parties;
 - (c) the entity is a financial member of a registered political party;
 - (d) another person is a financial member of a registered political party on behalf of the entity;
 - (e) the entity has voting rights in a registered political party;
 - (f) another person has voting rights in a registered political party on behalf of the entity.
- (2) The entity must be registered before the end of 90 days after becoming required to be registered.
- (3) An entity that is required to be registered under subsection (1) for a financial year must not incur any electoral expenditure in that financial year, after becoming required to be so registered, if the entity is not registered as an associated entity.

Note: A member, agent or officer of the entity may contravene this subsection if the entity is not a legal person (see section 287C).

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
- (b) if the court can determine the amount, or an estimate of the amount, of electoral expenditure incurred in contravention of this subsection—3 times that amount.

287J Expenditure incurred by persons and entities that are not registered when required to be so

- (1) For the purposes of this Act, a person or entity is taken to have incurred an amount of electoral expenditure in a financial year (the *current financial year*) if:
- (a) the person or entity incurred that amount of electoral expenditure in a previous financial year; and
 - (b) as a result of incurring that electoral expenditure, the person or entity was required to be registered as a political campaigner in the previous financial year; and

- (c) the person or entity was not so registered:
 - (i) in the previous financial year; or
 - (ii) if the person or entity was required to be registered under section 287F and the 90-day period in which the person was required to be registered ended after the end of the previous financial year—by the end of that period.
- (2) This section ceases to apply, at the end of the current financial year, in relation to the amount of electoral expenditure if the person or entity is registered as required as a political campaigner in the current financial year.

287K Application for registration

- (1) A person or entity may apply to the Electoral Commissioner to be registered as:
 - (a) a political campaigner; or
 - (c) an associated entity.
- (2) The application must:
 - (a) be in an approved form; and
 - (b) without limiting paragraph (a):
 - (i) state the financial controller nominated for the person or entity; and
 - (ii) for an application to be registered as an associated entity—identify any registered political party with which the entity is associated.

287L Determining an application for registration

- (1) The Electoral Commissioner must, subject to subsection (4), register a person or entity in accordance with the person or entity's application under section 287K if the application complies with subsection 287K(2). The Electoral Commissioner must register the person or entity as soon as practicable after receiving the application.
- (2) To avoid doubt, the Electoral Commissioner may register a person or entity in accordance with the person or entity's application

whether or not the person or entity is required to be registered under section 287F or 287H.

Refusing registration

- (4) The Electoral Commissioner must refuse to register a person or entity in accordance with the person or entity's application under section 287K if the Electoral Commissioner would be required to refuse registration under subsection 129(1) (except under paragraph 129(1)(a)) because of the name of the political campaigner or the associated entity assuming that:
 - (a) the person or entity were applying to be registered as a political party; and
 - (b) references in that subsection to a "recognised political party", "political party" or "the party" included references to a "political campaigner" or "associated entity"; and
 - (c) references in that subsection to a "registered party" included references to a "political campaigner" or "associated entity".
- (5) Section 131 (variation of application) applies as if references to an application for the registration of a political party included references to an application for registration under this section.

Review of decisions

- (6) Section 141 (review of certain decisions) applies as if:
 - (a) a decision under this section to refuse to register a person or entity in accordance with the person or entity's application under section 287K were a reviewable decision; and
 - (b) references to a person included references to a political campaigner or associated entity.

287M Applications for deregistration

- (1) A person or entity that is registered as a political campaigner or an associated entity may apply to the Electoral Commissioner to be deregistered.
- (2) The application must be in an approved form.

- (3) On receiving the application, the Electoral Commissioner must deregister the person or entity as a political campaigner or an associated entity (as the case requires).

Subdivision C—Transparency Register

287N Transparency Register

- (1) The Electoral Commissioner must establish and maintain a Transparency Register.

Content of Transparency Register

- (2) The Transparency Register must include the following information:
- (a) the name of:
 - (i) each person or entity registered as a political campaigner under section 287L; and
 - (ii) each entity registered as an associated entity under section 287L; and
 - (iii) each person or entity that has provided a return under section 314AEB (annual returns by third parties) for that or any of the previous 3 financial years; and
 - (iv) each political entity;
 - (b) for political campaigners and associated entities—the name of the financial controller of the person or entity;
 - (c) for associated entities—the name of any registered political parties with which the person or entity is associated;
 - (d) any determination, notice or return published under section 320;
 - (e) any enforceable undertaking published under subsection 384A(2A).

Note: The Transparency Register may include the Register of Political Parties (see section 125).

- (3) The Electoral Commissioner must keep the Transparency Register up-to-date.
- (4) Subsection (3) does not prevent historical data from being included in the Transparency Register.

287P Obligation to notify Electoral Commissioner of changes to information on Transparency Register

- (1) A person or entity (except a political entity) whose name is on the Transparency Register must notify the Electoral Commissioner, in an approved form, if information on the Transparency Register relating to the person or entity ceases to be correct or complete.

Note: For who is responsible for notifying the Electoral Commissioner in relation to certain entities that are not legal persons, see section 287C.

- (2) The person or entity must notify the Electoral Commissioner under subsection (1) within 90 days of the information ceasing to be correct or complete.

Civil penalty: 60 penalty units.

- (3) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (2) of this section.

287Q Transparency Register to be made public etc.

- (1) The Transparency Register may be maintained by electronic means.
- (2) The Transparency Register is to be made available to the public.

287R Entry in Transparency Register prima facie evidence of information

An entry in the Transparency Register is prima facie evidence of the information contained in the entry.

Subdivision D—Anti-avoidance

287S Anti-avoidance

- (1) The Electoral Commissioner may give a person or entity (the *relevant person*) a written notice if:
- (a) one or more persons or entities (whether or not including the relevant person) enter into, begin to carry out or carry out a scheme; and

- (b) there are reasonable grounds to conclude that the person or entity, or any of the persons or entities, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the requirement to register the relevant person under section 287F or 287H (requirement to register as a political campaigner or associated entity) for a financial year; and
- (c) as a result of the scheme or part of the scheme:
 - (i) the amount of electoral expenditure incurred by or with the authority of the relevant person during the financial year is reduced below the amount specified in paragraph 287F(1)(a) or subparagraph 287F(1)(b)(i); or
 - (ii) the amount of revenue of the relevant person during the previous financial year is increased; or
 - (iii) the amount of electoral expenditure incurred by or with the authority of the relevant person during the previous financial year is reduced; or
 - (iv) the relevant person is controlled by another person or entity that is not a registered political party but the other person or entity is controlled by, or controls, a registered political party; or
 - (v) the relevant person operates wholly, or to a significant extent, for the benefit of another person or entity that is not a registered political party but the other person or entity is controlled by, or controls, a registered political party; and
- (d) as a result of the scheme or part, the relevant person is not required to be registered under section 287F or 287H for the financial year.

Note 1: A decision to give a notice is a reviewable decision (see section 120).

Note 2: For the definition of *scheme*, see subsection 287(1).

- (2) The notice must specify that, for the purposes of this Act, the relevant person is taken, from the day specified in the notice, to be required to be registered for the financial year as a political campaigner or associated entity (as the case requires), and the notice has effect accordingly.

- (3) The day specified in the notice must not be earlier than the day the notice is given to the relevant person.
- (4) This section applies whether or not the scheme is entered into, begun to be carried out or carried out:
 - (a) in Australia; or
 - (b) outside Australia; or
 - (c) partly in Australia and partly outside Australia.

11A Section 308

Repeal the section.

12 Section 314AA (definition of *amount*)

Omit “, loan or bequest”, substitute “or loan”.

12A Paragraphs 321D(4)(a) and (b)

Repeal the paragraphs.

Division 2—Application and transitional provisions

13 Application and transitional provisions

- (1) The amendments of the *Commonwealth Electoral Act 1918* made by this Part apply (subject to this item) on and after the commencement of this item.

Note: The effect of subitem (1) is that a person or entity may be required to be registered as a political campaigner or associated entity before the end of 90 days after the commencement of this item (see subsections 287F(2) and 287H(2) of the *Commonwealth Electoral Act 1918*).

- (2) For the purposes of determining whether a person or entity:
 - (a) is required to be registered under section 287F of the *Commonwealth Electoral Act 1918*, as inserted by this Part; or
 - (b) is a third party (within the meaning of subsection 287(1) of that Act);

a reference in section 287F, or in the definition of *third party* in subsection 287(1), of that Act to electoral expenditure incurred by or with the authority of a person or entity is, in relation to the period beginning on 1 July 2015 and ending immediately before the commencement of this item, taken to be a reference to:

- (c) for section 287F—expenditure disclosed by the person or entity in accordance with section 314AEB of that Act for the financial years beginning on 1 July 2015 and ending on 30 June 2018; and
- (d) in any case—expenditure covered by section 314AEB of that Act incurred or authorised by the person or entity during the period beginning on 1 July 2018 and ending immediately before that commencement.

Transitional registration of associated entities

- (3) For the purposes of the *Commonwealth Electoral Act 1918*, an entity in relation to which a return is provided under section 314AEA (annual returns by associated entities) of that Act for the 2017-2018 financial year is taken, on and after the commencement of this item, to be registered as an associated entity under section 287L of that Act for the 2018-2019 financial year (whether the return is provided before or after that commencement).
- (4) However, if the entity is not required to be registered as an associated entity for the 2018-2019 financial year, the entity must notify the Electoral Commissioner that the entity is not required to be so registered within 90 days of:
 - (a) the commencement of this item; or
 - (b) if the entity did not provide a return for the 2017-2018 financial year until after that commencement—the day the entity provided the return.
- (5) To avoid doubt, subitems (3) and (4) do not limit the effect of section 287H or 287P of the *Commonwealth Electoral Act 1918*.

Application of Transparency Register

- (6) Sections 287N (Transparency Register) and 287Q (Transparency Register to be made public etc.) of the *Commonwealth Electoral Act*

Schedule 1 Electoral funding and disclosure reform

Part 1 Registration of political campaigners

1918, as inserted by this Part, apply as soon as practicable, and no later than 90 days, after the commencement of this item.

- (7) Section 287P (obligation to notify Electoral Commissioner of changes to information on Transparency Register) of the *Commonwealth Electoral Act 1918*, as inserted by this Part, applies:
- (a) on and after the day the Transparency Register first becomes available to the public under section 287Q of that Act; and
 - (b) in relation to information that ceased to be correct or complete before that day—as if the reference in subsection 287P(2) to the information ceasing to be correct or complete were a reference to that day.

Part 2—Other amendments

Division 1—Amendments

Commonwealth Electoral Act 1918

14 Subsection 17A(1)

Omit “an offence that has, or may have been, committed against section 315”, substitute “a contravention or potential contravention of a civil penalty provision in this Act”.

15 Before section 287

Insert:

286A Simplified outline of this Part

This Part deals with the funding of registered political parties, candidates and groups. It also deals with gifts and other financial matters relating to parties, candidates, groups, political campaigners, third parties and associated entities.

Registered political parties, candidates and groups must have agents. Political campaigners and associated entities must nominate financial controllers. Many of the obligations in this Part are imposed on those agents and financial controllers.

Registered political parties, candidates and groups may be entitled to election funding. The election funding is payable in relation to any candidate who received more than 4% of the total first preference votes cast in the election.

Generally, gifts of at least \$1,000 to political entities (who are registered political parties, candidates and Senate groups) and political campaigners must not be made by foreign donors (that is, persons who, broadly, do not have a connection to Australia).

Broadly, gifts to political entities, political campaigners or third parties must not be made by foreign donors for the purpose of

incurring electoral expenditure or creating or communicating electoral matter.

There are obligations to disclose certain gifts made to:

- (a) candidates and members of groups; and
- (b) registered political parties, State branches and political campaigners.

Certain expenditure incurred by or with the authority of candidates and groups during an election period must also be disclosed.

Each financial year, registered political parties, political campaigners, third parties and associated entities are required to disclose details relating to amounts received or paid or incurred by the parties, campaigners or entities during the year.

16 Subsection 287(1) (definitions of *designated federal party*, *disclosure period*, *eligible vote* and *entitlement*)

Repeal the definitions.

16A Subsection 287(1)

Insert:

federal party means a registered political party that has:

- (a) a federal branch; and
- (b) 2 or more State branches that are registered political parties.

17 Subsection 287(1) (definition of *financial controller*)

Omit “an entity, means”, substitute “a person or entity, means (subject to section 292F)”.

18 Subsection 287(1) (paragraphs (a), (b) and (c) of the definition of *financial controller*)

Omit “the entity”, substitute “the person or entity”.

18A Subsection 287(1) (definition of *Liberal Party*)

Repeal the definition.

18B Subsection 287(1)

Insert:

State or Territory electoral law means a law of a State or Territory that deals with electoral matters (within the ordinary meaning of the expression).

State or Territory electoral purpose means a purpose relating to a State, Territory or local government election (and, to avoid doubt, does not include the purpose of incurring electoral expenditure or creating or communicating electoral matter).

18C Section 287B

Repeal the section.

19 Division 2 of Part XX (heading)

Repeal the heading, substitute:

Division 2—Agents and financial controllers

20 Before section 288

Insert:

Subdivision A—Simplified outline of this Division

287V Simplified outline of this Division

Registered political parties, candidates and groups must have an agent. Political campaigners and associated entities must nominate a financial controller.

The Electoral Commissioner keeps a Register of Party Agents. Information about financial controllers for political campaigners and associated entities is kept in the Transparency Register under Division 1A.

The agents are responsible for making claims for election funding under Division 3. The agents and financial controllers are

responsible for complying with Divisions 1A and 3A, and providing returns under Divisions 4 to 5A.

Subdivision B—Appointment of agents

21 Sections 288A to 290

Repeal the sections, substitute:

289 Appointment of agents by candidates and groups

Agents of candidates

- (1) A candidate in an election (including a member of a group of candidates) may appoint a person to be the agent of the candidate in relation to the election.

Note: A group of candidates has an agent who is separate from the candidates' agents (see subsections (3) and (4)).

- (2) If the candidate does not appoint an agent, the candidate is taken to be his or her own agent in relation to the election.

Agents of members of groups

- (3) The members of a group of candidates in an election may appoint a person to be the agent of the group in relation to the election.
- (4) If the members of a group of candidates do not appoint an agent:
 - (a) if all the members have been endorsed by the same registered political party—the agent of the State branch of the party organised on the basis of the State or Territory in which the election is to be held is taken to be the agent of the group in relation to the election; and
 - (b) otherwise—the candidate whose name appears first in the group in the ballot papers (or if that candidate dies, the candidate whose name appears next highest in the ballot papers) is taken to be the agent of the group in relation to the election.

22 Paragraphs 292(2)(b) and (3)(b)

Omit “subsection 290(1)”, substitute “subsection 292F(1)”.

23 Paragraph 292B(a)

After “Division”, insert “3A,”.

24 Subsection 292(4)

Omit “subsection 290(1)”, substitute “subsection 292F(1)”.

25 Section 292D

Repeal the section, substitute:

292D Notice of death or resignation of agent of candidate or group

Death

- (1) If the agent of a candidate or group dies, the candidate or a member of the group must, without delay, give to the Electoral Commission notice in writing of the death.

Resignation

- (2) If the agent of a candidate or group resigns, the agent must, without delay, give to the Electoral Commission notice in writing of the resignation.

26 At the end of Division 2 of Part XX

Add:

Subdivision C—Nomination of financial controllers

292E Financial controllers of political campaigners and associated entities

- (1) Each political campaigner and associated entity must nominate a financial controller.

Note: See the definition of *financial controller* in subsection 287(1).

- (2) If the political campaigner or associated entity is an individual, he or she may nominate himself or herself as the financial controller.

- (3) If the political campaigner or associated entity (the *campaigner or entity*) is not a legal person, an individual acting on behalf of the campaigner or entity must nominate the financial controller.

Subdivision D—Requirements for appointment or nomination

292F Requirements for appointment or nomination

- (1) An appointment of an agent under section 288 or 289, or a nomination of a financial controller under section 292E, must meet the following conditions (subject to subsection (2)):
- (a) the person appointed or nominated is an individual who is at least 18 years old;
 - (b) written notice of the appointment or nomination is given to the Electoral Commission:
 - (i) for an appointment made by a political party or a State branch of a political party—by the party or branch; and
 - (ii) for any other appointment—by the candidate, or each member of the group, making the appointment; and
 - (iii) for a nomination of a financial controller of a political campaigner or associated entity—by the campaigner or entity nominating the financial controller;
 - (c) the name and full street address and suburb or locality of the person appointed or nominated are set out in the notice;
 - (d) the person appointed or nominated:
 - (i) has signed a form of consent to the appointment or nomination; and
 - (ii) has signed a declaration that he or she is eligible for appointment or nomination;
 - (e) for a nomination under section 292E—the person nominated meets the definition of *financial controller* in subsection 287(1).
- (2) Subsection (1) does not apply in relation to a person who is taken to be an agent under subsection 289(2) or (4).
- (3) A consent or declaration under subsection (1) may be incorporated in, or written on the same paper as, a notice under that subsection.
- (4) A person is not eligible to be:
-

- (a) appointed as an agent of a political party, candidate or group;
or
 - (b) nominated as a financial controller of a political campaigner
or associated entity;
- if the person is convicted of an offence against this Part.

27 Sections 294 and 297

Repeal the sections, substitute:

Subdivision A—Simplified outline of this Division

292G Simplified outline of this Division

Election funding may be payable in relation to registered political parties, candidates and groups under this Division. The election funding is payable in relation to any candidate who received more than 4% of the total first preference votes cast in the election. Election funding of \$10,000 (as indexed) is paid as soon as practicable after 20 days after the polling day for the election or elections. However, a claim must be made for election funding of more than that amount to be paid.

The amount of the election funding is worked out by reference to the number of formal first preference votes received by the candidate. However, for an amount of election funding that is more than \$10,000 (as indexed), the amount is capped at the amount of actual expenditure incurred by the candidate or the registered political party endorsing the candidate.

Subdivision B—Election funding

293 Election funding for registered political parties

- (1) Election funding is payable in relation to a registered political party under this section for an election if either of the following applies:
 - (a) in respect of a candidate whom the party endorses in a House of Representatives election, or in a Senate election and who is not a member of a group—the total number of formal first preference votes given for the candidate is at least 4% of the

total number of formal first preference votes cast in the election;

- (b) in respect of candidates whom the party endorses in a Senate election and who are members of a group—the total number of formal first preference group votes given for the candidates is at least 4% of the total number of formal first preference votes cast in the election.

Note: A claim must be made for election funding of more than \$10,000 to be paid (see section 297).

- (2) The amount of election funding that is payable in relation to the party is:

- (a) the total of the following:

- (i) \$2.73454 for each formal first preference vote given for a candidate in relation to whom paragraph (1)(a) is satisfied;
- (ii) \$2.73454 for each formal first preference group vote in respect of a group in relation to which paragraph (1)(b) is satisfied;

based on formal first preference votes and formal first preference group votes counted as at the day mentioned in subsection (3); or

- (b) if the amount worked out under paragraph (a) is more than \$10,000—the lesser of:
- (i) the amount worked out under that paragraph; and
- (ii) the amount of electoral expenditure that is claimed in respect of the registered political party for all elections held that day, and accepted by the Electoral Commission under section 298C.

Note: The amounts in subparagraphs (2)(a)(i) and (ii) and paragraph (b) are indexed under section 321.

- (3) The amount worked out under paragraph (2)(a) is based on formal first preference votes and formal first preference group votes counted as at the day:

- (a) if the amount is to be paid under Subdivision BA—that is 20 days after the polling day for the election or elections; or
- (b) if the amount is to be paid under Subdivision C—a determination on the party's interim claim or final claim (as

the case requires) for election funding is made by the Electoral Commission.

294 Election funding for unendorsed candidates

- (1) Election funding is payable in relation to a candidate under this section if:
- (a) the candidate is neither:
 - (i) endorsed by a registered political party; nor
 - (ii) in the case of a Senate election—a member of a group; and
 - (b) the total number of formal first preference votes given for the candidate in the election is at least 4% of the total number of formal first preference votes cast in the election.

Note: A claim must be made for election funding of more than \$10,000 to be paid (see section 297).

- (2) The amount of election funding that is payable in relation to the candidate is:
- (a) \$2.73454 for each formal first preference vote given for the candidate in the election, based on formal first preference votes counted as at the day mentioned in subsection (3); or
 - (b) if the amount worked out under paragraph (a) is more than \$10,000—the lesser of:
 - (i) the amount worked out under paragraph (a); and
 - (ii) the amount of electoral expenditure that is claimed in respect of the candidate for the election, and accepted by the Electoral Commission under section 298C.

Note: The amounts in paragraphs (2)(a) and (b) are indexed under section 321.

- (3) The amount worked out under paragraph (2)(a) is based on formal first preference votes counted as at the day:
- (a) if the amount is to be paid under Subdivision BA—that is 20 days after the polling day for the election; or
 - (b) if the amount is to be paid under Subdivision C—a determination on the candidate's interim claim or final claim (as the case requires) for election funding is made by the Electoral Commission.

295 Election funding for unendorsed groups

- (1) Election funding is payable in relation to a group in a Senate election under this section if:
- (a) none of the group's members is a candidate endorsed by a registered political party; and
 - (b) the total number of formal first preference group votes is at least 4% of the total number of formal first preference votes cast in the Senate election.

Note: A claim must be made for election funding of more than \$10,000 to be paid (see section 297).

- (2) The amount of election funding that is payable in relation to the group is:
- (a) \$2.73454 for each formal first preference group vote in the Senate election, based on formal first preference votes and formal first preference group votes counted as at the day mentioned in subsection (3); or
 - (b) if the amount worked out under paragraph (a) is more than \$10,000—the lesser of:
 - (i) the amount worked out under paragraph (a); and
 - (ii) the amount of electoral expenditure that is claimed in respect of the group for the Senate election, and accepted by the Electoral Commission under section 298C.

Note: The amounts in paragraphs (2)(a) and (b) are indexed under section 321.

- (3) The amount worked out under paragraph (2)(a) is based on formal first preference votes and formal first preference group votes counted as at the day:
- (a) if the amount is to be paid under Subdivision BA—that is 20 days after the polling day for the Senate election; or
 - (b) if the amount is to be paid under Subdivision C—a determination on the group's interim claim or final claim (as the case requires) for election funding is made by the Electoral Commission.

Subdivision BA—Automatic payment of election funding of \$10,000

296 Automatic payment of election funding of \$10,000

- (1) As soon as practicable after 20 days after the polling day for an election or elections, the Electoral Commission must pay \$10,000 in relation to each registered political party, candidate, or group in a Senate election, that is entitled to claim, and wishes to receive, an amount under subsection 293(2), 294(2) or 295(2).

Note 1: The amount of \$10,000 is indexed under section 321.

Note 2: A registered political party may state under paragraph 126(2)(d) that it does not wish to receive election funding.

- (2) The amount must be paid to:
- (a) for a registered political party:
 - (i) that is a State branch of a federal party; and
 - (ii) that the agent of the federal party has agreed may receive the amount;the agent of the State branch; or
 - (b) for a registered political party:
 - (i) that is a State branch of a federal party; and
 - (ii) that the agent of the federal party has not agreed may receive the amount;the agent of the federal party; or
 - (c) for any other registered political party—the agent of the registered political party; or
 - (d) for a candidate or group—the agent of the candidate or group.

Subdivision C—Claims for election funding of more than \$10,000

297 Need for a claim for election funding of more than \$10,000

- (1) For election funding of more than \$10,000 to be paid, a claim must be made by:
- (a) for a registered political party:

- (i) that is a State branch of a federal party; and
- (ii) that the agent of the federal party has agreed may receive the election funding;
the agent of the State branch; or
- (aa) for a registered political party:
 - (i) that is a State branch of a federal party; and
 - (ii) that the agent of the federal party has not agreed may receive the election funding;
the agent of the federal party; or
- (ab) for any other registered political party—the agent of the registered political party; or
- (b) the agent of a candidate or group.

Note: The amount of \$10,000 is indexed under section 321.

- (2) The agent may make:
 - (a) an interim claim; or
 - (b) both an interim claim and a final claim; or
 - (c) a final claim.

Note: If an interim claim only is made, see subsections 298C(3) and (4).

- (3) A final claim must specify all electoral expenditure for which election funding is sought, even if:
 - (a) some of the election funding sought has already been paid under Subdivision BA; or
 - (b) some or all of the electoral expenditure has been specified in an interim claim.
- (4) A final claim may specify electoral expenditure already specified in an interim claim by making reference to the interim claim.
- (5) Only one interim claim and one final claim may be made.

298 Electoral expenditure incurred

- (1) A claim made by the agent of a registered political party must specify, in relation to all elections held on the same day, electoral expenditure covered by subsection (1A) for which election funding is sought.

- (1A) The electoral expenditure must have been incurred, in relation to the elections, by:
- (a) for a claim made by the agent of a registered political party under paragraph 297(1)(a) or (ab):
 - (i) the party; or
 - (ii) a candidate endorsed by the party; or
 - (b) for a claim made by the agent of a federal party under paragraph 297(1)(aa) in relation to a State branch of the federal party:
 - (i) the State branch; or
 - (ii) a candidate endorsed by the State branch or by the federal party; or
 - (iii) the federal party.
- (2) A claim made by the agent of a candidate in an election who is not endorsed by a registered political party must specify electoral expenditure:
- (a) incurred by the candidate in relation to the election; and
 - (b) for which election funding is sought.
- (3) A claim made by the agent of a group in a Senate election must specify electoral expenditure:
- (a) incurred by the group, or by candidates who are members of the group, in relation to the election; and
 - (b) for which election funding is sought.

298A Form of claim

A claim must:

- (a) specify whether the claim is an interim claim or final claim; and
- (b) be in an approved form; and
- (c) specify the person or persons to whom the election funding is payable; and
- (d) if the election funding is payable to more than one person—specify the percentages in which the election funding is payable to each person; and
- (e) provide all the information, and be accompanied by any documents, required by the form.

298B Lodging of claim

- (1) A claim must be lodged with the Electoral Commission during the period:
 - (a) beginning 20 days after the polling day for the election or elections; and
 - (b) ending 6 months after that polling day.
- (2) A claim is taken not to have been made if it is not lodged within that period.

298C Determination of claim

- (1) The Electoral Commission must, within 20 days of the Electoral Commission receiving a claim:
 - (a) decide whether to accept or refuse the claim, in whole or in part; and
 - (b) to the extent that the Electoral Commission accepts the claim—pay the amount required by section 298D or 298E.
 - (2) In deciding whether to accept or refuse a claim, in whole or in part, the Electoral Commission must only consider:
 - (a) whether expenditure claimed is electoral expenditure; and
 - (b) if expenditure claimed is electoral expenditure—both:
 - (i) whether the electoral expenditure was incurred; and
 - (ii) whether the electoral expenditure has been specified in a claim made by another agent.
 - (3) If an interim claim is accepted, in whole or in part, and a final claim is not lodged:
 - (a) no further election funding is payable; and
 - (b) the interim claim is taken to be a final claim accepted, in whole or in part, by the Electoral Commission for the purposes of subsection 301(1); and
 - (c) if the interim claim is accepted only in part—the interim claim is taken to be a final claim refused in part by the Electoral Commission for the purposes of sections 298F, 298G and 298H.
 - (4) If:
-

- (a) an interim claim is refused; and
 - (b) a final claim is not lodged;
- the interim claim is taken to be a final claim refused by the Electoral Commission for the purposes of sections 298F, 298G and 298H.
- (5) To avoid doubt, subsection (3) does not require the Electoral Commission to determine the amount of election funding that is payable based on formal first preference votes and formal first preference group votes counted as at the day the interim claim is taken to be a final claim.

298D Payment to be made following acceptance of an interim claim

- (1) This section applies if the Electoral Commission accepts, in whole or in part, an interim claim made by the agent of a registered political party, candidate or group in relation to an election or elections.
- (2) Within 20 days of the Electoral Commission receiving the claim, the Electoral Commission must pay 95% of the amount:
 - (a) payable in relation to the party, candidate or group under subsection 293(2), 294(2) or 295(2); and
 - (b) reduced by any amount that has been paid in relation to the party, candidate or group in accordance with section 296.

The amount must be paid in accordance with paragraphs 298A(c) and (d).

Note 1: Under paragraphs 298A(c) and (d), a claim may specify the person or persons to whom, and percentages in which, election funding is payable.

Note 2: See also section 299A if the amount is payable to the agent of a registered political party.

298E Payment to be made following acceptance of a final claim

- (1) This section applies if the Electoral Commission accepts, in whole or in part, a final claim made by the agent of a registered political party, candidate or group in relation to an election or elections.
- (2) Within 20 days of the Electoral Commission receiving the claim, the Electoral Commission must pay the amount:

- (a) payable in relation to the party, candidate or group under subsection 293(2), 294(2) or 295(2); and
- (b) reduced by any amount that has been paid in relation to the party, candidate or group in accordance with section 296 or 298D.

The amount must be paid in accordance with paragraphs 298A(c) and (d).

Note 1: Under paragraphs 298A(c) and (d), a claim may specify the person or persons to whom, and percentages in which, election funding is payable.

Note 2: See also section 299A if the amount is payable to the agent of a registered political party.

298F Refusing a final claim

If a final claim is refused, in whole or in part, the Electoral Commission must cause to be given to the agent of the registered political party, candidate or group to which the claim relates, a notice that states that the claim has been refused, in whole or in part, and sets out the reasons for the refusal.

Note: A notice may be required under this section if an interim claim that is refused, in whole or in part, is taken to be a final claim under paragraph 298C(3)(c) or subsection 298C(4).

298G Application for reconsideration of decision to refuse a final claim

- (1) If a final claim is refused, in whole or in part, the agent of the registered political party, candidate or group to which the claim relates may apply to the Electoral Commission for the Electoral Commission to reconsider the decision.
- (2) The application must:
 - (a) be in writing; and
 - (b) set out the reasons for the application.
- (3) The application must be made within:
 - (a) 28 days after the day on which the agent is notified of the refusal; or

- (b) if, either before or after the end of that period of 28 days, the Electoral Commission extends the period within which the application may be made—the extended period for making the application.

298H Reconsideration by Electoral Commission

- (1) Upon receiving such an application, the Electoral Commission must:
- (a) reconsider the decision; and
 - (b) decide to:
 - (i) affirm the decision; or
 - (ii) vary the decision; or
 - (iii) set aside the decision and make another decision.
- (2) The Electoral Commission must give to the relevant agent a notice stating the decision on the reconsideration together with a statement of the reasons for the decision.
- (3) If the Electoral Commission’s decision on the reconsideration would require an amount, or an additional amount, of election funding to be paid, the Electoral Commission must pay the amount within 20 days of the day of its decision.
- (4) The Electoral Commission may not delegate its power under subsection (1).
- (5) Subsections 141(5) to (6A) apply in relation to a decision under this section in the same way as those subsections apply to a reviewable decision made by the Electoral Commission under subsection 141(2) or (4).

Subdivision D—Payments of election funding

28 Section 299

Repeal the section, substitute:

299 Recovery of amounts that are not payable

If:

- (a) a payment is made under this Division; and
-

(b) the recipient is not entitled to receive the whole or a part of the amount paid;

that amount or part may be recovered by the Commonwealth as a debt due to the Commonwealth by action against the person in a court of competent jurisdiction.

29 Subsection 299A(1)

Omit “under section 299 to the agent or principal agent”, substitute “under section 298D or 298E to the agent”.

30 At the end of subsection 299A(1)

Add:

Note: An interim claim or final claim must specify the person to whom election funding is payable which may be the agent (see paragraph 298A(c)).

31 Subsection 299A(8)

Omit “or principal agent”.

32 Sections 300 and 301

Repeal the sections, substitute:

Subdivision E—Miscellaneous

300 Death of candidates or group members

Death of candidate

- (1) If formal first preference votes were given for a candidate in an election, a payment may be made in respect of the candidate even if the candidate dies.
- (2) If the candidate was neither:
 - (a) endorsed by a registered political party; nor
 - (b) a member of a group;and was his or her own agent for the purposes of this Part, the payment may be made to the candidate’s legal personal representative.

Death of member of group

- (3) If group votes were given in a Senate election in relation to a group of candidates, a payment may be made for the group even if a candidate who was a member of the group dies.

301 Varying decisions accepting claims

- (1) If:
- (a) the Electoral Commission has made a decision (the *claim decision*) under section 298C to accept an amount of electoral expenditure specified in a final claim; and
 - (b) the Electoral Commission becomes satisfied that:
 - (i) the amount of electoral expenditure should not have been accepted; or
 - (ii) only a lesser amount of electoral expenditure should have been accepted;
- the Electoral Commission may vary the claim decision accordingly.
- (2) If the Electoral Commission makes a decision (the *variation decision*) to vary the claim decision, sections 298F, 298G and 298H apply in relation to the variation decision as if it were, to the extent of the variation, a decision of the Commission to refuse the claim.
- (3) If:
- (a) the Electoral Commission varies the claim decision; and
 - (b) the total amount of election funding that has been paid to a person in respect of the final claim, and any interim claim, exceeds the amount that, under the claim decision as varied, should have been paid to the person in respect of the final claim;
- the amount of the excess is an overpayment, and may be recovered by the Commonwealth as a debt due to the Commonwealth by action against the person.

33 After Division 3 of Part XX

Insert:

Division 3A—Requirements relating to donations

Subdivision A—Interpretation

302A Simplified outline of this Division

This Division regulates gifts that are made to registered political parties, candidates, groups, political campaigners and third parties.

Gifts of over \$1,000 to political entities (broadly, registered political parties, candidates and Senate groups) or political campaigners must not be made by foreign donors. A foreign donor is a person who does not have a connection to Australia, such as a person who is not an Australian citizen or an entity that does not have a significant business presence in Australia.

Broadly, gifts must not be made to a political entity, political campaigner or third party by a foreign donor for the purpose of incurring electoral expenditure or creating or communicating electoral matter.

Anti-avoidance provisions apply to strengthen these requirements.

A person or entity may commit an offence or be liable for a civil penalty if the person or entity contravenes the requirements. There are some exceptions, such as when a gift is made in a personal capacity.

302B Definitions

In this Division:

acceptable action is taken in relation to a gift if any of the following action is taken:

- (a) an amount equal to the amount or value of the gift is transferred to the Commonwealth for the purposes of this Division;
- (b) the gift is returned to the donor or the person who made the gift;

- (c) an amount equal to the amount or value of the gift is transferred to the donor or the person who made the gift.

appropriate donor information has the meaning given by section 302P.

302C Object of this Division

- (1) The object of the Division is to secure and promote the actual and perceived integrity of the Australian electoral process by reducing the risk of foreign persons and entities exerting (or being perceived to exert) undue or improper influence in the outcomes of elections.
- (2) This Division aims to achieve this object by restricting the receipt and use of political donations made by foreign persons or entities that do not have a legitimate connection to Australia.

302CA Relationship with State and Territory electoral laws

Giving, receiving or retaining gifts

- (1) Despite any State or Territory electoral law, a person or entity may:
- (a) give a gift to, or for the benefit of, a political entity, a political campaigner or a third party (a **gift recipient**); or
 - (b) if the person or entity is a gift recipient—receive or retain a gift; or
 - (c) on behalf of a gift recipient, receive or retain a gift;
- if:
- (d) this Division does not prohibit the giving, receiving or retaining of the gift; and
 - (e) the gift, or part of the gift, is required to be, or may be, used for the purposes of incurring electoral expenditure, or creating or communicating electoral matter, in accordance with subsection (2).
- (2) A gift, or part of a gift, is required to be, or may be, used for a purpose of incurring electoral expenditure, or creating or communicating electoral matter, if:

- (a) any terms set by the person or entity providing the gift explicitly require or allow the gift or part to be used for that purpose (whether or not those terms are enforceable); or
- (b) the person or entity providing the gift does not set terms relating to the purpose for which the gift or part can be used.

Gifts made or retained for State or Territory electoral purposes

- (3) Without limiting when subsection (1) does not apply, that subsection does not apply in relation to all or part of a gift if:
 - (a) any terms set by the person or entity providing the gift explicitly require the gift or part to be used only for a State or Territory electoral purpose (whether or not those terms are enforceable); or
 - (b) either:
 - (i) the effect of a State or Territory electoral law is to require the gift or part to be kept or identified separately (or to require the gift or part to be kept or identified separately in order to be entitled to a benefit under that law); or
 - (ii) the gift recipient keeps or identifies the gift or part separately;in order to be used only for a State or Territory electoral purpose.

Note: For the purposes of subparagraph (3)(b)(ii), a gift recipient may identify the electoral purpose for which a gift is to be used at any time prior to using that gift. A person who gives, receives or retains a gift that is used for a State or Territory electoral purpose in contravention of a State or Territory electoral law may be liable to a penalty under the State or Territory electoral law.

Example: A gift is given without expressing an intended purpose, and ultimately is used for a State or Territory electoral purpose. The giving, receipt, retention and use of that gift must comply with the State or Territory electoral law.

Using gifts

- (4) Despite any State or Territory electoral law, a gift recipient may use, or authorise the use of, a gift for the purposes of incurring electoral expenditure, or creating or communicating electoral matter, if this Division does not prohibit the use of the gift.
-

- (5) Without limiting when subsection (4) does not apply, that subsection does not apply in relation to all or part of a gift if the effect of the State or Territory electoral law is to require the gift or part to be kept or identified separately (or to require the gift or part to be kept or identified separately in order to be entitled to a benefit under that law) in order to be used only for a State or Territory electoral purpose.

When gifts are kept or identified separately

- (6) Without limiting paragraph (3)(b) or subsection (5), an amount that is all or part of a gift of money is kept or identified separately in order to be used only for a State or Territory electoral purpose if:
- (a) the amount is kept in an account where:
 - (i) the only amounts deposited into the account are amounts to be used only for a State or Territory electoral purpose; and
 - (ii) the only amounts paid out of the account are amounts incurred for a State or Territory electoral purpose; or
 - (b) the amount is designated as an amount that must be used only for a State or Territory electoral purpose.

Subdivision B—Offences and civil penalty provisions relating to donations

302D Donations to registered political parties, candidates, Senate groups and political campaigners by foreign donors

- (1) A person contravenes this subsection if:
- (a) the person is:
 - (i) an agent of a political entity (the *gift recipient*); or
 - (ii) a financial controller of a political campaigner (the *gift recipient*); and
 - (b) a gift is made to, or for the benefit of, the gift recipient during a financial year; and
 - (c) the gift is made by, or on behalf of, a person (the *donor*); and
 - (d) the donor is a foreign donor; and
 - (e) at the time the gift is made, the amount or value of the gift is at least \$1,000; and

- (f) acceptable action has not been taken in relation to the gift before the end of 6 weeks after the gift is made.

Note 2: The amount or value of the gift might be a debt due to the Commonwealth under section 302Q.

Note 3: The physical elements of an offence against subsection (2) are set out in this subsection (see section 302R).

Exception—obtaining information about foreign donor status

- (1A) Subsection (1) does not apply in relation to a gift made by a person (the **donor**) if:

- (a) before the end of 6 weeks after the gift was made, the donor affirmed in writing to the agent or financial controller, or to the political entity or political campaigner, that the donor was not a foreign donor; and
- (b) for a gift whose amount or value was, at the time the gift was made, at least equal to the disclosure threshold—before the end of 6 weeks after the gift was made:
- (i) the agent or financial controller obtained appropriate donor information in accordance with section 302P establishing that the donor was not a foreign donor; or
- (ii) the agent or financial controller took reasonable steps to verify that the donor was not a foreign donor; and
- (c) in any case—the agent or financial controller did not, at any time during that 6-week period, know, or have reasonable grounds to believe, that the donor was a foreign donor.

Note 1: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Note 2: A person who makes a false affirmation or provides false donor information for the purposes of paragraph (a) or subparagraph (b)(i) of this subsection may be liable to a penalty (see section 302G).

Exception—private capacity

- (1B) Subsection (1) does not apply if the gift was made in a private capacity to the gift recipient for the gift recipient's personal use.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see

subsection 13.3(3) of the *Criminal Code* and section 96 of the
Regulatory Powers Act).

*Exception—donations given on terms inconsistent with incurring
electoral expenditure etc.*

- (1C) Subsection (1) does not apply if using the gift for the purposes of
incurring electoral expenditure, or creating or communicating
electoral matter, would be inconsistent with the terms of the gift.

Note: A person who wishes to rely on this subsection bears an evidential
burden in relation to the matters in this subsection (see
subsection 13.3(3) of the *Criminal Code* and section 96 of the
Regulatory Powers Act).

Offence

- (2) A person commits an offence if the person contravenes
subsection (1).

Penalty: 200 penalty units.

Civil penalty

- (3) A person is liable to a civil penalty if the person contravenes
subsection (1).

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
(b) if there is sufficient evidence for the court to determine the
amount or value, or an estimate of the amount or value, of the
gift at the time the gift is made—3 times that amount or
value.

Provision not continuing offence or civil penalty

- (4) Section 4K of the *Crimes Act 1914* does not apply in relation to an
offence against subsection (2). Subsection 93(2) of the Regulatory
Powers Act does not apply in relation to a contravention of
subsection (3).

302E Donations to third parties by foreign donors

- (1) A person or entity (the *gift recipient*) contravenes this subsection if:
- (a) the gift recipient is a third party; and
 - (b) a gift is made to, or for the benefit of, the gift recipient during a financial year; and
 - (c) the gift is made by, or on behalf of, a person or entity (the *donor*); and
 - (d) the donor is a foreign donor; and
 - (e) at the time the gift is made, the amount or value of the gift is at least equal to the disclosure threshold; and
 - (f) the gift recipient uses the gift:
 - (i) for the purposes of incurring electoral expenditure; or
 - (ii) for the dominant purpose of creating or communicating electoral matter; and
 - (g) acceptable action has not been taken in relation to the gift before the end of 6 weeks after the gift is made.

Note 1: The amount or value of the gift might be a debt due to the Commonwealth under section 302Q.

Note 2: The physical elements of an offence against subsection (3) are set out in this subsection (see section 302R).

Exception—obtaining information about foreign donor status

- (2) Subsection (1) does not apply if:
- (a) before the end of 6 weeks after the gift was made, the donor affirmed in writing to the gift recipient that the donor was not a foreign donor; and
 - (b) before the end of 6 weeks after the gift was made:
 - (i) the gift recipient obtained appropriate donor information in accordance with section 302P establishing that the donor was not a foreign donor; or
 - (ii) the gift recipient took reasonable steps to verify that the donor was not a foreign donor; and
 - (c) in any case—the gift recipient did not, at any time during that 6-week period, know, or have reasonable grounds to believe, that the donor was a foreign donor.

Note 1: A person or entity that wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Note 2: A person who makes a false affirmation or provides false donor information for the purposes of paragraph (a) or subparagraph (b)(i) of this subsection may be liable to a penalty (see section 302G).

Offence

- (3) A person or entity commits an offence if the person or entity contravenes subsection (1).

Penalty: 50 penalty units.

Civil penalty

- (4) A person or entity is liable to a civil penalty if the person or entity contravenes subsection (1).

Civil penalty:

The higher of the following amounts:

- (a) 100 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift at the time the gift is made—3 times that amount or value.

Provision not continuing offence or civil penalty

- (5) Section 4K of the *Crimes Act 1914* does not apply in relation to an offence against subsection (3). Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (4).

302F Gifts provided for the purposes of incurring electoral expenditure etc.

Offence by gift recipient etc.

- (1) A person or entity (the *relevant person*) contravenes this subsection if:

- (a) the relevant person is:
 - (i) the agent of a political entity; or
 - (ii) the financial controller of a political campaigner; or
 - (iii) a third party; and
- (b) a gift is made to, or for the benefit of, the political entity, political campaigner or third party by a foreign donor; and
- (c) the relevant person knows that the donor is a foreign donor; and
- (d) the amount or value of the gift is at least \$100; and
- (e) either of the following applies:
 - (i) the relevant person knows that the foreign donor intends the gift to be used for the purposes of incurring electoral expenditure, or for the dominant purpose of creating or communicating electoral matter;
 - (ii) the relevant person accepted the gift intending to use the gift for the purposes of incurring electoral expenditure, or for the dominant purpose of creating or communicating electoral matter; and
- (f) acceptable action has not been taken in relation to the gift before the end of 6 weeks after the gift is made.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 302R).

Offence by foreign donor

- (2) A person or entity (the **donor**) contravenes this subsection if:
 - (a) the donor is a foreign donor; and
 - (b) the donor makes a gift to, or for the benefit of, another person or entity; and
 - (c) the other person or entity is:
 - (i) a political entity; or
 - (ii) a political campaigner; or
 - (iii) a third party; and
 - (d) if the other person or entity is a third party:
 - (i) the donor intends the gift to be used for the purposes of incurring electoral expenditure, or for the dominant purpose of creating or communicating electoral matter; or

- (ii) the donor knows that the other person or entity accepts the gift intending to use the gift for the purposes of incurring electoral expenditure, or for the dominant purpose of creating or communicating electoral matter; and
- (e) in any case—acceptable action has not been taken in relation to the gift before the end of 6 weeks after the gift is made.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 302R).

Offence

- (3) A person or entity commits an offence if the person or entity contravenes subsection (1) or (2).

Penalty:

- (a) for a contravention of subsection (1) by a third party—50 penalty units; or
 - (b) otherwise—100 penalty units.
- (4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (3).

Civil penalty

- (5) A person or entity is liable to a civil penalty if the person or entity contravenes subsection (1) or (2).

Civil penalty:

The higher of the following amounts:

- (a) either:
 - (i) for a contravention of subsection (1) by a third party—100 penalty units; or
 - (ii) otherwise—200 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift at the time the gift is made—3 times that amount or value.

- (6) Subsection (5) applies:
- (a) whether or not the conduct constituting the contravention of subsection (1) or (2) occurs in Australia; and
 - (b) whether or not a result of the conduct constituting the alleged contravention of subsection (1) or (2) occurs in Australia.

302G False affirmation or information that donor is not a foreign donor

- (1) A person contravenes this subsection if:
- (a) the person makes an affirmation or provides appropriate donor information in relation to a gift; and
 - (b) the affirmation or information is for the purposes of paragraph 302D(1A)(a) or 302E(2)(a) or subparagraph 302D(1A)(b)(i) or 302E(2)(b)(i); and
 - (c) the person knows that the affirmation or information is false.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 302R).

Offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 100 penalty units.

- (3) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (2).

Civil penalty

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;

- (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift—3 times that amount or value.
- (5) Subsection (4) applies:
- (a) whether or not the conduct constituting the contravention of subsection (1) occurs in Australia; and
 - (b) whether or not a result of the conduct constituting the alleged contravention of subsection (1) occurs in Australia.

302H Anti-avoidance

- (1) The Electoral Commissioner may give a person or entity (the *relevant person*) a written notice if:
- (a) the relevant person, whether alone or together with one or more other persons or entities, enters into, begins to carry out or carries out a scheme; and
 - (b) there are reasonable grounds to conclude that the relevant person did so for the sole or dominant purpose of avoiding section 302D, 302E or 302F prohibiting, in particular circumstances:
 - (i) a gift being made to or for the benefit of a political entity, political campaigner or third party (whether or not the relevant person) by or on behalf of a foreign donor; or
 - (ii) a gift made by or on behalf of a foreign donor being received, retained or used by or on behalf of a political entity, political campaigner or third party (whether or not the relevant person); and
 - (c) as a result of the scheme or part of the scheme:
 - (i) the foreign donor engages in a course of conduct of giving the gift, and one or more other gifts, to or for the benefit of the political entity, political campaigner or third party in those circumstances, where the amount or value of each of those gifts is below the amount specified in the provision but the total amount or value of the gifts is more than that amount; or
 - (ii) the foreign donor forms, or participates in the formation of, a body corporate in Australia; or

- (iii) the making of the gift to or for the benefit of the political entity, political campaigner or third party by or on behalf of the foreign donor in those circumstances is otherwise facilitated; and
- (d) as a result of the scheme or part, the provision does not prohibit the making, receipt, retention or use of the gift in those circumstances.

Note 1: A decision to give a notice is a reviewable decision (see section 120).

Note 2: For the definition of *scheme*, see subsection 287(1).

- (2) The notice must:
 - (a) specify the conduct constituting the scheme; and
 - (b) require the relevant person:
 - (i) not to enter into the scheme; or
 - (ii) not to begin to carry out the scheme; or
 - (iii) not to continue to carry out the scheme.

Offence

- (3) A person or entity commits an offence if:
 - (a) the person or entity is given a notice under subsection (1); and
 - (b) the person or entity engages in conduct; and
 - (c) the conduct contravenes the notice.

Penalty: 200 penalty units.

- (4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (3).

Civil penalty

- (5) A person or entity is liable to a civil penalty if:
 - (a) the person or entity is given a notice under subsection (1); and
 - (b) the person or entity engages in conduct; and
 - (c) the conduct contravenes the notice.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift—3 times that amount or value.
- (6) Subsection (5) applies:
- (a) whether or not the conduct constituting the contravention of subsection (1) occurs in Australia; and
 - (b) whether or not a result of the conduct constituting the alleged contravention of subsection (1) occurs in Australia.

Subdivision D—Other provisions relating to offences and civil penalty provisions

302P Information relating to foreign donor status

- (1) A person or entity (the *first person*) obtains *appropriate donor information* in relation to a person or entity (the *donor*) making a gift, or on whose behalf a gift is made, establishing that the donor is not a foreign donor if the first person obtains information or a document specified in column 2 of the applicable item in the following table:

Appropriate donor information		
Item	Column 1	Column 2
	If the donor is:	then the appropriate donor information is:
1	an individual	(a) the particulars relating to the individual set out in a Roll; or (b) a copy of a passport, of a certificate evidencing the individual's naturalisation, or of any other document evidencing the individual's Australian citizenship; or (c) a copy of a visa evidencing the individual's permanent residency in Australia; or (d) a copy of the individual's Subclass 444 (Special Category) visa under the <i>Migration Act 1958</i> (or if that Subclass ceases to exist, the kind of visa that replaces that visa); or (e) any information or a copy of any document prescribed by the regulations for the purposes of this table item.
2	an incorporated	(a) a copy of the certificate of the entity's incorporation in

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Appropriate donor information		
Item	Column 1	Column 2
	If the donor is:	then the appropriate donor information is:
	entity	<p>Australia; or</p> <p>(b) particulars of the entity’s registration with the Australian Securities Investment Commission evidencing the entity’s incorporation in Australia; or</p> <p>(c) any information or a copy of any document prescribed by the regulations for the purposes of this table item.</p>
3	an entity (whether or not incorporated)	<p>(a) copies of at least 3 recent minutes or other official documents of the entity, in accordance with subsection (2), evidencing that high-level decisions of the entity are made in Australia, such as:</p> <ul style="list-style-type: none"> (i) decisions setting the operational policies of the entity; or (ii) decisions appointing officers of the entity, or granting powers to such officers to carry on the entity’s activities; or (iii) directions to persons appointed to carry out the entity’s activities as to how to perform functions; or (iv) decisions on matters of finance, such as how profits are to be used; or <p>(b) copies of at least 3 official documents of the entity establishing that the entity’s activities are principally carried out in Australia, such as:</p> <ul style="list-style-type: none"> (i) documents recording separately the number of staff or members of the entity in Australia, and overseas, carrying on activities for the entity; or (ii) documents recording separately the scale or volume of the activities carried out in Australia, and overseas, (for example by reference to revenue derived in Australia and overseas); or <p>(c) for an entity that is a trust or foundation—a trust deed or other governing document evidencing:</p> <ul style="list-style-type: none"> (i) the governing law of the trust or foundation as the law of an Australian jurisdiction; or (ii) that the head office is in Australia, or that the principal place of activity is, or is in, Australia; or <p>(d) any information or a copy of any document prescribed by the regulations for the purposes of this table item.</p>

Note 1: A person or entity who obtains appropriate donor information may not commit an offence or contravene a civil penalty provision in this Division (see subsections 302D(1A) and 302E(2)).

Note 2: In 2018, trust deeds or other governing documents of entities registered under the *Australian Charities and Not-for-profits Commission Act 2012* were generally available on the Australian Charities and Not-for-profits Register as a governing document (see <https://www.acnc.gov.au>).

- (2) For the purposes of paragraph (a) of item 3 of the table, each of the minutes or other official documents must evidence a different kind of decision.
- (3) For the purposes of item 3 of the table, information may be omitted, redacted or deleted from the minutes, documents or information.

302Q Debts due to the Commonwealth

- (1) This section applies if:
 - (a) a gift is made to, or for the benefit of, a person (the ***gift recipient***); and
 - (b) a court has determined that the gift recipient or any other person has contravened any of sections 302D to 302F in relation to the gift.
- (2) The amount or value of the gift (determined at the time the gift is made) is payable by the gift recipient to the Commonwealth and may be recovered by the Commonwealth as a debt due to the Commonwealth by action in a court of competent jurisdiction.

302R Physical elements of offences

- (1) This section applies if a provision of this Division provides that a person contravening another provision of this Act (the ***conduct rule provision***) commits an offence.
- (2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct rule provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

34 Before section 303

Insert:

302V Simplified outline of this Division

Candidates and members of groups in an election who receive gifts must disclose the gifts by providing a return to the Electoral Commission. In addition, persons who make such gifts, where the value or amount of the gifts is more than the disclosure threshold, must also disclose the gifts.

Gifts totalling more than the disclosure threshold that are made by a single person to the same registered political party, State branch or political campaigner during a financial year must also be disclosed in a return provided to the Electoral Commission.

Returns provided under this Division are published by the Electoral Commissioner, on the Transparency Register, under section 320.

There are limitations on loans made to political parties, State branches, political campaigners, candidates or groups that are more than the disclosure threshold.

Gifts of more than the disclosure threshold to a political party, State branch, political campaigner, candidate or group by a corporation that is wound up within a year of making the gift may be recovered from the recipient of the gift.

35 At the end of section 303

Add:

Note: Particulars provided under subsection 318(2) may be taken to be a return provided under this Division (see subsection 318(2A)).

36 Subsection 304(2)

After “approved form”, insert “and in accordance with this section”.

36A Subsection 304(2)

Omit “during the disclosure period for the election”, substitute “while the person was a candidate in the election or by-election”.

37 At the end of subsection 304(2)

Add:

Civil penalty:

The higher of the following:

- (a) 60 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of gifts not disclosed—3 times that amount or value.

38 Subsection 304(3)

After “approved form”, insert “and in accordance with this section”.

38A Subsection 304(3)

Omit “during the disclosure period for the election”, substitute “while the group was a group in the election”.

39 At the end of subsection 304(3)

Add:

Civil penalty:

The higher of the following:

- (a) 60 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of gifts not disclosed—3 times that amount or value.

41 Subparagraph 304(5)(b)(ii)

Omit “\$10,000 or less”, substitute “less than or equal to the disclosure threshold”.

42 Paragraph 304(5)(c)

Omit “\$10,000 or less”, substitute “less than or equal to the disclosure threshold”.

43 Subsection 304(5) (note)

Repeal the note.

44 Paragraphs 304(6)(b) and (c)

Omit “exceeds \$10,000”, substitute “is more than the disclosure threshold”.

45 Subsection 304(6) (note)

Repeal the note.

45A At the end of section 304

Add:

- (9) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (2) or (3) of this section.

45B Subsection 305A(1)

After “A person”, insert “or entity”.

46 Paragraph 305A(1)(a)

Repeal the paragraph, substitute:

- (a) the person or entity makes a gift or gifts to any candidate or member of a group in an election or by-election; and

47 Subparagraph 305A(1)(b)(ii)

Omit “\$10,000”, substitute “the disclosure threshold”.

48 Paragraph 305A(1)(c)

Repeal the paragraph, substitute:

- (c) at the time the person or entity makes the gift or gifts, the person or entity is not a political entity or an associated entity.

49 Subsection 305A(1) (note)

Repeal the note.

49A Subsection 305A(1A)

After “A person”, insert “or entity”.

50 Paragraph 305A(1A)(a)

Repeal the paragraph, substitute:

- (a) the person or entity makes a gift or gifts:
 - (i) during the period, relating to an election or by-election, specified by legislative instrument by the Electoral Commissioner; and
 - (ii) to any person or entity (whether incorporated or not) specified by the instrument; and

51 Subparagraph 305A(1A)(b)(ii)

Omit “\$10,000”, substitute “the disclosure threshold”.

52 Paragraph 305A(1A)(c)

Repeal the paragraph, substitute:

- (c) at the time the person or entity makes the gift or gifts, the person or entity is not a political entity or associated entity.

53 Subsection 305A(1A) (note)

Repeal the note.

54 Subsection 305A(2)

Omit “The person must”, substitute “The person or entity must, in accordance with this section,”.

54A Paragraph 305A(2)(a)

Omit “made during the disclosure period”.

55 Paragraph 305A(2)(b)

Repeal the paragraph, substitute:

- (b) all gifts of more than the disclosure threshold, received by the person or entity at any time, that the person or entity used (either wholly or partly):
 - (i) to enable the person or entity to make the gifts mentioned in paragraph (a) of this subsection; or
 - (ii) to reimburse the person or entity for making such gifts.

56 Subsection 305A(2) (note)

Repeal the note, substitute:

Civil penalty:

The higher of the following:

- (a) 60 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of gifts not disclosed—3 times that amount or value.

57 Subsection 305A(2A)

Repeal the subsection, substitute:

- (2A) For the purposes of subsection (2), 2 or more gifts made by a person or entity are taken to be one gift if:
 - (a) the gifts are made to the same candidate or group in an election or by-election; or
 - (b) the gifts are made to the same person or entity during the period specified by legislative instrument under paragraph (1A)(a).

58 Paragraph 305A(3)(a)

After “election”, insert “or by-election”.

58A Paragraph 305A(4)(c)

Omit “organisation”, substitute “entity”.

59 Subsection 305A(5)

Repeal the subsection, substitute:

- (5) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (2) of this section.

60 Section 305B (heading)

Repeal the heading, substitute:

305B Gifts to political parties and political campaigners

61 Subsections 305B(1) and (2)

Repeal the subsections, substitute:

- (1) If, in a financial year, a person or entity makes gifts totalling more than the disclosure threshold to:
- (a) the same registered political party; or
 - (b) the same State branch of a registered political party; or
 - (c) the same political campaigner;

the person or entity must, in accordance with this section, provide a return to the Electoral Commission within 20 weeks after the end of the financial year, covering all the gifts that the person or entity made to that political party, branch or campaigner during the financial year.

Civil penalty:

The higher of the following:

- (a) 60 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of gifts not disclosed—3 times that amount or value.
- (2) For the purposes of subsection (1), a person or entity who makes a gift to any other person or entity with the intention of benefiting a particular registered political party, State branch of a registered political party, or political campaigner, is taken to have made that gift directly to that party, branch or campaigner.

62 Paragraph 305B(3)(c)

Omit “or branch”, substitute “, branch or campaigner”.

63 Subsection 305B(3A)

Repeal the subsection, substitute:

- (3A) The return must also set out the relevant details of any gift received by the person or entity at any time if:
- (a) the gift was used wholly or partly to make another gift (the *later gift*) in a financial year to:
 - (i) the same registered political party; or
 - (ii) the same State branch of a registered political party; or
 - (iii) the same political campaigner; and
 - (b) the amount or value of the later gift is more than the disclosure threshold.

63A Paragraph 305B(3B)(e)

After “person”, insert “or entity”.

64 Subsection 305B(5)

Repeal the subsection, substitute:

- (5) This section does not apply to gifts made by a political entity or associated entity.
- (6) In addition, this section does not apply in relation to a gift if:
- (a) the gift was received by, or on behalf of, a person or organisation that was registered under the *Australian Charities and Not-for-profits Commission Act 2012*; and
 - (b) no part of the gift was used during the financial year by the person or organisation:
 - (i) to enable the person or organisation to incur electoral expenditure, or create or communicate electoral matter; or
 - (ii) to reimburse the person or organisation for incurring electoral expenditure, or creating or communicating electoral matter.
- (7) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (1) of this section.

65 Section 306

Repeal the section.

66 Subsection 306A(1)

Repeal the subsection, substitute:

- (1) It is unlawful for any of the following:
- (a) a political party or a State branch of a political party;
 - (b) a person acting on behalf of a political party or a State branch of a political party;
 - (c) a political campaigner, or a person acting on behalf of a political campaigner;
- to receive a loan of more than the disclosure threshold from a person or entity other than a financial institution unless the loan is made in accordance with subsection (3).

67 Subsection 306A(2)

Omit “\$10,000”, substitute “the disclosure threshold”.

68 Subsection 306A(2) (note)

Repeal the note.

69 Subsection 306A(3)

Repeal the subsection, substitute:

- (3) The receiver of the loan must keep a record of the following:
- (a) the terms and conditions of the loan;
 - (b) the following information in relation to the loan (as the case requires):
 - (i) for a loan from a registered industrial organisation other than a financial institution—the name of the organisation, and the names and addresses of the members of the executive committee (however described) of the organisation;
 - (ii) for a loan from an unincorporated association—the name of the association, and the names and addresses of the members of the executive committee (however described) of the association;

- (iii) for a loan paid out of a trust fund or out of the funds of a foundation—the names and addresses of the trustees of the fund or foundation, and the title, name or other description of the trust fund or foundation;
- (iv) for any other loan—the name and address of the person or organisation that made the loan.

70 Subsections 306A(4) and (5)

Repeal the subsections.

71 Paragraph 306A(6)(a)

Repeal the paragraph, substitute:

- (a) in the case of a loan to or for the benefit of a political party, a State branch of a political party, or a political campaigner, (the *loan recipient*):
 - (i) if the loan recipient is a body corporate—the loan recipient; or
 - (ii) otherwise—the agent or financial controller of the loan recipient; or

72 Section 306A(8) (definitions of *credit card* and *loan*)

Repeal the definitions.

73 Section 306B

Repeal the section, substitute:

306B Repayment of gifts where corporations wound up etc.

- (1) This section applies if:
 - (a) a registered political party, a political campaigner, a candidate or a member of a group receives from a corporation a gift whose amount or value is more than the disclosure threshold; and
 - (b) the corporation is wound up in insolvency, or by the court on other grounds, within a year of making the gift.
- (2) The amount or value of the gift is payable, and may be recovered by the liquidator as a debt due to the liquidator in a court of competent jurisdiction, by:

- (a) for a gift to or for the benefit of a registered political party or a political campaigner (the *gift recipient*):
 - (i) if the gift recipient is a body corporate—the gift recipient; or
 - (ii) if the gift recipient is a registered political party that is not a body corporate—the agent of the gift recipient; or
 - (iii) if the gift recipient is a political campaigner that is not a body corporate—the financial controller of the gift recipient; or
- (b) for a gift to or for the benefit of a candidate or member of the group—the candidate or member, or the agent of the candidate or the group.

Note: The gift received by the liquidator is an asset of the corporation to be distributed under the provisions of the *Corporations Act 2001*.

74 Before section 308

Insert:

307A Simplified outline of this Division

Expenditure incurred by or with the authority of a candidate or group in an election during the election period must be disclosed by providing a return to the Electoral Commission. The agent for the candidate or group is responsible for providing the return. (Expenditure incurred by registered political parties is provided each financial year under Division 5A.)

Secretaries of Commonwealth Departments and Agency Heads of Commonwealth Agencies must attach statements to annual reports setting out of amounts of more than the disclosure threshold paid to advertising agencies, and market research, polling or other organisations.

Returns provided under this Division are published by the Electoral Commissioner, on the Transparency Register, under section 320.

77 Subsection 309(2)

After “approved form”, insert “and in accordance with this section”.

78 At the end of subsection 309(2)

Add:

Civil penalty:

The higher of the following:

- (a) 60 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of electoral expenditure not disclosed—3 times that amount.

79 Subsection 309(3)

After “approved form”, insert “and in accordance with this section”.

80 At the end of subsection 309(3)

Add:

Civil penalty:

The higher of the following:

- (a) 60 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of electoral expenditure not disclosed—3 times that amount.

81 At the end of section 309

Add:

- (4) A return provided under subsection (2) or (3) must also include details of any discretionary benefits (however described) received by, or on behalf of, the person or any of the members of the group from the Commonwealth, a State or a Territory during the period of 12 months before polling day in the election.
- (5) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (2) or (3) of this section.

82 Subsection 311A(2)

Omit “\$10,000 or less”, substitute “less than or equal to the disclosure threshold”.

83 Subsection 311A(2) (note)

Repeal the note.

84 Before section 314AA

Insert:

314AAA Simplified outline of this Division

Registered political parties, political campaigners and associated entities provide returns each financial year to the Electoral Commission setting out details relating to amounts received or paid or incurred by the parties, campaigners or entities during the year. Third parties also provide annual returns setting out details relating to electoral expenditure incurred by the third parties during the year.

Returns provided under this Division are published by the Electoral Commissioner, on the Transparency Register, under section 320.

85 Section 314AA

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

86 At the end of section 314AA

Add:

- (2) To avoid doubt, a person that becomes, or ceases to be, a registered political party, political campaigner or third party during a financial year is required to provide a return under this Division in relation to the whole financial year.

Note: Particulars provided under subsection 318(2) may be taken to be a return provided under this Division (see subsection 318(2A)).

87 Section 314AB

Repeal the section, substitute:

314AB Annual returns by registered political parties and political campaigners

- (1) The agent or financial controller of each registered political party, each State branch of each registered political party and each political campaigner must, subject to this Division, provide the Electoral Commission a return within 16 weeks after the end of a financial year that:
- (a) complies with subsection (2); and
 - (b) is in an approved form.

Civil penalty:

The higher of the following:

- (a) 120 penalty units;
 - (b) if an amount is not disclosed under paragraph (2)(a) or subparagraph (2)(b)(ii) and there is sufficient evidence for the court to determine the amount, or an estimate of the amount, not disclosed—3 times that amount.
- (2) The return must:
- (a) set out the following:
 - (i) the total amount received by, or on behalf of, the party or campaigner during the financial year, together with the details required by section 314AC;
 - (ii) the total amount paid by, or on behalf of, the party or campaigner during the financial year;
 - (iii) the total outstanding amount, as at the end of the financial year, of all debts incurred by, or on behalf of, the party or campaigner, together with the details required by section 314AE;
 - (iv) for political campaigners—the total amount of electoral expenditure incurred by or with the authority of the campaigner; and
 - (b) include details of any discretionary benefits (however described) received by, or on behalf of, the party, branch or campaigner from the Commonwealth, a State or a Territory during the financial year; and
 - (e) be complete.

- (3) The financial controller of a political campaigner that is taken to have incurred an amount of electoral expenditure in a financial year (the *later financial year*) under section 287J must provide:
- (a) a return for the financial year in which the expenditure was actually incurred that includes that expenditure; and
 - (b) a separate return for the later financial year that does not include the expenditure that was taken under section 287J to have been incurred in that later financial year.
- (4) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (1) of this section.

88 Subsection 314AC(1)

Omit “the party”, substitute “a registered political party or a political campaigner”.

89 Subsection 314AC(1)

Omit “\$10,000, the return must”, substitute “the disclosure threshold, the return must (subject to subsection (4))”.

90 Subsection 314AC(1) (note)

Repeal the note.

91 Subsection 314AC(2)

Omit “of \$10,000 or less”, substitute “that is less than or equal to the disclosure threshold”.

92 Subsection 314AC(2) (note)

Repeal the note.

92A At the end of section 314AC

Add:

- (4) This section does not apply in relation to an amount if:
- (a) the amount was received by, or on behalf of, a person or organisation that was registered under the *Australian Charities and Not-for-profits Commission Act 2012*; and
 - (b) no part of the amount was used during the financial year by the person or organisation:

- (i) to enable the person or organisation to incur electoral expenditure, or create or communicate electoral matter; or
- (ii) to reimburse the person or organisation for incurring electoral expenditure, or creating or communicating electoral matter.

93 Subsection 314AE(1)

Omit “the party”, substitute “a registered political party or a political campaigner”.

94 Subsection 314AE(1)

Omit “\$10,000”, substitute “the disclosure threshold”.

95 Subsection 314AE(1) (note)

Repeal the note.

96 Subsection 314AEA(1)

Omit “financial controller must furnish”, substitute “financial controller must, subject to subsection (6), provide”.

97 At the end of subsection 314AEA(1)

Add:

- ; and (d) in any case—details of any discretionary benefits (however described) received by, or on behalf of, the entity from the Commonwealth, a State or a Territory during the financial year.

Civil penalty:

The higher of the following:

- (a) 60 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, not disclosed in accordance with subsection (1)—3 times that amount.

98 Subsection 314AEA(5)

Omit “paragraphs 314AB(2)(a), (b) and (c) to a return for a registered political party”, substitute “subparagraphs 314AB(2)(a)(i), (ii) and (iii) to a return for a registered political party or a political campaigner”.

99 At the end of section 314AEA

Add:

- (6) A return is not required to be provided under subsection (1) for an associated entity for a financial year if:
 - (a) the entity was also a political campaigner during that year;
and
 - (b) a return was provided for the entity under section 314AB for that year.
- (7) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (1) of this section.

100 Section 314AEB (heading)

Repeal the heading, substitute:

314AEB Annual returns by third parties

101 Subsections 314AEB(1) and (2)

Repeal the subsections, substitute:

- (1) A person or entity must provide a return for a financial year in accordance with this section if the person or entity is a third party during the year.

Civil penalty:

The higher of the following:

- (a) 60 penalty units;
- (b) if an amount is not disclosed under paragraph (2)(a) and there is sufficient evidence for the court to determine the amount, or an estimate of the amount, not disclosed under that paragraph—3 times that amount.

- (2) The third party must provide to the Electoral Commission a return for the financial year:
- (a) setting out details of the electoral expenditure incurred by or with the authority of the third party during the financial year; and
 - (b) including a statement that the third party complied with section 302E (donations to third parties by foreign donors) during the financial year, signed by the members, agents or officers (however described) of the third party who have responsibility for ensuring that the third party complies with this Division.

102 At the end of subsection 314AEB(3)

Add:

- ; and (c) if the third party is also required to provide a return under section 314AEC—include that return.

103 At the end of section 314AEB

Add:

- (4) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (1) of this section.

104 Section 314AEC

Repeal the section, substitute:

314AEC Annual returns relating to gifts received by third parties for electoral expenditure

- (1) A person or entity must provide a return for a financial year in accordance with this section if:
- (a) the person or entity is required to provide a return for the year under section 314AEB (annual returns by third parties); and
 - (b) the person or entity received a gift or gifts, at any time, that the person or entity used during the year (either wholly or partly):
 - (i) to enable the person or entity to incur electoral expenditure; or

- (ii) to reimburse the person or entity for incurring electoral expenditure; and
- (c) either:
 - (i) the amount of at least one such gift was more than the disclosure threshold; or
 - (ii) the total amount of all gifts received by the person from at least one single person during the financial year was more than the disclosure threshold.

Note: The return required under this section must be included in the return provided under section 314AEB (see paragraph 314AEB(3)(c)).

- (2) The person must provide to the Electoral Commission a return for the financial year setting out the following details:
 - (a) for subparagraph (1)(c)(i):
 - (i) the amount of each gift covered by that subparagraph; and
 - (ii) the date on which the gift was made;
 - (b) for subparagraph (1)(c)(ii):
 - (i) the total amount of gifts made by each single person who is covered by that subparagraph; and
 - (ii) the date on which each of those gifts were made; and
 - (c) in any case:
 - (i) for a gift or gifts on behalf of the members of an unincorporated association (other than a registered industrial organisation)—the name of the association, and the names and addresses of the members of the executive committee (however described) of the association; or
 - (ii) for a gift or gifts purportedly made out of a trust fund, or out of the funds of a foundation—the names and addresses of the trustees of the fund or foundation, and the title, name or other description of the trust fund or foundation; or
 - (iii) for any other gift or gifts—the name and address of the person who made the gift or gifts.

105 Subsection 314AG(2)

Omit “section 314AB”, substitute “paragraph 314AB(2)(a)”.

106 Section 314A

Repeal the section, substitute:

314A Simplified outline of this Division

This Division deals with:

- (a) the recovery of payments made by the Commonwealth; and
- (b) the powers of the Electoral Commission in relation to investigating compliance with this Part; and
- (c) general provisions relating to claims and returns (such as amending claims and returns, and record-keeping and publishing requirements).

314B Relationship with State and Territory laws

Information on amounts provided or received

- (1) Despite any State or Territory electoral law, a person or entity is not required to disclose under the law an amount, or information relating to an amount, (including a gift or loan) if:
 - (a) the amount is provided to or for the benefit of a political entity, political campaigner, third party or associated entity (the *gift recipient*); and
 - (b) the person or entity is:
 - (i) the gift recipient; or
 - (ii) the person or entity providing the amount; or
 - (iii) another person acting on behalf of the person or entity referred to in subparagraph (i) or (ii); and
 - (c) either:
 - (i) the amount is required to be used by or with the authority of the gift recipient for the purposes of incurring electoral expenditure, or creating or communicating electoral matter, in accordance with subsection (2); or
 - (ii) the amount may be used by or with the authority of the gift recipient for the purposes of incurring electoral

expenditure, or creating or communicating electoral matter, in accordance with subsection (2), and has not been used for a State or Territory electoral purpose before the end of the period during which the amount is required to be disclosed under the State or Territory electoral law.

Note: If an amount was used for State or Territory electoral purposes during the applicable State or Territory disclosure period, State or Territory electoral laws apply to the amount. A person who does not disclose, under a State or Territory electoral law, an amount used for a State or Territory electoral purpose before the end of that period may be liable to a penalty under the State or Territory electoral law.

- (2) An amount is required to be, or may be, used for a purpose of incurring electoral expenditure, or creating or communicating electoral matter, if:
- (a) any terms set by the person or entity providing the amount explicitly require or allow the amount to be used for that purpose (whether or not those terms are enforceable); or
 - (b) the person or entity providing the amount does not set terms relating to the purpose for which the amount can be used.

Information on expenditure and debts

- (3) Despite any State or Territory electoral law, a person or entity (the **debtor**) is not required to disclose under the law an amount, or information relating to an amount, of expenditure or a debt (except a debt incurred as a result of a loan) if:
- (a) the debtor is a political entity, political campaigner, third party or associated entity; and
 - (b) either of the following apply:
 - (i) the expenditure is electoral expenditure;
 - (ii) the debt was incurred for the purposes of incurring electoral expenditure, or creating or communicating electoral matter.

Interpretation

- (4) To avoid doubt, despite any State or Territory electoral law, a person is not required to disclose under the law an amount, or information relating to an amount, whether:
-

- (a) the amount or information is required to be included in a return provided under this Part; or
 - (b) the amount or information is not required to be included in a return provided under this Part.
- (5) Despite any State or Territory electoral law, if, under this section, an amount, or information relating to an amount, is not required to be disclosed under the law, then a total amount, or information relating to a total amount, that is required to be disclosed under the law is not required to include the amount.

Amounts made or retained for State or Territory electoral purposes

- (6) Without limiting when subsection (1) does not apply, that subsection does not apply in relation to an amount of a gift if:
- (a) any terms set by the person or entity providing the amount explicitly require the amount to be used only for a State or Territory electoral purpose (whether or not those terms are enforceable); or
 - (b) either:
 - (i) the effect of a State or Territory electoral law is to require the amount to be kept or identified separately (or to require the amount to be kept or identified separately in order to be entitled to a benefit under that law); or
 - (ii) the gift recipient keeps or identifies the amount separately;in order to be used only for a State or Territory electoral purpose.
- (7) Without limiting paragraph (6)(b), an amount is kept or identified separately in order to be used only for a State or Territory electoral purpose if:
- (a) the amount is kept in an account where:
 - (i) the only amounts deposited into the account are amounts to be used only for a State or Territory electoral purpose; and
 - (ii) the only amounts paid out of the account are amounts incurred for a State or Territory electoral purpose; or
 - (b) the amount is designated as an amount that must be used only for a State or Territory electoral purpose.
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107 Section 315

Repeal the section, substitute:

315 Requirement to refund payments

If:

- (a) a person is convicted of an offence under section 137.1 of the *Criminal Code* in relation to the giving of a return or the making of a claim under this Part; or
- (b) a civil penalty order is made against a person in relation to a contravention of a civil penalty provision in this Part;

a court of competent jurisdiction may, in addition to imposing a penalty under section 137.1 or making the civil penalty order, order the person to refund to the Commonwealth the amount of any payment wrongfully obtained by the person under Division 3 of this Part, or the amount or value of any gift made in contravention of this Part.

108 Subsection 315A(1)

Omit “subsection 299(6) or 306(5)”, substitute “section 299 or 302Q or subsection 301(3), or under a civil penalty order made in relation to a contravention of a civil penalty provision in this Part,”.

109 Subsection 316(2A)

Omit “for the purpose of finding out whether a prescribed person, the financial controller of an associated entity or the agent of a registered political party has complied with this Part, by notice served personally or by post on:”, substitute:

for the purpose of:

(aaa) finding out whether:

- (i) a person to whom section 305B (gifts to political parties and political campaigners) applies or may apply; or
- (ii) a prescribed person; or
- (iii) the agent of a registered political party, candidate or group; or
- (iv) the financial controller of a political campaigner or associated entity; or

- (v) a third party;
has complied with this Part, or the *Criminal Code* to the extent that it relates to this Part; or
- (aab) determining whether to give a notice under section 287S or 302H (anti-avoidance);
by notice served personally or by post on:

110 Paragraphs 316(2A)(a) and (aa)

Repeal the paragraphs, substitute:

- (a) the agent or any officer of the political party, or the agent of the candidate or group; or
- (aa) the financial controller of the political campaigner, third party or associated entity or any officer of the political campaigner, third party or associated entity; or

111 Subsection 316(2B)

Repeal the subsection, substitute:

- (2B) If a notice under paragraph (2A)(a) or (aa) requires an officer of a political party, political campaigner, third party or associated entity (other than the agent of the party, or the financial controller of the political campaigner, third party or associated entity, as the case requires) to appear before an authorised officer under paragraph (2A)(d), then the agent of the party, or the financial controller of the political campaigner, third party or associated entity, is entitled:
 - (a) to attend at the proceeding under paragraph (2A)(d); or
 - (b) to nominate another person in writing to attend on behalf of the agent or financial controller.

112 Subsection 316(3)

Omit “section 315”, substitute “a civil penalty provision in this Part”.

113 Paragraph 316(3A)(a)

Repeal the paragraph, substitute:

- (a) an authorised officer has reasonable grounds to believe that a person is capable of producing documents or other things, or giving evidence, relating to whether another person or an
-

entity is, or was at a particular time, a political campaigner,
third party or associated entity; and

114 Paragraph 316(3A)(b)

After “an officer of the”, insert “political campaigner, third party or associated”.

115 Paragraph 316(7)(a)

Omit “section 315”, substitute “a civil penalty provision in, or an offence against, this Part”.

116 Paragraphs 316(8)(b) and (11)(a)

Omit “section 315”, substitute “the civil penalty provision or offence”.

117 Section 317

Repeal the section, substitute:

317 Keeping records

- (1) A person who is subject to a civil penalty provision in this Part must keep the following records in accordance with subsections (2) and (3):
 - (a) records allowing the person to provide an accurate return or claim under this Part;
 - (b) records required for the purposes of complying with Division 3A (requirements relating to donations);
 - (c) any other records required for the purposes of allowing the Electoral Commissioner to determine whether the person is complying, or has complied, with this Part;
 - (d) any other records required by the regulations or a determination under subsection (4).

Civil penalty: 200 penalty units.

- (2) A record must be kept for:
 - (a) if the record relates to a return in relation to a financial year—5 years after the end of the financial year; and
 - (b) if the record relates to a return in relation to a gift—5 years after the day the gift is made; and

- (c) if the record relates to a claim—5 years after the polling day in the election to which the claim relates; and
 - (d) if the records relates to compliance with Division 3A—5 years after the day the relevant gift is made.
- (3) A record must be kept in accordance with any other requirements determined under subsection (4).
- (4) The Electoral Commissioner may, by legislative instrument, determine:
- (a) records for the purposes paragraph (1)(d); or
 - (b) requirements for records for the purposes of subsection (3).

118 Subsection 318(1)

Omit “subsection 315(2)”, substitute “this Part”.

119 After subsection 318(2)

Insert:

- (2A) Particulars that were not provided in a return under Division 4, 5 or 5A that are provided under subsection (2) are, for the purposes of this Part, taken to be a return provided under that Division.

120 Subsection 318(3A)

Omit “subsection 315(2)”, substitute “this Part”.

120A Subsection 319A(2)

Omit “lodged a claim or”.

120B Subsection 319A(2)

Omit “the claim or”, substitute “the”.

121 Subsection 319A(2A)

Repeal the subsection, substitute:

- (2A) If the return was furnished by:
- (a) the agent of a registered political party; or
 - (b) the financial controller of a political campaigner or associated entity; or

- (c) a third party;
the request under subsection (2) may be made by:
- (d) the person who furnished the return; or
(e) the person who is currently registered as the agent or nominated as a financial controller; or
(f) for a third party—any person who is a member, agent or officer (however described) of the third party who, acting in the person’s actual or apparent authority, has authority to furnish a return.

122 Subsection 319A(4)

Omit “claim or” (wherever occurring).

123 Subsection 319A(9)

Repeal the subsection, substitute:

- (9) The amendment of a return under this section does not affect whether a civil penalty order may be made against a person because of a contravention of a civil penalty provision in this Part arising out of the furnishing of the return.

124 Section 320

Repeal the section, substitute:

320 Requirement to publish determinations, notices and returns

- (1) The Electoral Commissioner must publish the following on the Transparency Register in accordance with the following table.

Requirement to publish determinations, notices and returns		
Item	The Electoral Commissioner must publish ...	at this time ...
1	each determination made under section 298C or subsection 301(1) (determination and variation of determination of claims for election funding)	as soon as reasonably practicable after making the determination.
2	each notice of a refusal of a final	as soon as reasonably practicable

Requirement to publish determinations, notices and returns

Item	The Electoral Commissioner must publish ...	at this time ...
	claim given under section 298F	after giving the notice.
3	each notice given under section 298H reconsidering the refusal of a final claim	as soon as reasonably practicable after giving the notice.
4	each election return provided under Division 4 or 5	before the end of 24 weeks after the polling day in the election to which the return relates.
5	each annual return provided under Division 5A	before the end of the first business day in February in the calendar year after the return is provided.

- (2) A person is not entitled to inspect a determination, notice or return referred to in subsection (1) before the determination, notice or return is published under that subsection.

125 Subsection 321(1) (definition of *relevant amount*)

Repeal the definition, substitute:

relevant amount means an amount specified in the following provisions:

- (a) subparagraphs 293(2)(a)(i) and (ii);
- (b) paragraphs 293(2)(b), 294(2)(a) and (b) and 295(2)(a) and (b).

126 Subsection 321(1) (definition of *relevant period*)

Omit “the period of 6 months commencing on 1 July 1995 and each subsequent period of 6 months”, substitute “each period of 6 months beginning on 1 January or 1 July”.

127 Section 321A (heading)

Repeal the heading, substitute:

321A Indexation of disclosure threshold

128 Subsection 321A(1)

Repeal the subsection, substitute:

- (1) This section applies to the dollar amount mentioned in the definition of *disclosure threshold* in subsection 287(1).

129 Subsection 321A(2)

Omit “mentioned in the provision”, substitute “mentioned in the definition”.

129A Subsection 321A(3)

Repeal the subsection, substitute:

- (3) For the purposes of sections 304 and 305A, the dollar amount mentioned in the definition for an indexation year is not replaced if the indexation period begins:
 - (a) while a person is a candidate or member of a group in an election or by-election; or
 - (b) during the period specified by legislative instrument under paragraph 305A(1A)(a).

130 Subsection 321A(7) (definition of *indexation year*)

Omit “the financial year commencing on 1 July 2006, and each subsequent financial year”, substitute “each financial year beginning on 1 July”.

130A Section 321B (after paragraph (a) of the definition of *disclosure entity*)

Insert:

- (aa) a political campaigner (within the meaning of Part XX);
- (ab) a third party (within the meaning of Part XX);

131 Section 321B (paragraphs (g) and (h) of the definition of *disclosure entity*)

Repeal the paragraphs, substitute:

- (g) a person or entity who:

- (i) is or will be required to provide a return under section 305A or 305B for the financial year in which the time occurs; or
 - (ii) based on conduct in previous financial years, may be required to provide a return under section 305A or 305B for the financial year in which the time occurs;
- except if the return is provided because of electoral expenditure incurred solely for the purposes of carrying out an opinion poll, or other research, relating to an election or the voting intentions of electors.

132 Section 321B (note at the end of the definition of *disclosure entity*)

Repeal the note, substitute:

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

132A Section 321B (definition of *relevant town or city*)

Repeal the definition, substitute:

relevant town or city of an entity or natural person (the *authoriser*) that authorised the communication of electoral matter means:

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

132B After paragraph 321D(3)(a)

Insert:

- (aa) if the matter forms part of any other promotional item (such as a balloon, pen, mug, tote bag or marquee, but not a sticker

or fridge magnet) and contains only the name, logo or other identifying feature of the notifying entity; or

132C At the end of subsection 321D(4)

Add:

; or (i) a letter or card that contains the name and address of the notifying entity.

132D Subsection 321D(5) (table items 4 and 8)

Omit “the town or city in which the person lives”, substitute “the relevant town or city of the person”.

133 Subsection 384(1)

Omit “subsection 315(3) or”.

134 Subsection 384(2)

Omit “an offence referred to in subsection (1)”, substitute “the offence”.

135 Subsection 384(3)

Repeal the subsection, substitute:

(3) If, under subsection (2), a court of summary jurisdiction convicts a person of the offence, the court may impose a penalty of imprisonment for a period not exceeding 12 months or a fine not exceeding 20 penalty units, or both.

136 Subsection 384A(1)

Omit “Section 321D”, substitute “Each civil penalty provision of this Act”.

137 Subsection 384A(2)

Omit “section 321D of this Act”, substitute “each civil penalty provision of this Act”.

138 At the end of section 384A

Add:

Commissioner may publish enforceable undertakings

- (2A) The Electoral Commissioner may publish on the Transparency Register an undertaking given in relation to a civil penalty provision of this Act.

Delegation

- (3) The Electoral Commissioner may, in writing, delegate his or her powers and functions under the Regulatory Powers Act to an SES employee, or acting SES employee, of the Commission.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (4) A person exercising powers or performing functions under a delegation under subsection (3) must comply with any directions of the Electoral Commissioner.

138A Section 387 (heading)

Omit “**Electoral matters**”, substitute “**Electoral papers**”.

Referendum (Machinery Provisions) Act 1984

139 Section 110A (paragraphs (c) and (d) of the definition of *disclosure entity*)

Repeal the paragraphs, substitute:

- (c) a person or entity who:
- (i) is or will be required to provide a return under section 305A or 305B of that Act for the financial year in which the time occurs; or
 - (ii) based on conduct in previous financial years, may be required to provide a return under section 305A or 305B of that Act for the financial year in which the time occurs;

except if the return is provided because of electoral expenditure incurred solely for the purposes of carrying out an opinion poll, or other research, relating to an election or the voting intentions of electors;

140 Section 110A (paragraph (e) of the definition of *disclosure entity*)

Omit “the amount referred to in paragraph 314AEB(1)(b) of that Act”, substitute “the disclosure threshold (within the meaning of Part XX of that Act)”.

141 Section 110A (note at the end of the definition of *disclosure entity*)

Repeal the note, substitute:

Note: Sections 305A and 305B of the *Commonwealth Electoral Act 1918* require returns relating to gifts to candidates, political parties and political campaigners.

142 At the end of section 140AAA

Add:

Delegation

- (3) The Electoral Commissioner may, in writing, delegate his or her powers and functions under the Regulatory Powers Act to an SES employee, or acting SES employee, of the Commission.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (4) A person exercising powers or performing functions under a delegation under subsection (3) must comply with any directions of the Electoral Commissioner.

Division 2—Application and transitional provisions

143 Application of amendments

Death and resignation of agents

- (1) The amendments of section 292D of the *Commonwealth Electoral Act 1918*, made by this Part, apply in relation to resignations that occur after the commencement of this item.

Appointment of financial controllers and requirement to publish determinations, notices and returns

- (2) Sections 292E and 320 of the *Commonwealth Electoral Act 1918*, as inserted by this Part, apply on and after the commencement of this item.

Gifts and loans

- (3) Division 3A, and the amendments of Division 4 (except section 305B), of Part XX of the *Commonwealth Electoral Act 1918*, as inserted or made by this Part, apply in relation to gifts and loans made after the commencement of this item.

Annual returns

- (4) The amendments of section 305B, and Division 5A of Part XX, of the *Commonwealth Electoral Act 1918* apply in relation to the financial year in which this item commences and later financial years.
- (5) If the commencement of this item occurs on a day other than 1 July, the amendments of section 305B, and Division 5A of Part XX, of the *Commonwealth Electoral Act 1918* apply in relation to the financial year in which that commencement occurs as if:
- (a) the following obligations applied only from that commencement:
 - (i) the obligation to disclose gifts to political campaigners under section 305B of that Act;
 - (ii) the obligation to disclose discretionary benefits under paragraphs 314AB(2)(b) and 314AEA(1)(d) of that Act;
 - (iii) the obligation in paragraph 314AEA(2)(b) of that Act to confirm compliance with section 302E of that Act; and
 - (b) a reference in section 314AEB or 314AEC of that Act to electoral expenditure incurred or authorised by a person or entity, for the period beginning on 1 July in that financial year and ending immediately before that commencement, were a reference to expenditure covered by section 314AEB of that Act incurred or authorised by the person or entity during that period.

Note: For the application of the definition of *third party* in subsection 287(1) of the *Commonwealth Electoral Act 1918*, see subitem 13(2) of this Schedule.

Disclosure of electoral expenditure

- (7) The amendments of Division 5 of Part XX of the *Commonwealth Electoral Act 1918* made by this Part apply in relation to returns provided after the commencement of this item.

Requirement to refund payments

- (8) Section 315 of the *Commonwealth Electoral Act 1918*, as inserted by this Part, applies in relation to penalties imposed, or civil penalty orders made, after the commencement of this item.

Keeping records

- (9) Section 317 of the *Commonwealth Electoral Act 1918*, as inserted by this Part, applies in relation to records made after the commencement of this item.
- (10) Despite the repeal of section 317 of the *Commonwealth Electoral Act 1918* by this Part, that section, as in force immediately before its repeal, continues to apply after the commencement of this item in relation to records made before that commencement.

Requirement to publish determinations, notices and returns

- (10A) Section 320 of the *Commonwealth Electoral Act 1918*, as inserted by this Part, applies from the time the Transparency Register first becomes available to the public under section 287Q of that Act, in relation to determinations made, notices given or returns provided after the commencement of this item.
- (10B) The Electoral Commissioner may include on the Transparency Register any claim or return that was previously kept at the Electoral Commission's principal office in Canberra under section 320 of that Act before the repeal of that section by this Part.
- (10C) Despite the repeal of section 320 of that Act, that section continues to apply, after the commencement of this item, in relation to claims or returns previously kept at the Electoral Commission's principal office in Canberra under that section that are not included on the Transparency Register under subitem (10B).

Indexation

- (11) Section 321 of the *Commonwealth Electoral Act 1918*, as amended by this Part, applies from 1 January 2019.
- (12) Section 321A of the *Commonwealth Electoral Act 1918*, as amended by this Part, applies from 1 July 2019.

Authorisation of certain electoral matter

- (13) The amendments of section 321D of the *Commonwealth Electoral Act 1918* made by this Part apply in relation to any communications made after the commencement of this item.

Amnesty

- (14) No action, suit or proceeding lies against any person for failing to comply with section 314AEB or 314AEC of the *Commonwealth Electoral Act 1918* in relation to any financial year that ends before the commencement of this item.

Note: Section 314AEB dealt with annual returns relating to political expenditure.
Section 314AEC dealt with annual returns relating to gifts received for political expenditure.

144 Transitional—notices given under subsection 290(1)

A notice given to the Electoral Commission under subsection 290(1) of the *Commonwealth Electoral Act 1918* that is in force immediately before the commencement of this item is taken, after that commencement, to be in force under subsection 292F(1) of that Act, as inserted by this Part.

[*Minister's second reading speech made in—
Senate on 7 December 2017
House of Representatives on 27 November 2018*]

(286/17)
