



Electoral Legislation Amendment (Annual Disclosure Equality) Act 2021

No. 134, 2021

**An Act to amend the law relating to electoral and
financial disclosure matters, and for related
purposes**

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

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No. 134, 2021

**An Act to amend the law relating to electoral and
financial disclosure matters, and for related
purposes**

[Assented to 13 December 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Electoral Legislation Amendment (Annual Disclosure Equality) Act 2021*.

2 *Electoral Legislation Amendment (Annual Disclosure Equality) Act* No. 134, 2021
2021

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. The whole of this Act	The day after this Act receives the Royal Assent.	14 December 2021

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Prohibiting foreign donations

Commonwealth Electoral Act 1918

1 Section 286A

After “Generally, gifts of at least \$1,000 to”, insert “members of the House of Representatives, Senators,”.

2 Section 286A

After “Broadly, gifts to”, insert “members of the House of Representatives, Senators,”.

3 Section 286A

Before “registered political parties, State branches and political campaigners”, insert “members of the House of Representatives, Senators,”.

4 Section 302A

After “This Division regulates gifts that are made to”, insert “members of the House of Representatives, Senators,”.

5 Section 302A

Omit “Gifts of over \$1,000 to”, substitute “Gifts of at least \$1,000 to members of the House of Representatives, Senators,”.

6 Section 302A

After “Broadly, gifts must not be made to a”, insert “member of the House of Representatives, Senator,”.

7 Section 302D (heading)

After “**Donations to**”, insert “**members of the House of Representatives, Senators,**”.

8 Before subparagraph 302D(1)(a)(i)

Insert:

- (ia) a member of the House of Representatives (the *gift recipient*) or a Senator (the *gift recipient*); or

9 Paragraph 302D(1A)(a)

After “donor affirmed in writing to the”, insert “member of the House of Representatives, Senator,”.

10 Subparagraphs 302D(1A)(b)(i) and (ii)

After “the” (first occurring), insert “member of the House of Representatives, Senator,”.

11 Paragraph 302D(1A)(c)

After “the” (first occurring), insert “member of the House of Representatives, Senator,”.

12 Before subparagraph 302F(1)(a)(i)

Insert:

- (ia) a member of the House of Representatives or a Senator;
or

13 Paragraph 302F(1)(b)

After “benefit of, the”, insert “member of the House of Representatives, Senator,”.

14 Before subparagraph 302F(2)(c)(i)

Insert:

- (ia) a member of the House of Representatives or a Senator;
or

15 Subparagraph 302H(1)(b)(i)

After “for the benefit of a”, insert “member of the House of Representatives, Senator,”.

16 Subparagraph 302H(1)(b)(ii)

After “used by or on behalf of a”, insert “member of the House of Representatives, Senator,”.

17 Subparagraphs 302H(1)(c)(i) and (iii)

After “for the benefit of the”, insert “member of the House of Representatives, Senator,”.

18 After subparagraph 316(2A)(aaa)(i)

Insert:

- (ia) a member of the House of Representatives or a Senator;
or

19 Before paragraph 316(2A)(a)

Insert:

- (aac) the member of the House of Representatives or Senator; or

20 Subsection 316(2A)

After “as the case may be, require the”, insert “member of the House of Representatives, Senator,”.

21 Application provisions

- (1) The amendments of sections 302D and 302F of the *Commonwealth Electoral Act 1918* made by this Part apply in relation to gifts made on or after the commencement of this item.
- (2) The amendments of sections 302H and 316 of the *Commonwealth Electoral Act 1918* made by this Part apply in relation to notices given on or after the commencement of this item.

Part 2—Annual returns

Commonwealth Electoral Act 1918

22 Section 286A

After “Each financial year,” insert “members of the House of Representatives, Senators,”.

23 Section 286A

After “details relating to amounts received or paid or incurred by the”, insert “members, Senators,”.

24 Section 302V

After “disclosed in a return provided to the Electoral Commission.”, insert “Gifts totalling more than the disclosure threshold that are made by a single person to the same member of the House of Representatives or the same Senator during a financial year for federal purposes must also be disclosed in a return provided to the Electoral Commission.”.

25 After section 305B

Insert:

306 Gifts to members of the House of Representatives and Senators

- (1) A person or entity must provide to the Electoral Commission a return for a financial year in accordance with this section if:
 - (a) during the year the person or entity makes a gift or gifts to the same member of the House of Representatives or the same Senator and the total amount or value of the gift or gifts is more than the disclosure threshold; and
 - (b) the gift or gifts were made for federal purposes.

Note: For *federal purpose*, see subsection 287(1).

Civil penalty:

The higher of the following:

- (a) 60 penalty units;

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- (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.

Content of return

- (2) The return must set out the following details for each gift made to the member or Senator during the financial year for a federal purpose:
 - (a) the amount or value of the gift;
 - (b) the date on which the gift was made;
 - (c) the name and address of the member or Senator.
- (3) The return must also set out the relevant details of any gift (an **earlier gift**) received by the person or entity at any time if:
 - (a) the earlier gift was used wholly or partly to make another gift to the member or Senator during the financial year for a federal purpose; and
 - (b) the amount or value of the other gift is more than the disclosure threshold.
- (4) Relevant details for the purpose of subsection (3), in relation to an earlier gift, are:
 - (a) the amount or value of the gift; and
 - (b) the date on which the gift was made; and
 - (c) for a gift made 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; and
 - (d) for a gift 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 fund or foundation; and
 - (e) for any other gift—the name and address of the person or entity who made the gift.

Timing of return etc.

- (5) A return under this section must:
-

- (a) be provided before the end of 20 weeks after the end of the financial year; and
- (b) be in the approved form.

Limitation

- (6) This section does not apply to gifts made by a political entity or associated entity.

No continuing contraventions

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

26 Section 314AAA

After “Third parties also provide annual returns setting out details relating to electoral expenditure incurred by the third parties during the year.”, insert “Members of the House of Representatives and Senators also provide annual returns setting out details relating to gifts made for federal purposes that were received by them during the year.”.

27 Subsection 314AA(2)

After “be, a”, insert “member of the House of Representatives, Senator,”.

28 After section 314AEC

Insert:

314AED Annual returns relating to gifts received by members of the House of Representatives or Senators

- (1) A person must provide to the Electoral Commission a return for a financial year in accordance with this section if:
 - (a) the person is a member of the House of Representatives or is a Senator during the year; and
 - (b) the person received one or more gifts during the year that were made for federal purposes.

Note 1: For *federal purpose*, see subsection 287(1).

Note 2: If the person did not receive any gifts during the year that were made for federal purposes, the person does not need to provide a return.

Note 3: Returns provided under this section are published on the Transparency Register: see section 320.

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 under subsection (2)—3 times that amount.

Content of return

- (2) The return must set out the following details:
 - (a) the total amount or value of all gifts received by the person during the year that are covered by paragraph (1)(b);
 - (b) the total number of persons who made those gifts;
 - (c) in relation to each gift made to the person during the year that is covered by paragraph (1)(b) and where the amount or value of the gift is more than the disclosure threshold:
 - (i) the amount or value of the gift; and
 - (ii) the date on which the gift was made; and
 - (iii) for a gift made 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; and
 - (iv) for a gift 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 fund or foundation; and
 - (v) for any other gift—the name and address of the person who made the gift.

Timing of return etc.

- (3) A return under this section must:
- (a) be provided before the end of 20 weeks after the end of the financial year; and
 - (b) be in the approved form.

Limitation

- (4) This section does not apply in relation to a gift if the gift is covered by a return provided under section 304 or 314AB.

No continuing contraventions

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

Return provided on behalf of member or Senator

- (6) A member of the House of Representatives or a Senator is taken to have provided a return under this section if the member or Senator causes another person to provide the return on behalf of the member or Senator.

29 Subparagraph 316(2A)(aaa)(i)

After “political campaigners”, insert “or 306 (gifts to members of the House of Representatives or Senators)”.

30 Before paragraph 319A(2A)(a)

Insert:

- (aa) a member of the House of Representatives or a Senator; or

31 Section 321B (subparagraphs (g)(i) and (ii) of the definition of *disclosure entity*)

Omit “or 305B”, substitute “, 305B or 306”.

32 Section 321B (note to the definition of *disclosure entity*)

Omit “and 305B”, substitute “, 305B and 306”.

33 Section 321B (note to the definition of *disclosure entity*)

Omit “and political campaigners”, substitute “, political campaigners, members of the House of Representatives and Senators”.

34 Application and transitional provisions

- (1) Section 306 of the *Commonwealth Electoral Act 1918*, as inserted by this Part, applies in relation to each financial year that ends after the commencement of this item, whether the gifts concerned are made before, on or after that commencement.
- (2) Section 314AED of the *Commonwealth Electoral Act 1918*, as inserted by this Part, applies in relation to the 2020-21 financial year and each later financial year, whether the gifts concerned are received before, on or after the commencement of this item.
- (3) For the purposes of section 314AED of that Act applying in relation to the 2020-21 financial year, paragraph 314AED(3)(a) of that Act applies as if a reference to “20 weeks after the end of the financial year” were instead a reference to “the period of 30 days beginning on the day on which this section commences”.
- (4) For the purposes of subsection 320(1) of that Act applying in relation to a return under section 314AED of that Act for the 2020-21 financial year, item 5 of the table in subsection 320(1) of that Act applies as if a reference to “the end of the first business day in February in the calendar year after the return is provided” were instead a reference to “1 March 2022”.

Part 3—Candidates

Commonwealth Electoral Act 1918

35 At the end of subsection 287(9)

Add:

Note: This subsection is subject to subsections 302D(5) and (6), 302F(7) and (8), 304(10) and (11), 305A(6) and (7), 306A(7A) and (7B), 306B(3) and (4), 307(3), 309(6) and (7) and 313(3).

36 Section 302B

Insert:

acceptable action period, in relation to a gift, means:

- (a) the period of 6 weeks beginning on the day the gift is made, unless paragraph (b) or (c) applies; or
- (b) if the gift is made to, or for the benefit of, a political entity, being a person who is a candidate in an election or by-election, except where the person is a member of a group for a Senate election—the period of 6 weeks beginning on the later of the following days:
 - (i) the day the gift is made;
 - (ii) the earlier of the day the person announced that the person would be a candidate in the election or by-election and the day the person nominated as a candidate in the election or by-election; or
- (c) if the gift is made to, or for the benefit of, a political entity, being a member of a group for a Senate election—the period of 6 weeks beginning on the later of the following days:
 - (i) the day the gift is made;
 - (ii) 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.

37 Paragraph 302D(1)(f)

Repeal the paragraph, substitute:

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- (f) acceptable action has not been taken in relation to the gift before the end of the acceptable action period in relation to the gift.

38 Paragraph 302D(1A)(a)

Omit “6 weeks after the gift was made”, substitute “the acceptable action period in relation to the gift”.

39 Paragraph 302D(1A)(b)

Omit “6 weeks after the gift was made”, substitute “the acceptable action period in relation to the gift”.

40 Paragraph 302D(1A)(c)

Omit “that 6-week period”, substitute “the acceptable action period in relation to the gift”.

41 At the end of section 302D

Add:

Candidates and groups

- (5) Despite subsection 287(9), for the purposes of this section, a person who is a candidate in an election or by-election:
- (a) is taken to begin to be a candidate in the election or by-election on the earlier of the following days:
 - (i) the day that is 6 months before the day the person announced that the person would be a candidate in the election or by-election;
 - (ii) the day that is 6 months before the day the person nominated as a candidate in the election or by-election; and
 - (b) is taken to cease to be a candidate in the election or by-election at the end of 30 days after the polling day in the election or by-election.

Note: Under subsection 4(1), a candidate in an election or by-election is a *political entity*.

- (6) Despite subsection 287(9), for the purposes of this section, a group:

- (a) is taken to begin to be a group in an election on the day that is 6 months before 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
- (b) is taken to cease to be a group in the election at the end of 30 days after the polling day in the election.

Note: Under subsection 4(1), a member of a group is a *political entity*.

42 Paragraph 302F(1)(f)

Repeal the paragraph, substitute:

- (f) acceptable action has not been taken in relation to the gift before the end of the acceptable action period in relation to the gift.

43 Paragraph 302F(2)(e)

Repeal the paragraph, substitute:

- (e) in any case—acceptable action has not been taken in relation to the gift before the end of the acceptable action period in relation to the gift.

44 At the end of section 302F

Add:

Candidates and groups

- (7) Despite subsection 287(9), for the purposes of this section, a person who is a candidate in an election or by-election:
 - (a) is taken to begin to be a candidate in the election or by-election on the earlier of the following days:
 - (i) the day that is 6 months before the day the person announced that the person would be a candidate in the election or by-election;
 - (ii) the day that is 6 months before the day the person nominated as a candidate in the election or by-election; and
 - (b) is taken to cease to be a candidate in the election or by-election at the end of 30 days after the polling day in the election or by-election.

Note: Under subsection 4(1), a candidate in an election or by-election is a *political entity*.

- (8) Despite subsection 287(9), for the purposes of this section, a group:
- (a) is taken to begin to be a group in an election on the day that is 6 months before 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
 - (b) is taken to cease to be a group in the election at the end of 30 days after the polling day in the election.

Note: Under subsection 4(1), a member of a group is a *political entity*.

45 At the end of section 304

Add:

- (10) Despite subsection 287(9), for the purposes of this section, a person who is a candidate in an election or by-election:
- (a) is taken to begin to be a candidate in the election or by-election on the earlier of the following days:
 - (i) the day that is 6 months before the day the person announced that the person would be a candidate in the election or by-election;
 - (ii) the day that is 6 months before the day the person nominated as a candidate in the election or by-election; and
 - (b) is taken to cease to be a candidate in the election or by-election at the end of 30 days after the polling day in the election or by-election.
- (11) Despite subsection 287(9), for the purposes of this section, a group:
- (a) is taken to begin to be a group in an election on the day that is 6 months before 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
 - (b) is taken to cease to be a group in the election at the end of 30 days after the polling day in the election.

46 At the end of section 305A

Add:

- (6) Despite subsection 287(9), for the purposes of this section, a person who is a candidate in an election or by-election:
- (a) is taken to begin to be a candidate in the election or by-election on the earlier of the following days:
 - (i) the day that is 6 months before the day the person announced that the person would be a candidate in the election or by-election;
 - (ii) the day that is 6 months before the day the person nominated as a candidate in the election or by-election;
 - and
 - (b) is taken to cease to be a candidate in the election or by-election at the end of 30 days after the polling day in the election or by-election.
- (7) Despite subsection 287(9), for the purposes of this section, a group:
- (a) is taken to begin to be a group in an election on the day that is 6 months before 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
 - (b) is taken to cease to be a group in the election at the end of 30 days after the polling day in the election.

47 After subsection 306A(7)

Insert:

- (7A) Despite subsection 287(9), for the purposes of this section, a person who is a candidate in an election or by-election:
- (a) is taken to begin to be a candidate in the election or by-election on the earlier of the following days:
 - (i) the day that is 6 months before the day the person announced that the person would be a candidate in the election or by-election;
 - (ii) the day that is 6 months before the day the person nominated as a candidate in the election or by-election;
 - and
 - (b) is taken to cease to be a candidate in the election or by-election at the end of 30 days after the polling day in the election or by-election.
- (7B) Despite subsection 287(9), for the purposes of this section, a group:
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- (a) is taken to begin to be a group in an election on the day that is 6 months before 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
 - (b) is taken to cease to be a group in the election at the end of 30 days after the polling day in the election.

48 At the end of section 306B

Add:

- (3) Despite subsection 287(9), for the purposes of this section, a person who is a candidate in an election or by-election:
 - (a) is taken to begin to be a candidate in the election or by-election on the earlier of the following days:
 - (i) the day that is 6 months before the day the person announced that the person would be a candidate in the election or by-election;
 - (ii) the day that is 6 months before the day the person nominated as a candidate in the election or by-election; and
 - (b) is taken to cease to be a candidate in the election or by-election at the end of 30 days after the polling day in the election or by-election.
- (4) Despite subsection 287(9), for the purposes of this section, a group:
 - (a) is taken to begin to be a group in an election on the day that is 6 months before 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
 - (b) is taken to cease to be a group in the election at the end of 30 days after the polling day in the election.

49 At the end of section 307

Add:

- (3) Subsections 304(10) and (11) and 305A(6) and (7) apply in relation to this section in a corresponding way to the way in which they apply in relation to section 304 or 305A.

50 At the end of section 309

Add:

- (6) Despite subsection 287(9), for the purposes of this section, a person who is a candidate in an election:
 - (a) is taken to begin to be a candidate in the election on the earlier of the following days:
 - (i) the day that is 6 months before the day the person announced that the person would be a candidate in the election;
 - (ii) the day that is 6 months before the day the person nominated as a candidate in the election; and
 - (b) is taken to cease to be a candidate in the election at the end of 30 days after the polling day in the election.

- (7) Despite subsection 287(9), for the purposes of this section, a group:
 - (a) is taken to begin to be a group in an election on the day that is 6 months before 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
 - (b) is taken to cease to be a group in the election at the end of 30 days after the polling day in the election.

51 At the end of section 313

Add:

- (3) Subsections 309(6) and (7) apply in relation to this section in a corresponding way to the way in which they apply in relation to section 309.

52 Application and transitional provisions

- (1) The amendments of sections 302D, 302F, 304, 305A and 307 of the *Commonwealth Electoral Act 1918* made by this Part apply in relation to elections the writs for which are issued on or after the commencement of this item, whether the gifts concerned are made before, on or after that commencement.

- (2) If:

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- (a) subparagraph 302D(5)(a)(i) or 302F(7)(a)(i) of the *Commonwealth Electoral Act 1918*, as added by this Part, applies in relation to a person; and
 - (b) the announcement occurred before the commencement of this item; and
 - (c) a gift is made to, or for the benefit of, the person before that announcement in circumstances where acceptable action under section 302D or 302F of that Act, as amended by this Part, is required to be taken in relation to that gift;

then, in relation to that gift, the period of 6 weeks referred to in paragraph (b) of the definition of *acceptable action period* in section 302B of that Act is taken to begin on the day on which this item commences.

- (3) The amendment of section 306A of the *Commonwealth Electoral Act 1918* made by this Part applies in relation to elections the writs for which are issued on or after the commencement of this item, where the loan concerned is received on or after that commencement.
- (4) The amendment of section 306B of the *Commonwealth Electoral Act 1918* made by this Part applies in relation to elections the writs for which are issued on or after the commencement of this item, where the gift concerned is received on or after that commencement.
- (5) The amendments of sections 309 and 313 of the *Commonwealth Electoral Act 1918* made by this Part apply in relation to elections the writs for which are issued on or after the commencement of this item, whether the electoral expenditure concerned is incurred before, on or after that commencement.

[Minister's second reading speech made in—
House of Representatives on 25 November 2021
Senate on 2 December 2021]

(166/21)
