



Electoral Legislation Amendment (Foreign Influences and Offences) Act 2022

No. 6, 2022

An Act to amend the law relating to elections and referendums in respect of electoral communication and expenditure of foreign campaigners, and offences, 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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[Assented to 17 February 2022]

The Parliament of Australia enacts:

No. 6, 2022

*Electoral Legislation Amendment (Foreign Influences and Offences)
Act 2022*

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1 Short title

This Act is the *Electoral Legislation Amendment (Foreign Influences and Offences) Act 2022*.

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.	18 February 2022

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Communication authorised by foreign campaigners

Commonwealth Electoral Act 1918

1 Subsection 4(1)

Insert:

foreign campaigner means a person or entity referred to in a paragraph of section 287AA.

Note: A person or entity referred to in a paragraph of section 287AA is also a foreign donor for the purposes of Part XX.

2 Section 321B (definition of *ancillary contravention*)

After “section 321D”, insert “or 321DA”.

3 Section 321B (definition of *primary contravention*)

After “section 321D”, insert “or 321DA”.

4 At the end of subsection 321C(1)

Add:

; (d) the integrity of the electoral system, by ensuring that only those with a legitimate connection to Australia are able to influence Australian elections.

5 At the end of subsection 321C(2)

Add:

; (c) restricting the communication of electoral matter authorised by foreign campaigners.

6 Paragraph 321C(3)(a)

Repeal the paragraph, substitute:

(a) the ability of Australians to communicate electoral matters to voters; and

7 At the end of subsection 321D(3)

Add:

- ; or (c) if the matter is communicated in circumstances giving rise to a contravention of subsection 321DA(1) (communications authorised by foreign campaigners).

8 After section 321D

Insert:

321DA Prohibition on foreign campaigners authorising certain electoral matter

- (1) A foreign campaigner contravenes this subsection if electoral matter is communicated to a person and:
- (a) all of the following apply:
 - (i) the matter is an electoral advertisement;
 - (ii) all or part of the distribution or production of the advertisement was paid for;
 - (iii) the content of the advertisement was approved by the foreign campaigner (whether or not the foreign campaigner paid for the distribution or production of the advertisement); or
 - (b) both of the following apply:
 - (i) the matter forms part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card;
 - (ii) the content of the matter was approved by the foreign campaigner; or
 - (c) the foreign campaigner is a disclosure entity and communicates the matter, or the foreign campaigner communicates the matter on behalf of a disclosure entity, and the matter is not an advertisement covered by paragraph (a), nor does the matter form part of a sticker, fridge magnet, leaflet, flyer, pamphlet, notice, poster or how-to-vote card.

Civil penalty: 120 penalty units.

Exceptions

- (2) Subsection (1) does not apply in relation to electoral matter referred to in paragraphs (1)(b) and (c) if the matter forms part of:
- (a) an opinion poll or research relating to voting intentions at an election or by-election; or
 - (b) a communication communicated for personal purposes; or
 - (c) an internal communication of the foreign campaigner; or
 - (d) a communication at a meeting of 2 or more persons if the identity of the person (the *speaker*) communicating at the meeting, and any foreign campaigner on whose behalf the speaker is communicating, can reasonably be identified by the person or persons to whom the speaker is speaking; or
 - (e) a live communication of a meeting covered by paragraph (d), but not any later communication of that meeting; or
 - (f) a communication communicated solely for the purpose of announcing a meeting.

Application of civil penalty to entities that are not legal persons

- (3) For the purposes of this Act and the Regulatory Powers Act, a contravention of subsection (1) that would otherwise have been committed by a foreign campaigner that is not a legal person is taken to have been committed by each member, agent or officer (however described) of the foreign campaigner who, acting in the foreign campaigner's actual or apparent authority, engaged in the conduct or made the omission constituting the contravention.

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

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

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

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

9 Section 321E (heading)

Omit “**section 321D**”, substitute “**sections 321D and 321DA**”.

10 Subsection 321E(1)

Omit “contravene section 321D”, substitute “contravene section 321D or 321DA”.

11 Subparagraphs 321E(1)(d)(i) and (iii)

Omit “section 321D”, substitute “that section”.

12 Subsection 321E(2)

Omit “contravene section 321D”, substitute “contravene section 321D or 321DA”.

13 Paragraph 321E(2)(b)

Omit “section 321D”, substitute “that section”.

14 Paragraph 321E(2)(d)

Omit “section 321D” (wherever occurring), substitute “that section”.

15 Subsection 321F(1)

Repeal the subsection, substitute:

- (1) This section applies to a person (whether within or outside Australia) if the Electoral Commissioner has reason to believe that the person has information or a document that is relevant to:
 - (a) assessing compliance with section 321D; or
 - (b) investigating a possible contravention of section 321DA.

16 After subsection 383(2B)

Insert:

Injunctions relating to section 321DA—carriage service providers

- (2C) Without limiting subsection (1), if:
 - (a) an injunction could be granted under subsection (1) or (2) in relation to a contravention or proposed contravention by a foreign campaigner of section 321DA in relation to an electoral matter; and
 - (b) a carriage service provider supplies, or is to supply, a listed carriage service to the foreign campaigner; and

- (c) the listed carriage service is to be used solely for making bulk voice calls or sending bulk text messages;
- the Federal Court may, on the application of:
- (d) if the conduct relates to an election—a candidate in the election; or
 - (e) in any case—the Electoral Commission;
- grant an injunction restraining the carriage service provider from supplying the listed carriage service to the foreign campaigner.

Note: Section 321DA prohibits the communication of certain electoral matter authorised by a foreign campaigner.

Injunctions relating to section 321DA—broadcasters

- (2D) Without limiting subsection (1), if an injunction could be granted under subsection (1) or (2) in relation to a contravention or proposed contravention by a foreign campaigner of section 321DA in relation to an electoral matter, the Federal Court may, on the application of:
 - (a) if the conduct relates to an election—a candidate in the election; or
 - (b) in any case—the Electoral Commission;grant an injunction restraining a broadcaster from broadcasting the matter.

17 Subsection 383(3)

Omit “or (2B)” (wherever occurring), substitute “, (2B), (2C) or (2D)”.

18 After subsection 383(6A)

Insert:

- (6B) If an application is made to the Federal Court for the grant of an injunction under subsection (2C) or (2D) restraining a carriage service provider or broadcaster as referred to in that subsection, the power of the Federal Court to grant the injunction may be exercised:
 - (a) if the Federal Court is satisfied that the foreign campaigner has contravened section 321DA—whether or not it appears to the Federal Court that the foreign campaigner intends to contravene or continue to contravene that section; or

- (b) if it appears to the Federal Court that, in the event that an injunction is not granted, it is likely that the foreign campaigner will contravene section 321DA—whether or not the foreign campaigner has previously contravened that section.

19 Application of amendments

Section 321DA of the *Commonwealth Electoral Act 1918*, as inserted by this Schedule, applies in relation to electoral matter that is communicated on or after the commencement of this Schedule (regardless of when the content of the matter was approved).

Part 2—Electoral expenditure by foreign campaigners

Commonwealth Electoral Act 1918

20 Subsection 120(2) (table item 14)

Omit “or 302H”, substitute “, 302H or 314AK”.

21 After Division 5A of Part XX

Insert:

Division 5B—Electoral expenditure by foreign campaigners

314AH Simplified outline of this Division

This Division limits electoral expenditure and fundraising for electoral expenditure by foreign campaigners (that is, persons who, broadly, do not have a connection with Australia).

Electoral expenditure incurred by or with the authority of a foreign campaigner must not total \$1,000 or more in a financial year. Amounts fundraised for that purpose must not total \$1,000 or more in a financial year.

314AI Objects of this Division

- (1) The objects of this Division are:
 - (a) to ensure, to the extent possible, that only Australians and those with a genuine, legitimate stake in the outcomes of the Australian political process are able to influence those outcomes; and
 - (b) to reduce the risk of foreign persons or entities influencing the results of Australian elections through electoral expenditure.

- (2) This Division aims to achieve these objects by limiting electoral expenditure and fundraising for electoral expenditure by foreign persons or entities that do not have a legitimate connection to Australia.

314AJ Prohibition on foreign campaigners incurring electoral expenditure or fundraising for that purpose

- (1) A foreign campaigner contravenes this subsection if:
- (a) amounts of electoral expenditure incurred by or with the authority of the foreign campaigner in a financial year total \$1,000 or more; or
 - (b) amounts fundraised for the purpose of electoral expenditure being incurred by or with the authority of the foreign campaigner in a financial year total \$1,000 or more.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine or estimate the amount of electoral expenditure incurred or fundraised in contravention of this subsection—3 times that amount.
- (2) Subsection (1) applies:
- (a) whether or not the conduct constituting the contravention of that subsection occurs in Australia; and
 - (b) whether or not a result of the conduct constituting the alleged contravention of that subsection occurs in Australia.

314AK 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 314AJ prohibiting:
 - (i) an amount of electoral expenditure being incurred by or with the authority of a person (whether or not the relevant person) in a financial year; or
 - (ii) the fundraising of an amount for the purposes of electoral expenditure being incurred by or with the authority of a person (whether or not the relevant person) in a financial year; and
- (c) there are reasonable grounds to conclude that, as a result of the scheme or part of the scheme, section 314AJ will not prohibit the incurring of the amount of electoral expenditure or the fundraising of the amount in the financial year.

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

- (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.

Civil penalty

- (3) 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 or estimate the amount that was not prohibited as a result of the scheme or part of the scheme—3 times that amount.

Schedule 1 Foreign electoral communication and expenditure

Part 2 Electoral expenditure by foreign campaigners

- (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.

Meaning of scheme

- (5) For the purposes of this section, *scheme* has the same meaning as in subsection 287(1).

22 Application of amendments

Division 5B of Part XX of the *Commonwealth Electoral Act 1918*, as inserted by this Schedule, applies to the financial year in which this Schedule commences and later financial years in relation to an amount of electoral expenditure incurred, or an amount fundraised, on or after the commencement of this Schedule.

Schedule 2—Offences

Commonwealth Electoral Act 1918

1 Subsection 287H(3)

After “any electoral expenditure”, insert “, or fundraise any amounts for the purpose of incurring electoral expenditure,”.

2 Subsection 287H(3) (penalty)

After “electoral expenditure incurred”, insert “, or fundraised,”.

3 Subsection 329(4)

Repeal the subsection, substitute:

- (4) A person who contravenes subsection (1) commits an offence.

Penalty:

- (a) if the person is a natural person—imprisonment for 3 years or 100 penalty units, or both; or
(b) if the person is a body corporate—500 penalty units.

Referendum (Machinery Provisions) Act 1984

4 Subsection 122(4)

Repeal the subsection, substitute:

- (4) A person who contravenes subsection (1) commits an offence.

Penalty:

- (a) if the person is a natural person—imprisonment for 3 years or 100 penalty units, or both; or
(b) if the person is a body corporate—500 penalty units.

*[Minister's second reading speech made in—
Senate on 9 February 2022
House of Representatives on 15 February 2022]*

(15/22)

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