

2016-2017

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Electoral Legislation Amendment
(Electoral Funding and Disclosure
Reform) Bill 2017**

No. , 2017

(Finance)

**A Bill for an Act to amend the *Commonwealth
Electoral Act 1918*, and for related purposes**

Contents

1	Short title	1
2	Commencement	1
3	Schedules	2
Schedule 1—Electoral funding and disclosure reform		3
Part 1—Registration of political campaigners, third party campaigners and associated entities		3
Division 1—Amendments		3
<i>Commonwealth Electoral Act 1918</i>		3
Division 2—Application and transitional provisions		31
Part 2—Other amendments		32
Division 1—Amendments		34
<i>Commonwealth Electoral Act 1918</i>		34
<i>Referendum (Machinery Provisions) Act 1984</i>		117
Division 2—Application and transitional provisions		119

A Bill for an Act to amend the *Commonwealth Electoral Act 1918*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2017*.

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.	
2. Schedule 1, Part 1	The earlier of: (a) the first 1 July that occurs on or after the day on which this Act receives the Royal Assent; and (b) 28 days after this Act receives the Royal Assent.	
3. Schedule 1, Part 2	The first 1 July that occurs on or after the day on which this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	
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.	

Formatted Table

Note: This table relates only to the provisions of this Act as originally enacted.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, ~~third party campaigners and associated entities~~ 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 (except in sections 302CA and 314B) has the meaning given by section 4AA.

1C Subsection 4(1)

Insert:

political entity means any of the following:

- (a) a registered political party;

13TSchedule 113T Electoral funding and disclosure reform

11TPart 111T Registration of political campaigners, third party campaigners and associated entities and associated entities and the Transparency Register

(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.

(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; 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

13TSchedule 113T Electoral funding and disclosure reform

11TPart 111T Registration of political campaigners, third party campaigners and associated entities and associated entities and the Transparency Register

(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”.

2 Subsection 287(1)

Insert:

~~*allowable amount* of a person or entity for a financial year means any amount received by the person or entity, or to which the person or entity has access, during the financial year except:~~

~~(a) any gifts received from another person or entity that is not an allowable donor; and~~

~~(b) any loan to which the person or entity has access.~~

~~Note: Certain gifts may be taken to be made by allowable donors (see subsection (9)).~~

~~*allowable donor* has the meaning given by section 287A.A.~~

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 ~~\$13,500~~\$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 (~~political campaigners and third party campaigners~~ 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.

~~**political entity** means any of the following:~~

- ~~(a) a registered political party;~~
- ~~(b) a State branch of a registered political party;~~
- ~~(c) a candidate in an election (including a by-election);~~
- ~~(d) a member of a group.~~

~~**political expenditure** means expenditure incurred for one or more political purposes.~~

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

~~**political purpose** means any of the following purposes:~~

- ~~(a) the public expression by any means of views on a political party, a candidate in an election or a member of the House of Representatives or the Senate;~~
- ~~(b) the public expression by any means of views on an issue that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election);~~

13TSchedule 113T Electoral funding and disclosure reform

11TPart 111T Registration of political campaigners, third party campaigners and associated entities and associated entities and the Transparency Register

-
- ~~(c) the communicating of any electoral matter (not being matter referred to in paragraph (a) or (b)) for which particulars are required to be notified under section 321D;~~
- ~~(d) the broadcast of political matter (not being matter referred to in paragraph (c)) in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the *Broadcasting Services Act 1992*;~~
- ~~(e) the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors;~~
except if:
- ~~(f) the sole or predominant purpose of the expression of the views, or the communication, broadcast or research, is the reporting of news, the presenting of current affairs or any editorial content in news media; or~~
- ~~(g) the expression of the views, or the communication, broadcast or research, is solely for genuine satirical, academic or artistic purposes.~~

~~**Register of Associated Entities** means the Register of that name established and maintained under section 287N.~~

~~**Register of Political Campaigners** means the Register of that name established and maintained under section 287N.~~

~~**Register of Third Party Campaigners** means the Register of that name established and maintained under section 287N.~~

~~**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.~~

~~**senior staff** of a person or entity means:~~

- ~~(a) for a person or entity with directors—the directors of the person or entity; or~~

- (b) otherwise—any person who makes or participates in making decisions that affect the whole or a substantial part of the operations of the person or entity.

~~*third party campaigner* means a person or entity that is registered as a third party campaigner under section 287I.~~

~~Note 1: See also subsection (8) and section 287C (political campaigners and third party campaigners that have branches or are not incorporated).~~

~~Note 2: See section 287G for when a person or entity is required to be registered as a third party campaigner.~~

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 party* campaigners*~~ *third parties*

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

Note: See also section 287C (~~*political campaigners and third party campaigners*~~ *entities* that are not incorporated).

13TSchedule 113T Electoral funding and disclosure reform

11TPart 111T Registration of political campaigners, third party campaigners and associated entities and associated entities and the Transparency Register

~~*Certain gifts taken to be made by allowable donors*~~

~~(9) For the purposes of this Part, in working out a person or entity's allowable amount for a financial year, a gift is taken to have been made by an allowable donor to the person or entity during the financial year if:~~

~~(a) all of the following apply:~~

~~(i) the gift was made to the person or entity during the financial year by a donor who is not an allowable donor;~~

~~(ii) the person or entity obtained appropriate donor information in accordance with section 302P establishing that the donor was an allowable donor;~~

~~(iii) the person did not, at any time during the period of 6 weeks after receiving the gift, know, or have reasonable grounds to believe, that the donor was not an allowable donor; or~~

~~(b) the amount or value of the gift, and of all other gifts previously made by the donor to the person or entity during the financial year, is less than \$250.~~

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 allowable donor**~~

- ~~(1) A person or entity is an **allowable donor** if:~~
- ~~(a) for an individual who makes a gift—the individual:~~
 - ~~(i) is an elector; or~~
 - ~~(ii) is an Australian citizen; or~~
 - ~~(iii) is an Australian resident, unless a determination is in force under subsection (2) determining that Australian residents are not allowable donors; or~~
 - ~~(b) for an entity that makes a gift:~~
 - ~~(i) the entity is incorporated in Australia; or~~
 - ~~(ii) for an entity that is not incorporated—the entity's head office or principal place of activity is in Australia; or~~
 - ~~(c) for a person or entity that is a trustee of an unincorporated trust fund or unincorporated foundation, out of which a gift is made—the person or entity is an allowable donor within the meaning of paragraph (a), (b) or (d); or~~
 - ~~(d) the person or entity is in a class of persons or entities prescribed by the regulations for the purposes of this paragraph.~~

~~*Australian residents*~~

- ~~(2) For the purposes of subparagraph (1)(a)(iii), the Minister may, by legislative instrument, determine that Australian residents are not allowable donors.~~

~~*Foreign political entities*~~

- ~~(3) Despite subsection (1), an entity is not an **allowable donor** if the entity is:~~

- ~~(a) a body politic of a foreign country; or~~
- ~~(b) a body politic of a part of a foreign country; or~~
- ~~(c) a part of a body politic mentioned in paragraph (a) or (b); or~~
- ~~(d) a foreign public enterprise.~~

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.

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.

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 ~~Political campaigners and third party campaigners~~ 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 this Part that would otherwise have been committed by a political campaigner or a third party campaigner that is not a legal person is taken to have been committed by the financial controller of the campaigner.~~

(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 party campaigners~~ third parties that have branches).

11 After Division 1 of Part XX

Insert:

Division 1A—Registration of political campaigners, ~~third party campaigners and associated entities~~ and associated entities and the Transparency Register

Subdivision A—Simplified outline of this Division

~~**287D Simplified outline of this Division**~~

~~A political campaigner, third party campaigner or associated entity must be registered as such under this Division. A person may be liable to a civil penalty if the person incurs political expenditure without being appropriately registered.~~

~~Whether a person or entity is a political campaigner or third party campaigner depends on the amount of political expenditure that the campaigner incurs (which generally must be at least more than the disclosure threshold in a particular financial year).~~

~~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 Register of Political Campaigners, the Register of Third Party Campaigners and the Register of Associated Entities under 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.

13TSchedule 113T Electoral funding and disclosure reform

11TPart 111T Registration of political campaigners, third party campaigners and associated entities and associated entities and the Transparency Register

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, ~~third party campaigner~~ or associated entity

287F Requirement to register as a political campaigner

~~(1) A person or entity (except a political entity or a member of the House of Representatives or the Senate) must be registered for a financial year as a political campaigner, in accordance with subsection (2), if:~~

Electoral funding and disclosure reform **13TSchedule 113T**
Registration of political campaigners, third party campaigners and associated entities
and associated entities and the Transparency Register **11TPart 111T**

- ~~(a) the amount of political expenditure incurred by or with the authority of the person or entity during that or any one of the previous 3 financial years is \$100,000 or more; or~~
~~(b) the amount of political expenditure incurred by or with the authority of the person or entity:~~
~~(i) during that financial year is \$50,000 or more; and~~
~~(ii) during the previous financial year was at least 50% of the person or entity's allowable amount for that year.~~

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

- (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 ~~28 days~~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 ~~political expenditure~~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: 240 penalty units.~~

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.

~~(4) The person or entity commits a separate contravention of subsection (3) in respect of each day in the period:~~

~~(a) beginning on the day the person or entity first contravenes the subsection; and~~

~~(b) ending on the day the person or entity ceases to contravene the subsection (including the day a civil penalty order is made in relation to any of the contraventions or any later day).~~

~~287G Requirement to register as a third party campaigner~~

~~(1) A person or entity (except a political entity or a member of the House of Representatives or the Senate) must be registered for a financial year as a third party campaigner, in accordance with subsection (2), if:~~

~~(a) the amount of political expenditure incurred by or with the authority of the person or entity during that financial year is more than the disclosure threshold; and~~

~~(b) the person or entity is not required to be registered as a political campaigner under section 287F for that financial year; and~~

~~(c) the person or entity is not registered as a political campaigner.~~

~~Note: A person or entity might be taken to have incurred political expenditure in a financial year if the person or entity was required to be registered as a political campaigner or third party 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 28 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 political expenditure in that financial year if the person or entity is not registered as a third party 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: 120 penalty units.~~

~~(4) The person or entity commits a separate contravention of subsection (3) in respect of each day in the period:~~

~~(a) beginning on the day the person or entity first contravenes the subsection; and~~

~~(b) ending on the day the person or entity ceases to contravene the subsection (including the day a civil penalty order is made in relation to any of the contraventions or any later day).~~

287H Requirement to register as an associated entity

- (1) An entity (~~except a registered political party or a State branch of a registered political party~~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 ~~(see also subsection (5))~~;
 - (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 ~~28 days~~90 days after becoming required to be registered.

13TSchedule 113T Electoral funding and disclosure reform

11TPart 111T Registration of political campaigners, third party campaigners and associated entities and associated entities and the Transparency Register

- (3) An entity that is required to be registered under subsection (1) for a financial year must not incur any ~~political expenditure~~electoral expenditure in that financial year, after becoming required to be so registered, if the entity is not registered as an associated entity.

Note: ~~The financial controller~~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: 240 penalty units.~~

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.

- ~~(4) The entity commits a separate contravention of subsection (3) in respect of each day in the period:~~

~~(a) beginning on the day the entity first contravenes the subsection; and~~

~~(b) ending on the day the entity ceases to contravene the subsection (including the day a civil penalty order is made in relation to any of the contraventions or any later day).~~

~~Entities that operate wholly, or to a significant extent, for the benefit of registered political parties~~

- ~~(5) Without limiting paragraph (1)(b), an entity is, for the purposes of this Part, taken to be an entity that operates wholly, or to a significant extent, for the benefit of one or more registered political parties if:~~

~~(a) the entity, or an officer of the entity acting in his or her actual or apparent authority, has stated (in any form and whether publicly or privately) that the entity is to operate:~~

~~(i) for the benefit of one or more registered political parties; or~~

~~(ii) to the detriment of one or more registered political parties in a way that benefits one or more other registered political parties; or~~

-
- ~~(iii) for the benefit of a candidate in an election who is endorsed by a registered political party; or~~
 - ~~(iv) to the detriment of a candidate in an election in a way that benefits one or more registered political parties; or~~
 - ~~(b) the expenditure incurred by or with the authority of the entity during the relevant financial year is wholly or predominantly political expenditure, and that political expenditure is used wholly or predominantly:~~
 - ~~(i) to promote one or more registered political parties, or the policies of one or more registered political parties; or~~
 - ~~(ii) to oppose one or more registered political parties, or the policies of one or more registered political parties, in a way that benefits one or more other registered political parties; or~~
 - ~~(iii) to promote a candidate in an election who is endorsed by a registered political party; or~~
 - ~~(iv) to oppose a candidate in an election in a way that benefits one or more registered political parties.~~

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 ~~political expenditure~~electoral expenditure in a financial year (the *current financial year*) if:
- (a) the person or entity incurred that amount of ~~political expenditure~~electoral expenditure in a previous financial year; and
 - (b) as a result of incurring that ~~political expenditure~~electoral expenditure, the person or entity was required to be registered as a political campaigner ~~or third party 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 ~~or 287G and the 28-day period~~and the 90-day period in which the person was required to

13TSchedule 113T Electoral funding and disclosure reform

11TPart 111T Registration of political campaigners, third party campaigners and associated entities and associated entities and the Transparency Register

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 ~~political expenditure~~electoral expenditure if the person or entity is registered as required as a political campaigner ~~or third party 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
 - ~~(b) a third party 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) After receiving a person or entity's application under section 287K, the Electoral Commissioner must, subject to subsection (4), register the person or entity within a reasonable period in accordance with the application:~~
- ~~(a) if the application complies with subsection 287K(2); and~~
 - ~~(b) for an application to be registered as a third party campaigner—unless the Electoral Commissioner knows that the person or entity is a political campaigner.~~
- (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 ~~(subject to paragraph (1)(b))~~ 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 ~~any of sections 287F to 287H~~ section 287F or 287H.

~~Persons or entities that are already on other Registers~~

- ~~(3) The Electoral Commissioner must remove a person or entity from the Register of Third Party Campaigners if:~~

~~(a) the person or entity is on that Register; and~~

~~(b) the Electoral Commissioner registers the person or entity as a political campaigner under subsection (1); and vice versa.~~

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, ~~the third party 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", ~~"third party campaigner"~~ or "associated entity"; and
 - (c) references in that subsection to a "registered party" included references to a "political campaigner", ~~"third party 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, ~~third party campaigner~~ or associated entity.

287M Applications for deregistration

- (1) A person or entity that is registered as a political campaigner, ~~a third party 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, ~~a third party campaigner~~ or an associated entity (as the case requires).

Subdivision C ~~Register of Political Campaigners, Register of Third Party Campaigners and Register of Associated Entities~~ Transparency Register

287N ~~Register of Political Campaigners, Register of Third Party Campaigners and Register of Associated Entities~~ Transparency Register

- ~~(1) The Electoral Commissioner must establish and maintain each of the following:~~
- ~~(a) a Register of Political Campaigners;~~
 - ~~(b) a Register of Third Party Campaigners;~~
 - ~~(c) a Register of Associated Entities.~~

~~*Content of Registers*~~

- ~~(2) The Register of Political Campaigners must include:~~
- ~~(a) the name of each person or entity registered as a political campaigner under section 287L; and~~

Electoral funding and disclosure reform **13TSchedule 113T**
Registration of political campaigners, third party campaigners and associated entities
and associated entities and the Transparency Register **11TPart 111T**

-
- ~~(b) the name of the financial controller of the person or entity;
and~~
- ~~(c) for any entity that is also on the Register of Associated
Entities;~~
- ~~(i) a statement that the entity is also on the Register of
Associated Entities; and~~
- ~~(ii) the names of any registered political parties with which
the entity is associated.~~
- ~~(3) The Register of Third Party Campaigners must include:~~
- ~~(a) the name of each person or entity registered as a third party
campaigner under section 287L; and~~
- ~~(b) the name of the financial controller of the person or entity;
and~~
- ~~(c) for any entity that is also on the Register of Associated
Entities;~~
- ~~(i) a statement that the entity is also on the Register of
Associated Entities; and~~
- ~~(ii) the names of any registered political parties with which
the entity is associated.~~
- ~~(4) The Register of Associated Entities must include:~~
- ~~(a) the name of each entity registered as an associated entity
under section 287L; and~~
- ~~(b) the name of the financial controller of the entity; and~~
- ~~(c) the names of any registered political parties with which the
entity is associated; and~~
- ~~(d) for any entity that is also on the Register of Political
Campaigners or the Register of Third Party Campaigners a
statement that the entity is also on that 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:
-

13TSchedule 113T Electoral funding and disclosure reform

11TPart 111T Registration of political campaigners, third party campaigners and associated entities and associated entities and the Transparency Register

-
- (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.

Determination of additional information

- (5) ~~Each of the Registers~~The Transparency Register may include any other information determined by the Electoral Commissioner under subsection (6).
- (6) The Electoral Commissioner may, by legislative instrument, determine information that may or must be included in ~~each or any specified Register~~the Transparency Register.
- (7) Before making a determination under subsection (6), the Electoral Commissioner must consult the Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*) and have regard to any submissions made by the Information Commissioner because of that consultation.

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

~~(1) A person or entity that is registered as a political campaigner, third party campaigner or associated entity must notify the Electoral Commissioner, in an approved form, if information on the relevant Register relating to the person or entity ceases to be correct or complete.~~

(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 ~~28 days~~ 90 days of the information ceasing to be correct or complete.

~~Note: A contravention of this civil penalty provision may be a continuing contravention (see section 93 of the Regulatory Powers Act).~~

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 ~~Registers~~ Transparency Register to be made public etc.

(1) The ~~Register of Political Campaigners, the Register of Third Party Campaigners and the Register of Associated Entities~~ Transparency Register may be maintained by electronic means.

(2) ~~Each of the Registers~~ The Transparency Register is to be made available to the public.

287R Entry in ~~Registers~~ Transparency Register prima facie evidence of information

An entry in the ~~Register of Political Campaigners, the Register of Third Party Campaigners or the Register of Associated~~

~~Entities~~ Transparency Register is prima face 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

13TSchedule 113T Electoral funding and disclosure reform

11TPart 111T Registration of political campaigners, third party campaigners and associated entities and associated entities and the Transparency Register

commencement of this item (see subsections 287F(2) and 287H(2) of the Commonwealth Electoral Act 1918).

~~(2) The following amendments apply on and after the first 1 July that occurs on or after the day this Act receives the Royal Assent:~~

~~(a) the amendments of the definition of *gift* in subsection 287(1), and the definition of *amount* in section 314AA, of the Commonwealth Electoral Act 1918 made by this Part;~~

~~(b) sections 287F to 287H of that Act, as inserted by this Part.~~

~~Note: The effect of paragraph (2)(b) is that an entity that is required to be registered on the first 1 July that occurs on or after the day this Act receives the Royal Assent has 28 days from that day to become registered (see subsections 287F(2), 287G(2) and 287H(2) of the Commonwealth Electoral Act 1918).~~

~~(3) If this Part commences before Schedule 1 to the Electoral and Other Legislation Amendment Act 2017, paragraph (e) of the definition of *political purpose* in subsection 287(1) of the Commonwealth Electoral Act 1918, as inserted by this Part, applies until that commencement as if that paragraph referred instead to “the printing, production, publication or distribution of any material (not being material referred to in subparagraph 314AEB(1)(a)(i) or (ii)) that is required under section 328, 328A or 328B to include a name, address or place of business”.~~

(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) An entity in relation to which a return is provided under section 314AEA (annual returns by associated entities) of the *Commonwealth Electoral Act 1918* for the 2017-2018 financial year is taken, on and after the commencement of this item, to be registered as an associated entity for the 2018-2019 financial year for the purposes of that Act (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 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 party campaigners and associated entities.~~

~~Registered political parties, candidates and groups must have agents. Political campaigners, third party campaigners and associated entities must have 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 over \$250 to political entities (who are registered political parties, candidates and Senate groups), and most political campaigners, must be made by allowable donors (who, broadly, have a connection to Australia). Similarly, only allowable donors may make gifts of more than \$250 in a financial year to a single political entity or political campaigner.~~

~~Gifts to third party campaigners, and to political campaigners that are registered charities or registered organisations, from non-allowable donors must not be made or used for political purposes. Gifts to such charities and organisations from non-allowable donors must be kept in a separate account.~~

~~Generally, gifts must also be paid from bank accounts in Australia. Specified particulars must be provided for gifts over \$250.~~

~~There are obligations to disclose certain gifts made to:~~

- ~~— (a) candidates and members of groups during an election period; 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 party campaigners 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.~~

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)~~

~~Insert:~~

~~electoral expenditure has the meaning given by subsection 308(1).~~

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 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**~~

~~Political parties, candidates and groups must have an agent. Political campaigners, third party 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, third party campaigners and associated entities are kept in the Registers under Division 1A.~~

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

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

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, ~~third party~~ campaigners and associated entities

- (1) Each political campaigner, ~~third party 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, ~~third party campaigner~~ or associated entity is an individual, he or she may nominate himself or herself as the financial controller.
- (3) If the political campaigner, ~~third party 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, ~~third party 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, ~~third party 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.

~~However, a claim must be made for election funding to be paid.~~ 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 ~~the election funding~~ 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 the lesser of:~~

~~(a) the total of the following:~~

- ~~(i) \$2,70479 for each formal first preference vote given for a candidate in relation to whom paragraph (1)(a) is satisfied;~~
- ~~(ii) \$2,70479 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 a determination on the party's interim claim or final claim (as the case requires) for election funding is made by the Electoral Commission; and~~
- ~~(b) the amount of electoral expenditure:~~
- ~~(i) claimed in respect of the registered political party for all elections held that day; and~~
- ~~(ii) accepted by the Electoral Commission under section 298C.~~

~~Note: The amounts in subparagraphs (2)(a)(i) and (ii) are indexed under section 324.~~

- (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 ~~the election funding~~ 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 the lesser of:~~

~~(a) \$2,70479 for each formal first preference vote given for the candidate in the election, based on formal first preference votes counted as at the day a determination on the candidate's interim claim or final claim (as the case requires) for election funding is made by the Electoral Commission; and~~

~~(b) the amount of electoral expenditure:~~

~~(i) claimed in respect of the candidate for the election; and~~

~~(ii) accepted by the Electoral Commission under section 298C.~~

~~Note: The amount in paragraph (2)(a) is indexed under section 321.~~

(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 ~~the election funding~~ 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 the lesser of:~~

- ~~(a) \$2.70479 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 a~~

~~determination on the group's interim claim or final claim (as the case requires) for election funding is made by the Electoral Commission; and~~

~~(b) the amount of electoral expenditure:~~

~~(i) claimed in respect of the group for the Senate election; and~~

~~(ii) accepted by the Electoral Commission under section 298C.~~

~~Note: The amount in paragraph (2)(a) is indexed under section 321.~~

(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 branch; 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 an amount of election funding~~ election funding of more than \$10,000 to be paid, a claim must be made by:

~~(a) the agent of a registered political party; or~~

(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 branch; 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 some or all of the electoral expenditure has been specified in an interim claim.~~

(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 electoral expenditure:
 - (a) incurred by the party, or by candidates endorsed by the party, in relation to all elections held on the same day; and
 - (b) for which election funding is sought.
- (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) The Electoral Commission must, within 20 days of the Electoral Commission receiving the claim, pay 95% of the amount that is payable in relation to the party, candidate or group under subsection 293(2), 294(2) or 295(2), in accordance with paragraphs 298A(c) and (d).~~

(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) The Electoral Commission must, within 20 days of the Electoral Commission receiving the claim, pay the amount that is payable in~~

~~relation to the party, candidate or group under subsection 293(2), 294(2) or 295(2), reduced by any amount that has been paid in accordance with section 298D, in accordance with paragraphs 298A(c) and (d).~~

(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 party campaigners.~~

~~Gifts of over \$250 to political entities (broadly, registered political parties, candidates and Senate groups), and most political campaigners, must be made by allowable donors. Similarly, only allowable donors may make gifts of more than \$250 in a financial year to a single political entity or political campaigner. An allowable donor is a person who has a connection to Australia, such as an Australian citizen or an entity that is incorporated in Australia.~~

~~Gifts to third party campaigners, and to political campaigners that are registered charities or registered organisations, from non allowable donors must not be made or used for political purposes. Gifts to such charities and organisations from non allowable donors must be kept in a separate account.~~

~~Anti avoidance provisions apply to strengthen these requirements.~~

~~Generally, gifts must also be paid from bank accounts in Australia. Specified particulars must be provided for gifts over \$250.~~

~~A person may be liable for a civil penalty for contravening the requirements. There are some exceptions such as when a gift is made in a personal capacity.~~

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 Interpretation~~

302B Definitions

~~(1) In~~ 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.

~~*Persons to remain candidates and groups for 30 days after an election*~~

~~(2) For the purpose of this Division:~~

~~(a) a person who is a candidate in an election is taken to remain a candidate; and~~

~~(b) persons who constituted a group in an election are taken to continue to constitute the same group;~~

~~for 30 days after the polling day in the election.~~

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 laws

Despite any law of a State or Territory dealing with electoral matters (within the ordinary meaning of the expression), 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; or

(b) if the person or entity is a political entity, a political campaigner or a third party—receive, retain or use a gift; or

(c) receive, retain or use a gift on behalf of a political entity, a political campaigner or a third party;

if:

(d) this Division does not prohibit the receiving or retaining of the gift, or the using of the gift; and

- (e) the gift is required to be, or may be, used for the purposes of incurring electoral expenditure or creating or communicating electoral matter.

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 ~~not an allowable donor~~ a foreign donor; and
 - ~~(e) at the time the gift is made:~~
 - ~~(i) the amount or value of the gift is at least \$250; or~~
 - ~~(ii) the amount or value of the gift, and of all gifts previously made by the donor to the gift recipient during the financial year, is at least \$250; and~~
 - ~~(f) acceptable action has not been taken in relation to the gift before the end of 6 weeks after the gift is made; and~~
 - ~~(g) at the time the gift is made, the gift recipient is not registered under:~~
 - ~~(i) the *Australian Charities and Not for Profits Commission Act 2012*; or~~
 - ~~(ii) the *Fair Work (Registered Organisations) Act 2009*.~~
 - (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 1: For exceptions to this provision, see sections 302M (seeking information about allowable donor status) and 302N (gifts made in private capacity).~~

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: 10 years imprisonment or 600 penalty units, or both.~~

Penalty: 200 penalty units.

Civil penalty

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

~~Civil penalty: 1,000 penalty units.~~

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). ~~Section 93~~ Subsection 93(2) of the *Regulatory Powers Act* does not apply in relation to a contravention of subsection (3).

**302E Donations to third party campaigners and certain political
campaigners parties by foreign donors**

- ~~(1) A person contravenes this subsection if:~~
- ~~(a) the person is a financial controller of:~~
 - ~~(i) a political campaigner (the *gift recipient*); or~~
 - ~~(ii) a third party 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; and~~
 - ~~(d) the person is not an allowable donor; and~~
 - ~~(e) at the time the gift is made, the gift recipient is:~~
 - ~~(i) a third party campaigner; or~~
 - ~~(ii) a political campaigner that is registered under the *Australian Charities and Not for Profits Commission Act 2012* or the *Fair Work (Registered Organisations) Act 2009*; and~~
 - ~~(f) either of the conditions in subsection (2) is met; 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: For an exception to this provision, see section 302M (seeking information about allowable donor status).~~

~~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).~~

- ~~(2) A condition in this subsection is met if:~~
- ~~(a) the total of the following amounts is more than the gift recipient's allowable amount for the financial year:~~
 - ~~(i) the amount of political expenditure incurred by the gift recipient during the financial year;~~
 - ~~(ii) the total amount or value of gifts made to a political entity or political campaigner by the gift recipient during the financial year; or~~
 - ~~(b) the gift is expressly made (whether wholly or partly) for one or more political purposes, and at the time the gift is made:~~
 - ~~(i) the amount or value of the gift is at least \$250; or~~

~~(ii) the amount or value of the gift, and of all gifts previously made by the donor to the gift recipient during the financial year, is at least \$250.~~

(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 commits an offence if the person~~person or entity commits an offence if the person or entity contravenes subsection (1).

~~Penalty: 10 years imprisonment or 600 penalty units, or both.~~

Penalty: 50 penalty units.

Civil penalty

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

~~Civil penalty: 1,000 penalty units.~~

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). ~~Section 93~~Subsection 93(2) of the *Regulatory Powers Act* does not apply in relation to a contravention of subsection (4).

~~**302F Donations to political campaigners that are registered charities and organisations**~~

- ~~(1) A person contravenes this subsection if:~~
- ~~(a) the person is a financial controller of a political campaigner that is registered under the *Australian Charities and Not for Profits Commission Act 2012* or the *Fair Work (Registered Organisations) Act 2009*; and~~
 - ~~(b) a gift is made to the campaigner by, or on behalf of, a person; and~~
 - ~~(c) the person is not an allowable donor; and~~
 - ~~(d) the gift is paid into an account; and~~
 - ~~(e) political expenditure, or one or more gifts to one or more political entities or political campaigners, are paid by the political campaigner from the account; and~~
 - ~~(f) acceptable action has not been taken in relation to the gift referred to in paragraph (1)(b) before the end of 6 weeks after that gift is made.~~

~~Note 1: For an exception to this provision, see section 302M (seeking information about allowable donor status).~~

~~Note 2: 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: 10 years imprisonment or 600 penalty units, or both.~~

~~*Civil penalty*~~

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

~~Civil penalty: 1,000 penalty units.~~

~~*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). Section 93 of the *Regulatory*~~

~~Powers Act does not apply in relation to a contravention of subsection (3).~~

~~302G—Soliciting gifts from non-allowable donors~~

- ~~(1) A person (the *first person*) contravenes this subsection if:~~
- ~~(a) the first person solicits another person (the *donor*) to:~~
 - ~~(i) make a gift; or~~
 - ~~(ii) have a gift made on behalf of the donor; (whether or not the gift is actually made); and~~
 - ~~(b) the donor is not an allowable donor; and~~
 - ~~(c) the first person solicits the gift intending that all or part of the gift, or of the amount or value of the gift, be transferred to any of the following (the *future gift recipient*):~~
 - ~~(i) a political entity;~~
 - ~~(ii) a political campaigner;~~
 - ~~(iii) any other person for one or more political purposes; and~~
 - ~~(d) at the time the gift is solicited, the future gift recipient is not registered under:~~
 - ~~(i) the *Australian Charities and Not for Profits Commission Act 2012*; or~~
 - ~~(ii) the *Fair Work (Registered Organisations) Act 2009*.~~

~~Note 1: For an exception to this provision, see section 302M (seeking information about allowable donor status).~~

~~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 (3) are set out in this subsection (see section 302R).~~

~~Exception—private capacity~~

- ~~(2) Subsection (1) does not apply if the first person solicited the gift intending that all or part of the gift, or of the amount or value of the gift, be transferred to a person or entity referred to in paragraph (1)(c) in a private capacity for his or her 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*).~~

~~Offence~~

~~(3) A person commits an offence if the person contravenes subsection (1).~~

~~Penalty: 5 years imprisonment or 300 penalty units, or both.~~

~~Civil penalty~~

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

~~Civil penalty: 500 penalty units.~~

302H Receiving gifts from non-allowable donors in order to transfer the gifts

~~(1) A person (the *first person*) contravenes this subsection if:~~

~~(a) a gift is made to the first person by, or on behalf of, another person (the *donor*); and~~

~~(b) the donor is not an allowable donor; and~~

~~(c) the first person receives the gift intending that all or part of the gift, or of the amount or value of the gift, be transferred to any of the following (the *gift recipient*):~~

~~(i) a political entity;~~

~~(ii) a political campaigner;~~

~~(iii) any other person for one or more political purposes; and~~

~~(d) at the time the gift is made, the gift recipient is not registered under:~~

~~(i) the *Australian Charities and Not-for-Profits Commission Act 2012*; or~~

~~(ii) the *Fair Work (Registered Organisations) Act 2009*.~~

~~Note 1: For an exception to this provision, see section 302M (seeking information about allowable donor status).~~

~~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 (3) are set out in this subsection (see section 302R).~~

~~Exception private capacity~~

- ~~(2) Subsection (1) does not apply if the first person received the gift intending that all or part of the gift, or of the amount or value of the gift, be transferred to a person or entity referred to in paragraph (1)(c) in a private capacity for his or her 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 12.3(2) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).~~

~~Offence~~

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

~~Penalty: 5 years imprisonment or 300 penalty units, or both.~~

~~Civil penalty~~

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

~~Civil penalty: 500 penalty units.~~

~~302J Forming bodies corporate for the purposes of avoiding restrictions in this Division~~

- ~~(1) A person contravenes this subsection if:~~

~~(a) the person forms, or participates in the formation of, a body corporate in Australia; and~~

~~(b) the person does so solely or predominantly for the purpose of making a gift that, under this Division, it is unlawful to receive or retain, or use for a political purpose.~~

~~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: 5 years imprisonment or 300 penalty units, or both.~~

~~Civil penalty~~

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

~~Civil penalty: 500 penalty units.~~

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; and

(c) the gift is made by a foreign donor; and

(d) 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

(e) 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 a provision of this Division prohibiting a gift being made to a political entity, political campaigner or third party (whether or not the relevant person) by a foreign donor in particular circumstances; 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 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 the political entity, political campaigner or third party by 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 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).

Note 3: An example of circumstances in which a gift may be made is the making of a gift knowing that the person accepting the gift intends to use the gift for the purposes of incurring electoral expenditure.

(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 C—Other offences and civil penalty provisions~~

~~302K—Donations from foreign bank accounts, or donations made while in a foreign country~~

~~(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; and~~

~~(c) either:~~

~~(i) the gift is made directly from an account with a bank, credit union, building society or similar institution that is held in a foreign country; or~~

~~(ii) the gift is made by telegraphic or electronic transfer by a person who is in a foreign country at the time of making the gift (except if the gift is made from an account held by a bank, credit union, building society or similar institution in Australia); and~~

- ~~(d) acceptable action has not been taken in relation to the gift before the end of 6 weeks after the gift is made; and~~
~~(e) at the time the gift is made, the gift recipient is not registered under:~~
- ~~(i) the *Australian Charities and Not-for-Profits Commission Act 2012*; or~~
 - ~~(ii) the *Fair Work (Registered Organisations) Act 2009*.~~

~~Note 1: For an exception to this provision, see section 302N (gifts made in private capacity).~~

~~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).~~

~~*Offence*~~

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

~~Penalty: 10 years imprisonment or 600 penalty units, or both.~~

~~*Civil penalty*~~

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

~~Civil penalty: 1,000 penalty units.~~

~~*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). Section 93 of the *Regulatory Powers Act* does not apply in relation to a contravention of subsection (3).~~

~~302L Donations of at least \$250 etc. without appropriate donor information~~

- ~~(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) at the time the gift is made:~~
- ~~(i) the amount or value of the gift is at least \$250; or~~
- ~~(ii) the amount or value of the gift, and of all gifts previously made by the donor to the gift recipient during the financial year, is at least \$250; and~~
- ~~(e) before the end of 6 weeks after the gift is made, appropriate donor information has not been obtained in accordance with section 302P establishing that the donor is an allowable donor; and~~
- ~~(f) acceptable action has not been taken in relation to the gift before the end of that 6-week period; and~~
- ~~(g) at the time the gift is made, the gift recipient is not registered under:~~
- ~~(i) the *Australian Charities and Not-for-Profits Commission Act 2012*; or~~
- ~~(ii) the *Fair Work (Registered Organisations) Act 2009*.~~

~~Note 1: For an exception to this provision, see section 302N (gifts made in private capacity).~~

~~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).~~

~~*Offence*~~

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

~~Penalty: 10 years imprisonment or 600 penalty units, or both.~~

~~*Civil penalty*~~

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

~~Civil penalty: 1,000 penalty units.~~

~~*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). Section 93 of the *Regulatory Powers Act* does not apply in relation to a contravention of subsection (3).~~

Subdivision D—~~Exceptions and other~~ Other provisions relating to offences and civil penalty provisions

~~302M—Exception—seeking information about allowable donor status~~

~~Subsection 302D(1), 302E(1), 302F(1), 302G(1) or 302H(1) does not apply if:~~

~~(a) the person who, apart from this section, would contravene the subsection obtained appropriate donor information in accordance with section 302P establishing that the donor was an allowable donor; and~~

~~(b) the person did not, at the following time or times, know, or have reasonable grounds to believe, that the donor was not an allowable donor:~~

~~(i) for subsection 302D(1), 302E(1) or 302F(1) at any time during the 6-week period referred to in that subsection;~~

~~(ii) for subsection 302G(1) at the time the gift is solicited;~~

~~(iii) for subsection 302H(1) at the time the gift is received.~~

~~Note: A person who wishes to rely on this section bears an evidential burden in relation to the matters in this section (see subsection 12.3(2) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).~~

~~302N—Exception—gifts made in private capacity~~

~~Subsection 302D(1), 302K(1) or 302L(1) does not apply if the relevant gift was made in a private capacity to the relevant gift recipient for his or her personal use.~~

~~Note: A person who wishes to rely on this section bears an evidential burden in relation to the matters in this section (see subsection 12.3(2) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).~~

~~302P Information relating to allowable donor status~~

- ~~(1) A person (the *first person*) obtains *appropriate donor information* from another person establishing that the other person is an allowable donor if:~~
- ~~(a) the first person obtains a statutory declaration from the other person declaring that the other person is an allowable donor (unless subsection (2) applies); or~~
 - ~~(b) if the regulations determine information that the first person may seek from the other person in order to establish that the other person is an allowable donor — the first person obtains that information from the other person.~~
- ~~(2) For the purposes of paragraph (1)(b), the regulations may (but are not required to) determine that a statutory declaration that a person is an allowable donor is not *appropriate donor information*.~~

~~Note: A person who obtains *appropriate donor information* may not commit an offence or contravene a civil penalty provision in this Division (see subsection 287(9) and section 302M).~~

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

<u>Item</u>	<u>Column 1</u>	<u>Column 2</u>
	<u>If the donor is:</u>	<u>then the appropriate donor information is:</u>
<u>1</u>	<u>an individual</u>	<u>(a) the particulars relating to the individual set out in a Roll; or</u> <u>(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</u> <u>(c) a copy of a visa evidencing the individual's permanent residency in Australia; or</u> <u>(d) any information or a copy of any document</u>

<u>Appropriate donor information</u>		
<u>Item</u>	<u>Column 1</u>	<u>Column 2</u>
	<u>If the donor is:</u>	<u>then the appropriate donor information is:</u>
		<u>prescribed by the regulations for the purposes of this table item.</u>
<u>2</u>	<u>an incorporated entity</u>	<p>(a) <u>a copy of the certificate of the entity's incorporation in Australia; or</u></p> <p>(b) <u>particulars of the entity's registration with the Australian Securities Investment Commission evidencing the entity's incorporation in Australia; or</u></p> <p>(c) <u>any information or a copy of any document prescribed by the regulations for the purposes of this table item.</u></p>
<u>3</u>	<u>an entity (whether or not incorporated)</u>	<p>(a) <u>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:</u></p> <p style="padding-left: 20px;">(i) <u>decisions setting the operational policies of the entity; or</u></p> <p style="padding-left: 20px;">(ii) <u>decisions appointing officers of the entity, or granting powers to such officers to carry on the entity's activities; or</u></p> <p style="padding-left: 20px;">(iii) <u>directions to persons appointed to carry out the entity's activities as to how to perform functions; or</u></p> <p style="padding-left: 20px;">(iv) <u>decisions on matters of finance, such as how profits are to be used; or</u></p> <p>(b) <u>copies of at least 3 official documents of the entity establishing that the entity's activities are principally carried out in Australia, such as:</u></p> <p style="padding-left: 20px;">(i) <u>documents recording separately the number of staff or members of the entity in Australia, and overseas, carrying on activities for the entity; or</u></p> <p style="padding-left: 20px;">(ii) <u>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</u></p> <p>(c) <u>any information or a copy of any document prescribed by the regulations for the purposes of this</u></p>

Appropriate donor information

<u>Item</u>	<u>Column 1</u>	<u>Column 2</u>
	<u>If the donor is:</u>	<u>then the appropriate donor information is:</u>

table item.

Note: 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)).

(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 ~~302L (except section 302J)~~ 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 ~~during the disclosure period for the election~~ 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 ~~Commission~~ 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:

~~Note: A contravention of this civil penalty provision may be a continuing contravention (see section 93 of the Regulatory Powers Act).~~

~~Civil penalty: 180 penalty units.~~

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:

~~Note: A contravention of this civil penalty provision may be a continuing contravention (see section 93 of the Regulatory Powers Act).~~

~~Civil penalty: 180 penalty units.~~

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.

~~40 After subsection 304(3)~~

~~Insert:~~

~~(3AA) A return provided under subsection (2) or (3) must also include details of:~~

- ~~(a) any senior staff employed or engaged by or on behalf of the person or group in the person or group's capacity as a candidate or group, and any membership of any registered political party that any of those members of staff have; and~~
- ~~(b) 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 the polling day in the election or by election.~~

~~Note: For the definition of *senior staff*, see subsection 287(1).~~

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.

~~46 Paragraph 305A(1)(a)~~

~~After “election” (wherever occurring), insert “or by election”.~~

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 makes the gift or gifts, the person is not a political entity or associated entity.~~

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.

~~50 Paragraph 305A(1A)(a)~~

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

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)(e)**~~

~~Repeal the paragraph, substitute:~~

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

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)**~~

~~After "person must", insert "in accordance with this section."~~

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)**~~

~~Omit "\$10,000", substitute "the disclosure threshold".~~

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:

~~Note: A contravention of this civil penalty provision may be a continuing contravention (see section 93 of the Regulatory Powers Act).~~

~~Civil penalty: 60 penalty units.~~

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)~~

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

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”.

~~**59 Subsection 305A(5)**~~

~~Repeal the subsection.~~

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 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 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 made to that political party, branch or campaigner during the financial year.~~

~~Note: ——— A contravention of this civil penalty provision may be a continuing contravention (see section 93 of the Regulatory Powers Act).~~

~~Civil penalty: ——— 60 penalty units.~~

~~———— (2) For the purposes of subsection (1), a person who makes a gift to any person or body 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.~~

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) 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 Subsection 306A(4)**~~

~~After “an election”, insert “or by election”.~~

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, and~~ gift.

~~(c) for a political campaigner at the time the gift was made, the campaigner was not registered under:~~

~~(i) the *Australian Charities and Not-for-Profits Commission Act 2012*; or~~

~~(ii) the *Fair Work (Registered Organisations) Act 2009*.~~

(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 ~~Commission~~[Commissioner, on the Transparency Register](#), under section 320.

~~75 At the end of subsection 308(1)~~

~~Add:~~

~~_____ ; or (h) any other event or activity prescribed by the regulations.~~

~~76 At the end of section 308~~

~~Add:~~

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

77 Subsection 309(2)

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

78 At the end of subsection 309(2)

Add:

~~Note: A contravention of this civil penalty provision may be a continuing contravention (see section 93 of the Regulatory Powers Act).~~

~~Civil penalty: 180 penalty units.~~

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:

~~Note: A contravention of this civil penalty provision may be a continuing contravention (see section 93 of the Regulatory Powers Act).~~

~~Civil penalty: 180 penalty units.~~

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:
- (a) any senior staff employed or engaged by or on behalf of the person or group, in the person or group's capacity as a candidate or group in the election, and any membership of any registered political party that any of those members of staff have; and
 - (b) 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.

Note: For the definition of *senior staff*, see subsection 287(1).

[\(5\) 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, and the senior staff of, the parties, campaigners or entities during the year. ~~Third party campaigners~~ [Third parties](#) also provide annual returns setting out details relating to ~~political expenditure~~ [electoral expenditure](#) incurred by, ~~and the senior staff of, the campaigners~~ [the third parties](#) during the year.

Returns provided under this Division are published by the Electoral ~~Commission~~[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, ~~third party campaigner or associated entity 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.

~~Note: A contravention of this civil penalty provision may be a continuing contravention (see section 92 of the Regulatory Powers Act).~~

~~Civil penalty: 360 penalty units.~~

[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~~; and ~~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:

- (i) any senior staff employed or engaged by or on behalf of the party or branch, or by or on behalf of the campaigner in its capacity as a political campaigner, and any membership of any registered political party that any of those members of staff have; and
- (ii) 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

~~(c) include an auditor's report prepared in accordance with section 314ABA; and~~

~~(d) for a return by a political campaigner that is registered under the Australian Charities and Not-for-Profits Commission Act 2012 or the Fair Work (Registered Organisations) Act 2009—include a signed statement by the financial controller of the campaigner that the campaigner complied with sections 302E and 302F (political donations to third party~~

~~campaigners, political campaigners and registered charities and organisations) of this Act during the financial year; and~~

(e) ~~in any case~~ be complete.

Note: For the definition of *senior staff*, see subsection 287(1).

- (3) The financial controller of a political campaigner that is taken to have incurred an amount of ~~political expenditure~~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.

~~314ABA Requirements for auditor's report~~

~~*Who undertakes audit*~~

- ~~(1) An audit of the return of a registered political party, a State branch of a registered political party, or a political campaigner, (the *audited person*) must be undertaken by:~~
- ~~(a) a registered company auditor (within the meaning of the *Corporations Act 2001*); or~~
 - ~~(b) a firm:~~
 - ~~(i) that consents to be appointed, or is appointed, as auditor of the audited person; and~~
 - ~~(ii) at least one member of which is a registered company auditor (within the meaning of that Act) who is ordinarily resident in Australia; or~~
 - ~~(c) an authorised audit company (within the meaning of that Act); or~~
 - ~~(d) an entity prescribed by the regulations for the purposes of this paragraph.~~

~~*Audit to be conducted in accordance with auditing standards*~~

- ~~(2) An audit must be undertaken in accordance with the auditing standards.~~

~~*Content of auditor's report*~~

- ~~(3) The auditor must prepare a report setting out the opinion formed by the auditor about:~~

~~(a) whether the return satisfies the requirements of this Act; and~~

~~(b) if the auditor is not satisfied that the return satisfies the requirements of this Act:~~

~~(i) an explanation as to why the return does not satisfy the requirements of the Act; and~~

~~(ii) if it is practicable to quantify the effect that the failure to satisfy the requirements of the Act has on the return — the quantification of that effect; and~~

~~(iii) otherwise — a statement as to why it is not possible to quantify the effect that the failure has on the return; and~~

~~(c) whether the auditor has been given all information, explanation and assistance necessary for the conduct of the audit; and~~

~~(d) whether the audited person has kept financial records sufficient to enable a return to be prepared and audited; and~~

~~(e) whether the audited person has kept other records as required by this Act; and~~

~~(f) any material defect or irregularity in the return; and~~

~~(g) any other statements or disclosures required by the auditing standards.~~

~~*Obligations on audited entities*~~

- ~~(4) In having its return audited, the audited person must ensure that the auditor:~~

~~(a) has access at all reasonable times to the books of the audited person; and~~

~~(b) is given all requested information, explanations or other assistance for the purposes of the audit.~~

~~A request under paragraph (b) must be reasonable.~~

88 Subsection 314AC(1)

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

89 Subsection 314AC(1)

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

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.

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:

- (i) any senior staff employed or engaged by or on behalf of the entity, in the entity’s capacity as an associated

- entity, and any membership of any registered political party that any of those members of staff have; and
- (ii) 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.

~~Note 1~~Note: For the definition of *senior staff*, see subsection 287(1).

~~Note 2: A contravention of this civil penalty provision may be a continuing contravention (see section 93 of the Regulatory Powers Act).~~

~~Civil penalty: 180 penalty units.~~

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 party campaigners~~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:~~
- ~~(a) the person or entity is a third party campaigner during the year; and~~
 - ~~(b) the campaigner incurred, or authorised the incurring of, political expenditure at a time during the year; and~~
 - ~~(c) at that time, the campaigner was not:
 - ~~(i) a political entity; or~~
 - ~~(ii) a member of the House of Representatives or the Senate; or~~
 - ~~(iii) the Commonwealth (including a Department of the Commonwealth, an Executive Agency or a Statutory Agency (within the meaning of the *Public Service Act 1999*)).~~~~

(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.

~~Note: A contravention of this civil penalty provision may be a continuing contravention (see section 93 of the Regulatory Powers Act).~~

~~Civil penalty: 180 penalty units.~~

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 campaigner must provide to the Electoral Commission a return for the financial year:~~

- ~~(a) setting out details of:~~

- ~~(i) the expenditure incurred; and~~
- ~~(ii) any senior staff employed or engaged by or on behalf of the campaigner, in its capacity as a third party campaigner, and any membership of any registered political party that any of those members of staff have; and~~
- ~~(iii) any discretionary benefits (however described) received by, or on behalf of, the campaigner from the Commonwealth, a State or a Territory during the financial year; and~~
- ~~(b) including a signed statement by the financial controller of the campaigner that the campaigner complied with section 302E (donations to third party campaigners and certain political campaigners) during the financial year.~~

~~Note: For the definition of *senior staff*, see subsection 287(1).~~

(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 ~~campaigner~~third party is also required to provide a return under section 314AEC—include that return.

~~**103 At the end of section 314AEB**~~

~~Add:~~

- ~~(4) The financial controller of a third party campaigner that is taken to have incurred an amount of political 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.~~

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 party campaigners for political expenditure~~ 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 party campaigners~~ 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 political expenditure; or~~
 - ~~(ii) to reimburse the person or entity for incurring expenditure for a political purpose; and~~
 - (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

(1) This section applies in relation to a law of a State or Territory that deals with electoral matters (within the ordinary meaning of the expression).

Limit on State and Territory power—information on amounts provided

(2) A person or entity (the *provider*) is not required by the law to disclose an amount, or information relating to an amount, (including a gift or loan) if:

- (a) the provider provides the amount to or for the benefit of a political entity, political campaigner, third party or associated entity (the *recipient*); and
- (b) the amount is required to be, or may be, used by or with the authority of the recipient for the purposes of incurring electoral expenditure, or for the purposes of creating or communicating electoral matter, in accordance with subsection (5).

Limit on State and Territory power—information on amounts received

(3) A person or entity (the *recipient*) is not required by the law to disclose 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 the recipient; and
- (b) the recipient is a political entity, political campaigner, third party or associated entity; and
- (c) the amount is required to be, or may be, used by or with the authority of the recipient for the purposes of incurring electoral expenditure, or for the purposes of creating or communicating electoral matter, in accordance with subsection (5).

Limit on State and Territory power—information on expenditure and debts

- (4) A person or entity (the *debtor*) is not required by the law to disclose 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

- (5) An amount is required to be, or may be, used for a purpose 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; or
 - (b) the person or entity providing the amount does not set terms relating to the purpose for which the amount can be used.
- (6) A reference in this section to a law not requiring an amount, or information relating to an amount, to be disclosed applies if:
 - (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.

(7) A reference in this section to a law not requiring an amount, or information relating to an amount, (the *specific amount*) to be disclosed includes a reference to the law not requiring the following to be disclosed:

(a) a total amount that includes the specific amount;

(b) information relating to the specific amount as it is included in a total amount.

(8) A reference in this section to a person or entity (the *first person*) being required by a law to disclose an amount or information includes a reference to another person being required to disclose the amount or information on behalf of the first person.

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 “the financial controller of an associated entity or the agent of a registered political party”, substitute “the financial controller of a political campaigner, third party campaigner or associated entity, or the agent of a registered political party, candidate or group”.~~

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 a prescribed person, the agent of a registered political party, candidate or group, the financial controller of a political campaigner or associated entity, or a third party, has complied with:

(i) this Part; or

(ii) 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 noticed 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 campaigner~~third party or associated entity or any officer of the political campaigner, ~~third party campaigner~~third party or associated entity; or

111 Subsection 316(2B)

Repeal the subsection, substitute:

(2B) If a notice under paragraph ~~(2A)(a) requires an officer of a political party, political campaigner, third party campaigner~~(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 ~~campaigner or entity~~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 ~~campaigner or entity~~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 campaigner~~third party or associated entity; and

114 Paragraph 316(3A)(b)

After “an officer of the”, insert “~~campaigner~~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: 1,000 penalty units.~~

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”.

~~**121 Subsection 319A(2A)**~~

~~After “registered political party”, insert “or the financial controller of a political campaigner, third party campaigner or associated entity.”~~

~~**122 Paragraph 319A(2A)(b)**~~

~~After “of the political party”, insert “, or nominated as the financial controller of the campaigner or entity”.~~

~~**123 Subsection 319A(9)**~~

~~Omit “the liability of a person to be convicted of an offence against subsection 315(2), (3) or (4)”, substitute “whether a civil penalty order may be made against a person because of a contravention of a civil penalty provision in 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 ~~Commission must publish the following~~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 Commission 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	at this time ...
	Commission Commissioner must publish ...	
	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 294(2)(a) and 295(2)(a).~~

(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 Subsections 321A(2) and (3)~~

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

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, 305B or 314AEB 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, 305B or 314AEB for the financial year in which the time occurs;~~
- (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 ~~political expenditure~~ 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)**~~

~~Omit “and political expenditure”, substitute “and returns by third party campaigners”.~~

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 ~~logo~~ 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 314AEB 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 314AEB of that Act for the financial year in which the time occurs;~~

(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 ~~political expenditure~~ 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: Section 314AEB of the Commonwealth Electoral Act 1918 requires returns by third party campaigners.~~

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) The following amendments apply in relation to gifts and loans made after the commencement of this item:~~

~~(a) Division 3A of Part XX of the *Commonwealth Electoral Act 1918* (except as provided by subitems (3) to (5)), as inserted by this Part;~~

~~(b) the amendments of Division 4 of Part XX of that Act made by this Part.~~

~~Annual returns~~

- ~~(4) The following amendments apply in relation to financial years commencing at or after the commencement of this item:~~
- ~~(a) sections 302D and 302E of the *Commonwealth Electoral Act 1918*, and Division 3A of Part XX of that Act to the extent that it relates to those sections, as inserted by this Part;~~
 - ~~(b) the amendments of Division 5A of Part XX of that Act made by this Part.~~

~~Soliciting gifts~~

- ~~(5) Section 302G of the *Commonwealth Electoral Act 1918*, and Division 3A of Part XX of that Act to the extent that it relates to that section, as inserted by this Part, apply in relation to the soliciting of gifts after the commencement of this item.~~

~~Forming bodies corporate~~

- ~~(6) Section 302J of the *Commonwealth Electoral Act 1918*, and Division 3A of Part XX of that Act to the extent that it relates to that section, as inserted by this Part, apply in relation to the forming of bodies corporate 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 and senior staff 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.

~~Indexation~~

~~(11) To avoid doubt, sections 321 and 321A of the Commonwealth Electoral Act 1918, as amended by this Part, apply from the first 1 July that occurs on or after the day on which this Act receives the Royal Assent.~~

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.