

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

THE SENATE

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| EXPOSURE DRAFT |
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## Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017

(Government)

- (1) Clause 2, page 2 (table items 2 and 3), omit the table items, substitute:

|                          |   |
|--------------------------|---|
| 2. Schedule 1,<br>Part 1 | The day after this Act receives the Royal Assent.   |
| 3. Schedule 1,<br>Part 2 | A single day to be fixed by Proclamation.<br>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. |

**[commencement]**

- (2) Schedule 1, heading to Part 1, page 3 (lines 3 and 4), omit “, **third party campaigners and associated entities**”, substitute “**and associated entities and the Transparency Register**”.  
**[registration of third party campaigners; Transparency Register]**
- (3) Schedule 1, page 3 (after line 10), after item 1, insert:

### 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.

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## 1C Subsection 4(1)

Insert:

*political entity* means any of the following:

- (a) a registered political party;
- (b) a State branch (within the meaning of Part XX) of a registered political party;
- (c) a candidate (within the meaning of that Part) in an election (including a by-election);
- (d) a member of a group (within the meaning of that Part).

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

## 1D Subsection 4(9)

Repeal the subsection.

## 1E After section 4

Insert:

### 4AA Meaning of *electoral matter*

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

- (a) a political entity, to the extent that the matter relates to a federal election; or
- (b) a member of the House of Representatives or a Senator.

- (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);

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- (c) whether the matter contains an express or implicit comment on a political entity, a member of the House of Representatives or a Senator;
- (d) whether the communication or intended communication is or would be received by electors near a polling place;
- (e) how soon a federal election is to be held after the creation or communication of the matter;
- (f) whether the communication or intended communication is or would be unsolicited.

## *Exceptions*

- (5) Despite subsections (1) and (3), matter is not ***electoral matter*** if the communication or intended communication of the matter:
  - (a) forms or would form part of the reporting of news, the presenting of current affairs or any genuine editorial content in news media; or
  - (b) is or would be by a person for a dominant purpose that is a satirical, academic, educative or artistic purpose, taking into account any relevant consideration including the dominant purpose of any other communication of matter by the person; or
  - (c) is or would be a private communication by a person to another person who is known to the first person; or
  - (d) is or would be by or to a person who is a Commonwealth public official (within the meaning of the *Criminal Code*) in that person's capacity as such an official; or
  - (e) is or would be a private communication to a political entity (who is not a Commonwealth public official) in relation to public policy or public administration; or
  - (f) occurs or would occur in the House of Representatives or the Senate, or is or would be to a parliamentary committee.

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

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

Repeal the definition.

## **1G Paragraph 7(1)(b)**

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

## **1H Paragraph 7(1)(c)**

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

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

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

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

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

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

Add:

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- 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”.

**[anti-avoidance; definition of electoral expenditure]**

- (4) Schedule 1, item 2, page 3 (lines 11 to 21), **to be opposed**.  
**[allowable amount; foreign donors]**

- (5) Schedule 1, item 4, page 4 (after line 4), after the definition of *Australian resident* in subsection 287(1), insert:

*candidate* has a meaning affected by subsection (9).

**[candidates and groups]**

- (6) Schedule 1, item 4, page 4 (line 12), omit “\$13,500”, substitute “\$13,800”.

**[disclosure threshold]**

- (7) Schedule 1, item 4, page 4 (after line 13), after the definition of *disclosure threshold*, insert:

*electoral expenditure* has the meaning given by section 287AB.

*foreign donor* has the meaning given by section 287AA.

**[definition of electoral expenditure; foreign donors]**

- (8) Schedule 1, page 4 (after line 21), after item 6, insert:

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

Add:

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

**[candidates and groups]**

- (9) Schedule 1, item 7, page 5 (lines 9 and 10), omit “political campaigners and third party campaigners”, substitute “entities”.

**[entities that are not legal persons]**

- (10) Schedule 1, item 7, page 5 (lines 13 to 17), omit the definition of *political entity* in subsection 287(1).

**[definition of electoral expenditure]**

- (11) Schedule 1, item 7, page 5 (lines 18 to 23), omit the definition of *political expenditure* in subsection 287(1).

**[definition of electoral expenditure]**

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- (12) Schedule 1, item 7, page 5 (line 24) to page 6 (line 12), omit the definition of *political purpose* in subsection 287(1).

**[definition of electoral expenditure]**

- (13) Schedule 1, item 7, page 6 (lines 13 and 14), omit the definition of *Register of Associated Entities* in subsection 287(1).

**[Transparency Register]**

- (14) Schedule 1, item 7, page 6 (lines 15 and 16), omit the definition of *Register of Political Campaigners* in subsection 287(1).

**[Transparency Register]**

- (15) Schedule 1, item 7, page 6 (lines 17 and 18), omit the definition of *Register of Third Party Campaigners* in subsection 287(1).

**[registration of third party campaigners]**

- (16) Schedule 1, item 7, page 6 (before line 19), before the definition of *senior staff* in subsection 287(1), insert:

*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.

**[anti-avoidance]**

- (17) Schedule 1, item 7, page 6 (lines 25 to 30), omit the definition of *third party campaigner* in subsection 287(1), substitute:

*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.

**[registration of third party campaigners; Transparency Register]**

- (18) Schedule 1, page 6 (after line 30), after item 7, insert:

## **7A Subsection 287(7)**

Repeal the subsection.

**[definition of electoral expenditure]**

- (19) Schedule 1, item 8, page 7 (line 1), omit “*third party campaigners*”, substitute “*third parties*”.

**[third party campaigners]**

- (20) Schedule 1, item 8, page 7 (line 2), omit “third party campaigner”, substitute “third party”.

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***[third party campaigners]***

- (21) Schedule 1, item 8, page 7 (line 4), omit “third party campaigner”, substitute “third party”.

***[third party campaigners]***

- (22) Schedule 1, item 8, page 7 (lines 5 and 6), omit “political campaigners and third party campaigners”, substitute “entities”.

***[entities that are not legal persons]***

- (23) Schedule 1, item 8, page 7 (lines 7 to 24), omit subsection 287(9), substitute:

*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.

***[candidates and groups; allowable amount]***

- (24) Schedule 1, item 9, page 7 (line 31) to page 8 (line 28), omit section 287AA, substitute:

## **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:

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- (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.

### ***[definition of electoral expenditure; foreign donors; implied freedom of political communication]***

- (25) Schedule 1, item 10, page 9 (line 1), omit “**Political campaigners and third party campaigners**”, substitute “**Entities**”.

### ***[entities that are not legal persons]***

- (26) Schedule 1, item 10, page 9 (lines 10 to 13), omit paragraph 287C(b), substitute:

- (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

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- (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.

***[entities that are not legal persons]***

- (27) Schedule 1, item 10, page 9 (lines 14 and 15), omit “third party campaigners”, substitute “third parties”.

***[third party campaigners]***

- (28) Schedule 1, item 11, page 9 (lines 18 and 19), omit “, third party campaigners and associated entities”, substitute “and associated entities and the Transparency Register”.

***[registration of third party campaigners; Transparency Register]***

- (29) Schedule 1, item 11, page 9 (line 21) to page 10 (line 6), omit section 287D, substitute:

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

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

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

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

The Electoral Commissioner maintains the Transparency Register under this Division.

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

***[definition of electoral matter; registration of third party campaigners; Transparency Register]***

- (30) Schedule 1, item 11, page 10 (line 10), after “in elections”, insert “, and to provide for the Transparency Register,”.

***[Transparency Register]***

- (31) Schedule 1, item 11, page 10 (line 19), omit “, third party campaigner”.

***[registration of third party campaigners]***

- (32) Schedule 1, item 11, page 10 (line 22) to page 11 (line 6), omit subsection 287F(1), substitute:

- (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:



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- (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).

***[definition of electoral expenditure; registration requirements for political campaigners]***

- (33) Schedule 1, item 11, page 11 (line 7), omit “28 days”, substitute “90 days”.  
***[registration requirements for political campaigners]***

- (34) Schedule 1, item 11, page 11 (lines 10 and 11), omit “political expenditure”, substitute “electoral expenditure”.  
***[definition of electoral expenditure]***

- (35) Schedule 1, item 11, page 11 (line 15), omit the penalty, substitute:

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.

***[definition of electoral expenditure; registration requirements for political campaigners]***

- (36) Schedule 1, item 11, page 11 (lines 16 to 23), omit subsection 287F(4).  
***[continuing contraventions]***

- (37) Schedule 1, item 11, page 11 (line 24) to page 12 (line 23), section 287G to be opposed.  
***[registration of third party campaigners]***

- (38) Schedule 1, item 11, page 12 (lines 25 and 26), omit “except a registered political party or a State branch of a registered political party”, substitute “except a political entity”.  
***[registration requirements for associated entities]***

- (39) Schedule 1, item 11, page 12 (lines 32 and 33), omit “(see also subsection (5))”.  
***[registration requirements for associated entities]***

- (40) Schedule 1, item 11, page 13 (line 6), omit “28 days”, substitute “90 days”.  
***[registration requirements for associated entities]***

- (41) Schedule 1, item 11, page 13 (line 9), omit “political expenditure”, substitute “electoral expenditure”.  
***[definition of electoral expenditure]***

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- (42) Schedule 1, item 11, page 13 (line 12), omit “The financial controller”, substitute “A member, agent or officer”.

***[entities that are not legal persons]***

- (43) Schedule 1, item 11, page 13 (line 14), omit the penalty, substitute:

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.

***[definition of electoral expenditure; registration requirements for associated entities]***

- (44) Schedule 1, item 11, page 13 (line 15) to page 14 (line 19), omit subsections 287H(4) and (5).  
***[definition of associated entity; continuing contraventions]***

- (45) Schedule 1, item 11, page 14 (line 23), omit “political expenditure”, substitute “electoral expenditure”.

***[definition of electoral expenditure]***

- (46) Schedule 1, item 11, page 14 (lines 25 and 26), omit “political expenditure”, substitute “electoral expenditure”.

***[definition of electoral expenditure]***

- (47) Schedule 1, item 11, page 14 (line 27), omit “political expenditure”, substitute “electoral expenditure”.

***[definition of electoral expenditure]***

- (48) Schedule 1, item 11, page 14 (line 29), omit “or third party campaigner”.

***[registration of third party campaigners]***

- (49) Schedule 1, item 11, page 14 (line 34), omit “or 287G and the 28-day period”, substitute “and the 90-day period”.

***[registration of third party campaigners]***

- (50) Schedule 1, item 11, page 15 (line 2), omit “political expenditure”, substitute “electoral expenditure”.

***[definition of electoral expenditure]***

- (51) Schedule 1, item 11, page 15 (lines 3 and 4), omit “or third party campaigner”.

***[registration of third party campaigners]***

- (52) Schedule 1, item 11, page 15 (line 9), omit paragraph 287K(1)(b).

***[registration of third party campaigners]***

- (53) Schedule 1, item 11, page 15 (lines 20 to 27), omit subsection 287L(1), substitute:

- (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.

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*[registration of third party campaigners]*

- (54) Schedule 1, item 11, page 15 (lines 28 and 29), omit “(subject to paragraph (1)(b))”.

*[registration of third party campaigners]*

- (55) Schedule 1, item 11, page 15 (line 31), omit “any of sections 287F to”, substitute “section 287F or”.

*[registration of third party campaigners]*

- (56) Schedule 1, item 11, page 16 (lines 1 to 7), omit subsection 287L(3).

*[registration of third party campaigners]*

- (57) Schedule 1, item 11, page 16 (line 14), omit “, the third party campaigner”.

*[registration of third party campaigners]*

- (58) Schedule 1, item 11, page 16 (line 20), omit “, “third party campaigner””.

*[registration of third party campaigners]*

- (59) Schedule 1, item 11, page 16 (lines 23 and 24), omit “, “third party campaigner””.

*[registration of third party campaigners]*

- (60) Schedule 1, item 11, page 16 (line 34), omit “, third party campaigner”.

*[registration of third party campaigners]*

- (61) Schedule 1, item 11, page 17 (lines 2 and 3), omit “, a third party campaigner”.

*[registration of third party campaigners]*

- (62) Schedule 1, item 11, page 17 (lines 7 and 8), omit “, a third party campaigner”.

*[registration of third party campaigners]*

- (63) Schedule 1, item 11, page 17 (lines 9 to 11), omit “**Register of Political Campaigners, Register of Third Party Campaigners and Register of Associated Entities**”, substitute “**Transparency Register**”.

*[registration of third party campaigners; Transparency Register]*

- (64) Schedule 1, item 11, page 17 (lines 12 and 13), omit “**Register of Political Campaigners, Register of Third Party Campaigners and Register of Associated Entities**”, substitute “**Transparency Register**”.

*[registration of third party campaigners; Transparency Register]*

- (65) Schedule 1, item 11, page 17 (line 14) to page 18 (line 19), omit subsections 287N(1) to (4), substitute:

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

*Content of Transparency Register*

- (2) The Transparency Register must include the following information:

- (a) the name of:

- (i) each person or entity registered as a political campaigner under section 287L; and

- (ii) each entity registered as an associated entity under section 287L; and

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- (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.

***[registration of third party campaigners; Transparency Register]***

- (66) Schedule 1, item 11, page 18 (line 21), omit “Each of the Registers”, substitute “The Transparency Register”.

***[registration of third party campaigners]***

- (67) Schedule 1, item 11, page 18 (lines 24 and 25), omit “each or any specified Register”, substitute “the Transparency Register”.

***[registration of third party campaigners]***

- (68) Schedule 1, item 11, page 19 (line 2), omit “**register**”, substitute “**Transparency Register**”.

***[Transparency Register]***

- (69) Schedule 1, item 11, page 19 (lines 3 to 7), omit subsection 287P(1), substitute:

- (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.

***[registration of third party campaigners]***

- (70) Schedule 1, item 11, page 19 (line 9), omit “28 days”, substitute “90 days”.

***[obligation to notify of changes to information on register]***

- (71) Schedule 1, item 11, page 19 (lines 11 and 12), omit the note.

***[continuing contraventions]***

- (72) Schedule 1, item 11, page 19, (after line 13), at the end of section 287P, add:

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

***[continuing contraventions]***

- (73) Schedule 1, item 11, page 19 (line 14), omit “**Registers**”, substitute “**Transparency Register**”.

***[Transparency Register]***

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- (74) Schedule 1, item 11, page 19 (lines 15 and 16), omit “Register of Political Campaigners, the Register of Third Party Campaigners and the Register of Associated Entities”, substitute “Transparency Register”.

***[Transparency Register]***

- (75) Schedule 1, item 11, page 19 (line 18), omit “Each of the Registers”, substitute “The Transparency Register”.

***[Transparency Register]***

- (76) Schedule 1, item 11, page 19 (line 19), omit “**Registers**”, substitute “**Transparency Register**”.

***[Transparency Register]***

- (77) Schedule 1, item 11, page 19 (lines 20 and 21), omit “Register of Political Campaigners, the Register of Third Party Campaigners or the Register of Associated Entities”, substitute “Transparency Register”.

***[Transparency Register]***

- (78) Schedule 1, item 11, page 19 (after line 22), at the end of Division 1A, add:

## **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).

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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.

**[anti-avoidance]**

- (79) Schedule 1, page 19 (before line 23), before item 12, insert:

## **11A Section 308**

Repeal the section.

**[definition of electoral expenditure]**

- (80) Schedule 1, Division 1, page 19 (after line 24), at the end of the Division, add:

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

Repeal the paragraphs.

**[definition of electoral expenditure]**

- (81) Schedule 1, item 13, page 19 (after line 29), at the end of subitem (1), add:

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

**[commencement; registration requirements]**

- (82) Schedule 1, item 13, page 20 (lines 1 to 19), omit subitems (2) and (3), substitute:

- (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.

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## *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.

## ***[commencement; registration requirements]***

- (83) Schedule 1, item 15, page 21 (line 10) to page 22 (line 18), omit section 286A, substitute:

### **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).

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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.

**[election funding]**

(84) Schedule 1, item 16, page 22 (lines 19 to 21), omit the item, substitute:

**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.

**[disclosure period; definition of electoral expenditure; election funding]**

(85) Schedule 1, page 22 (after line 27), after item 18, insert:

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

Repeal the definition.

**18B Section 287B**

Repeal the section.

**[election funding]**

(86) Schedule 1, item 20, page 23 (lines 5 to 16), omit section 287V, substitute:

**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.



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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.

***[registration and liability of third party campaigners; Transparency Register]***

- (87) Schedule 1, item 26, page 25 (lines 8 and 9), omit “, **third party campaigners**”.  
***[liability of third party campaigners]***
- (88) Schedule 1, item 26, page 25 (line 10), omit “, third party campaigner”.  
***[liability of third party campaigners]***
- (89) Schedule 1, item 26, page 25 (line 13), omit “, third party campaigner”.  
***[liability of third party campaigners]***
- (90) Schedule 1, item 26, page 25 (line 16), omit “, third party campaigner”.  
***[liability of third party campaigners]***
- (91) Schedule 1, item 26, page 26 (line 4), omit “, third party campaigner”.  
***[liability of third party campaigners]***
- (92) Schedule 1, item 26, page 26 (lines 24 and 25), omit “, third party campaigner”.  
***[liability of third party campaigners]***
- (93) Schedule 1, item 27, page 27 (line 3), omit “However, a claim must be made for election funding to be paid.”, substitute “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.”.  
***[election funding]***
- (94) Schedule 1, item 27, page 27 (line 6), after “However,”, insert “for an amount of election funding that is more than \$10,000 (as indexed),”.  
***[election funding]***
- (95) Schedule 1, item 27, page 27 (line 24), omit “the election funding”, substitute “election funding of more than \$10,000”.  
***[election funding]***
- (96) Schedule 1, item 27, page 27 (line 26) to page 28 (line 12), omit subsection 293(2), substitute:
- (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

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- (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.

***[election funding]***

- (97) Schedule 1, item 27, page 28 (line 23), omit “the election funding”, substitute “election funding of more than \$10,000”.

***[election funding]***

- (98) Schedule 1, item 27, page 28 (line 25) to page 29 (line 1), omit subsection 294(2), substitute:

- (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.

***[election funding]***

- (99) Schedule 1, item 27, page 29 (line 10), omit “the election funding”, substitute “election funding of more than \$10,000”.

***[election funding]***

- (100) Schedule 1, item 27, page 29 (lines 12 to 25), omit subsection 295(2), substitute:

- (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:

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- (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.

***[election funding]***

(101) Schedule 1, item 27, page 29 (after line 25), after Subdivision B, insert:

## **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.

***[election funding]***

(102) Schedule 1, item 27, page 29 (line 26), at the end of the heading to Subdivision C, add “**of more than \$10,000**”.

***[election funding]***

(103) Schedule 1, item 27, page 29 (line 27), at the end of the heading to section 297, add “**for election funding of more than \$10,000**”.

***[election funding]***

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(104) Schedule 1, item 27, page 29 (line 28), omit “an amount of election funding”, substitute “election funding of more than \$10,000”.

***[election funding]***

(105) Schedule 1, item 27, page 29 (line 30), omit paragraph 297(1)(a), substitute:

- (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

***[election funding]***

(106) Schedule 1, item 27, page 29 (after line 31), at the end of subsection 297(1), add:

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

***[election funding]***

(107) Schedule 1, item 27, page 30 (lines 4 to 6), omit subsection 297(3), substitute:

- (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.

***[election funding]***

(108) Schedule 1, item 27, page 32 (lines 24 to 28), omit subsection 298D(2) (not including the notes), substitute:

- (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).

***[election funding]***

(109) Schedule 1, item 27, page 33 (lines 5 to 10), omit subsection 298E(2) (not including the notes), substitute:

- (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

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- (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).

***[election funding]***

(110) Schedule 1, item 33, page 37 (lines 5 to 27), omit section 302A, substitute:

## **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.

***[donations]***

(111) Schedule 1, item 33, page 38 (line 1), omit the heading to section 302B, substitute:

## **302B Definitions**

***[candidates and groups]***

(112) Schedule 1, item 33, page 38 (line 2), omit “(1) In”, substitute “In”.

***[candidates and groups]***

(113) Schedule 1, item 33, page 38 (lines 14 to 21), omit subsection 302B(2).

***[candidates and groups]***

(114) Schedule 1, item 33, page 38 (after line 29), at the end of Subdivision A, add:

## **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

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- (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.

***[relationship with State and Territory laws]***

(115) Schedule 1, item 33, page 39 (line 4), at the end of the heading to section 302D, add “**by foreign donors**”.

***[donations to political entities and political campaigners]***

(116) Schedule 1, item 33, page 39 (line 13), omit “not an allowable donor”, substitute “a foreign donor”.

***[donations to political entities and political campaigners]***

(117) Schedule 1, item 33, page 39 (lines 14 to 25), omit paragraphs 302D(1)(e) to (g), substitute:

- (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.

***[donations to political entities and political campaigners]***

(118) Schedule 1, item 33, page 39 (lines 26 to 28), omit note 1.

***[donations to political entities and political campaigners]***

(119) Schedule 1, item 33, page 39 (after line 32), after subsection 302D(1), insert:

*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).

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## *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*).

## ***[donations to political entities and political campaigners]***

- (120) Schedule 1, item 33, page 40 (line 4), omit the penalty, substitute:

Penalty: 200 penalty units.

***[penalties]***

- (121) Schedule 1, item 33, page 40 (line 8), omit the penalty, substitute:

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.

***[penalties]***

- (122) Schedule 1, item 33, page 40 (line 11), omit “Section 93”, substitute “Subsection 93(2)”.

***[continuing contraventions]***

- (123) Schedule 1, item 33, page 40 (lines 14 and 15), omit “**party campaigners and certain political campaigners**”, substitute “**parties by foreign donors**”.

***[donations to third party campaigners]***

- (124) Schedule 1, item 33, page 40 (line 16) to page 41 (line 22), omit subsections 302E(1) and (2), substitute:

- (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:

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- (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).

***[donations to third party campaigners]***

- (125) Schedule 1, item 33, page 41 (line 24), omit “person commits an offence if the person”, insert “person or entity commits an offence if the person or entity”.

***[donations to third party campaigners]***

- (126) Schedule 1, item 33, page 41 (line 26), omit the penalty, substitute:

Penalty: 50 penalty units.

***[penalties]***

- (127) Schedule 1, item 33, page 41 (line 28), omit “person is liable to a civil penalty if the person”, insert “person or entity is liable to a civil penalty if the person or entity”.

***[donations to third party campaigners]***

- (128) Schedule 1, item 33, page 41 (line 30), omit the penalty, substitute:

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.

***[penalties]***



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(129) Schedule 1, item 33, page 42 (line 3), omit “Section 93”, substitute “Subsection 93(2)”.

**[continuing contraventions]**

(130) Schedule 1, item 33, page 42 (line 6) to page 46 (line 10), omit sections 302F to 302J, substitute:

## **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.

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## *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.

***[gifts by foreign donors; anti-avoidance; false information about foreign donor status]***

(131) Schedule 1, item 33, page 46 (line 11) to page 49 (line 5), Subdivision C **to be opposed**.

***[other offences and civil penalty provisions]***

(132) Schedule 1, item 33, page 49 (line 6), omit “**Exceptions and other**”, substitute “**Other**”.

***[exceptions to offences and civil penalty provisions]***

(133) Schedule 1, item 33, page 49 (lines 8 to 32), sections 302M and 302N **to be opposed**.

***[exceptions to offences and civil penalty provisions]***

(134) Schedule 1, item 33, page 50 (lines 1 to 17), omit section 302P, substitute:

## **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:

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## Appropriate donor information

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| Item | Column 1<br>If the donor is:            | Column 2<br>then the appropriate donor information is:   |
|------|---|--|
| 1    | an individual                           | (a) the particulars relating to the individual set out in a Roll; or<br>(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<br>(c) a copy of a visa evidencing the individual's permanent residency in Australia; or<br>(d) any information or a copy of any document prescribed by the regulations for the purposes of this table item.  |
| 2    | an incorporated entity                  | (a) a copy of the certificate of the entity's incorporation in Australia; or<br>(b) particulars of the entity's registration with the Australian Securities Investment Commission evidencing the entity's incorporation in Australia; or<br>(c) any information or a copy of any document prescribed by the regulations for the purposes of this table item.   |
| 3    | an entity (whether or not incorporated) | (a) copies of at least 3 recent minutes or other official documents of the entity, in accordance with subsection (2), evidencing that high-level decisions of the entity are made in Australia, such as:<br>(i) decisions setting the operational policies of the entity; or<br>(ii) decisions appointing officers of the entity, or granting powers to such officers to carry on the entity's activities; or<br>(iii) directions to persons appointed to carry out the entity's activities as to how to perform functions; or<br>(iv) decisions on matters of finance, such as how profits are to be used; or<br>(b) copies of at least 3 official documents of the entity establishing that the entity's activities are principally carried out in Australia, such as:<br>(i) documents recording separately the number of staff or members of the entity in Australia, and overseas, carrying on activities for the entity; or<br>(ii) documents recording separately the scale or volume of the activities carried out in Australia, and overseas, (for example by reference to revenue derived in Australia and overseas); or<br>(c) any information or a copy of any document prescribed by the regulations for the purposes of this 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)).

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(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.

***[information relating to foreign donor status]***

(135) Schedule 1, item 33, page 50 (lines 23 and 24), omit “302L (except section 302J)”, substitute “302F”.

***[debts due to the Commonwealth]***

(136) Schedule 1, item 34, page 51 (line 10), omit “during the disclosure period for the election”.

***[candidates and groups]***

(137) Schedule 1, item 34, page 51 (line 20), omit “Commission”, substitute “Commissioner, on the Transparency Register,”.

***[Transparency Register]***

(138) Schedule 1, page 52 (after line 2), after item 36, insert:

## **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”.

***[candidates and groups]***

(139) Schedule 1, item 37, page 52 (lines 5 to 7), omit the note and the penalty, substitute:

Civil penalty:

The higher of the following:

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

***[continuing contraventions; penalties]***

(140) Schedule 1, page 52 (after line 9), after item 38, insert:

## **38A Subsection 304(3)**

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

***[candidates and groups]***

(141) Schedule 1, item 39, page 52 (lines 12 to 14), omit the note and the penalty, substitute:

Civil penalty:

The higher of the following:

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

***[continuing contraventions; penalties]***

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(142) Schedule 1, item 40, page 52 (lines 15 to 28), **to be opposed.**

***[returns of candidates and groups]***

(143) Schedule 1, page 53 (after line 10), after item 45, insert:

**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.

***[continuing contraventions]***

(144) Schedule 1, item 46, page 53 (lines 11 and 12), omit the item, substitute:

**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

***[gifts to candidates etc.]***

(145) Schedule 1, item 48, page 53 (lines 15 to 18), omit the item, substitute:

**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.

***[gifts to candidates etc.]***

(146) Schedule 1, item 50, page 53 (lines 21 and 22), omit the item, substitute:

**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

***[gifts to candidates etc.]***

(147) Schedule 1, item 52, page 53 (line 25) to page 54 (line 2), omit the item, substitute:

**52 Paragraph 305A(1A)(c)**

Repeal the paragraph, substitute:

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- (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.

***[gifts to candidates etc.]***

(148) Schedule 1, item 54, page 54 (lines 5 and 6), omit the item, substitute:

## **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”.

***[gifts to candidates etc.]***

(149) Schedule 1, item 55, page 54 (lines 7 and 8), omit the item, substitute:

## **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.

***[gifts to candidates etc.]***

(150) Schedule 1, item 56, page 54 (lines 11 to 13), omit the note and the penalty, substitute:

Civil penalty:

The higher of the following:

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

***[continuing contraventions; penalties]***

(151) Schedule 1, item 57, page 54 (lines 14 and 15), omit the item, substitute:

## **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).

***[candidates and groups]***

(152) Schedule 1, item 59, page 54 (lines 18 and 19), omit the item, substitute:



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## 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.

***[continuing contraventions]***

(153) Schedule 1, item 61, page 54 (line 23) to page 55 (line 15), omit the item, substitute:

## 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.

***[continuing contraventions; penalties]***

(154) Schedule 1, item 63, page 55 (line 21), after “person”, insert “or entity”.

***[gifts to political parties]***

(155) Schedule 1, page 55 (after line 28), after item 63, insert:

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

After “person”, insert “or entity”.

***[gifts to political parties]***

(156) Schedule 1, item 64, page 55 (after line 32), at the end of section 305B, add:

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

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*[continuing contraventions]*

(157) Schedule 1, item 70, page 57 (lines 7 and 8), omit the item, substitute:

**70 Subsections 306A(4) and (5)**

Repeal the subsections.

*[candidates and groups]*

(158) Schedule 1, item 73, page 57 (line 29), omit “gift; and”, substitute “gift.”.

*[registration of political campaigners]*

(159) Schedule 1, item 73, page 57 (line 30) to page 58 (line 3), omit paragraph 306B(1)(c).

*[registration of political campaigners]*

(160) Schedule 1, item 74, page 59 (line 2), omit “Commission”, substitute “Commissioner, on the Transparency Register,”.

*[Transparency Register]*

(161) Schedule 1, items 75 and 76, page 59 (lines 3 to 9), **to be opposed.**

*[definition of electoral expenditure]*

(162) Schedule 1, item 78, page 59 (lines 14 to 16), omit the note and the penalty, substitute:

Civil penalty:

The higher of the following:

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

*[continuing contraventions; penalties]*

(163) Schedule 1, item 80, page 59 (lines 21 to 23), omit the note and the penalty, substitute:

Civil penalty:

The higher of the following:

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

*[continuing contraventions; penalties]*

(164) Schedule 1, item 81, page 60 (after line 10), at the end of section 309, add:

- (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.

*[continuing contraventions]*

(165) Schedule 1, item 84, page 60 (line 23), omit “Third party campaigners”, substitute “Third parties”.

*[third party campaigners]*

(166) Schedule 1, item 84, page 60 (line 24), omit “political expenditure”, substitute “electoral expenditure”.

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## ***[definition of electoral expenditure]***

(167) Schedule 1, item 84, page 60 (line 25), omit “, and the senior staff of, the campaigners”, substitute “the third parties”.

## ***[annual returns by third party campaigners]***

(168) Schedule 1, item 84, page 60 (line 28), omit “Commission”, substitute “Commissioner, on the Transparency Register,”.

## ***[Transparency Register]***

(169) Schedule 1, item 86, page 61 (lines 4 and 5), omit “, third party campaigner or associated entity”, substitute “or third party”.

## ***[registration of associated entities]***

(170) Schedule 1, item 87, page 61 (lines 20 to 22), omit the note and the penalty, substitute:

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.

## ***[penalties]***

(171) Schedule 1, item 87, page 61 (line 33), omit “314AE; and”, substitute “314AE;”.

## ***[returns of political campaigners]***

(172) Schedule 1, item 87, page 61 (after line 33), at the end of paragraph 314AB(2)(a), add:

- (iv) for political campaigners—the total amount of electoral expenditure incurred by or with the authority of the campaigner; and

## ***[returns of political campaigners]***

(173) Schedule 1, item 87, page 62 (lines 11 and 12), omit paragraph 314AB(2)(c).

## ***[auditor’s report in annual returns by registered parties etc.]***

(174) Schedule 1, item 87, page 62 (lines 13 to 20), omit paragraph 314AB(2)(d).

## ***[registration for political campaigners]***

(175) Schedule 1, item 87, page 62 (line 21), omit “in any case—”.

## ***[registration for political campaigners]***

(176) Schedule 1, item 87, page 62 (line 24), omit “political expenditure”, substitute “electoral expenditure”.

## ***[definition of electoral expenditure]***

(177) Schedule 1, item 87, page 62 (after line 30), at the end of section 314AB, add:

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

## ***[registration of third party campaigners; continuing contraventions]***

(178) Schedule 1, item 87, page 62 (line 31) to page 64 (line 11), section 314ABA to be opposed.

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*[auditor's report in annual returns by registered parties etc.]*

(179) Schedule 1, item 97, page 65 (line 16), omit “Note 1”, substitute “Note”.

*[continuing contraventions]*

(180) Schedule 1, item 97, page 65 (lines 17 and 18), omit note 2.

*[continuing contraventions]*

(181) Schedule 1, item 97, page 65 (line 19), omit the penalty, substitute:

Civil penalty:

The higher of the following:

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

*[penalties]*

(182) Schedule 1, item 99, page 65 (after line 31), at the end of section 314AEA, add:

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

*[continuing contraventions]*

(183) Schedule 1, item 100, page 66 (line 3), omit “**third party campaigners**”, substitute “**third parties**”.

*[third party campaigners]*

(184) Schedule 1, item 101, page 66 (lines 6 to 19), omit subsection 314AEB(1), substitute:

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

*[third party campaigners]*

(185) Schedule 1, item 101, page 66 (lines 20 to 22), omit the note and the penalty, substitute:

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.

*[continuing contraventions; penalties]*

(186) Schedule 1, item 101, page 66 (line 23) to page 67 (line 7), omit subsection 314AEB(2), substitute:

- (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,

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agents or officers (however described) of the third party who have responsibility for ensuring that the third party complies with this Division.

***[annual returns by third party campaigners]***

(187) Schedule 1, item 102, page 67 (line 10), omit “campaigner”, substitute “third party”.

***[annual returns by third party campaigners]***

(188) Schedule 1, item 103, page 67 (lines 12 to 21), omit the item, substitute:

## **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.

***[registration of third party campaigners; continuing contraventions]***

(189) Schedule 1, item 104, page 67 (lines 24 and 25), omit “**third party campaigners for political expenditure**”, substitute “**third parties for electoral expenditure**”.

***[definition of electoral expenditure]***

(190) Schedule 1, item 104, page 67 (lines 29 and 30), omit “third party campaigners”, substitute “third parties”.

***[third party campaigners]***

(191) Schedule 1, item 104, page 68 (lines 1 to 4), omit subparagraphs 314AEC(1)(b)(i) and (ii), substitute:

- (i) to enable the person or entity to incur electoral expenditure; or
- (ii) to reimburse the person or entity for incurring electoral expenditure; and

***[definition of electoral expenditure]***

(192) Schedule 1, item 106, page 69 (after line 13), after section 314A, insert:

## **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

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- (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.

## ***[relationship with State and Territory laws]***

(193) Schedule 1, item 109, page 70 (lines 5 to 9), omit item 109, substitute:

### **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:

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(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:

***[liability of third party campaigners]***

(194) Schedule 1, item 110, page 70 (lines 14 and 15), omit “third party campaigner”, substitute “third party”.

***[third party campaigners]***

(195) Schedule 1, item 110, page 70 (line 16), omit “third party campaigner”, substitute “third party”.

***[third party campaigners]***

(196) Schedule 1, item 111, page 70 (lines 20 and 21), omit “(2A)(a) requires an officer of a political party, political campaigner, third party campaigner”, substitute “(2A)(a) or (aa) requires an officer of a political party, political campaigner, third party”.

***[investigation powers]***

(197) Schedule 1, item 111, page 70 (line 23), omit “campaigner or entity”, substitute “political campaigner, third party or associated entity”.

***[third party campaigners]***

(198) Schedule 1, item 111, page 70 (line 25), omit “campaigner or entity”, substitute “political campaigner, third party or associated entity”.

***[third party campaigners]***

(199) Schedule 1, item 113, page 71 (line 7), omit “third party campaigner”, substitute “third party”.

***[third party campaigners]***

(200) Schedule 1, item 114, page 71 (line 9), omit “campaigner”, substitute “political campaigner, third party”.

***[third party campaigners]***

(201) Schedule 1, item 117, page 71 (line 30), omit the penalty, substitute:

Civil penalty: 200 penalty units.

***[penalties]***

(202) Schedule 1, items 121 to 123, page 72 (line 24) to page 73 (line 5), omit the items, substitute:

**120A Subsection 319A(2)**

Omit “lodged a claim or”.

**120B Subsection 319A(2)**

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

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## 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.

***[amendment of claims]***

- (203) Schedule 1, item 124, page 73 (line 9), omit “Commission must publish the following”, substitute “Commissioner must publish the following on the Transparency Register”.

***[Transparency Register]***

- (204) Schedule 1, item 124, page 73 (line 11) (table heading), omit “**Commission**”, substitute “**Commissioner**”.

***[Transparency Register]***

- (205) Schedule 1, item 125, page 74 (line 6), omit paragraph (b) of the definition of ***relevant amount*** in subsection 321(1), substitute:

- (b) paragraphs 293(2)(b), 294(2)(a) and (b) and 295(2)(a) and (b).

***[election funding]***

- (206) Schedule 1, item 129, page 74 (lines 18 to 20), omit the item, substitute:

## 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



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- (b) during the period specified by legislative instrument under paragraph 305A(1A)(a).  
***[candidates and groups]***

(207) Schedule 1, page 74 (after line 24), after item 130, insert:

**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);

***[definition of disclosure entity]***

(208) Schedule 1, item 131, page 74 (line 28), after “person”, insert “or entity”.

***[definition of disclosure entity]***

(209) Schedule 1, item 131, page 75 (lines 1 to 7), omit subparagraphs (g)(i) and (ii), substitute:

- (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;

***[definition of disclosure entity]***

(210) Schedule 1, item 131, page 75 (lines 8 and 9), omit “political expenditure”, substitute  
“electoral expenditure”.

***[definition of electoral expenditure]***

(211) Schedule 1, item 132, page 75 (lines 12 to 15), omit the item, substitute:

**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.

***[definition of disclosure entity]***

(212) Schedule 1, item 132, page 75 (lines 14 and 15), omit “third party campaigners”, substitute  
“third parties”.

***[third party campaigners]***

(213) Schedule 1, page 75 (after line 15), after item 132, insert:

**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:

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- (i) the authoriser lives; or
  - (ii) if the authoriser is an entity—the natural person who was responsible for giving effect to the authorisation lives.

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

Insert:

- (aa) if the matter forms part of any other promotional item (such as a balloon, pen, mug, tote bag or marquee, but not a sticker or fridge magnet) and contains only the name, logo or other identifying feature of the notifying entity; or

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

Add:

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

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

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

**[authorisations]**

(214) Schedule 1, item 138, page 76 (before line 3), before subsection 384A(3), insert:

*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.

**[enforceable undertakings]**

(215) Schedule 1, page 76 (after line 11), after item 138, insert:

## 138A Section 387 (heading)

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

**[definition of electoral expenditure]**

(216) Schedule 1, item 139, page 76 (line 16), after “person”, insert “or entity”.

**[definition of disclosure entity]**

(217) Schedule 1, item 139, page 76 (lines 17 to 22), omit subparagraphs (c)(i) and (ii), substitute:

- (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;

**[definition of disclosure entity]**

(218) Schedule 1, item 139, page 76 (lines 23 and 24), omit “political expenditure”, substitute “electoral expenditure”.

**[definition of electoral expenditure]**

(219) Schedule 1, item 141, page 77 (lines 4 and 5), omit the note, substitute:

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

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## **[definition of disclosure entity]**

(220) Schedule 1, item 143, page 77 (line 27) to page 78 (line 23), omit subitems (3) to (6), substitute:

### *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.

## **[commencement]**

(221) Schedule 1, item 143, page 79 (lines 9 to 12), omit subitem (11), substitute:

### *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).

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## *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.

***[commencement]***