

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**COMMONWEALTH ELECTORAL AMENDMENT (POLITICAL DONATIONS  
AND OTHER MEASURES) BILL 2008**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Special Minister of State,  
Senator the Hon John Faulkner)

# COMMONWEALTH ELECTORAL AMENDMENT (POLITICAL DONATIONS AND OTHER MEASURES) BILL 2008

## OUTLINE

The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 (the Bill) amends the funding and disclosure provisions of the *Commonwealth Electoral Act 1918* (the Electoral Act). The Bill contains measures implementing commitments made in the 2007 federal election campaign.

The Bill contains provisions that will:

- reduce the disclosure threshold from 'more than \$10,000' (indexed to the Consumer Price Index annually) to \$1,000 (non-indexed);
- require people who make gifts above the threshold to candidates and members of groups during the election disclosure period to furnish a return within 8 weeks after polling day. Agents of candidates and groups have a similar timeframe to furnish a return in relation to gifts received during the disclosure period;
- if they fall within the relevant provision, require people who make gifts, agents of registered political parties, the financial controller of an associated entity, or people who have incurred political expenditure to furnish a return within 8 weeks after 31 December and 30 June each year rather than following the end of each financial year;
- ensure that for the purposes of the \$1,000 threshold and the disclosure of gifts, related political parties are treated as the one entity;
- make unlawful the receipt of a gift of foreign property by political parties, candidates and members of a Senate group. It will also be unlawful in some situations for associated entities and people incurring political expenditure to receive a gift of foreign property;
- extend the current prohibition on the receipt of anonymous gifts above the threshold to prohibit the receipt of all anonymous gifts by registered political parties, candidates and members of a Senate group. It will also be unlawful in some situations for associated entities and people incurring political expenditure to receive an anonymous gift;
- provide that public funding of election campaigning is limited to declared expenditure incurred by the eligible political party, candidate or Senate group, or the sum payable calculated on the number of first preference votes received where they have satisfied the 4% threshold, whichever is the lesser;
- provide for the recovery of gifts of foreign property that are not returned, anonymous gifts that are not returned and undisclosed gifts; and
- introduce new offences and penalties related to the new measures and increase the penalties for existing offence provisions.

## FINANCIAL IMPACT STATEMENT

There may be additional costs for the Australian Electoral Commission, however the exact magnitude is difficult to quantify. It is possible that public funding for elections may be reduced due to the operation of the payment of the lesser amount between election expenditure and the 4% threshold. There may be increased revenue as a result of recovering unlawful gifts or undisclosed gifts.

## **NOTES ON CLAUSES**

### **Clause 1 – Short title**

1. This clause provides for the Act to be cited as the *Commonwealth Electoral Amendment (Political Donations and Other Measures) Act 2008*.

### **Clause 2 – Commencement**

2. This clause provides that sections 1 to 3 commence upon Royal Assent and all items in Schedule 1 commence on 1 July 2008.

### **Clause 3 – Schedule(s)**

3. This clause provides that each Act specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1 – Amendment of the *Commonwealth Electoral Act 1918***

### **Part 1 – Amendments**

#### ***Commonwealth Electoral Act 1918***

##### **Item 1 - Subsection 4(1)**

4. This item inserts a definition of ‘related’ into the Interpretation section of the Electoral Act. The definition of ‘related’ is based on subsection 123(2) of the Electoral Act which is repealed by item 4. The concept of related parties is now relevant for Part XI and Part XX of the Electoral Act. In the application of this definition to Part XX of the Act, it applies so that the total value of the gifts made by donors to ‘related’ parts of a political party will be subject to the \$1,000 disclosure threshold.

##### **Item 2 – Subsection 4(1)**

5. This item inserts a definition of ‘reporting period’ into the Interpretation section of the Electoral Act. A definition of ‘reporting period’ is required due to the amendments made by items 37, 54 to 57, 60, 62, 64 to 67, 70 to 74, 76, 77 and 80. The definition applies for Divisions 4 and 5A of Part XX. The ‘reporting period’ relies on the existing financial year reporting obligations (that reflect existing reporting periods for income tax and corporate reporting) and overlays the new six-monthly reporting obligations. The application of this definition to Part XX of the Electoral Act will result in a compounding of information within a financial year to be included in the reports.

##### **Item 3 – Subsection 17A(1)**

6. Section 17 of the Electoral Act requires the Electoral Commission to publish various reports, including reports about the operation of Part XX of the Act. Section 17A provides

that those reports must not contain certain particulars of any information obtained from the notice to produce powers contained in subsection 316(2A). This item extends the application of subsection 17A(1) so that it now also applies to additional categories of persons who are required to furnish returns under section 305A, 305B, 314AEB, 314AEC, including persons acting on their behalf and their officers. Persons acting on behalf of a 'prescribed person' have also been brought within the section for consistency with amended subsection 316(2A).

#### **Item 4 – Subsection 123(2)**

7. This item repeals subsection 123(2) which provided for a definition of related parties only for the purposes of the registration of political parties in Part XI of the Electoral Act. The definition of related parties has been moved to subsection 4(1) by item 1 and applies to the whole Act.

#### **Item 5 – Subsection 287(1)**

8. This item inserts a definition of 'electoral expenditure' in subsection 287(1) of the Electoral Act. This definition is almost the same as the existing definition of 'electoral expenditure' in section 308(1) of the Electoral Act that is used for the basis of the returns of electoral expenditure by candidates and groups under section 309. The difference between existing subsection 308(1) and the definition inserted by item 5 is that the reference to section 332 in paragraph 308(1)(e) has been omitted as this section has been repealed.

9. This definition sets out the categories of electoral expenditure relating to an election that may be the subject of a claim for election funding. The costs incurred in relation to electoral advertising and electoral matter (whether printed, via the internet and via television and radio), polling and other research costs are the main categories of expenditure that can be claimed. This definition is an exhaustive list of the types of expenditure that can be claimed to obtain election funding.

#### **Item 6 – Subsection 287(1) (definition of *eligible vote*)**

10. This item repeals the definition of 'eligible vote' in subsection 287(1) of the Electoral Act. This definition is redundant as the new entitlement provisions in item 16 refer eligibility to formal first preference votes of at least 4% as the basis for part of the calculation of any entitlement to receive election funding.

#### **Item 7 – Subsection 287(1) (definition of *entitlement*)**

11. This item repeals the definition of 'entitlement' in subsection 287(1) of the Electoral Act. This definition is redundant as the new entitlement provisions in item 16 refer eligibility to formal first preference votes of at least 4% as the basis for part of the calculation of any entitlement to receive election funding.

#### **Item 8 – Subsection 287(1)**

12. This item inserts a definition of ‘group vote’ that is necessary for part of the calculation of the entitlement to election funding for Senate groups in new section 295. A Senate group is one that comprises unendorsed candidates and which has been the subject of a request to be grouped on the ballot paper, at the time of nomination, to the Australian Electoral Officer under section 168 of the Electoral Act.

13. This definition specifies that a ‘group vote’ means a first preference vote given to a candidate who is a member of the group and which has been counted for the purposes of section 273 of the Electoral Act. Section 273 sets out the rules for the scrutiny of Senate votes, determining which of those votes are formal and the counting of Senate votes.

#### **Item 9 – Subsection 287(2)**

14. This item repeals the existing subsection 287(2) of the Electoral Act and inserts a new subsection 287(2). The substance of the subsection has not changed. The new subsection 287(2) requires that a thing that is required to be lodged under Part XX of the Electoral Act must be lodged at the principal office of the Electoral Commission in Canberra.

15. This subsection makes it clear that compliance with the requirements of Part XX can only be met by lodging the claim, return or other thing with the Electoral Commission at Canberra. The lodging of such claims, returns and other things at a Divisional or State Office of the Electoral Commission will not satisfy the requirements of the Part.

#### **Item 10 – Subsection 287(4)**

16. This item makes an exception for the purposes of section 305B to the operation of the subsection. Existing subsection 287(4) operates so that, for the purposes of all of Part XX, a reference to ‘political party’ (other than a reference to the endorsement of a candidate or group in an election) does not include a reference to a part of the political party. Item 10 amends subsection 287(4) to make it clear that, for the purposes of the reporting of gifts made to political parties (section 305B amended by item 37), the donor is required to disclose the total value of the gifts made to ‘related’ parts of a political party where the total is \$1,000 or more. Accordingly, section 305B is required to be specifically exempted from the operation of subsection 287(4).

#### **Item 11 – After subsection 287(4A)**

17. This item inserts a new subsection 287(4B) in the Electoral Act. This new subsection is similar to existing section 309 of the Electoral Act and makes it clear that electoral expenditure incurred by, or on behalf of, a division of a State branch of a political party is to be regarded as having been incurred by the State branch.

18. This provision enables State branches of political parties to lodge returns and claims for election funding based on the expenditure that has been incurred by their various divisions or by other persons who have the authority to incur expenditure on their behalf. This facilitates the lodging of a single claim from a State branch of a political party.

#### **Item 12 – After subsection 287(6)**

19. This item makes it clear that subsection 287(6) does not apply to a political party that is a body corporate. New subsection 287(6A) operates so that the new concept of 'related' parties in item 1 is not altered by the principles contained in the *Corporations Act 2001*.

#### **Item 13 – Subsection 287A(1)**

20. This item provides that subsection 287A(1) applies to the new requirements of Division 4A dealing with the ban on the receipt of gifts of foreign property and the ban on anonymous gifts. Subsection 287A(1) now provides that Division 4, 4A, 5 and 5A apply as if the campaign committee of an endorsed candidate or endorsed group were a division of the relevant State branch of the political party that endorsed the candidate or members of the group.

#### **Item 14 – At the end of Division 1 of Part XX**

21. This item inserts a new section 287C in the Electoral Act. New provisions in relation to gifts of foreign property, anonymous gifts or undisclosed gifts give the Commonwealth the power to recover the amount or value of certain unlawful gifts under several provisions. For example, a gift might be a gift of foreign property and also anonymous and so both would be recoverable by the Commonwealth. This item ensures that the Commonwealth may only recover the amount or value of the gift once.

#### **Item 15 – Paragraph 292B(a)**

22. This item provides that section 292B applies to the new Division 4A. Section 292B ensures that where an obligation is imposed on an agent of a political party or a State branch of the party, and there is no agent, the obligation rests on each member of the executive committee of the party or branch.

#### **Item 16 – Sections 294 and 297**

23. Item 16 contains measures that give effect to the Government's announcement that it was planning to legislate to tie election funding to reported and verified electoral expenditure. In other words, election funding will only be paid for expenditure directly incurred by a candidate or a party in an election unless the 4% threshold is reached. This will stop any candidate, or any party, making a financial gain from the electoral public funding system.

24. Concerns with the payment of election funding following the November 2007 general election has caused the Government to address concerns that candidates and parties received payments of election funding that were not related to the actual costs incurred. The policy intention behind the new provisions is that candidates and parties should only receive the lesser amount of the electoral expenditure that was actually incurred or the amount calculated based on the amount per vote where they have satisfied the 4% threshold.

25. This item repeals sections 294 and 297 of the Electoral Act and inserts new sections 293 to 298H. Existing section 294 establishes the entitlement to election funding under the

existing scheme. New sections 293 to 298H contain provisions that establish the entitlement to election funding, the making of claims, the determination of claims and a review process.

## **Subdivision A – Entitlement to election funding**

26. This subdivision sets out how any entitlement to election funding is to be calculated.

### **Section 293 – Entitlement to election funding – registered political parties**

27. This new section sets out the entitlement to election funding for registered political parties. One of the requirements for applying for registration of a political party under section 126 of the Electoral Act is that the application must state whether or not the party wishes to receive election funding.

28. Subsection 293(1) provides that a registered political party is entitled to election funding for elections where the total number of formal first preference votes for endorsed candidates is at least 4% of the overall total of formal first preference votes cast in the election for either the House of Representatives or the Senate.

29. Subsection 293(2) provides that once a registered political party meets the threshold requirements in subsection 293(1), the amount of the election funding that can be paid is the lesser of \$2.1894 for each formal first preference vote received and the amount of ‘electoral expenditure’ that has been claimed and accepted by the Electoral Commission. The amount per formal first preference vote remains indexed by the Consumer Price Index under section 321. Small changes to terminology are made to section 321 by items 100 and 101.

### **Section 294 - Entitlement to election funding – unendorsed candidates**

30. An unendorsed candidate is a candidate who has lodged a nomination with either the Australian Electoral Officer or the Divisional Returning Officer under Part XIV of the Electoral Act and the nomination form does not include the required notification of the party endorsement and the verification of this endorsement under sections 169 and 169B of the Electoral Act. An unendorsed candidate includes a candidate who has requested the word “Independent” to be printed on the ballot papers next to his or her name under section 169A of the Electoral Act. An unendorsed candidate does not include a candidate who is a member a group of unendorsed Senate candidates who have made a joint request, at the time of nomination, to the Australian Electoral Officer under section 168 of the Electoral Act. Applications from a Senate group are dealt with in new section 295.

31. Subsection 294(1) provides that a candidate or member of a Senate group is entitled to election funding for all elections where the total number of formal first preference votes for the candidate is at least 4% of the overall total of formal first preference votes cast in the election for either the House of Representatives or the Senate.

32. Subsection 294(2) provides that once a candidate meets the threshold requirements in subsection 294(1), the amount of the election funding that can be paid is the lesser of \$2.1894 for each formal first preference vote received and the amount of ‘electoral expenditure’ that has been claimed and accepted by the Electoral Commission.

### **Section 295 - Entitlement to election funding – unendorsed groups**

33. An unendorsed group is a grouping of unendorsed Senate candidates who have made a joint request, at the time of nomination, to the Australian Electoral Officer under section 168 of the Electoral Act and who are not endorsed by any registered political party. This enables such a group to have a box above the line on the Senate ballot paper.

34. Subsection 295(1) provides that where an endorsed group is entitled to election funding for all elections where the total number of formal first preference votes for the group is at least 4% of the overall total of formal first preference votes cast in the election for the Senate.

35. Subsection 295(2) provides that once an unendorsed group meets the threshold requirements in subsection 295(1), the amount of the election funding that can be paid is the lesser of \$2.1894 for each formal first preference vote received and the amount of 'electoral expenditure' that has been claimed and accepted by the Electoral Commission.

### **Section 296 - Entitlement to election funding – special rule for joint Senate groups**

36. A joint Senate group is a grouping of candidates for the Senate who are endorsed by different registered political parties and who have made a joint request, at the time of nomination, to the Australian Electoral Officer under section 168 of the Electoral Act. This enables such a group to have a box above the line on the Senate ballot paper.

37. Subsection 296(1) provides for the candidates who are to be regarded as members of a joint Senate group.

38. Subsection 296(2) provides that an agent of one of the registered political parties which have endorsed the candidates under sections 169 and 169B must give to the Commission a copy of the agreement as to how the parties have agreed to the division of the first preference votes received by the joint Senate group. This agreement is necessary for the Electoral Commission to calculate the amount of any election funding that may be payable to the agent of the registered political party in accordance with the requirements of subsection 293(2).

39. Subsection 296(3) requires that each party agent of the registered political parties which have endorsed the candidates who are members of the joint Senate group must sign the original agreement.

40. Subsection 296(4) requires that a copy of the agreement for the division of first preference votes must be given to the Electoral Commission before polling day.

41. Subsection 296(5) provides the Commission with the discretion to determine the division of the first preference votes between the registered political parties in the absence of any written agreement having been given to the Commission before polling day. This subsection reflects a number of provisions in existing subsection 299(4) of the Electoral Act that require the Commission to determine the shares of electoral funding in the absence of any agreement.

### **Subdivision B – Claims for election funding**

42. This subdivision sets out how claims for election funding can be made to the Commission.

### **Section 297 – Need for a claim**

43. One of the major changes that is introduced by this Bill is the need for claims to be made to the Commission for any payment of election funding entitlement. The new process for tying such funding to the lesser of \$2.1894 for each formal first preference vote received and the amount of incurred 'electoral expenditure' requires claims to be lodged with details of the electoral expenditure that has been incurred.

44. Subsection 297(1) requires that, in order to be entitled to be paid an amount of election funding, the agent of the party, candidate or group must make a claim. The party agents are persons who are appointed in accordance with the processes and requirements contained in sections 288 to 290 of the Electoral Act.

45. Subsection 297(2) provides that an agent may make an interim claim, or both an interim claim and a final claim, or a final claim. Interim claims are dealt with in subsection 298B(1) and a final claim in subsection 298B(2).

46. Subsection 297(3) provides that a final claim for election funding must specify all of the electoral expenditure against which the claim is to be assessed, even if it has been included in an interim claim.

47. Subsection 297(4) provides that a final claim is able to incorporate, by reference, electoral expenditure that has been included in the interim claim. Subsection 298E(2) makes it clear that the electoral expenditure that is claimed twice in an interim and a final claim does not result in two entitlements based on the same expenditure.

48. Subsection 297(5) provides that only one interim claim and one final claim for election funding can be made.

### **Section 298 – Electoral expenditure incurred**

49. This provision sets out what is required to be part of a claim for election funding. The various categories of registered political parties, candidates and Senate groups must specify in their claims 'electoral expenditure' that falls within the scope of the definition in subsection 287(1). The agent is not required to specify all electoral expenditure that may have been incurred, only that expenditure that is to be claimed against which the entitlement to election funding is to be calculated. The six-monthly returns that are required to be lodged under other provisions in Part XX of the Electoral Act address the need to have transparency and accountability in this amount of electoral expenditure and other expenditure incurred by candidates and registered political parties.

50. Subsection 298(1) provides that a claim for election funding made by the agent of a registered political party must specify the electoral expenditure incurred by the party and its endorsed candidates in relation to the election for which election funding is sought.

51. Subsection 298(2) provides that a claim for election funding made by the agent of a candidate must specify the electoral expenditure incurred by the candidate in relation to the election for which election funding is sought.

52. Subsection 298(3) provides that a claim for election funding made by the agent of a Senate group must specify the electoral expenditure incurred by the group or the candidates who are members of the group for which election funding is sought.

### **Section 298A – Form of claim**

53. Section 298A requires that any claim for election funding must be made on the ‘approved form’. The ‘approved forms’ are required to be made by the Electoral Commission and published in the *Gazette* (see subsection 4(1)) of the Electoral Act). This process is similar to all other approved forms made under the Act. The form will specify the categories of ‘electoral expenditure’ included in the definition of this term in subsection 287(1). The form will also specify whether the claim is an interim or a final claim. The agent is required to specify whether the claim is an interim or a final claim. Details of the types of expenditure, the companies/persons to whom the payments were made or the liability incurred and the basis on which the amounts are calculated will be required to be specified. Sufficient information will need to be provided to enable the Electoral Commission to verify the amount claimed and to conduct compliance audits into the accuracy of the amounts claimed. Some documents may be required to be provided to the Electoral Commission to support the amount of electoral expenditure that has been claimed to have been incurred.

### **Section 298B – Lodging of claim**

54. Section 298B sets out the two types of claims for election funding that are able to be lodged with the Commission and the timing for lodging these claims.

55. Subsection 298B(1) provides for the lodging of an interim claim. Such a claim can be made commencing on the 20<sup>th</sup> day after polling day. Any claim for interim funding must be received by the Commission within six months of polling day. Subsection 298D(2) makes it clear that an interim claim is to be assessed by the Commission against the known vote count as at the 20<sup>th</sup> day after polling day. The intent of this provision is similar to the entitlement to the early payment of election funding contained in existing subsection 299(5D) of the Electoral Act.

56. Subsection 298B(2) provides for the lodging of a final claim. Such a claim can be made commencing on the day on which the writ or the last writs for the election are returned. Any final claim for funding must be received by the Commission within six months of polling day. At the time of the return of the writs, the majority of the votes will have been counted. Following the November 2007 general election, the final counting of the votes took place by a period of 14 days after the return of the last writ on 21 December 2007 to enable the final payment of election funding to be made on 9 January 2008.

57. Subsection 298B(3) makes it clear that any claim lodged outside the periods specified in subsections 298B(1) and (2) will not be valid and will not be processed by the Commission or attract any election funding.

## **Section 298C – Determination of claim**

58. The intention of this section is to provide some certainty in the processing of claims for election funding that have been validly lodged. Existing subsection 299(5D) of the Electoral Act contains the requirement for the Electoral Commission to make the two payments of election funding ‘as soon as possible after’ the 20<sup>th</sup> day after polling day, or after the full amount of entitlement is known. While the Electoral Commission will still be aiming to make a similar commitment to the timely payment of election funding, with the added complexity of needing to verify electoral expenditure, an end date for the Electoral Commission’s consideration of a claim has been included to enable candidates and political parties to properly plan their financial affairs in relation to the receipt of election funding.

59. Subsection 298C(1) provides that any claim for election funding must be decided by the Commission within 20 days of receipt. This time period includes the actual making of the payment.

60. Subsection 298C(2) provides that, in deciding whether or not to accept the claim, the Commission must only have regard to whether an amount claimed is ‘electoral expenditure’ and whether the claimed expenditure was actually incurred.

61. Subsection 298C(3) deals with the situation where an interim claim is lodged under subsection 298B(1) and no final claim is lodged under subsection 298B(2). In this situation, the interim claim will be deemed to be the final claim. This process will finalise any claim for election funding. It also enables the Commission to rely on the variation power in amended section 301 of the Electoral Act to vary the decision, based on the results of compliance audits and monitoring activities in relation to claims for election funding.

## **Section 298D – Accepting an interim claim**

62. The intention of this provision is similar to the entitlement to the early payment of election funding contained in existing subsection 299(5D) of the Electoral Act. Under that subsection, the payment of election funding to a person with an entitlement is made in two stages. The first payment of 95% of the entitlement is made as soon as possible after the 20<sup>th</sup> day after polling day. The remaining 5% of the entitlement is paid as soon as possible after the full entitlement is known which is a period of weeks after the return of the writs.

63. Subsection 298D(1) provides that this provision applies where an interim claim for election funding has been made under subsection 298B(1) and the Commission has accepted that claim as complying with the requirements of the Electoral Act and the ‘approved form’ in relation to the provision of information about the incurring of ‘electoral expenditure’.

64. Subsection 298D(2) provides that, in relation to an interim claim, the Commission must pay the lesser amount of 95% of the relevant amount for each formal first preference vote based on the vote count as at day 20 after polling day and the amount of ‘electoral expenditure’ that the Commission has accepted to have been incurred.

### **Section 298E – Accepting a final claim**

65. This provision deals with the payment of a final claim for election funding. A final claim can be made at any time after the return of the writ and up to six months after polling day. A final claim can be made on its own or after the making of an interim claim. The intention of this provision is to set out how the final claim amounts are to be calculated, with any amount that has been paid pursuant to an interim claim being deducted from that final amount.

66. Subsection 298E(1) provides that this provision applies where a final claim for election funding has been made under subsection 298B(2) and the Electoral Commission has accepted that claim as complying with the requirements of the Electoral Act and the ‘approved form’ in relation to the provision of information about the incurring of ‘electoral expenditure’.

67. Subsection 298E(2) provides that, in relation to a final claim, the Commission must pay the lesser amount of 100% of the relevant amount for each formal first preference vote based, on the final vote count and the amount of ‘electoral expenditure’ that the Electoral Commission has accepted to have been incurred. If any amount has been paid by the Electoral Commission under section 298D after determining an interim claim, that amount is to be deducted from the overall amount to which a person is entitled as part of the final claim.

### **Section 298F – Refusing a final claim**

68. This section provides that if a final claim is refused, in whole or in part, the Electoral Commission must notify the agent that the claim has been refused and provide reasons for the refusal to the agent.

69. The intention of this provision is to ensure that it is the decision on a final claim that is the operative decision that attracts review rights and that the Commission is required to provide reasons for any decision refusing the payment of amounts claimed in a final claim. As a final claim is able to incorporate amounts of ‘electoral expenditure’ contained in the interim claim (see subsection 297(4)), it is the decision on the final claim that is effectively the reviewable decision. The timeframes between the lodging of an interim claim and a final claim are likely to be relatively short, given both past practice and the desire to obtain speedy payments of any entitlement to election funding.

### **Section 298G – Application for reconsideration of decision refusing a final claim**

70. This section provides for the reconsideration of decisions made by delegates of the Electoral Commission on a final claim for election funding. Reconsideration will be undertaken by the full Commission in a review process that is similar for the review of other administrative decisions made under the Electoral Act.

71. Subsection 298G(1) provides that where a final claim has been refused, the agent may apply to the Electoral Commission for a reconsideration of the delegate’s decision.

72. Subsection 298G(2) provides that an application for a reconsideration of a decision on a final claim must be in writing and set out the reasons for the application.

73. Subsection 298G(3) provides that an application for reconsideration must be made within 28 days of the agent being notified of the delegate's decision, or any extension of that time that has been granted by the Electoral Commission. In deciding whether or not to grant an extension of time, the Electoral Commission would have regard to the principles outlined in the case of *Hunter Valley Developments v Cohen* [1984] FCA 176.

### **Section 298H – Reconsideration by Electoral Commission**

74. This section sets out how the Commission is to deal with an application for the reconsideration of a decision on a final claim.

75. Subsection 298H(1) provides that the Commission is to reconsider the delegate's decision that refused all or part of a final claim for election funding and has the power to affirm, vary, set aside and replace that decision with another decision.

76. Subsection 298H(2) provides that the Commission is required to give the agent written reasons for its decision on the reconsideration application.

77. Subsection 298H(3) provides that if the Commission's decision results in any additional payment of election funding, that payment is to be made within 20 days of its decision.

78. Subsection 298H(4) provides that the Commission is unable to delegate its power to undertake a reconsideration of a final claim for election funding where it has received a reconsideration application.

### **Subdivision C – Payments of election funding**

79. Item 16 also inserts this new heading in the Electoral Act dealing with the payment processes for any payment of election funding.

#### **Item 17 – Subsection 299(1)**

80. This item amends subsection 299(1) to reflect the new structure of Part XX of the Electoral Act by omitting the previous reference to the Division and replacing this with the wording that reflects the new claims process.

#### **Item 18 – Subsections 299(2) to (5)**

81. These amendments repeal subsections 299(2) to (5) to reflect the new claims process and makes it clear to whom any payment of the election funding is to be made.

82. Subsection 299(2) provides that any payment of election funding in respect of an unendorsed candidate is to be made to the candidate's agent.

83. Subsection 299(3) provides that any payment of election funding in respect of a Senate group is to be paid to the group's agent.

### **Item 19 – Subsections 299(5D) and (6)**

84. These amendments reflect the new claims process and remove redundant provisions.

### **Item 20 – Sections 300 and 301**

85. These amendments repeal sections 300 and 301 and substitute new sections to reflect the new claims process and simplify the process for dealing with the situation where there has been a death of a candidate or a member of a group.

86. New section 300 reflects the existing provisions in sections 300 and 301 of the Electoral Act that deal with the death of a candidate. There has been no change to the substantive operation of the existing provisions.

87. New section 301 provides the Commission with a post-payment variation power to vary the previous decision, based on the results of compliance audits and monitoring activities in relation to claims for election funding. With the repeal of existing subsection 299(6) of the Electoral Act (item 19) new section 301 contains the power for the recovery of any over payment.

### **Subdivision D – Miscellaneous**

88. Item 20 also inserts this new heading in the Electoral Act dealing with miscellaneous matters relating to the payment of election funding.

### **Section 300 – Death of candidates or group members**

89. Subsection 300(1) provides that a payment of election funding may be made even if the candidate dies.

90. Subsection 300(2) provides that where a candidate was his or her own agent (for example because he or she was not endorsed by a political party and not a member of a group), the payment of election funding may be made to the candidate's legal personal representative. In most situations this would be the Executor to the deceased candidate's estate.

91. Subsection 300(3) provides that where a candidate who is a member of a Senate group dies, a payment of election funding may be made for the group.

92. Subsection 300(4) provides that where the candidate who died was the agent of the unendorsed Senate group, the payment of election funding may be made to another member of the group.

### **Section 301 – Varying decisions accepting claims**

93. New section 301 provides the Commission with a post-payment variation power to vary the previous decision, based on the results of compliance audits and monitoring activities in relation to claims for election funding. With the repeal of existing subsection

299(6) of the Electoral Act (item 19) new section 301 contains the power for the recovery of any overpayment.

94. Subsection 301(1) provides that the Commission is able to vary decisions previously made on claims for election funding. Given the timeframes specified in the Act for the making of decisions and payments of election funding, it is highly likely that situations will arise where the basis of claims will be questioned due to a lack of supporting documentary evidence. Accordingly, the Commission (and its delegates) is given a specific power to be able to revisit previous decisions and to vary the amount of payments that had previously been approved.

95. Subsection 301(2) provides that where the Commission makes a decision to vary the amount of election funding under subsection 301(1), the agent is able to make a reconsideration application to have that decision reviewed by the full Commission.

96. Subsection 301(3) provides that where the decision under subsection 301(1) results in a decrease in the amount of the entitlement to election funding, the amount of the previous overpayment can be recovered as a debt due to the Commonwealth.

97. Subsection 301(4) provides that where an amount previously paid for an interim claim is to be taken into account in the variation decision. This means that the varied decision will in effect be the decision on the final claim.

#### **Item 21 – After section 303**

98. This item inserts a new section 303A into the Electoral Act to provide for the treatment of gifts of foreign property that are returned within six weeks after their receipt or, in the case of anonymous gifts, returned or the amount or value of the gift is paid to the Commonwealth within six weeks after receipt. Gifts that are returned in this period do not have to be disclosed for the purposes of Division 4 unless that gift was a gift of foreign property or an anonymous gift and it was \$1,000 or more. The disclosure of information about attempts to make unlawful gifts to political parties and others involved in the political process is an important part of the transparency and accountability measures of this Bill.

#### **Item 22 – Subsections 304(2) and (3)**

99. This item reduces the period from 15 weeks to 8 weeks in which a return must be made under these subsections. Subsection 304(2) provides for returns by agents of candidates and members of groups to be made disclosing, amongst other things, the total amount or value of all gifts received by the candidate or member during the disclosure period. Subsection 304(3) provides for returns by agents of groups to be made disclosing, amongst other things, the total amount or value of all gifts received by the group during the disclosure period. The disclosure period is defined in subsection 287(1) and varies depending upon the circumstances of the candidate, member or group.

#### **Item 23 – Subparagraph 304(5)(b)(ii)**

#### **Item 24 – Paragraph 304(5)(c)**

#### **Item 25 – Subsection 304(5) (note)**

100. These items amend the threshold at which an agent of a candidate or group is required to disclose a gift. A gift does not have to be disclosed under subsections 304(2) or (3) if it is less than \$1,000. Previously, gifts of \$10,000 (indexed under section 321A) or less did not have to be disclosed. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the note is also repealed.

**Item 26 – Paragraph 304(6)(b)**

**Item 27 – Paragraph 304(6)(c)**

**Item 28 – Subsection 304(6) (note)**

101. These items amend the threshold for the total amount of gifts made by one person to a candidate or a group which can be made during the period to which the return relates without disclosure. A gift does not have to be disclosed under subsection 304(6) if the sum of the gifts is less than \$1,000. Previously, gifts totalling \$10,000 (indexed under section 321A) or less did not have to be disclosed. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the note is also repealed.

**Item 29 – At the end of section 304**

102. This item inserts new subsections 304(9) and 304(10) to provide for nil returns under the subsection. These new subsections are essentially a relocation of existing section 307 with minor wording changes to subsection (10). Due to the creation of a new Division 4A, dealing with unlawful gifts and other gifts and loans, the section providing for nil returns is better placed with section 304. Section 307 is repealed by item 47.

**Item 30 – Subparagraph 305A(1)(b)(ii)**

**Item 31 – Subsection 305A(1) (note)**

**Item 32 – Subparagraph 305A(1A)(b)(ii)**

**Item 33 – Subsection 305A(1A) (note)**

**Item 34 – Paragraph 305A(2)(b)**

**Item 35 – Subsection 305A(2) (note)**

103. These items amend the threshold at which gifts must be disclosed. A gift does not have to be disclosed under subparagraphs 305A(1)(b)(ii) and 305A(1A)(b)(ii), or paragraph 305A(2)(b) if the sum of the gifts is less than \$1,000. Previously, gifts totalling \$10,000 (indexed under section 321A) or less did not have to be disclosed. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the note is also repealed.

**Item 36 – Paragraph 305A(3)(a)**

104. This item amends the time from 15 weeks to 8 weeks in which a return under section 305A must be provided to the Electoral Commission.

**Item 37 – Subsections 305B(1) and (2)**

105. This item repeals subsections 305B(1) and (2) and substitutes new subsections 305B(1), (1A), (2), (2A) and (2B). The recasting of these provisions is to allow for rules about related parties and changes to the reporting period for when returns must be made and the information that must be included in those returns.

### **Subsection 305B(1)**

106. New subsection 305B(1) imposes an obligation on a person to furnish a return to the Electoral Commission disclosing all gifts if, in a reporting period, the person makes gifts totalling \$1,000 or more to the same registered political party. The 'reporting period' is defined at item 2 to be the first six months of a financial year or a full financial year. The return must be lodged eight weeks after the reporting period.

### **Subsection 305B(1A)**

107. Using the definition of 'related' at item 1, new subsection 305B(1A) operates so that if a person makes a gift to a number of related parties, one of which is a registered political party, the gifts are deemed to be made to the single registered political party. The intention of this subsection is to prevent a person giving multiple gifts under the new \$1,000 threshold to various divisions or branches of the same political party which are then not required to be disclosed by the donor.

### **Subsection 305B(2)**

108. Similar to 305B(1A), new subsection 305B(2) operates so that, if a person makes a gift to any person or body with the intention of benefiting a political party, subsection 305B(2) deems the gift to have been made directly to that political party for the purposes of the section. The intent of the provision is to ensure that donors cannot avoid disclosure obligations by using intermediaries.

### **Subsection 305B(2A)**

109. To reduce any unnecessary duplication of reporting by donors, new subsections 305B(2A) and (2B) operate as exceptions to the requirement imposed by 305B(1). New subsection 305B(2A) provides that if a person has furnished a return disclosing gifts to a registered political party in the first six months of a financial year, and makes no further gifts to that registered political party during the remainder of the financial year, the person does not have to furnish a return in respect of the second reporting period that finishes at the end of the full financial year.

### **Subsection 305B(2B)**

110. New subsection 305B(2B) provides that if a person making a gift furnishes a return for the second reporting period that finishes at the end of the full financial year, the person does not have to disclose any gift made by the person that has already been disclosed in a return for the first six months of that financial year.

### **Item 38 – Paragraph 305B(3)(c)**

111. This item amends what is required to be disclosed by a person who made a gift to a political party. Due to the operation of the related party provisions in subsections 4(1) and 305B(1A), a donor is also required to furnish details of gifts made to all political parties, not just registered political parties. A political party is defined in subsection 4(1) to mean, in short, an organisation of which the object or activity is the promotion of the election of candidates endorsed by it to the Senate or House of Representatives.

### **Item 39 – Subsection 305B(3A)**

112. This item recasts subsection 305B(3A) to clarify the operation of the provision and substitute the new threshold of ‘\$1,000 or more’ in place of the references to ‘more than \$10,000’ and ‘exceeds \$10,000’. To prevent the use of intermediaries to avoid disclosure obligations under 305B(1), the provision also requires a donor to include in a return details of gifts which enable a person to make a gift to a political party to be disclosed. The intention of this new subsection is to ensure that donors are not able to use intermediaries to circumvent the operation of the new reporting obligations.

### **Item 40 – Section 306**

113. This item repeals section 306 and inserts a new Division 4A into the Electoral Act made up of Subdivisions A, B and C. Subdivision A generally prohibits gifts of foreign property and is a new provision for the Electoral Act. Subdivision B generally prohibits anonymous gifts and is an extension of the existing prohibition in previous section 306. Subdivision C relates to other gifts and loans, and is essentially unchanged from existing provisions.

#### **Subdivision A – Gifts of foreign property**

##### **Section 306 - Interpretation**

114. New section 306 defines a number of words and terms for the purposes of Subdivision A. This interpretive section is required due to the new provisions dealing with gifts of foreign property which are specific to this subdivision.

##### **Section 306AA – Subdivision does not apply to gifts that are returned within 6 weeks**

115. This section clarifies that the subdivision does not apply to a gift that is returned within six weeks after its receipt. This provision ensures that if a person receives a gift of foreign property and returns it within six weeks, no offence or penalty would apply for the purposes of sections 306AC or 306AD.

##### **Section 306AB – Determining whether a gift or transfer is of Australian or foreign property**

116. Taking into account the definitions of ‘Australian property’ and ‘foreign property’ in section 306, subsection 306AB(1) establishes what is Australian property, and what is foreign property, for the purposes of the Subdivision.

117. To ensure that Subdivision A is not avoided by using intermediaries, subsection 306AB(2) deems gifts of foreign property to include gifts made using foreign property where the original donor’s main purpose is to enable a person to make a gift to another person or entity. Similarly, subsection 306AB(3) deems certain transfers or gifts to be transfers or gifts of foreign property.

### **Section 306AC – Gifts of foreign property: when unlawful for political party, candidate etc. to receive gift**

118. Subsection 306AC(1) provides that it is unlawful for a registered political party, a State branch of a registered political party, a candidate or a member of a group to receive a gift of foreign property. It is also unlawful for a person to receive a gift acting on behalf of one of these political parties or persons.

119. For candidates and members of groups, the prohibition only applies during the candidacy or group period. These periods are defined in new section 306. The ‘candidacy period’ is the period from when a candidate announces that he or she will be a candidate in an election or when the person nominates as a candidate, and ending 30 days after polling day. The ‘group period’ is the period from the time when a request to be grouped is made under section 168 of the Electoral Act and ending 30 days after polling day.

120. Subsection 306AC(2) provides that if a person or entity receives a gift that is unlawful under subsection 306AC(1), an amount equal to the amount or value of the gift is payable to the Commonwealth. A table in subsection 306AC(2) sets out who is liable to pay the amount.

121. Subsection 306AC(3) provides that if, under subsection 306AC(2), an amount is payable to the Commonwealth by two or more persons, these persons are jointly and severally liable for payment of the amount. This means that while all persons are individually responsible for the debt, just one person may satisfy the debt by paying the amount.

122. Subsection 306AC(4) provides that if the amount under subsection 306AC(2) is not paid, the Commonwealth may recover the amount as a debt due to the Commonwealth in a court of competent jurisdiction. The Commonwealth may take action against one person, or if two or more are liable, any one or more of those persons.

### **Section 306AD – Gifts of foreign property made to enable incurring of political expenditure: when unlawful to use or receive gift**

123. Unlike section 306AC that places a prohibition on some people or entities simply receiving a gift of foreign property, section 306AD is directed towards the use of gifts of foreign property for political expenditure or the purpose behind such gifts. ‘Political expenditure’ is defined in subsection 306(1) as expenditure incurred for any of the purposes specified in paragraph 314AEB(1)(a).

124. Subsection 306AD(1) provides that it is unlawful for a person to incur political expenditure when four circumstances apply. The first of these is that the person is not a candidate, a member of a group or an associated entity. These are excluded as separate provisions apply, including to persons who at any time have been a candidate or a member of a group. The second circumstance is that the foreign property enabled the person to incur the expenditure. The third is that the purpose of the person who made the gift was to enable the political expenditure.

125. The fourth circumstance is that the recipient of the gift is required by section 314AEB to provide a return to the Electoral Commission setting out the details of the expenditure. Section 314AEB operates so that a person is not required to make a return unless the total amount of political expenditure incurred by the person during the reporting period was \$1,000 or more.

126. Subsection 306AD(2) applies to persons who at any time have been a candidate or a member of a group. This subsection makes it unlawful for such a person to incur political expenditure if a gift of foreign property enabled the person to incur political expenditure and the main purpose of making the gift was to enable the recipient to incur political expenditure.

127. Subsection 306AD(3) applies to associated entities. An 'associated entity' is defined in subsection 287(1) and generally means an entity that has a close relationship with a registered political party. This subsection makes it unlawful for an associated entity to receive a gift of foreign property if the main purpose of making the gift was to enable the associated entity to incur political expenditure.

128. Some associated entities are bodies corporate and can receive gifts or incur political expenditure in their own right. To address situations where an associated entity is not a legal person, subsection 306AD(4) deems that a person receives the gift or incurs the expenditure on behalf of the entity.

129. Subsection 306AD(5) provides that if a person incurs an amount of political expenditure that is unlawful under subsections 306AD(1) or (2), an amount equal to the amount or value of the gift is payable to the Commonwealth. Subsection 306AD(7) provides that if the amount under subsection 306AD(5) is not paid, the Commonwealth may recover the amount from the person as a debt due to the Commonwealth in a court of competent jurisdiction.

130. In the situation where an associated entity receives a gift that under subsection 306AD(3) it is unlawful to receive, subsection 306AD(6) provides for two persons that might be liable to pay to the Commonwealth an amount equal to the amount or value of the gift. This caters for the possibility that the associated entity is not a legal person. Paragraph 306AD(6)(a) provides that if the associated entity is a body corporate or the trustee of a trust, the amount is payable by the associated entity. Paragraph 306AD(6)(b) provides that if the associated entity is not a body corporate, the amount is payable by the financial controller of the associated entity. The financial controller is defined in section 287 as the person responsible for maintaining the financial records of the entity.

131. Subsection 306AD(7) provides that if the amount under subsection 306AD(6) is not paid, the Commonwealth may recover the amount from the person as a debt due to the Commonwealth in a court of competent jurisdiction.

## **Subdivision B – Anonymous gifts**

### **Section 306AE - Interpretation**

132. New section 306AE defines a number of words and terms for the purposes of Subdivision B. This interpretive section is required due to the new provisions dealing with anonymous gifts which are specific to this subdivision.

### **Section 306AF – Subdivision does not apply to gifts that are returned within 6 weeks**

133. This section clarifies that the subdivision does not apply to a gift that is returned within six weeks after its receipt. This provision ensures that if a person receives an anonymous gift and returns it within six weeks, no offence or penalty would apply for the purposes of sections 306AG or 306AH. Where it is not possible or practicable to return the gift, the amount or value of the gift can be paid to the Commonwealth.

### **Section 306AG – Anonymous gifts: when unlawful for political party, candidate etc. to receive gift**

134. Subsection 306AG(1) provides that it is unlawful for a registered political party, a State branch of a registered political party, a candidate or a member of a group to receive an anonymous gift. It is also unlawful for a person to receive an anonymous gift acting on behalf of one of these political parties or persons.

135. For candidates and members of groups, the prohibition only applies during the candidacy or group period. These periods are defined in new section 306AE. The ‘candidacy period’ is the period from when a candidate announces that he or she will be a candidate in an election or when the person nominates as a candidate, and ending 30 days after polling day. The ‘group period’ is the period from the time when a request to be grouped is made under section 168 of the Electoral Act and ending 30 days after polling day.

136. Subsection 306AG(2) provides that if a person or entity receives a gift that is unlawful under subsection 306AG(1), an amount equal to the amount or value of the gift is payable to the Commonwealth. A table in subsection 306AG(2) sets out who is liable to pay the amount.

137. Subsection 306AG(3) provides that if, under subsection 306AG(2), an amount is payable to the Commonwealth by two or more persons, these persons are jointly and severally liable for payment of the amount. This means that while all persons are individually responsible for the debt, just one person may satisfy the debt by paying the amount.

138. Subsection 306AG(4) provides that if the amount under subsection 306AG(2) is not paid, the Commonwealth may recover the amount as a debt due to the Commonwealth in a court of competent jurisdiction. The Commonwealth may take action against one person, or if two or more are liable, any one or more of those persons.

**Section 306AH – Anonymous gifts: when unlawful for political party, candidate etc. to receive gift made using anonymous gift**

139. Section 306AH seeks to prevent the use of intermediaries to avoid the prohibition in 306AG. Similar to subsection 306AB(2) in relation to gifts of foreign property, subsection 306AH(1) provides that it is unlawful for a registered political party, State branch of a registered political party, a candidate or member of a group to receive a gift if an anonymous gift enabled a donor to make the gift.

140. Subsection 306AH(2) provides that if a person or entity receives a gift that is unlawful under subsection 306AH(1), an amount equal to the amount or value of the gift is payable to the Commonwealth. A table in subsection 306AH(2) sets out who is liable to pay the amount.

141. Subsection 306AH(3) provides that if, under subsection 306AH(2), an amount is payable to the Commonwealth by two or more persons, these persons are jointly and severally liable for payment of the amount. This means that while all persons are individually responsible for the debt, just one person may satisfy the debt by paying the amount.

142. Subsection 306AH(4) provides that if the amount under subsection 306AH(2) is not paid, the Commonwealth may recover the amount as a debt due to the Commonwealth in a court of competent jurisdiction. The Commonwealth may take action against one person, or if two or more are liable, any one or more of those persons.

**Section 306AI – Anonymous gifts: when unlawful for person to incur political expenditure using anonymous gift**

143. Unlike section 306AG that places a prohibition on some people or entities simply receiving an anonymous gift, section 306AI is directed towards the use of anonymous gifts for political expenditure. ‘Political expenditure’ is defined in subsection 306AE(1) as expenditure incurred for any of the purposes specified in paragraph 314AEB(1)(a).

144. Subsection 306AI(1) provides that it is unlawful for a person to incur political expenditure when three circumstances apply. The first of these is that the person is not a candidate or a member of a group. These are excluded as separate provisions apply to persons who at any time have been a candidate or a member of a group. The second circumstance is that the anonymous gift received by the person enabled the person to incur the expenditure. The third is that the recipient of the gift is required by section 314AEB to provide a return to the Electoral Commission setting out the details of the expenditure. Section 314AEB operates so that a person is not required to make a return unless the total amount of political expenditure incurred by the person during the reporting period was \$1,000 or more.

145. Subsection 306AI(2) applies to persons who at any time have been a candidate or a member of a group. This subsection makes it unlawful for such a person to incur political expenditure if an anonymous gift enabled the person to incur political expenditure.

146. Subsection 306AI(3) provides that if a person incurs an amount of political expenditure that is unlawful under subsections 306AI(1) or (2), an amount equal to the amount or value of the gift is payable to the Commonwealth. Subsection 306AI(4) provides that if the amount under subsection 306AI(3) is not paid, the Commonwealth may recover the amount from the person as a debt due to the Commonwealth in a court of competent jurisdiction.

### **Subdivision C – Other gifts and loans**

#### **Item 41 – Subsection 306A(1)**

#### **Item 42 – Subsection 306A(1) (note)**

#### **Item 43 – Subsection 306A(2)**

#### **Item 44 – Subsection 306A(2) (note)**

147. These items amend the threshold at which it becomes unlawful for a loan to be received unless it is disclosed. A loan is unlawful above the threshold unless details required by subsection 306A(3) of the loan are recorded. Previously, loans totalling \$10,000 (indexed under section 321A) or less did not have to be disclosed. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the notes are also repealed.

#### **Item 45 – Paragraph 306B(a)**

#### **Item 46 – Section 306B (note 3)**

148. Item 45 amends the threshold at which a gift by a corporation that is wound up within a year of making the gift may be recovered by a liquidator from gifts exceeding \$10,000 to a gift of \$1,000 or more. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the note is also repealed by item 46.

#### **Item 47 – Section 307**

149. Section 307 provided for nil returns under Division 4. With the creation of new Division 4A and the fact that nil returns were only applicable to section 304, item 29 relocates the substance of section 307 to subsections 304(9) and (10).

#### **Item 48 – Section 308**

150. As the provisions relating to ‘electoral expenditure’ have now been placed in subsection 287(1), item 48 repeals section 308 as it is redundant.

#### **Item 49 – Subsections 309(2) and 309(3)**

151. These items reduce the period from 15 weeks to 8 weeks in which a return must be made under these subsections. Subsection 309(2) provides for returns by agents of candidates to be made disclosing details of all electoral expenditure incurred by or with the authority of the candidate. Subsection 309(3) provides for returns by agents of groups to be made disclosing details of all electoral expenditure incurred by or with the authority of members of the group.

**Item 50 – Subsection 311A(2)**

**Item 51 – Subsection 311A(2) (note)**

152. Item 50 reduces the threshold from ‘\$10,000 or less’ to ‘less than \$1,000’ at which particulars of a payment by a Commonwealth Department in a financial year to advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising organisations must be included in the Department’s annual report. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the note is also repealed by item 51.

**Item 52 – Division 5A of Part XX (heading)**

153. The heading to Division 5A of Part XX refers to ‘annual returns’. This item amends the heading to Division 5A due to the amendments by the following items that change the requirement for annual returns to returns on a six-month and full financial year basis.

**Item 53 – After section 314AA**

154. This item inserts a new section 314AA into the Electoral Act to provide for the treatment of gifts of foreign property that are returned within six weeks after their receipt or, in the case of anonymous gifts, returned or the amount or value of the gift is paid to the Commonwealth within six weeks after receipt. Gifts that are returned in this period do not have to be disclosed for the purposes of Division 5A unless that gift was a gift of foreign property or an anonymous gift and it was \$1,000 or more. The disclosure of information about attempts to make unlawful gifts to political parties and others involved in the political process is an important part of the transparency and accountability measures of this Bill.

**Item 54 – Subsection 314AB(1)**

155. This item amends the timeframe in which agents of registered political parties or agents of State branches of registered political parties must submit a return to the Electoral Commission setting out the total amount received and paid by the party and the total of outstanding debts. Previously, such a return had to be submitted within 16 weeks after the end of each financial year. The item amends the subsection so that a return must be furnished within 8 weeks after the end of each reporting period. ‘Reporting period’ is defined in subsection 4(1) to mean the first six months of a financial year or a full financial year.

**Item 55 – Paragraph 314AB(1)(b)**

**Item 56 – Subsection 314AB(2)**

156. These items are consequential to the change from annual to six-monthly reporting and amend the terminology from ‘annual’ or ‘financial year’ to reporting period.

**Item 57 – Subsection 314AC(1)**

**Item 58 – Subsection 314AC(1) (note)**

157. Item 57 amends both the reporting period and the threshold amount. Previously, particulars of all sums had to be included in a return if the party received more than \$10,000 from one person or organisation during a financial year. The amendments made by the item will require particulars of all sums to be included in a return if the party received \$1,000 or more from one person or organisation during a reporting period. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the note is also repealed by item 58.

**Item 59 – Subsection 314AC(2)**

158. By repealing subsection 314AC(2), this item requires all gifts to be included when calculating, for the purposes of 314AC(1), whether particulars of gifts must be disclosed. Subsection 314AC(2) provided that only particulars of gifts above \$10,000 would need to be disclosed.

**Item 60 – Subsection 314AE(1)**

**Item 61 – Subsection 314AE(1) (note)**

159. Item 60 amends both the reporting period and the threshold amount. Previously, particulars of all sums had to be included in a return if a party had outstanding debts of more than \$10,000 to a person or an organisation during a financial year. The amendments made by the item will require particulars of all sums to be included in a return if a party had outstanding debts of \$1,000 or more during a reporting period. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the note is also repealed by item 61.

**Item 62 – Subsection 314AEA(1)**

160. This item is consequential to the change from annual to six-monthly reporting and amends the terminology from ‘financial year’ to reporting period in relation to returns by associated entities.

**Item 63 – Subsection 314AEA(1)**

161. This item amends the timeframe in which the financial controller of an associated entity must submit a return to the Electoral Commission setting out the total amount received and paid by the associated entity and the total of outstanding debts. Previously, such a return had to be submitted within 16 weeks after the end of each financial year. This item and item 62 above amend the subsection so that a return must be furnished within 8 weeks after the end of each reporting period. ‘Reporting period’ is defined in subsection 4(1) to mean the first six months of a financial year or a full financial year.

**Item 64 – Paragraph 314AEA(3)(d)**

**Item 65 – Subsection 314AEB(1)**

**Item 66 – Paragraph 314AEB(1)(a)**

162. These items are consequential to the change from annual to six monthly reporting and amend the terminology from 'financial year' or 'year' to reporting period in relation to returns by associated entities and persons incurring political expenditure.

**Item 67 – Paragraphs 314AEB(1)(b) and (c)**

**Item 68 – Subsection 314AEB(1) (note)**

163. Item 67 repeals paragraphs 314AEB(1)(b) and (c) and substitutes a new paragraph 314AEB(1)(b) that provides a return must be furnished to the Electoral Commission if a total of \$1,000 or more was incurred on the kinds of expenditure set out in paragraph 314AEB(1)(a). The previous threshold for where a return was required was ‘more than \$10,000’. The substance of existing paragraph 314AEB(1)(c) is moved to new subsection 314AEB(1A) by item 69. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the note is also repealed by item 68.

**Item 69 – After subsection 314AEB(1)**

164. This item inserts new subsection 314AEB(1A) which essentially duplicates paragraph 314AEB(1)(c) that was repealed by item 67. The new subsection provides that 314AEB(1) does not apply to expenditure incurred by a registered political party, a State branch of a registered political party, the Commonwealth, a member of the House of Representatives or the Senate, a candidate or a member of a group.

**Item 70 – Subsection 314AEB(2)**

165. This item is consequential to the change from annual to six-monthly reporting and amends the terminology from ‘financial year’ to reporting period in relation to returns by persons incurring political expenditure.

**Item 71 – Paragraph 314AEB(3)(a)**

166. This item amends the timeframe in which a return under 314AEB(1) must be provided to the Electoral Commission. Previously, such a return had to be submitted within 20 weeks after the end of the financial year. This item amends the subsection so that a return must be furnished within 8 weeks after the end of the reporting period. ‘Reporting period’ is defined in subsection 4(1) to mean the first six months of a financial year or a full financial year.

**Item 72 – Subsection 314AEC(1)**

**Item 73 – Paragraphs 314AEC(1)(a) and (b)**

167. These items are consequential to the change from annual to six-monthly reporting and amend the terminology from ‘financial year’ and ‘year’ to reporting period in relation to returns detailing gifts that enabled political expenditure.

**Item 74 – Paragraph 314AEC(1)(c)**

**Item 75 – Subsection 314AEC(1) (note)**

**Item 76 – After subsection 314AEC(1)**

168. Item 74 repeals paragraph 314AEC(1)(c) which operated so that, if a person must provide a return to the Electoral Commission under section 314AEB, and the person received a gift of more than \$10,000 which enabled the political expenditure, the person must also provide a return under section 314AEC. Item 74 substitutes a new paragraph

314AEC(1)(c) to provide that, if a person must provide a return to the Electoral Commission under section 314AEB, a person must also provide a return under section 314AEC if there is at least one major donor in relation to the person and the reporting period.

169. A major donor is defined by new subsection 314AEC(1A), which is inserted by item 76. A major donor is a person who provides gifts totalling \$1,000 or more in a reporting period.

170. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the note is also repealed by item 75.

**Item 77 – Subsection 314AEC(2)**

171. This item is consequential to the change from annual to six-monthly reporting and amends the terminology from ‘financial year’ to reporting period in relation to returns by persons receiving gifts enabling political expenditure.

**Item 78 – Subsection 314AEC(2)**

**Item 79 – Subsection 314AEC(2) (note)**

172. Item 78 amends subsection 314AEC(2) as a consequence of introducing the new \$1,000 threshold. Rather than providing details of each gift of more than \$10,000, the item amends 314AEC(2) to require that details of each gift made by a major donor in a reporting period are provided. A major donor is defined by new subsection 314AEC(1A).

173. As the threshold figure is no longer indexed, following the repeal of section 321A by item 102, the note is also repealed by item 79.

**Item 80 - Paragraph 314AEC(3)(a)**

174. This item amends the timeframe in which a return under 314AEC(1) must be provided to the Electoral Commission. Previously, such a return had to be submitted within 20 weeks after the end of the financial year. This item amends the subsection so that a return must be furnished within 8 weeks after the end of the reporting period. ‘Reporting period’ is defined in subsection 4(1) to mean the first six months of a financial year or a full financial year.

**Item 81 – Subsection 314AEC(4)**

175. This item repeals subsection 314AEC(4) which is redundant following the amendments made to subsections 314AEC(1) and 314AEC(2). This is because details of all gifts made by a major donor are now required.

**Item 82 – Subsections 315(1) to (4)**

176. This item repeals subsections 315(1) to (4) and substitutes new offence and penalty provisions. The offence and penalty provisions of Part XX have generally not been revised since before 1983, with the penalties inadequate to reflect the level of public money

involved. The penalty levels have been set to encourage appropriate transparency in the political process.

### **Subsection 315(1)**

177. This subsection provides that a person commits an offence if the person is required to furnish a return under Division 4, 5 or 5A and the person fails to furnish the return by the time required by the applicable Division. The maximum penalty is 120 penalty units. Section 4AA of the *Crimes Act 1914* currently provides that one penalty unit equates to \$110.

178. While this offence is based on the previous offence in subsection 315(1), the repeal of subsection 315(1A) by item 82 means that subsection 315(1) is no longer an offence of strict liability. This means that all elements of the offence have to be proven.

### **Subsection 315(2)**

179. This subsection provides that a person commits an offence if the person is required to furnish a return under Division 4, 5 or 5A, the person furnishes a return which purports to be a return under the applicable Division and the return is incomplete. The maximum penalty is 120 penalty units.

180. While this offence is based on the previous offence in subsection 315(2), the repeal of subsection 315(2A) means that subsection 315(2) is no longer an offence of strict liability. This means that all elements of the offence have to be proven.

### **Subsection 315(3)**

181. This subsection provides an interpretation of 'incomplete' for the purposes of subsection 315(2) by item 82. A return will be incomplete if it does not contain all the information that is required to be included in the return by the relevant Division, or by the form produced by the Electoral Commission that must be used for the return.

### **Subsection 315(4)**

182. This subsection provides that a person commits an offence if the person is required by section 317 to retain records and the person fails to retain the records as required by that section. The maximum penalty is 120 penalty units.

183. This subsection is based upon repealed subsection 315(2), however it is now located in its own subsection rather than combined with the offence of furnishing an incomplete return. The offence of furnishing an incomplete return is located in subsection 315(2). The repeal of subsection 315(2A) by item 82 means that the failure to keep records is no longer an offence of strict liability. This means that all elements of the offence have to be proven.

### **Subsection 315(4A)**

184. This subsection provides that a person commits an offence if the person lodges a purported claim under Division 3 and the person knows that the claim is false or misleading in a material particular or the claim omits a matter or thing without which the claim is misleading in a material particular. The maximum penalty is imprisonment for 2 years or 240 penalty units, or both.

185. This offence is based upon repealed subsections 315(3) and (4), however the penalty has been significantly increased to reflect the large amount of public money involved with claims under Division 3. The requirement for the person to have knowledge that the claim is false or misleading is a higher fault element than, for example, recklessness.

#### **Subsection 315(4B)**

186. This subsection provides that a person commits an offence if the person lodges a purported return under Division 4, 5 or 5A and the person knows that the return is false or misleading in a material particular or the claim omits a matter or thing without which the return is misleading in a material particular. The maximum penalty is imprisonment for 12 months or 120 penalty units, or both.

187. This offence is based upon repealed subsections 315(3) and (4), however the penalty has been increased to reflect the importance of a transparent political process. The requirement for the person to have knowledge that the claim is false or misleading is a higher fault element than, for example, recklessness.

#### **Item 83 - Subsection 315(5)**

188. This amendment repeals references in subsection 315(5) to subsections 315(3) and (4) and inserts a reference to subsection 315(4A). This amendment is a consequence of new subsection 315(4A) dealing solely with claims under Division 3. Repealed subsections 315(3) and (4) both contained provisions dealing with Division 3 claims.

#### **Item 84 - Subsection 315(6A) (penalty)**

189. As this provision relates to claims under Division 3, this amendment increases the penalty so that it is consistent with the offence under subsection 315(4A).

#### **Item 85 - Subsection 315(7) (penalty)**

190. As this provision relates to returns under Division 4, 5 and 5A, this amendment increases the penalty so that it is consistent with the offence under subsection 315(4B).

#### **Item 86 – After subsection 315(10)**

191. This item inserts new offences into section 315 to provide offences for the new provisions dealing with gifts of foreign property and anonymous gifts.

#### **Subsection 315(10A)**

192. This subsection provides for an offence when a gift of foreign property or an anonymous gift is received by specified legal entities. The maximum penalty is imprisonment for 12 months or 240 penalty units, or both.

### **Subsection 315(10B)**

193. This subsection provides for an offence when a gift of foreign property or an anonymous gift is received by specified non-legal entities. The maximum penalty is imprisonment for 12 months or 240 penalty units, or both.

194. As the gift is received by a non-legal entity, a table in subsection 315(10B) sets out who is liable for the offence if a particular entity receives the gift.

### **Subsection 315(10C)**

195. As subsection 315(10B) deems a person or persons liable for an offence by a non-legal entity, subsection 315(10C) provides that a person does not commit an offence against subsection 315(10B) in two situations. These are if the person does not know of the circumstances because of which the receipt of the gift is unlawful, or the person takes all reasonable steps to avoid those circumstances occurring.

### **Subsection 315(10D)**

196. Subsection 315(10A) excludes from its operation a person acting on behalf of a group as subsection 315(10D) specifically addresses such people. Subsection 315(10D) provides for an offence when a person acting on behalf of a group receives specified unlawful gifts of foreign property or specified unlawful anonymous gifts. The maximum penalty is 12 months imprisonment or 240 penalty units, or both.

### **Subsection 315(10E)**

197. Subsection 315(10E) provides for an offence when a person incurs expenditure and the expenditure is unlawful because it was enabled by a specified unlawful gift of foreign property or specified unlawful anonymous gift. The maximum penalty is 12 months imprisonment or 240 penalty units, or both.

### **Item 87 – After section 315**

198. This item inserts a new subsection 315AA to provide for the recovery of undisclosed gifts. An undisclosed gift is defined for the purposes of the section as a gift whose details should be included in a return under subsection 304(2) or (3), section 314AC, section 314AC as it applies for the purpose of section 314AEA, and section 314AEC, and the return was not furnished or the details of the gift were not included.

199. Subsection 315AA(2) provides for a method of extending the period in which details may be provided, and if those details are provided before the end of the extension period, it is as if the details were provided in the return.

200. Subsection 315AA(3) provides that for each disclosure provision specified in the table, an amount equal to the amount or value of the gift is payable to the Commonwealth by the person or persons specified in the table.

201. Subsection 306AA(4) provides that if the amount under subsection 306AA(3) is not paid, the Commonwealth may recover the amount as a debt due to the Commonwealth in a court of competent jurisdiction.

**Item 88 – Subsection 315A(1)**

202. This item repeals subsection 315A(1) and substitutes a new subsection which refers to recovery of amounts under Part XX, rather than the two previously specified subsections. This is because there are now several provisions in Part XX that provide for an amount to be recovered by the Commonwealth.

**Item 89 – Subsection 316(2A)**

203. This item repeals subsection 316(2A) and substitutes a reworked provision that expands the range of persons or entities that may be asked to produce documents or appear to give evidence to determine compliance with Part XX or if something has been done that is unlawful under Part XX.

204. New subsection 316(2AA) is based on repealed subsection 315(2A) and provides that a notice to a person under subsection (2A) is to be served personally or by post on the person. New subsection 316(2AB) clarifies that for the people identified at item 6 of the table in subsection 316(2A), compliance is not limited to that return or the period to which that return relates.

**Item 90 – Subsection 316(2B)**

205. This item amends subsection 316(2B) to refer to a political party or branch due to the extension of 316(2A) to include State branches of registered political parties.

**Item 91 – Subsection 316(5) (penalty)**

**Item 92 – Subsection 316(5A) (penalty)**

**Item 93 – Subsections 316(5B) and (5C)**

206. Items 91 and 92 increase the penalties under subsections 316(5) and 316(5A) from \$1,000 to imprisonment for 12 months or 60 penalty units, or both.

207. Item 93 repeals subsection 316(5B) to remove strict liability from an offence against 316(5A) and repeals 316(5C) which provided that subsections 316(5) and (5A) do not apply if the person has a reasonable excuse. The Commonwealth Criminal Code will now govern the application of the offence provisions.

**Item 94 – Subsection 316(6) (penalty)**

208. Consistent with subsections 316(5) and (5A), this item increases the penalty under subsection 316(6) from \$1,000 or imprisonment for 6 months, or both, to imprisonment for 12 months or 60 penalty units, or both.

**Item 95 – Subsection 319A(1)**

209. This item amends the existing power in section 319A of the Electoral Act that deals with the amendment of claims and returns. The proposed amendment makes it clear that it is only the final claim for election funding that can be amended under section 319A, as the final claim itself is able to vary the interim claim for election funding (see subsection 297(4)).

#### **Item 96 – Subsection 319A(2)**

210. This amendment makes it clear that it is only the final claim for election funding that can be amended under section 319A as the final claim itself is able to vary the interim claim for election funding (see subsection 297(4)).

#### **Item 97 – After subsection 319A(4)**

211. New subsection 319A(4) makes it clear that any amendment or variation of a claim for election funding that is made under this section is not able to result in an increase in the payment. This subsection links back to the requirements of new subsection 297(5) that only one interim and one final claim may be made. The intention of this subsection is that candidates and political parties should be able to correct any formal errors and mistakes but not so that they can obtain an increase in election funding payments. This process is to assist in the transparency and accountability of candidates and political parties but not to allow repeated amendments of claims for election funding to attempt to increase those payments.

#### **Item 98 – Subsection 319A(9)**

212. Due to the substitution of new offence provisions in section 315, this item corrects the references to the relevant offences in section 315.

#### **Item 99 – Subsections 320(4) and (5)**

213. This item amends subsections 320(4) and (5) to provide that a claim or return may be available for inspection or perusal as soon as practicable after it is lodged. It is anticipated that advances in technology might enable claims or returns to be available sooner than the fixed time of 24 weeks after polling day for Division 4 or 5 claims (with the exception on section 305B) or February in the calendar year after the return is furnished under Division 5A or section 305B.

#### **Item 100 – Subsection 321(1) (definition of *relevant amount*)**

214. Section 321 is the indexation section. It applies to the amount per vote that can be paid as part of election funding once a political party, candidate or Senate group obtains at least 4% of the first preference votes in an election. The amount per vote of \$2.1894 specified in sections 293, 294 and 295 is based on the existing amount contained in the current section 294 of the Electoral Act that has been indexed since 1995. The amendment will ensure that the amount per vote that can be used in the calculation of election funding will continue to be indexed. This item amends the amount referred to as the ‘relevant amount’ to apply the current amount per vote of \$2.1894.

### **Item 101 – Subsection 321(1) (definition of *relevant period*)**

215. This item amends the definition of ‘relevant period’ in subsection 321(1) so that the indexation of the current \$2.1894 amount per vote commences from 1 January 2009. This is a mechanical provision that is necessary given the amendments to the above amount to reflect the current value resulting from the indexation of the previous \$1.50 amount since 1995.

### **Item 102 – Section 321A**

216. Section 321A provided for the indexation of the previous threshold of ‘more than \$10,000’. This item repeals section 321A as the threshold amount of \$1,000 for Part XX is no longer indexed.

### **Item 103 – Section 384**

217. This item repeals section 384 which specified two offences as indictable offences and provided that a court of summary jurisdiction may determine the matter in specified circumstances. By repealing section 384, sections 4G, 4H, 4J and 4JA of the *Crimes Act 1914* will provide for indictable offence proceedings.

## **Part 2 – Application and savings provisions**

### **Item 104 - Amendments applying to reporting periods starting on or after 1 July 2008**

218. This item provides that the amendments made by items 37 to 39 (obligation to furnish returns disclosing gifts made during a reporting period) and items 54 to 81 (Division 5A returns for reporting periods by registered political parties and other persons) apply to reporting periods that start on or after 1 July 2008.

### **Item 105 - Amendments applying to financial years starting on or after 1 July 2008**

219. This item provides that amendments made by items 50 and 51 (disclosure of expenditure by Commonwealth Departments) apply in relation to financial years that start on or after 1 July 2008.

### **Item 106 - Amendments applying to elections the writs for which are issued on or after 1 July 2008**

220. This item provides that amendments made by the listed items relating to election funding apply to elections the writs for which are issued on or after 1 July 2008.

### **Item 107 - Amendments applying to gifts etc made on or after 1 July 2008**

221. This item provides that the amendments made by the listed items apply to gifts, transfers or loans made or received, or expenditure incurred on or after 1 July 2008.

**Item 108 - Amendments applying to acts or omissions occurring on or after 1 July 2008**

222. This item provides that the amendments made by the listed items apply to acts or omissions after 1 July 2008.

**Item 109 - Amendment applying to returns a person becomes required to furnish on or after 1 July 2008**

223. This item provides that the amendment made by item 87 of this Schedule applies in relation to returns a person becomes required to furnish on or after 1 July 2008.

**Item 110 - Saving of notices under subsection 316(2A)**

224. This item ensures that a notice given before 1 July 2008 under subsection 316(2A) as then in force has effect after that commencement as if it had been given under that subsection as amended by item 89.