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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

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THURSDAY, 15 NOVEMBER 2018

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1 Meeting of Senate
The Senate met at 9.30 am. The President (Senator the Honourable Scott Ryan) took the chair, read prayers and made an acknowledgement of country.

2 Documents
The Clerk tabled the following documents pursuant to statute:

[Legislative instruments are identified by a Federal Register of Legislation (FRL) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]

- Remuneration Tribunal Act 1973—Remuneration Tribunal Amendment Determination (No. 3) 2018 [F2018L01568].

3 Committees—Leave to meet during sitting
Committees were authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sitting of the Senate today, as follows:

- Legal and Constitutional Affairs References Committee—from 4 pm.
- Public Accounts and Audit—Joint Statutory Committee—from 12.45 pm.

4 My Health Records Amendment (Strengthening Privacy) Bill 2018
Order of the day read for the further consideration of the bill in committee of the whole.

In the committee
Consideration resumed of the bill, as amended—and of the amendments moved by the Leader of the Australian Greens (Senator Di Natale):

No. 1—Schedule 1, page 3 (after line 5), after item 1, insert:

1AA Subsection 6(1) (heading)
  Omit “18”, substitute “14”.

1AB Subsection 6(1)
  Omit “18”, substitute “14”.

1AC Subsection 6(2)
  Omit “18”, substitute “14”.

1AD Subsection 6(3)

Repeal the subsection, substitute:

_Healthcare recipients aged between 14 and 17_

(3) For the purposes of this Act, a person is the _authorised representative_ of a healthcare recipient aged between 14 and 17 years if the healthcare recipient, by written notice given to the System Operator in the approved form, nominates the person to be his or her authorised representative.

No. 2—Schedule 1, page 4 (after line 19), after item 6, insert:

6A After subsection 51(5)

Insert:

_Suspension while healthcare recipient between 14 and 17_

(5A) The System Operator must, in writing, decide to suspend the registration of a healthcare recipient aged between 14 and 17 years until the healthcare recipient turns 18 if:

(a) the healthcare recipient does not have an authorised representative; and

(b) the System Operator is not satisfied that the healthcare recipient wants to manage his or her own My Health Record.

6B Paragraph 53(1)(a)

Omit “(4) or (5)”, substitute “(4), (5) or (5A)”.

6C Paragraph 53(4)(a)

Omit “(4) or (5)”, substitute “(4), (5) or (5A)”.

Debate resumed.

Senator Di Natale, by leave, withdrew amendment no. 2.

Debate continued.

Question—That amendment no. 1 be agreed to—put and passed.

_Explanatory memorandum:_ The Minister for Indigenous Affairs (Senator Scullion) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Senator Griff moved the following amendments together by leave:

Schedule 1, item 6, page 4 (line 16), omit “or 69A”.

Schedule 1, item 7, page 4 (lines 20 and 21), omit the item.

Schedule 1, item 16, page 8 (line 32) to page 9 (line 3), omit all the words from and including “sufficient certainty” to the end of subsection 70(3A), substitute “sufficient certainty to initiate consideration of the matter or concerns”.

Debate ensued.

Question—That the amendments be agreed to—put and negatived.
Senator Scullion moved the following amendments together by leave:

No. 1—Clause 2, page 2 (table), omit the table (including the note), substitute:

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Schedule 2</td>
<td>A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

No. 2—Schedule 1, page 3 (before line 4), before item 1, insert:

**1AA Section 3**

After “national”, insert “public”.

**1AB Section 4**

After “system is a”, insert “national public”.

No. 3—Schedule 1, page 3 (after line 5), after item 1, insert:

**1A Section 5**

Insert:

*national system employer* has the same meaning as in the *Fair Work Act 2009*, disregarding sections 30D and 30N of that Act.

*prohibited purpose* has the meaning given by section 70A.

**1B After subsection 6(1)**

Insert:

(1A) Despite subsection (1), a person who has parental responsibility for a healthcare recipient aged under 18 is not the authorised representative of the healthcare recipient if the System Operator is satisfied that:
(a) under a court order or a law of the Commonwealth or a State or Territory, the person must be supervised while spending time with the healthcare recipient; or
(b) the life, health or safety of the healthcare recipient or another person would be put at risk if the person were the authorised representative of the healthcare recipient.

1C Subsection 6(2)

After “If there is no person who the System Operator is satisfied has parental responsibility for a healthcare recipient aged under 18,”, insert “or the only such persons are covered by subsection (1A),”.

1D At the end of subsection 7(2)

Add:

Note: Despite this subsection, a nominated representative must not use information for a prohibited purpose within the meaning of section 70A (even though a healthcare recipient may do so): see subsections 59A(2), 70B(2), 71A(4) and 71B(3).

1E After section 15

Insert:

16 Research or public health purposes

The System Operator’s function under paragraph 15(ma) does not include providing de-identified data to a private health insurer (within the meaning of the Private Health Insurance Act 2007) or any other insurer.

No. 4—Schedule 1, item 6, page 4 (after line 19), after subsection 17(4), insert:

(5) To avoid doubt, if the System Operator is required under subsection (3) to destroy a record that includes health information, the System Operator must also destroy the following:

(a) any copy of the record;
(b) any previous version of the record;
(c) any back-up version of the record.

No. 5—Schedule 1, page 4 (after line 19), after item 6, insert:

6A Subsection 59(3) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

6B Subsection 59(4) (penalty)

Repeal the penalty, substitute:

Civil penalty: 1,500 penalty units.

6C After section 59

Insert:

59A Unauthorised use of information included in a healthcare recipient’s My Health Record for prohibited purpose

(1) A person must not use health information included in a healthcare recipient’s My Health Record for a prohibited purpose, if the person obtained the information by using or gaining access to the My Health Record system.

Note: For prohibited purpose, see section 70A.

Civil penalty: 1,500 penalty units.
(2) Subsection (1) does not apply if the person is the healthcare recipient, but does apply if the person is the nominated representative of the healthcare recipient (despite subsection 7(2)).

6D Subsection 60(3) (penalty)
Repeal the penalty, substitute:
Penalty: Imprisonment for 5 years or 300 penalty units, or both.

6E Subsection 60(4) (penalty)
Repeal the penalty, substitute:
Civil penalty: 1,500 penalty units.

No. 6—Schedule 1, page 9 (after line 3), after item 16, insert:

16A At the end of Division 2 of Part 4
Add:

Subdivision C—Unauthorised use of information included in a healthcare recipient’s My Health Record for prohibited purpose

70A Definition of prohibited purpose

(1) Information included in a healthcare recipient’s My Health Record is used for a prohibited purpose if the person who uses the information does so for any one or more of the following purposes:
(a) the purpose of:
   (i) underwriting a contract of insurance that covers the healthcare recipient; or
   (ii) determining whether to enter into a contract of insurance that covers the healthcare recipient (whether alone or as a member of a class); or
   (iii) determining whether a contract of insurance covers the healthcare recipient in relation to a particular event; or
   (iv) a national system employer employing, or continuing or ceasing to employ, the healthcare recipient;
   (b) a purpose prescribed by the regulations.

(2) If the person uses information for purposes that include, or for a purpose that includes, a purpose mentioned in subsection (1), the person is taken to be using the information for a prohibited purpose.

(3) To avoid doubt, use of information is not for a prohibited purpose if the use is solely for:
   (a) the purpose of providing healthcare to the healthcare recipient; or
   (b) purposes relating to the provision of indemnity cover for a healthcare provider.

(4) If a fault element applies to an element of an offence or civil penalty provision involving a prohibited purpose within the meaning of subparagraph (1)(a)(iv), absolute liability applies to the element that the employer is a national system employer.

(5) References in paragraph (1)(a) to insurance do not include State insurance that does not extend beyond the limits of the State concerned.
70B Use for prohibited purpose is unauthorised

(1) Despite Subdivisions A and B, a person is not authorised under this Division to use health information included in a registered healthcare recipient’s My Health Record for a prohibited purpose.

(2) Subsection (1) does not apply if the person is the healthcare recipient, but does apply if the person is the nominated representative of the healthcare recipient (despite subsection 7(2)).

16B After Division 3 of Part 4

Insert:

Division 3A—Offences and penalties in relation to use of My Health Record-derived information for prohibited purpose

71A Offence for use of My Health Record-derived information for prohibited purpose

(1) A person commits an offence if:

(a) the person uses information; and

(b) the person does so for a prohibited purpose, and the person knows or is reckless as to that fact; and

(c) the information is health information; and

(d) the information is or was included in a healthcare recipient’s My Health Record; and

(e) the person is not the healthcare recipient.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(2) Subsection (1) does not apply if the information was not collected from, and is not derived from a disclosure that was made by, a person who obtained the information by using or gaining access to the My Health Record system. For this purpose, it does not matter whether or not any collection or disclosure of the information was authorised under this Act or any other law.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the Criminal Code.

(3) Strict liability applies to paragraphs (1)(d) and (e).

Note: For strict liability, see section 6.1 of the Criminal Code.

(4) Despite paragraph (1)(e) and subsection 7(2), subsection (1) of this section applies to a person who is the nominated representative of the healthcare recipient.

71B Civil penalty for use of My Health Record-derived information for prohibited purpose

(1) A person must not use health information that is or was included in a healthcare recipient’s My Health Record for a prohibited purpose.

Civil penalty: 1,500 penalty units.

(2) Subsection (1) does not apply if the information was not collected from, and is not derived from a disclosure that was made by, a person who obtained the information by using or gaining access to the My Health Record system. For this purpose, it does not matter whether or not any collection or disclosure of the information was authorised under this Act or any other law.
Note: A person bears an evidential burden in relation to the matter in subsection (2); see section 96 of the Regulatory Powers (Standard Provisions) Act 2014.

(3) Subsection (1) does not apply if the person is the healthcare recipient, but does apply if the person is the nominated representative of the healthcare recipient (despite subsection 7(2)).

16C Subsection 75(2) (penalty)
Repeal the penalty, substitute:
Civil penalty: 1,500 penalty units.

16D Section 76 (penalty)
Repeal the penalty, substitute:
Civil penalty: 1,500 penalty units.

16E Subsection 77(2A) (penalty)
Repeal the penalty, substitute:
Penalty: Imprisonment for 5 years or 300 penalty units, or both.

16F Subsection 77(2B) (penalty)
Repeal the penalty, substitute:
Civil penalty: 1,500 penalty units.

16G After subsection 97(2)
Insert:
(2A) However, the System Operator is not required to give notice of the decision to a person if the System Operator is satisfied that doing so would put at risk the life, health or safety of a person.

16H Paragraph 98(1)(b)
Omit “Medicare;”, substitute “Medicare.”.

16J Paragraph 98(1)(c)
Repeal the paragraph.

16K Subsection 105(3)
After “disclosure of” (wherever occurring), insert “de-identified data or”.

16L After paragraph 105(3)(b)
Insert:
(ba) in connection with insurance, other than State insurance that does not extend beyond the limits of the State concerned; or

16M Subsection 105(4)
After “disclosure of”, insert “de-identified data or”.

No. 7—Schedule 1, item 17, page 9 (after line 12), at the end of the item, add:

(3) The amendments made by items 6C, 16A and 16B of this Schedule apply in relation to the use of information after this Schedule commences, regardless of whether the information was collected before or after that commencement.
Schedule 2—Amendments commencing on Proclamation

My Health Records Act 2012

1 Section 5
   Insert:
   
   data custodian means the Australian Institute of Health and Welfare.

2 Paragraph 15(ma)
   Repeal the paragraph, substitute:
   (ma) in accordance with the guidance and direction of the Board established under section 82, to prepare and provide de-identified data, and, with the consent of the healthcare recipient, health information, for research or public health purposes;

3 Section 16
   After “de-identified data”, insert “or health information”.

4 Part 5 (heading)
   After “Other”, insert “offences and”.

5 After section 77
   Insert:
   77A Enforceable requirements in My Health Records Rules must not be contravened: offence
      (1) An entity commits an offence if:
          (a) the entity does an act or omits to do an act; and
          (b) the result is that the entity contravenes a requirement imposed on
              the entity by My Health Records Rules made for the purposes of
              subsection 109(7A) and the entity is reckless as to that result; and
          (c) the My Health Records Rules provide that the requirement is
              enforceable for the purposes of this paragraph; and
          (d) the entity is not the System Operator, the Data Governance
              Board established by section 82 or the data custodian.
      Penalty: 100 penalty units.
      (2) Strict liability applies to paragraphs (1)(c) and (d).
      Note: For strict liability, see section 6.1 of the Criminal Code.

6 Section 78 (at the end of the heading)
   Add “: civil penalty”.

7 Section 78
   Before “A person”, insert “(1)”.

...
8 At the end of section 78

Add:

(2) An entity (other than the System Operator, the Data Governance Board established by section 82 or the data custodian) must not contravene a requirement imposed on the entity by My Health Records Rules made for the purposes of subsection 109(7A), if the My Health Records Rules provide that the requirement is enforceable for the purposes of this subsection.

Civil penalty: 100 penalty units.

9 After Part 6

Insert:

Part 7—Data Governance Board

Division 1—Establishment and functions

82 Data Governance Board

The Data Governance Board is established by this section.

83 Functions of the Board

(1) The functions of the Data Governance Board are:

(a) to oversee the operation of the framework prescribed by My Health Records Rules made for the purposes of subsection 109(7A), including by:

(i) assessing applications for the collection, use or disclosure of de-identified data and health information for research or public health purposes; and

(ii) guiding and directing the System Operator in the performance of its function under paragraph 15(ma) (preparing and providing de-identified data and health information); and

(iii) taking steps to ensure the ongoing protection of de-identified data and health information used by, or disclosed to, persons for research or public health purposes and that the data and information is being used and disclosed only for those purposes; and

(b) any other functions conferred on the Board by this Act or the My Health Records Rules.

(2) The Board does not have any functions, and must not perform any role, in relation to the day-to-day operation of the My Health Record system.

Division 2—Membership

84 Membership

The Data Governance Board consists of the following members:

(a) the Chair of the Data Governance Board;

(b) the Deputy Chair of the Data Governance Board;

(c) at least 7, and no more than 10, other members.
85 Appointment of members

(1) Members are to be appointed by the Minister by written instrument, on a part-time basis.

(2) The Minister must appoint one member to be the Chair and another member to be the Deputy Chair.

86 Qualifications and experience

(1) The Minister must appoint the following as members:
   (a) a person who represents the System Operator;
   (b) a person who represents the data custodian;
   (c) a person who is an Aboriginal person or a Torres Strait Islander.

(2) A person (including a person appointed in accordance with subsection (1)) is not eligible for appointment as a member of the Data Governance Board unless the person has skills or experience in, or knowledge of, one or more of the following fields:
   (a) population health and epidemiology;
   (b) medical or health research;
   (c) health services delivery;
   (d) technology;
   (e) data science;
   (f) data governance;
   (g) privacy;
   (h) consumer advocacy.

87 Acting appointments

(1) The Minister may, by written instrument, appoint a person to act as the Chair:
   (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
   (b) during any period, or during all periods, when the Chair:
       (i) is absent from duty or from Australia; or
       (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the Acts Interpretation Act 1901.

(2) The Minister may, by written instrument, appoint a person to act as the Deputy Chair:
   (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
   (b) during any period, or during all periods, when the Deputy Chair:
       (i) is absent from duty or from Australia; or
       (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the Acts Interpretation Act 1901.

88 Term of appointment and other terms and conditions

(1) A member of the Data Governance Board holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
(2) A member of the Data Governance Board holds office on the terms and conditions (if any) in relation to matters not covered by this Part that are determined by the Minister.

89 Remuneration

(1) A member of the Data Governance Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by an instrument made under subsection (4).

(2) A member is to be paid the allowances that are prescribed by an instrument made under subsection (4).

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

(4) The Minister may, by legislative instrument, prescribe:
   (a) remuneration for the purposes of subsection (1); and
   (b) allowances for the purposes of subsection (2).

90 Resignation

(1) A member of the Data Governance Board may resign the member’s appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

91 Termination of appointment

(1) The Minister may terminate the appointment of a member of the Data Governance Board:
   (a) for misbehaviour; or
   (b) if the member is unable to perform the duties of the member’s office because of physical or mental incapacity.

(2) The Minister may terminate the appointment of a member of the Data Governance Board if:
   (a) the member:
      (i) becomes bankrupt; or
      (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
      (iii) compounds with the member’s creditors; or
      (iv) makes an assignment of the member’s remuneration for the benefit of the member’s creditors; or
   (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
   (c) the member engages in paid work (within the meaning of section 93) that, in the Minister’s opinion, conflicts or could conflict with the proper performance of the member’s duties (see section 93); or
   (d) the member fails, without reasonable excuse, to comply with section 29 of the Public Governance, Performance and Accountability Act 2013 (which deals with the duty to disclose interests) or rules made for the purposes of that section.
92 Leave of absence
The Minister may grant leave of absence to any member of the Data Governance Board on the terms and conditions that the Minister determines.

93 Other paid work
(1) A member of the Data Governance Board must not engage in any paid work that, in the Minister’s opinion, conflicts or could conflict with the proper performance of the member’s duties.

(2) In subsection (1):
*paid work* means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

**Division 3—Meetings of the Data Governance Board**

94 Convening meetings
(1) The Data Governance Board must hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chair of the Data Governance Board:
(a) may convene a meeting at any time; and
(b) must convene a meeting within 30 days after receiving a written request to do so from another member of the Board.

95 Presiding at meetings
(1) The Chair of the Data Governance Board must preside at all meetings at which the Chair is present.

(2) If the Chair is not present at a meeting at which the Deputy Chair is present, the Deputy Chair must preside.

(3) If neither the Chair nor the Deputy Chair is present at a meeting, the other members present must appoint one of themselves to preside.

96 Quorum
(1) At a meeting of the Data Governance Board, a quorum is constituted by a majority of members of the Board.

(2) However, if:
(a) a member of the Board is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
(b) when the member leaves the meeting concerned there is no longer a quorum present;
the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

96A Voting at meetings
(1) A question arising at a meeting of the Data Governance Board is to be determined by a majority of the votes of the members of the Board present and voting.
(2) The person presiding at a meeting of the Board has a deliberative vote and, if the votes are equal, a casting vote.

96B Conduct of meetings

The Data Governance Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the Acts Interpretation Act 1901 contains further information about the ways in which members of the Board may participate in meetings.

96C Minutes

The Data Governance Board must keep minutes of its meetings.

96D Decisions without meetings

(1) The Data Governance Board is taken to have made a decision at a meeting if:
   (a) without meeting, a majority of the members of the Board entitled to vote on the proposed decision indicate agreement with the decision; and
   (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
   (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.

(2) Subsection (1) applies only if the Board:
   (a) has determined that it may make decisions of that kind without meeting; and
   (b) has determined the method by which members are to indicate agreement with proposed decisions.

(3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.

(4) The Board must keep a record of decisions made in accordance with this section.

Note: Section 33B of the Acts Interpretation Act 1901 contains further information about the ways in which members of the Board may participate in meetings.

Division 4—Other matters relating to the Data Governance Board

96E Relationship between System Operator and Data Governance Board in relation to data for research or public health purposes

(1) In performing the function mentioned in paragraph 15(ma), the System Operator must comply with a direction from, and follow the guidance of, the Data Governance Board.

(2) If rules made for the purposes of subsection 109(7A) require the Data Governance Board to take steps to ensure that de-identified data and health information disclosed to persons for research or public health purposes is being used only for those purposes, the System Operator must not take any steps of its own to ensure that the data and information is being used only for those purposes.
(3) Subsection (2) does not imply that the System Operator has a duty to take steps in relation to use of data and information at a time when there are no rules of the kind mentioned in subsection (2).

96F **Board committees**

(1) The Data Governance Board may establish a committee or committees to assist in carrying out the functions of the Board.

(2) The Board may dissolve a committee at any time.

(3) The functions of a committee are as determined by the Board.

(4) In performing its functions, a committee must comply with any directions given to the committee by the Board.

(5) A question arising at a meeting of a committee is to be determined by a majority of the votes of committee members present.

(6) A committee must inform the other members of the Board of its decisions.

(7) A committee may regulate proceedings at its meetings as it considers appropriate.

(8) A committee must ensure that minutes of its meetings are kept.

96G **Delegation of functions**

(1) If the Secretary of the Department consents to the Data Governance Board delegating functions to APS employees in the Department, the Board may delegate any or all of its functions to such an APS employee.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(2) If the chief executive officer (however described) of the data custodian consents to the Board delegating functions to members of the staff mentioned in subsection 19(1) of the *Australian Institute of Health and Welfare Act 1987*, the Board may delegate all or any of its functions to such a member of staff.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(3) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Board.

(4) The delegation continues in force despite a change in the membership of the Board.

(5) The delegation may be varied or revoked by the Board (whether or not there has been a change in the membership of the Board).

96H **Annual report**

(1) As soon as practicable after the end of each financial year, the Data Governance Board must prepare and give a report to the Minister, for presentation to the Parliament, on the Board’s activities during the financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.
(2) A report on the Department’s activities given under section 46 of the Public Governance, Performance and Accountability Act 2013 does not need to include a report on the activities of the Board.

96J Board is part of the Department

For the purposes of paragraph (a) of the definition of Department of State in section 8 of the Public Governance, Performance and Accountability Act 2013, the Data Governance Board is prescribed in relation to the Department.

10 Subsection 105(2)

After “System Operator”, insert “, Data Governance Board and data custodian”.

11 After paragraph 105(6)(a)

Insert:

(aa) the Data Governance Board;
(ab) the data custodian;

12 Subsection 109(7A)

Repeal the subsection, substitute:

My Health Records Rules may relate to research or public health purposes

(7A) The My Health Records Rules may, in accordance with section 109A, prescribe a framework to guide the collection, use and disclosure of de-identified data and, with the consent of healthcare recipients, health information, for research or public health purposes.

13 Subsection 109(9)

Omit “the My Health Records Rules”, substitute “My Health Records Rules made for purposes other than subsection (7A)”.

14 After section 109

Insert:

109A My Health Records Rules relating to data for research or public health purposes

Examples of what the rules may do

(1) Without limiting subsection 109(7A), My Health Records Rules made for the purposes of that subsection (the rules) may do any or all of the following:

(a) impose requirements on the System Operator, the Data Governance Board established by section 82, the data custodian and other entities, including procedures that must be followed, in relation to preparing, providing, collecting, accessing, using and disclosing health information and de-identified data;
(b) provide that any or all such requirements are enforceable for the purposes of paragraph 77A(1)(c) or subsection 78(2);
(c) make provision in relation to the performance of the Board’s functions set out in paragraph 83(1)(a);
(d) authorise the Board to make written policies and guidelines to be followed by other entities for the purposes of giving effect to the prescribed framework.

*Functions of data custodian*

(2) The data custodian has the following functions, and the rules may make provision in relation to the performance of those functions:

(a) under the direction of the Data Governance Board and in accordance with this Act—helping to implement the prescribed framework by:

(i) receiving de-identified data and health information from the My Health Record system; and

(ii) as necessary—de-identifying health information; and

(iii) as necessary—providing data linkage services (within the meaning of the rules); and

(iv) preparing and providing de-identified data and health information to users of data and information whose use has been approved by the Data Governance Board; and

(v) ensuring that users of de-identified data and health information are subject to conditions of use;

(b) any other functions conferred on the data custodian by this Act or the rules.

*Limits on rules*

(3) The rules:

(a) must not allow the health information of a healthcare recipient to be collected, used or disclosed otherwise than with the consent of the healthcare recipient; and

(b) must not allow de-identified data or health information to be provided to a private health insurer (within the meaning of the *Private Health Insurance Act 2007*) or any other insurer (with or without the consent of the healthcare recipient); and

(c) must not provide that any of the following is enforceable for the purposes of paragraph 77A(1)(c) or subsection 78(2):

(i) a provision of a policy, guideline or other instrument made under the rules;

(ii) a provision of the rules that requires an entity to comply with such a policy, guideline or instrument.

*Constitutional limits on rules*

(4) If the rules make provision for the disclosure of de-identified data or health information obtained by using or gaining access to the My Health Record system, the rules must have the effect that the data or information is to be disclosed only:

(a) by means of a postal, telegraphic, telephonic or other like service; or

(b) by or to a corporation to which paragraph 51(xx) of the Constitution applies; or

(c) by or to a person within a Territory or a place acquired by the Commonwealth for a public purpose; or

(d) by or to the Commonwealth or an authority of the Commonwealth.
(5) The rules may make other provision in relation to de-identified data or health information only:
   (a) to ensure that collection, use and disclosure of data or information does not result in an interference with privacy of the kind the Commonwealth has international obligations to protect against, including under the International Covenant on Civil and Political Rights (in particular Article 17 of the Covenant); or


   (b) for purposes related to collecting, preparing, analysing or publishing statistics; or

   (c) by providing for data or information to be collected from or by, used by or disclosed by or to, any of the following:
      (i) a corporation to which paragraph 51(xx) of the Constitution applies;
      (ii) a person within a Territory or a place acquired by the Commonwealth for a public purpose;
      (iii) the Commonwealth or an authority of the Commonwealth.

Senator Polley moved the following amendments to Senator Scullion’s proposed amendments nos 3 and 6 together by leave:

Amendment no. 3, item 1A, omit the definition of national system employer.
Amendment no. 6, item 16A, subparagraph 70A(1)(a)(iv), omit “a national system employer”, substitute “an employer”.
Amendment no. 6, item 16A, omit subsection 70A(4).
Amendment no. 6, item 16A, at the end of section 70A, add:
   (6) For the purposes of this section, using information for a purpose includes requesting or requiring the information for that purpose.

Amendment no. 6, item 16B, before section 71A, insert:

71AA Definitions

   In this Division:

   My Health Record of a healthcare recipient includes a My Health Record of the healthcare recipient that has been cancelled or suspended.

   use information for a purpose includes request or require the information for that purpose.

Debate ensued.

Question—That Senator Polley’s amendments to Senator Scullion’s proposed amendments nos 3 and 6 be agreed to—put and passed.

Question—That amendments nos 3 and 6, as amended, and nos 1, 2, 4, 5, 7 and 8 be agreed to—put and passed.

Bill, as amended, agreed to and reported with amendments.
On the motion of Senator Scullion the report from the committee was adopted and the bill read a third time.

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

Order of the day read for the adjourned debate on the motion of the Minister for Finance and the Public Service (Senator Cormann)—That this bill be now read a second time.

Debate resumed.

Senator Farrell moved the following amendment:

At the end of the motion, add “but the Senate:

(a) supports increased transparency throughout our political system;

(b) notes that the current threshold for disclosure of political donations is too high, at $10,000 (indexed to inflation); and

(c) believes that the threshold for disclosure of political donations should be set at $1000, not indexed to inflation”.

Debate ensued.

At 11.45 am: Debate was interrupted while the Leader of Pauline Hanson’s One Nation (Senator Hanson) was speaking.

6 Notices

The Chair of the Standing Committee on Regulations and Ordinances (Senator Williams): To move 15 sitting days after today—

No. 1—that the English Language Proficiency Assessments Exemption 2018, made under the Civil Aviation Act 1988, be disallowed [F2018L01214].

No. 2—that the Number of Cabin Attendants (Alliance Airlines) Direction 2018, made under the Civil Aviation Act 1988, be disallowed [F2018L01244].

No. 3—that the Banking (prudential standard) determination No. 4 of 2018—Prudential Standard APS 221 Large Exposures, made under the Banking Act 1959, be disallowed [F2018L01190].

Senator Anning: To move on the next day of sitting—that the Senate—

(a) expresses its concern that:

(i) the Federal Government is pushing ahead with signing the UN Global Compact on Refugees, and

(ii) the Compact lacks clear indicators to measure progress and accountability in relation to the agreement’s four objectives;

(b) expresses its alarm that, once again, unelected left-wing United Nations bureaucrats are being allowed to dictate policy to the government of Australia without regard to the wishes of the Australian people; and

(c) condemns the UN Global Compact on Refugees as yet another attack on Australian sovereignty, and calls on the Australian Government to repudiate it.

(general business notice of motion no. 1223)
Senator Anning: To move on the next day of sitting—That the Senate requests the Banking Royal Commission to publish all the 9000 submissions made to it on a public website (with the usual privacy considerations), so that the public will be able to check that the Royal Commission’s report in February 2019 will have dealt with all the issues raised by the public. (general business notice of motion no. 1224)

Senator Patrick: To move on the next day of sitting—

(1) That the Senate notes that—

(a) on 16 October 2018, the Senate ordered the Commissioner of Taxation to provide information (company names) to the Economics Legislation Committee related to designated financial entities that have lodged a late, or not yet lodged a, corporate income tax return;

(b) on 5 November 2018, the Minister for Finance and the Public Service advanced a public interest immunity claim on the grounds that the disclosure of individual taxpayer information to the committee will harm the public interest by undermining public confidence in taxation laws and taxation administration;

(c) the Minister for Finance and the Public Service also claimed that the disclosure of this information will have a substantial adverse effect on the proper and efficient operations of the Australian Taxation Office;

(d) except in circumstances where the Parliament has explicitly carved out the ability for a House of Parliament to make inquiries, the secrecy provisions of legislation are subservient to the Constitution-derived inquiry powers of Senate;

(e) disclosing the names of financial entities that have not complied with tax laws does not undermine taxation laws and taxation administration, but rather may serve to encourage compliance with taxation laws; and

(f) Australia’s tax transparency laws oblige the Commissioner of Taxation to annually publish selected income tax information, including the company name, for certain taxpayers and this has not resulted in the purported harm.

(2) That the Senate affirms that:

(a) under no circumstances should any corporation be of the view that it is entitled to anonymity when it breaches taxation law;

(b) the public interest balance lies in favour of the disclosure of companies in breach of taxation law; and

(c) the Senate does not accept the public interest immunity claim advanced by the Minister for Finance and the Public Service.

(3) That the Senate orders the Commissioner of Taxation to comply with the balance of the order agreed to by the Senate on 16 October 2018. (general business notice of motion no. 1225)

Senator Singh: To move on the next day of sitting—That the Senate—

(a) observes that 20 November 2018 is Universal Children’s Day, commemorating the UN General Assembly’s same-day adoption of the 1958 Declaration of the Rights of the Child, and the 1989 Convention on the Rights of the Child (‘Children’s Convention’);
(b) acknowledges the work of UNICEF Australia and other stakeholders involved in the Australian Child Rights Taskforce’s Children’s Report and its recommendations;

(c) notes:
   (i) that Australia’s Aboriginal and Torres Strait Islander children continue to experience disadvantage,
   (ii) the report and recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory,
   (iii) that children in Australia face growing issues of intergenerational inequality,
   (iv) that no child under Australia’s care should suffer harm, and
   (v) that refugee children under Australia’s care have been languishing in indefinite detention on Nauru for over five years;

(d) invites the Morrison Government to take steps to improve Australia’s adherence to the Children’s Convention; and

(e) calls on the Morrison Government to accept New Zealand’s resettlement offer and get the children off Nauru. (general business notice of motion no. 1226)

Senator Patrick: To move on the next day of sitting—That—

(a) the Senate notes that formal business is taking up a significant amount of time each sitting week; and

(b) the following amendment to standing order 66 operate as a temporary order from 27 November 2018 to the last sitting day of 2019:
   At the end of paragraph (3), add:
   (4) A senator may not in any sitting week request that more than four general business motions be taken as formal motions, with the exception of motions ordering documents to be laid on the table or relating to an earlier order of the Senate relating to the production of documents. (general business notice of motion no. 1227)

Senators Williams, O’Sullivan and Bernardi: To move on the next day of sitting—That the Senate—

(a) notes that:
   (i) the National Farmers’ Federation states that one Australian farmer produces enough food to feed 600 people, including 450 people overseas,
   (ii) there are over 300,000 people directly employed in Australian agriculture, and
   (iii) the gross value of Australian farm production in 2016-17 was $60 billion;

(b) further notes that:
   (i) the Australian Greens endorsed candidate for the Federal seat of Page, Mr Daniel Reid, posted on Facebook ‘Cattle don’t belong on this land and the cost of supporting them through drought is extreme’, and
   (ii) Mr Reid’s Facebook post also included the statement ‘In Australia there are 26 million cattle that eat as much as 669 million kangaroos’; and

(c) calls on the Australian Greens to clarify whether they support farmers or kangaroos loose in the top paddock. (general business notice of motion no. 1228)
Notices of motion withdrawn: Senator Bushby, at the request of the Chair of the Standing Committee on Regulations and Ordinances (Senator Williams) and pursuant to notice of intention given on 14 November 2018, withdrew business of the Senate notices of motion standing in Senator Williams’s name, as follows:

Business of the Senate notice of motion no. 1 for 10 sitting days after today for the disallowance of the Census and Statistics (Information Release and Access) Determination 2018 [F2018L01114].

Business of the Senate notice of motion no. 1 for 12 sitting days after today for the disallowance of the Financial Framework (Supplementary Powers) Amendment (Jobs and Small Business Measures No. 2) Regulations 2018 [F2018L01133].

7 Selection of Bills—Standing Committee—Report no. 13 of 2018

The Chair of the Selection of Bills Committee (Senator Bushby) tabled the following report:

SELECTION OF BILLS COMMITTEE
REPORT NO. 13 OF 2018

1. The committee met in private session on Wednesday, 14 November 2018 at 7.12 pm.

2. The committee recommends that the provisions of the Migration Amendment (Strengthening the Character Test) Bill 2018 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 18 January 2019.

3. The committee recommends that the following bills not be referred to committees:
   Discrimination Free Schools Bill 2018
   Fair Work Amendment (Restoring Penalty Rates) Bill 2018 [No. 2]
   National Housing Finance and Investment Corporation Amendment Bill 2018.

4. The committee deferred consideration of the following bills to its next meeting:
   Agricultural and Veterinary Chemicals Legislation Amendment (Streamlining Regulation) Bill 2018
   Australian Research Council Amendment (Ensuring Research Independence) Bill 2018
   Customs Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018
   Customs Tariff Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018
   Parliamentary Joint Committee on the Australia Fund Bill 2018
   Social Services Legislation Amendment (Ending the Poverty Trap) Bill 2018
   Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018.

David Bushby
Chair
15 November 2018.

Senator Bushby moved—That the report be adopted.
Question put and passed.
8 Order of business—Rearrangement

The Minister for Communications and the Arts (Senator Fifield) moved—That—
(a) the following government business orders of the day be considered from 12.45 pm today:
   No. 7 Aviation Transport Security Amendment Bill 2018
   No. 8 Maritime Legislation Amendment Bill 2018
   No. 9 National Housing Finance and Investment Corporation Amendment Bill 2018
   No. 10 Shipping Registration Amendment Bill 2018
   No. 11 Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Bill 2018
   Excise Tariff Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018
   No. 12 Treasury Laws Amendment (Financial Sector Regulation) Bill 2018;
and
(b) government business be called on after consideration of the bills listed in paragraph (a) and considered till not later than 2 pm today.

Question put and passed.

Senator Fifield moved—that the order of general business for consideration today be as follows:
(a) general business order of the day no. 96 (Australian Broadcasting Corporation Amendment (Appointment of Directors) Bill 2018); and
(b) orders of the day relating to documents.

Question put and passed.

9 Leave of absence

Senator Urquhart, by leave, moved—that leave of absence be granted to Senators Marshall and Dodson for today, on account of parliamentary business.

Question put and passed.

Senator Bushby, by leave, moved—that leave of absence be granted to Senators Canavan, Payne and Ruston for today, on account of parliamentary business.

Question put and passed.

10 Postponements

Business was postponed as follows:
   General business notice of motion no. 1200 standing in the name of Senator Brown for today, relating to Tourism Australia, postponed till 26 November 2018.
   General business notice of motion no. 1219 standing in the name of Senator Waters for today, proposing the introduction of the National Integrity Commission Bill 2018, postponed till 26 November 2018.

11 Committee—Extension of time to report

The following committee was granted an extension of time to report:
12 Routine of business—Variation

Leave refused: The Minister for Finance and the Public Service (Senator Cormann) sought leave to move a motion to provide for consideration of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017. An objection was raised and leave was not granted.

Suspension of standing orders: Senator Cormann, pursuant to contingent notice, moved—that so much of the standing orders be suspended as would prevent him moving a motion to provide for the consideration of a matter, namely a motion to provide that a motion to provide for consideration of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 may be moved immediately and determined without amendment or debate.

Debate ensued.

Question put.

The Senate divided—

AYES, 33

Senators—

Abetz
Brockman
Bushby*
Carr
Chisholm
Colbeck
Collins
Cormann
Duniam
Farrell
Fierravanti-Wells
Fifield
Gallacher
Gichihi
Hinch
Hume
Keneally
Reynolds
Ryan
Scullion
Smith, David
Smith, Dean
Stoker
Urquhart
Wong

NOES, 17

Senators—

Anning
Bernardi*
Di Natale
Faruqi
Georgiou
Griff
Hanson
Hanson-Young
Leyonhjelm
McKim
Patrick
Rice
Siewert
Steele-John
Storer
Waters
Whish-Wilson

* Tellers

Question agreed to.

Senator Cormann moved—that a motion to provide for consideration of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 may be moved immediately and determined without amendment or debate.

Closure: Senator Cormann moved—that the question be now put.

Question—that the question be now put—put.

The Senate divided—

AYES, 40

Senators—

Abetz
Bilyk
Brockman
Bushby*
Cameron
Carr
Chisholm
Colbeck
Collins
Cormann
Duniam
Farrell
Fawcett
Fierravanti-Wells
Fifield
Gallacher
Gichihi
Hinch
Hume
Keneally
Kitching
McAllister
McCarthy
McGrath
McKenzie
Molan
O’Neill
O’Sullivan
Pratt
Reynolds
Ryan
Seselja
Singh
Smith, David
Smith, Dean
Sterle
Stoker
Urquhart
Wong
Question agreed to.

Question—That the precedence motion be agreed to—put.

The Senate divided—

AYES, 41

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NOES, 17

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Question agreed to.

Senator Cormann moved—That today—

(a) if, by 2 pm, consideration of the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 has not concluded, then:

(i) after ministerial statements, the bill be called on immediately and be considered until determined,

(ii) divisions may take place after 4.30 pm for the purposes of the bill only, and

(iii) the time allotted for all remaining stages be until 6.15 pm;

(b) paragraph (a) of this order shall operate as a limitation of debate under standing order 142; and

(c) after consideration of the bill has concluded, the routine of business shall be consideration of general business order of the day no. 96 (Australian Broadcasting Corporation Amendment (Appointment of Directors) Bill 2018) for not more than 90 minutes, and then the Senate shall return to its routine of business.

Question put.
The Senate divided—

**AYES, 42**

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* Tellers

Question agreed to.

13 **Australian Research Council Amendment (Ensuring Research Independence) Bill 2018**

Senator Faruqi, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 1190—That the following bill be introduced:

A Bill for an Act to amend the *Australian Research Council Act 2001*, and for related purposes.

Question put and passed.

Senator Faruqi presented the bill and moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Faruqi moved—That this bill be now read a second time.

*Explanatory memorandum:* Senator Faruqi, by leave, tabled an explanatory memorandum relating to the bill.

Debate adjourned till the next day of sitting, Senator Faruqi in continuation.

14 **Abortion—Queensland laws**

*Motion determined as not formal:* Senator Anning requested that general business notice of motion no. 1205 standing in his name for today, relating to Queensland abortion laws, be taken as formal. An objection was raised and the motion was not proceeded with as a formal motion.
At 12.45 pm—

15 **Aviation Transport Security Amendment Bill 2018**
Order of the day read for the adjourned debate on the motion of the Assistant Minister for International Development and the Pacific (Senator Ruston)—That this bill be now read a second time.
Debate resumed.
Question put and passed.
Bill read a second time.
No amendments to the bill were circulated and no senator required that it be considered in committee.
On the motion of the Assistant Minister for Treasury and Finance (Senator Seselja) the bill was read a third time.

16 **Maritime Legislation Amendment Bill 2018**
Order of the day read for the adjourned debate on the motion of the Minister for Small and Family Business, Skills and Vocational Education (Senator Cash)—That this bill be now read a second time.
Debate resumed.
Question put and passed.
Bill read a second time.
No amendments to the bill were circulated and no senator required that it be considered in committee.
On the motion of the Assistant Minister for Treasury and Finance (Senator Seselja) the bill was read a third time.

17 **National Housing Finance and Investment Corporation Amendment Bill 2018**
Order of the day read for the adjourned debate on the motion of the Assistant Minister for International Development and the Pacific (Senator Ruston)—That this bill be now read a second time.
Debate resumed.
Question put and passed.
Bill read a second time.
No amendments to the bill were circulated and no senator required that it be considered in committee.
On the motion of the Assistant Minister for Treasury and Finance (Senator Seselja) the bill was read a third time.

18 **Shipping Registration Amendment Bill 2018**
Order of the day read for the adjourned debate on the motion of the Assistant Minister for International Development and the Pacific (Senator Ruston)—That this bill be now read a second time.
Debate resumed.
Question put and passed.
Bill read a second time.
No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Assistant Minister for Treasury and Finance (Senator Seselja) the bill was read a third time.

19 Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Bill 2018
Excise Tariff Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018

Order of the day read for the adjourned debate on the motion of the Minister for Small and Family Business, Skills and Vocational Education (Senator Cash)—That these bills be now read a second time.
Debate resumed.

Question put and passed.

Bills read a second time.

No amendments to the bills were circulated and no senator required that they be considered in committee.

On the motion of the Assistant Minister for Treasury and Finance (Senator Seselja) the bills were read a third time.

20 Treasury Laws Amendment (Financial Sector Regulation) Bill 2018

Order of the day read for the adjourned debate on the motion of the Minister for Indigenous Affairs (Senator Scullion)—That this bill be now read a second time.
Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Assistant Minister for Treasury and Finance (Senator Seselja) the bill was read a third time.

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

Order of the day read for the adjourned debate on the motion of the Minister for Finance and the Public Service (Senator Cormann)—That this bill be now read a second time—and on the amendment moved by Senator Farrell (see entry no. 5).

Debate resumed.

At 2 pm: Debate was interrupted while Senator Stoker was speaking.

22 Questions

Questions without notice were answered.

23 Indigenous Advancement Strategy—Grant applications—Order for production of documents—Explanation and documents

Pursuant to order (see entry no. 26, 13 November 2018), Senator McCarthy asked the Minister for Indigenous Affairs (Senator Scullion) for an explanation of the minister’s failure to respond to an order for the production of documents concerning grant applications under the Indigenous Advancement Strategy.
The Minister for Indigenous Affairs (Senator Scullion) provided an explanation.
Senator McCarthy moved—That the Senate take note of the explanation.
Debate ensued.

Documents: The Minister for Indigenous Affairs (Senator Scullion) tabled the following documents:
Indigenous Advancement Strategy—Grant applications—Order of 13 November 2018—Letter to the President of the Senate from the Minister for Indigenous Affairs (Senator Scullion), dated 15 November 2018, responding to the order, and attachments.

Question put and passed.

24 Motions to take note of answers
Senator Polley moved—That the Senate take note of the answers given by ministers to questions without notice asked by Opposition senators today.
Debate ensued.
Question put and passed.
The Leader of the Australian Greens (Senator Di Natale) moved—That the Senate take note of the answer given by the Minister for Finance and the Public Service (Senator Cormann) to a question without notice asked by Senator Di Natale today relating to the Muslim community.
Leave refused: After the time for debate on motions to take note of answers reached the limit of 30 minutes, the Leader of Pauline Hanson’s One Nation (Senator Hanson) sought leave to speak to the motion. An objection was raised and leave was not granted.
Question put and passed.

25 Committee reports and government responses—Tabling and consideration
Senator Williams, at the request of the Chair of the Community Affairs Legislation Committee (Senator Gichuhi), tabled the following document:

Pursuant to order, the Chair of the Economics References Committee (Senator Ketter) tabled the following report and documents:
Economics References Committee—Regulatory framework for the protection of consumers in the banking, insurance and financial services sector—Report, dated November 2018, Hansard record of proceedings, documents presented to the committee, additional information and submissions.

Senator Ketter moved—That the Senate take note of the report.
Debate adjourned till the next day of sitting, Senator Ketter in continuation.
Senator Molan, on behalf of the Joint Standing Committee on Foreign Affairs, Defence and Trade, tabled the following report:


Senator Molan moved—that the Senate take note of the report.

On the motion of Senator Urquhart the debate was adjourned till the next day of sitting.

The Minister for Regional Services, Sport, Local Government and Decentralisation (Senator McKenzie) tabled the following document:


The Minister for Regional Services, Sport, Local Government and Decentralisation (Senator McKenzie) tabled the following document:


Senator Leyonhjelm moved—that the Senate take note of the document.

Question put and passed.

The Minister for Regional Services, Sport, Local Government and Decentralisation (Senator McKenzie) tabled the following document:


Senator Leyonhjelm moved—that the Senate take note of the document.

Debate adjourned till the next day of sitting, Senator Leyonhjelm in continuation.

26 Australian Research Council—Incoming ministers brief—Order for production of documents—Document

The Minister for Regional Services, Sport, Local Government and Decentralisation (Senator McKenzie) tabled the following document:

Australian Research Council—Incoming ministers brief—Order of 13 November 2018—Letter to the President of the Senate from the Minister for Regional Services, Sport, Local Government and Decentralisation (Senator McKenzie) responding to the order and raising a public interest immunity claim.

Senator Carr, by leave, moved—that the Senate take note of the document.

Question put and passed.
27 Australian and Children’s Screen Content Review—Order for production of documents—Document
The Minister for Regional Services, Sport, Local Government and Decentralisation (Senator McKenzie) tabled the following document:

Australian and Children’s Screen Content Review—Order of 13 November 2018—Letter to the President of the Senate from the Minister for Communications and the Arts (Senator Fifield), dated 14 November 2018, responding to the order and raising a public interest immunity claim.

Senator Urquhart, by leave, moved—That the Senate take note of the document.
Debate adjourned till the next day of sitting, Senator Urquhart in continuation.

28 Funding for Research into Cancers with Low Survival Rates—Select Committee—Community Affairs References Committee—Government responses—Order for production of documents—Documents
The Minister for Regional Services, Sport, Local Government and Decentralisation (Senator McKenzie) tabled the following documents:

Funding for Research into Cancers with Low Survival Rates—Select Committee—Community Affairs References Committee—Government responses—Order of 13 November 2018—Letter to the President of the Senate from the Minister for Indigenous Affairs (Senator Scullion), dated 14 November 2018, responding to the order, and attachment as follows—

Funding for Research into Cancers with Low Survival Rates—Select Committee—Report—Government response.

Senator Urquhart, by leave, moved—That the Senate take note of the documents.
Debate adjourned till the next day of sitting, Senator Urquhart in continuation.

29 Questions without notice—Answers—Documents
The Minister for Regional Services, Sport, Local Government and Decentralisation (Senator McKenzie) tabled the following documents:

Letters to the President of the Senate from the Minister for Finance and the Public Service (Senator Cormann), dated 15 November 2018, providing information concerning questions without notice asked on 14 November 2018, as follows—

Employment of the Prime Minister—Director of the New Zealand Office of Tourism and Sport—Question without notice asked by Senator Bilyk.

Provision of housing in Borroloola—Question without notice asked by Senator McCarthy.

30 Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017
Order of the day read for the adjourned debate on the motion of the Minister for Finance and the Public Service (Senator Cormann)—That this bill be now read a second time—and on the amendment moved by Senator Farrell (see entry no. 5).

Debate resumed.

Explanatory memorandum: Senator Cormann tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Question—That the amendment be agreed to—put.
The Senate divided—

AYES, 28

Senators—

Brown  Griff  McKim  Smith, David
Carr  Hanson-Young  O’Neill  Steele-John
Collins  Hinch  Patrick  Storer
Di Natale  Ketter*  Pratt  Urquhart
Farrell  Lines  Rice  Waters
Faruqi  McAllister  Siewert  Watt
Gallacher  McCarthy  Singh  Whish-Wilson

NOES, 23

Senators—

Brockman  Fierravanti-Wells  Leyonhjelm  Ryan
Bushby  Fifield  McGrath  Seselja
Colbeck  Georgiou  McKenzie  Smith, Dean*
Cormann  Gichuhi  Molan  Stoker
Duniam  Hanson  O’Sullivan  Williams
Fawcett  Hume  Reynolds

* Tellers

Question agreed to.

Senator Waters moved the following amendment:

Omit all words after “That”, substitute “the bill be withdrawn, because the Senate is of the opinion that:

(a) the bill ignores corporate influence over politics and disproportionately targets the not-for-profit sector, which is an attack on public interest advocacy;

(b) the bill is likely to discourage charities from engaging in issue-based advocacy in furtherance of their charitable purposes, because of uncertainty in the definition of ‘electoral matter’;

(c) there is no public interest benefit to the proposed added layer of regulation for the charitable sector, because the existing regulatory framework for not-for-profit organisations under the Charities Act 2013 is sufficient to prevent charitable organisations from engaging in partisan political activities; and

(d) the Commonwealth Electoral Act 1918 should be amended to introduce caps on campaign expenditure by political parties, candidates and associated entities, which are indexed to inflation and subject to periodic review”.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 9

Senators—

Di Natale  McKim  Siewert*  Waters
Faruqi  Rice  Steele-John  Whish-Wilson
Hanson-Young
Question negatived.
Main question, as amended, put and passed.
Bill read a second time.
The Senate resolved itself into committee for the consideration of the bill.

In the committee

Senator Cormann moved the following amendments together by leave:

No. 1—Clause 2, page 2 (table items 2 and 3), omit the table items, substitute:

2. Schedule 1, Part 1, The day after this Act receives the Royal
   Assent.

3. Schedule 1, Part 2, A single day to be fixed by Proclamation.
   However, if the provisions do not commence
   within the period of 6 months beginning on
   the day this Act receives the Royal Assent,
   they commence on the day after the end of
   that period.

No. 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”.

No. 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 has the meaning given by section 4AA.
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.

Note: Communications whose dominant purpose is to educate their audience on a public policy issue, or to raise awareness of, or encourage debate on, a public policy issue, are not for the dominant purpose of influencing the way electors vote in an election (as there can be only one dominant purpose for any given communication).

(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, to the extent that the matter relates to a federal election;

is presumed to be the purpose referred to in subsection (1), unless the contrary is proved.
Matters to be taken into account

(4) Without limiting subsection (1), the following matters must be taken into account in determining the dominant purpose of the communication or intended communication of matter:

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

Exceptions

(5) Despite subsections (1) and (3), matter is not electoral matter if the communication or intended communication of the matter:

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

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

1F Section 5 (definition of electoral matters)

Repeal the definition.

1G Paragraph 7(1)(b)

Omit “electoral matters” (wherever occurring), substitute “election and ballot matters”.
1H Paragraph 7(1)(c)
Omit “electoral and Parliamentary matters”, substitute “election and ballot matters, and Parliamentary matters.”.

1J Paragraphs 7(1)(d) and (e)
Omit “electoral matters”, substitute “election and ballot matters”.

1K Paragraphs 91A(1A)(aa) and (2)(aa)
Omit “electoral matters”, substitute “election and ballot matters”.

1L Subsection 120(2) (at the end of the table)
Add:
14 A decision under section 287S or 302H (anti-avoidance) to give a notice to a person or entity.

1M Section 125
Omit “The Electoral Commission shall”, substitute “(1) The Electoral Commissioner must”.

1N At the end of section 125
Add:
(2) The Register may be included on the Transparency Register under section 287N.

1P Paragraphs 189B(4)(b) and (5)(b)
Omit “electoral matters”, substitute “election and ballot matters”.

1Q Subsection 193(4) (definition of Commonwealth country)
Omit “political entity” (wherever occurring), substitute “body politic”.

No. 4—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).

No. 5—Schedule 1, item 4, page 4 (line 12), omit “$13,500”, substitute “$13,800”.

No. 6—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.

No. 7—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).

No. 8—Schedule 1, item 7, page 5 (lines 9 and 10), omit “political campaigners and third party campaigners”, substitute “entities”.

No. 9—Schedule 1, item 7, page 5 (lines 13 to 17), omit the definition of political entity in subsection 287(1).

No. 10—Schedule 1, item 7, page 5 (lines 18 to 23), omit the definition of political expenditure in subsection 287(1).

No. 11—Schedule 1, item 7, page 5 (line 24) to page 6 (line 12), omit the definition of political purpose in subsection 287(1).
No. 12—Schedule 1, item 7, page 6 (lines 13 and 14), omit the definition of *Register of Associated Entities* in subsection 287(1).

No. 13—Schedule 1, item 7, page 6 (lines 15 and 16), omit the definition of *Register of Political Campaigners* in subsection 287(1).

No. 14—Schedule 1, item 7, page 6 (lines 17 and 18), omit the definition of *Register of Third Party Campaigners* in subsection 287(1).

No. 15—Schedule 1, item 7, page 6 (lines 19 to 24), omit the definition of *senior staff* in subsection 287(1).

No. 16—Schedule 1, item 7, page 6 (lines 25 to 30), omit the definition of *third party campaigner* in subsection 287(1), substitute:

> 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.

*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.

No. 17—Schedule 1, page 6 (after line 30), after item 7, insert:

**7A Subsection 287(7)**

Repeal the subsection.

No. 18—Schedule 1, item 8, page 7 (line 1), omit “*third party campaigning*”, substitute “*third parties*”.

No. 19—Schedule 1, item 8, page 7 (line 2), omit “*third party campaigner*”, substitute “*third party*”.

No. 20—Schedule 1, item 8, page 7 (line 4), omit “*third party campaigner*”, substitute “*third party*”.

No. 21—Schedule 1, item 8, page 7 (lines 5 and 6), omit “political campaigners and third party campaigners”, substitute “entities”. 

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*Register of Associated Entities* in subsection 287(1).

*Register of Political Campaigners* in subsection 287(1).

*Register of Third Party Campaigners* in subsection 287(1).

*senior staff* in subsection 287(1).

*third party campaigner* in subsection 287(1), substitute:

> 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.

*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.

No. 17—Schedule 1, page 6 (after line 30), after item 7, insert:

**7A Subsection 287(7)**

Repeal the subsection.

No. 18—Schedule 1, item 8, page 7 (line 1), omit “*third party campaigning*”, substitute “*third parties*”.

No. 19—Schedule 1, item 8, page 7 (line 2), omit “*third party campaigner*”, substitute “*third party*”.

No. 20—Schedule 1, item 8, page 7 (line 4), omit “*third party campaigner*”, substitute “*third party*”.

No. 21—Schedule 1, item 8, page 7 (lines 5 and 6), omit “political campaigners and third party campaigners”, substitute “entities”. 

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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.

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;
(iv) a New Zealand citizen who holds a Subclass 444 (Special Category) visa under the Migration Act 1958 (or if that Subclass ceases to exist, the kind of visa that replaces that Subclass).

287AB Meaning of electoral expenditure

Dominant purpose of creating or communicating electoral matter

(1) Electoral expenditure means expenditure incurred for the dominant purpose of creating or communicating electoral matter, except to the extent that:
(a) the expenditure is, or is to be, paid or reimbursed by the Commonwealth (except under Division 3 (election funding)) to or in relation to a person who is or was a member of the House of Representatives, a Senator or a Minister, because that person is or was such a member, Senator or Minister; or
(b) the expenditure is incurred by a person or entity (the service provider):

(i) in providing a communication service or communication platform that is used to create or communicate electoral matter; or

(ii) in providing a service for another person or entity that engaged the service provider, on a commercial basis, to create or communicate electoral matter.

Note 1: For example, expenditure incurred in relation to the communication of electoral matter for which particulars are required to be notified under section 321D is electoral expenditure.

Note 2: Expenditure by a person who creates matter that is covered by an exception under subsection 4AA(5) is not electoral expenditure. However, as each creation or communication of matter is treated as separate matter under subsection 4AA(2), expenditure incurred by another person who communicates the same matter for the dominant purpose referred to in subsection 4AA(1) may be electoral expenditure.

Note 3: For deemed electoral expenditure for political campaigners, see section 287J.

(2) Expenditure may be electoral expenditure whether the expenditure is incurred for the dominant purpose of creating or communicating particular electoral matter or electoral matter generally.

Expenditure in relation to an election

(3) In addition, any expenditure incurred by or with the authority of a political entity, a member of the House of Representatives or a Senator in relation to an election is electoral expenditure, except to the extent that the expenditure is, or is to be, paid or reimbursed by the Commonwealth (except under Division 3 (election funding)) to or in relation to a person who is or was a member of the House of Representatives, a Senator or a Minister, because that person is or was such a member, Senator or Minister.

287AC Implied freedom of political communication

This Part does not apply to a person or entity to the extent that any constitutional doctrine of implied freedom of political communication would be infringed if this Part were to apply to the person or entity.

No. 24—Schedule 1, item 10, page 9 (line 1), omit “Political campaigners and third party campaigners”, substitute “Entities”.

No. 25—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
(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.

No. 26—Schedule 1, item 10, page 9 (lines 14 and 15), omit “third party campaigners”, substitute “third parties”.

No. 27—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”.

No. 28—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.

No. 29—Schedule 1, item 11, page 10 (line 10), after “in elections”, insert “, and to provide for the Transparency Register,”.

No. 30—Schedule 1, item 11, page 10 (line 19), omit “, third party campaigner”.

No. 31—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:

(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).

No. 32—Schedule 1, item 11, page 11 (line 7), omit “28 days”, substitute “90 days”.

No. 33—Schedule 1, item 11, page 11 (lines 10 and 11), omit “political expenditure”, substitute “electoral expenditure”.

No. 34—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.

No. 35—Schedule 1, item 11, page 11 (lines 16 to 23), omit subsection 287F(4).

No. 36—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”.

No. 37—Schedule 1, item 11, page 12 (lines 32 and 33), omit “(see also subsection (5))”.

No. 38—Schedule 1, item 11, page 13 (line 6), omit “28 days”, substitute “90 days”.

No. 39—Schedule 1, item 11, page 13 (line 9), omit “political expenditure”, substitute “electoral expenditure”.

No. 40—Schedule 1, item 11, page 13 (line 12), omit “The financial controller”, substitute “A member, agent or officer”.

No. 41—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.

No. 42—Schedule 1, item 11, page 13 (line 15) to page 14 (line 19), omit subsections 287H(4) and (5).

No. 43—Schedule 1, item 11, page 14 (line 23), omit “political expenditure”, substitute “electoral expenditure”.

No. 44—Schedule 1, item 11, page 14 (lines 25 and 26), omit “political expenditure”, substitute “electoral expenditure”.

No. 45—Schedule 1, item 11, page 14 (line 27), omit “political expenditure”, substitute “electoral expenditure”.

No. 46—Schedule 1, item 11, page 14 (line 29), omit “or third party campaigner”.

No. 47—Schedule 1, item 11, page 14 (line 34), omit “or 287G and the 28-day period”, substitute “and the 90-day period”.

No. 129—15 November 2018
No. 48—Schedule 1, item 11, page 15 (line 2), omit “political expenditure”, substitute “electoral expenditure”.

No. 49—Schedule 1, item 11, page 15 (lines 3 and 4), omit “or third party campaigner”.

No. 50—Schedule 1, item 11, page 15 (line 9), omit paragraph 287K(1)(b).

No. 51—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.

No. 52—Schedule 1, item 11, page 15 (lines 28 and 29), omit “(subject to paragraph (1)(b))”.

No. 53—Schedule 1, item 11, page 15 (line 31), omit “any of sections 287F to”, substitute “section 287F or”.

No. 54—Schedule 1, item 11, page 16 (lines 1 to 7), omit subsection 287L(3).

No. 55—Schedule 1, item 11, page 16 (line 14), omit “, the third party campaigner”.

No. 56—Schedule 1, item 11, page 16 (line 20), omit “, “third party campaigner””.

No. 57—Schedule 1, item 11, page 16 (lines 23 and 24), omit “, “third party campaigner””.

No. 58—Schedule 1, item 11, page 16 (line 34), omit “, third party campaigner”.

No. 59—Schedule 1, item 11, page 17 (lines 2 and 3), omit “, a third party campaigner”.

No. 60—Schedule 1, item 11, page 17 (lines 7 and 8), omit “, a third party campaigner”.

No. 61—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”.

No. 62—Schedule 1, item 11, page 17 (line 12) to page 18 (line 31), omit section 287N, substitute:

287N Transparency Register

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

Content of Transparency Register

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

(a) the name of:

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

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

(iii) each person or entity that has provided a return under section 314AEB (annual returns by third parties) for that or any of the previous 3 financial years; and

(iv) each political entity;
(b) for political campaigners and associated entities—the name of the financial controller of the person or entity;
(c) for associated entities—the name of any registered political parties with which the person or entity is associated;
(d) any determination, notice or return published under section 320;
(e) any enforceable undertaking published under subsection 384A(2A).

Note: The Transparency Register may include the Register of Political Parties (see section 125).

(3) The Electoral Commissioner must keep the Transparency Register up-to-date.

(4) Subsection (3) does not prevent historical data from being included in the Transparency Register.

No. 63—Schedule 1, item 11, page 19 (line 2), omit “register”, substitute “Transparency Register”.

No. 64—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.

No. 65—Schedule 1, item 11, page 19 (line 9), omit “28 days”, substitute “90 days”.

No. 66—Schedule 1, item 11, page 19 (lines 11 and 12), omit the note.

No. 67—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.

No. 68—Schedule 1, item 11, page 19 (line 14), omit “Registers”, substitute “Transparency Register”.

No. 69—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”.

No. 70—Schedule 1, item 11, page 19 (line 18), omit “Each of the Registers”, substitute “The Transparency Register”.

No. 71—Schedule 1, item 11, page 19 (line 19), omit “Registers”, substitute “Transparency Register”.

No. 72—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”.
Subdivision D—Anti-avoidance

287S Anti-avoidance

(1) The Electoral Commissioner may give a person or entity (the *relevant person*) a written notice if:

(a) one or more persons or entities (whether or not including the relevant person) enter into, begin to carry out or carry out a scheme; and

(b) there are reasonable grounds to conclude that the person or entity, or any of the persons or entities, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the requirement to register the relevant person under section 287F or 287H (requirement to register as a political campaigner or associated entity) for a financial year; and

(c) as a result of the scheme or part of the scheme:

(i) the amount of electoral expenditure incurred by or with the authority of the relevant person during the financial year is reduced below the amount specified in paragraph 287F(1)(a) or subparagraph 287F(1)(b)(i); or

(ii) the amount of revenue of the relevant person during the previous financial year is increased; or

(iii) the amount of electoral expenditure incurred by or with the authority of the relevant person during the previous financial year is reduced; or

(iv) the relevant person is controlled by another person or entity that is not a registered political party but the other person or entity is controlled by, or controls, a registered political party; or

(v) the relevant person operates wholly, or to a significant extent, for the benefit of another person or entity that is not a registered political party but the other person or entity is controlled by, or controls, a registered political party; and

(d) as a result of the scheme or part, the relevant person is not required to be registered under section 287F or 287H for the financial year.

Note 1: A decision to give a notice is a reviewable decision (see section 120).
Note 2: For the definition of *scheme*, see subsection 287(1).

(2) The notice must specify that, for the purposes of this Act, the relevant person is taken, from the day specified in the notice, to be required to be registered for the financial year as a political campaigner or associated entity (as the case requires), and the notice has effect accordingly.

(3) The day specified in the notice must not be earlier than the day the notice is given to the relevant person.
(4) This section applies whether or not the scheme is entered into, begun to be carried out or carried out:
   (a) in Australia; or
   (b) outside Australia; or
   (c) partly in Australia and partly outside Australia.

No. 74—Schedule 1, page 19 (before line 23), before item 12, insert:

11A Section 308

Repeal the section.

No. 75—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.

No. 76—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).

No. 77—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.

Transitional registration of associated entities

(3) For the purposes of the Commonwealth Electoral Act 1918, an entity in relation to which a return is provided under section 314AEA (annual returns by associated entities) of that Act for the 2017-2018 financial year is taken, on and after the commencement of this item, to be registered as an associated entity under section 287L of that Act for the 2018-2019 financial year (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.

No. 78—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).
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.

No. 79—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.

No. 80—Schedule 1, page 22 (after line 27), after item 18, insert:

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

Repeal the definition.

18B Subsection 287(1)

Insert:

_State or Territory electoral law_ means a law of a State or Territory that deals with electoral matters (within the ordinary meaning of the expression).

_State or Territory electoral purpose_ means a purpose relating to a State, Territory or local government election (and, to avoid doubt, does not include the purpose of incurring electoral expenditure or creating or communicating electoral matter).

18C Section 287B

Repeal the section.
No. 81—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.

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.

No. 82—Schedule 1, item 26, page 25 (lines 8 and 9), omit “, third party campaigners”.

No. 83—Schedule 1, item 26, page 25 (line 10), omit “, third party campaigner”.

No. 84—Schedule 1, item 26, page 25 (line 13), omit “, third party campaigner”.

No. 85—Schedule 1, item 26, page 25 (line 16), omit “, third party campaigner”.

No. 86—Schedule 1, item 26, page 26 (line 4), omit “, third party campaigner”.

No. 87—Schedule 1, item 26, page 26 (lines 24 and 25), omit “, third party campaigner”.

No. 88—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.”.

No. 89—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).”.

No. 90—Schedule 1, item 27, page 27 (line 24), omit “the election funding”, substitute “election funding of more than $10,000”.

No. 91—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
   (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.

No. 92—Schedule 1, item 27, page 28 (line 23), omit “the election funding”, substitute “election funding of more than $10,000”.

No. 93—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.

No. 94—Schedule 1, item 27, page 29 (line 10), omit “the election funding”, substitute “election funding of more than $10,000”.
No. 95—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:
      (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 B—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.

No. 96—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 party; 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.

No. 97—Schedule 1, item 27, page 29 (line 26), at the end of the heading to Subdivision C, add “of more than $10,000”.

No. 98—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”.

No. 99—Schedule 1, item 27, page 29 (line 28), omit “an amount of election funding”, substitute “election funding of more than $10,000”.

No. 100—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 party; or

(ab) for any other registered political party—the agent of the registered political party; or

No. 101—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.

No. 102—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.

No. 103—Schedule 1, item 27, page 30 (lines 11 to 15), omit subsection 298(1), substitute:

(1) A claim made by the agent of a registered political party must specify, in relation to all elections held on the same day, electoral expenditure covered by subsection (1A) for which election funding is sought.

(1A) The electoral expenditure must have been incurred, in relation to the elections, by:
   (a) for a claim made by the agent of a registered political party under paragraph 297(1)(a) or (ab):
      (i) the party; or
      (ii) a candidate endorsed by the party; or
   (b) for a claim made by the agent of a federal party under paragraph 297(1)(aa) in relation to a State branch of the federal party:
      (i) the State branch; or
(ii) a candidate endorsed by the State branch or by the federal party; or
(iii) the federal party.

No. 104—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).

No. 105—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
(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).

No. 106—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.

No. 107—Schedule 1, item 33, page 38 (line 1), omit the heading to section 302B, substitute:

**302B Definitions**

No. 108—Schedule 1, item 33, page 38 (line 2), omit “(1) In”, substitute “In”.
Giving, receiving or retaining gifts

(1) Despite any State or Territory electoral law, 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 (a gift recipient); or
(b) if the person or entity is a gift recipient—receive or retain a gift; or
(c) on behalf of a gift recipient, receive or retain a gift;
if:
(d) this Division does not prohibit the giving, receiving or retaining of the gift; and
(e) the gift, or part of the gift, is required to be, or may be, used for the purposes of incurring electoral expenditure, or creating or communicating electoral matter, in accordance with subsection (2).

(2) A gift, or part of a gift, is required to be, or may be, used for a purpose of incurring electoral expenditure, or creating or communicating electoral matter, if:
(a) any terms set by the person or entity providing the gift explicitly require or allow the gift or part to be used for that purpose (whether or not those terms are enforceable); or
(b) the person or entity providing the gift does not set terms relating to the purpose for which the gift or part can be used.

Gifts made or retained for State or Territory electoral purposes

(3) Without limiting when subsection (1) does not apply, that subsection does not apply in relation to all or part of a gift if:
(a) any terms set by the person or entity providing the gift explicitly require the gift or part to be used only for a State or Territory electoral purpose (whether or not those terms are enforceable); or
(b) either:
   (i) the effect of a State or Territory electoral law is to require the gift or part to be kept or identified separately (or to require the gift or part to be kept or identified separately in order to be entitled to a benefit under that law); or
   (ii) the gift recipient keeps or identifies the gift or part separately;
in order to be used only for a State or Territory electoral purpose.

Note: For the purposes of subparagraph (3)(b)(ii), a gift recipient may identify the electoral purpose for which a gift is to be used at any time prior to using that gift. A person who gives, receives or retains a gift that is used for a State or Territory electoral purpose in contravention of a State or Territory electoral law may be liable to a penalty under the State or Territory electoral law.
Example: A gift is given without expressing an intended purpose, and ultimately is used for a State or Territory electoral purpose. The giving, receipt, retention and use of that gift must comply with the State or Territory electoral law.

**Using gifts**

(4) Despite any State or Territory electoral law, a gift recipient may use, or authorise the use of, a gift for the purposes of incurring electoral expenditure, or creating or communicating electoral matter, if this Division does not prohibit the use of the gift.

(5) Without limiting when subsection (4) does not apply, that subsection does not apply in relation to all or part of a gift if the effect of the State or Territory electoral law is to require the gift or part to be kept or identified separately (or to require the gift or part to be kept or identified separately in order to be entitled to a benefit under that law) in order to be used only for a State or Territory electoral purpose.

**When gifts are kept or identified separately**

(6) Without limiting paragraph (3)(b) or subsection (5), an amount that is all or part of a gift of money is kept or identified separately in order to be used only for a State or Territory electoral purpose if:

(a) the amount is kept in an account where:

(i) the only amounts deposited into the account are amounts to be used only for a State or Territory electoral purpose;

and

(ii) the only amounts paid out of the account are amounts incurred for a State or Territory electoral purpose; or

(b) the amount is designated as an amount that must be used only for a State or Territory electoral purpose.

No. 111—Schedule 1, item 33, page 39 (line 4), at the end of the heading to section 302D, add “by foreign donors”.

No. 112—Schedule 1, item 33, page 39 (line 13), omit “not an allowable donor”, substitute “a foreign donor”.

No. 113—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.

No. 114—Schedule 1, item 33, page 39 (lines 26 to 28), omit note 1.

No. 115—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).

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).
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No. 120—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:
   (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).

No. 121—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”.

No. 122—Schedule 1, item 33, page 41 (line 26), omit the penalty, substitute:

Penalty: 50 penalty units.
No. 123—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”.

No. 124—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.

No. 125—Schedule 1, item 33, page 42 (line 3), omit “Section 93”, substitute “Subsection 93(2)”.

No. 126—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 by a foreign donor; and
(c) the relevant person knows that the donor is a foreign donor; and
(d) the amount or value of the gift is at least $100; and
(e) 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
(f) 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 section 302D, 302E or 302F prohibiting, in particular circumstances:

(i) a gift being made to or for the benefit of a political entity, political campaigner or third party (whether or not the relevant person) by or on behalf of a foreign donor; or

(ii) a gift made by or on behalf of a foreign donor being received, retained or used by or on behalf of a political entity, political campaigner or third party (whether or not the relevant person); 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 or for the benefit of 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 or for the benefit of the political entity, political campaigner or third party by or on behalf of 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, receipt, retention or use 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).

(2) The notice must:
(a) specify the conduct constituting the scheme; and
(b) require the relevant person:
   (i) not to enter into the scheme; or
   (ii) not to begin to carry out the scheme; or
   (iii) not to continue to carry out the scheme.

Offence

(3) A person or entity commits an offence if:
(a) the person or entity is given a notice under subsection (1); and
(b) the person or entity engages in conduct; and
(c) the conduct contravenes the notice.

Penalty: 200 penalty units.

(4) Section 15.4 of the Criminal Code (extended geographical jurisdiction—category D) applies to an offence against subsection (3).

Civil penalty

(5) A person or entity is liable to a civil penalty if:
(a) the person or entity is given a notice under subsection (1); and
(b) the person or entity engages in conduct; and
(c) the conduct contravenes the notice.

Civil penalty:
The higher of the following amounts:
(a) 200 penalty units;
(b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of the gift—3 times that amount or value.

(6) Subsection (5) applies:
(a) whether or not the conduct constituting the contravention of subsection (1) occurs in Australia; and
(b) whether or not a result of the conduct constituting the alleged contravention of subsection (1) occurs in Australia.

No. 127—Schedule 1, item 33, page 49 (line 6), omit “Exceptions and other”, substitute “Other”.
No. 129—15 November 2018

No. 128—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:

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If the donor is:</td>
<td>then the appropriate donor information is:</td>
</tr>
<tr>
<td>1</td>
<td>an individual</td>
<td>(a) the particulars relating to the individual set out in a Roll; or (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 (c) a copy of a visa evidencing the individual’s permanent residency in Australia; or (d) a copy of the individual’s Subclass 444 (Special Category) visa under the <em>Migration Act 1958</em> (or if that Subclass ceases to exist, the kind of visa that replaces that visa); or (e) any information or a copy of any document prescribed by the regulations for the purposes of this table item.</td>
</tr>
<tr>
<td>2</td>
<td>an incorporated entity</td>
<td>(a) a copy of the certificate of the entity’s incorporation in Australia; or (b) particulars of the entity’s registration with the Australian Securities Investment Commission evidencing the entity’s incorporation in Australia; or (c) any information or a copy of any document prescribed by the regulations for the purposes of this table item.</td>
</tr>
<tr>
<td>3</td>
<td>an entity (whether or not incorporated)</td>
<td>(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: (i) decisions setting the operational policies of the entity; or (ii) decisions appointing officers of the entity, or granting powers to such officers to carry on the entity’s activities; or (iii) directions to persons appointed to carry out the entity’s activities as to how to perform functions; or (iv) decisions on matters of finance, such as how profits are to be used; or</td>
</tr>
</tbody>
</table>
### Appropriate donor information

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 1 If the donor is:</th>
<th>Column 2 then the appropriate donor information is:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(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:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(i) documents recording separately the number of staff or members of the entity in Australia, and overseas, carrying on activities for the entity; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(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</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) for an entity that is a trust or foundation—a trust deed or other governing document evidencing:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(i) the governing law of the trust or foundation as the law of an Australian jurisdiction; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) that the head office is in Australia, or that the principal place of activity is, or is in, Australia; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) any information or a copy of any document prescribed by the regulations for the purposes of this table item.</td>
</tr>
</tbody>
</table>

**Note 1:** 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)).

**Note 2:** In 2018, trust deeds or other governing documents of entities registered under the *Australian Charities and Not-for-profits Commission Act 2012* were generally available on the Australian Charities and Not-for-profits Register as a governing document (see https://www.acnc.gov.au).

(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.

No. 129—Schedule 1, item 33, page 50 (lines 23 and 24), omit “302L (except section 302J)”, substitute “302F”.

No. 130—Schedule 1, item 34, page 51 (line 10), omit “during the disclosure period for the election”.

No. 131—Schedule 1, item 34, page 51 (line 20), omit “Commission”, substitute “Commissioner, on the Transparency Register,”.

No. 132—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”.

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No. 129—15 November 2018
No. 133—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.

No. 134—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”.

No. 135—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.

No. 136—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.

No. 137—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

No. 138—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.

No. 139—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

52 Paragraph 305A(1A)(c)
Repeal the paragraph, substitute:
(c) at the time the person or entity makes the gift or gifts, the person
    or entity is not a political entity or associated entity.

54 Subsection 305A(2)
Omit “The person must”, substitute “The person or entity must, in accordance
with this section.”.

54A Paragraph 305A(2)(a)
Omit “made during the disclosure period”.

55 Paragraph 305A(2)(b)
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.

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).

No. 145—Schedule 1, item 59, page 54 (lines 18 and 19), omit the item, substitute:

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.

No. 146—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.

No. 147—Schedule 1, item 63, page 55 (line 21), after “person”, insert “or entity”.

No. 148—Schedule 1, page 55 (after line 28), after item 63, insert:

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

After “person”, insert “or entity”.

No. 149—Schedule 1, item 64, page 55 (after line 32), at the end of section 305B, add:

(6) In addition, this section does not apply in relation to a gift if:
   (a) the gift was received by, or on behalf of, a person or organisation that was registered under the Australian Charities and Not-for-profits Commission Act 2012; and
(b) no part of the gift was used during the financial year by the
person or organisation:
   (i) to enable the person or organisation to incur electoral
   expenditure, or create or communicate electoral matter; or
   (ii) to reimburse the person or organisation for incurring
   electoral expenditure, or creating or communicating
   electoral matter.

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

No. 150—Schedule 1, item 70, page 57 (lines 7 and 8), omit the item, substitute:

70 Subsections 306A(4) and (5)

Repeal the subsections.

No. 151—Schedule 1, item 73, page 57 (line 29), omit “gift; and”, substitute
“gift.”.

No. 152—Schedule 1, item 73, page 57 (line 30) to page 58 (line 3), omit
paragraph 306B(1)(c).

No. 153—Schedule 1, item 74, page 59 (line 2), omit “Commission”, substitute
“Commissioner, on the Transparency Register,”.

No. 154—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.

No. 155—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.

No. 156—Schedule 1, item 81, page 59 (line 24) to page 60 (line 10), omit the
item, substitute:

81 At the end of section 309

Add:

(4) A return provided under subsection (2) or (3) must also include details
of any discretionary benefits (however described) received by, or on
behalf of, the person or any of the members of the group from the
Commonwealth, a State or a Territory during the period of 12 months
before polling day in the election.
No. 157—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.

No. 158—Schedule 1, item 84, page 60 (line 22), omit “, and the senior staff of,”.

No. 159—Schedule 1, item 84, page 60 (line 23), omit “Third party campaigners”, substitute “Third parties”.

No. 160—Schedule 1, item 84, page 60 (line 24), omit “political expenditure”, substitute “electoral expenditure”.

No. 161—Schedule 1, item 84, page 60 (line 25), omit “, and the senior staff of, the campaigners”, substitute “the third parties”.

No. 162—Schedule 1, item 84, page 60 (line 28), omit “Commission”, substitute “Commissioner, on the Transparency Register,”.

No. 163—Schedule 1, item 86, page 61 (lines 4 and 5), omit “, third party campaigner or associated entity”, substitute “or third party”.

No. 164—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.

No. 165—Schedule 1, item 87, page 61 (line 33), omit “314AE; and”, substitute “314AE;”.

No. 166—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

No. 167—Schedule 1, item 87, page 62 (lines 1 to 10), omit paragraph 314AB(2)(b), substitute:

(b) include details of any discretionary benefits (however described) received by, or on behalf of, the party, branch or campaigner from the Commonwealth, a State or a Territory during the financial year; and

No. 168—Schedule 1, item 87, page 62 (lines 11 and 12), omit paragraph 314AB(2)(c).

No. 169—Schedule 1, item 87, page 62 (lines 13 to 20), omit paragraph 314AB(2)(d).

No. 170—Schedule 1, item 87, page 62 (line 21), omit “in any case—”.

No. 171—Schedule 1, item 87, page 62 (line 22), omit the note.

No. 172—Schedule 1, item 87, page 62 (line 24), omit “political expenditure”, substitute “electoral expenditure”.
No. 173—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.

No. 174—Schedule 1, item 89, page 64 (lines 15 and 16), omit the item, substitute:

**89 Subsection 314AC(1)**

Omit “$10,000, the return must”, substitute “the disclosure threshold, the return must (subject to subsection (4))”.

No. 175—Schedule 1, page 64 (after line 23), after item 92, insert:

**92A At the end of section 314AC**

Add:

(4) This section does not apply in relation to an amount if:

(a) the amount was received by, or on behalf of, a person or organisation that was registered under the *Australian Charities and Not-for-profits Commission Act 2012*; and

(b) no part of the amount was used during the financial year by the person or organisation:

(i) to enable the person or organisation to incur electoral expenditure, or create or communicate electoral matter; or

(ii) to reimburse the person or organisation for incurring electoral expenditure, or creating or communicating electoral matter.

No. 176—Schedule 1, item 97, page 65 (lines 6 to 19), omit the item, substitute:

**97 At the end of subsection 314AEA(1)**

Add:

; and (d) in any case—details of any discretionary benefits (however described) received by, or on behalf of, the entity from the Commonwealth, a State or a Territory during the financial year.

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.

No. 177—Schedule 1, item 99, page 65 (after line 31), at the end of section 314AE, add:

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

No. 178—Schedule 1, item 100, page 66 (line 3), omit “third party campaigners”, substitute “third parties”.

No. 179—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.
No. 180—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.

No. 181—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, agents or officers (however described) of the third party who have responsibility for ensuring that the third party complies with this Division.

No. 182—Schedule 1, item 102, page 67 (line 10), omit “campaigner”, substitute “third party”.

No. 183—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.

No. 184—Schedule 1, item 104, page 67 (lines 24 and 25), omit “third party campaigners for political expenditure”, substitute “third parties for electoral expenditure”.

No. 185—Schedule 1, item 104, page 67 (lines 29 and 30), omit “third party campaigners”, substitute “third parties”.

No. 186—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
314B Relationship with State and Territory laws

Information on amounts provided or received

(1) Despite any State or Territory electoral law, a person or entity is not required to disclose under the law 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 a political entity, political campaigner, third party or associated entity (the gift recipient); and

(b) the person or entity is:

(i) the gift recipient; or

(ii) the person or entity providing the amount; or

(iii) another person acting on behalf of the person or entity referred to in subparagraph (i) or (ii); and

(c) either:

(i) the amount is required to be used by or with the authority of the gift recipient for the purposes of incurring electoral expenditure, or creating or communicating electoral matter, in accordance with subsection (2); or

(ii) the amount may be used by or with the authority of the gift recipient for the purposes of incurring electoral expenditure, or creating or communicating electoral matter, in accordance with subsection (2), and has not been used for a State or Territory electoral purpose before the end of the period during which the amount is required to be disclosed under the State or Territory electoral law.

Note: If an amount was used for State or Territory electoral purposes during the applicable State or Territory disclosure period, State or Territory electoral laws apply to the amount. A person who does not disclose, under a State or Territory electoral law, an amount used for a State or Territory electoral purpose before the end of that period may be liable to a penalty under the State or Territory electoral law.

(2) An amount is required to be, or may be, used for a purpose of incurring electoral expenditure, or creating or communicating electoral matter, 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 (whether or not those terms are enforceable); or

(b) the person or entity providing the amount does not set terms relating to the purpose for which the amount can be used.

Information on expenditure and debts

(3) Despite any State or Territory electoral law, a person or entity (the debtor) is not required to disclose under the law 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

(4) To avoid doubt, despite any State or Territory electoral law, a person is not required to disclose under the law an amount, or information relating to an amount, whether:
   (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.

(5) Despite any State or Territory electoral law, if, under this section, an amount, or information relating to an amount, is not required to be disclosed under the law, then a total amount, or information relating to a total amount, that is required to be disclosed under the law is not required to include the amount.

Amounts made or retained for State or Territory electoral purposes

(6) Without limiting when subsection (1) does not apply, that subsection does not apply in relation to an amount of a gift if:
   (a) any terms set by the person or entity providing the amount explicitly require the amount to be used only for a State or Territory electoral purpose (whether or not those terms are enforceable); or
   (b) either:
      (i) the effect of a State or Territory electoral law is to require the amount to be kept or identified separately (or to require the amount to be kept or identified separately in order to be entitled to a benefit under that law); or
      (ii) the gift recipient keeps or identifies the amount separately;
   in order to be used only for a State or Territory electoral purpose.

(7) Without limiting paragraph (6)(b), an amount is kept or identified separately in order to be used only for a State or Territory electoral purpose if:
   (a) the amount is kept in an account where:
      (i) the only amounts deposited into the account are amounts to be used only for a State or Territory electoral purpose; and
      (ii) the only amounts paid out of the account are amounts incurred for a State or Territory electoral purpose; or
   (b) the amount is designated as an amount that must be used only for a State or Territory electoral purpose.
No. 188—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:

(aaa) finding out whether:

(i) a person to whom section 305B (gifts to political parties and political campaigners) applies or may apply; or
(ii) a prescribed person; or
(iii) the agent of a registered political party, candidate or group; or
(iv) the financial controller of a political campaigner or associated entity; or
(v) a third party;

has complied with this Part, or 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 notice served personally or by post on:

No. 189—Schedule 1, item 110, page 70 (lines 14 and 15), omit “third party campaigner”, substitute “third party”.

No. 190—Schedule 1, item 110, page 70 (line 16), omit “third party campaigner”, substitute “third party”.

No. 191—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”.

No. 192—Schedule 1, item 111, page 70 (line 23), omit “campaigner or entity”, substitute “political campaigner, third party or associated entity”.

No. 193—Schedule 1, item 111, page 70 (line 25), omit “campaigner or entity”, substitute “political campaigner, third party or associated entity”.

No. 194—Schedule 1, item 113, page 71 (line 7), omit “third party campaigner”, substitute “third party”.

No. 195—Schedule 1, item 114, page 71 (line 9), omit “campaigner”, substitute “political campaigner, third party”.

No. 196—Schedule 1, item 117, page 71 (line 30), omit the penalty, substitute:

Civil penalty: 200 penalty units.

No. 197—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”.

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.

No. 198—Schedule 1, item 124, page 73 (line 9), omit “Commission must publish the following”, substitute “Commissioner must publish the following on the Transparency Register”.

No. 199—Schedule 1, item 124, page 73 (line 11) (table heading), omit “Commission”, substitute “Commissioner”.

No. 200—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).

No. 201—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
   (b) during the period specified by legislative instrument under paragraph 305A(1A)(a).
No. 202—Schedule 1, page 74 (after line 24), after item 130, insert:

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);

No. 203—Schedule 1, item 131, page 74 (line 28), after “person”, insert “or entity”.

No. 204—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;

No. 205—Schedule 1, item 131, page 75 (lines 8 and 9), omit “political expenditure”, substitute “electoral expenditure”.

No. 206—Schedule 1, item 132, page 75 (lines 12 to 15), omit the item, substitute:

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.

No. 207—Schedule 1, page 75 (after line 15), after item 132, insert:

Section 321B (definition of relevant town or city)

Repeal the definition, substitute:

relevant town or city of an entity or natural person (the authoriser) that authorised the communication of electoral matter means:

(a) if the authoriser has a principal office—the town or city in which the office is located; or
(b) if the authoriser does not have a principal office, but does have premises from which the authoriser operates—the town or city in which the premises are located; or
(c) otherwise—the town or city in which:

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

Section 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”.

No. 208—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.

No. 209—Schedule 1, page 76 (after line 11), after item 138, insert:  
138A Section 387 (heading)  
Omit “Electoral matters”, substitute “Electoral papers”.

No. 210—Schedule 1, item 139, page 76 (line 16), after “person”, insert “or entity”.

No. 211—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;

No. 212—Schedule 1, item 139, page 76 (lines 23 and 24), omit “political expenditure”, substitute “electoral expenditure”.

No. 213—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.

No. 214—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 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.

No. 215—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).

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.

Debate ensued.

Senator Waters moved the following amendment to amendment no. 3:

Amendment no. 3, item 1E, at the end of subsection 4AA(5), add:

; or (g) is or would be made for a charitable purpose.

Debate ensued.

Question—That the amendment to amendment no. 3 be agreed to—put and negatived.

Question—That the amendments be agreed to—put and passed.

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Cormann, in respect of Schedule 1, item 2; section 287G in item 11; Subdivision C and sections 302M and 302N in item 33; items 40, 75 and 76; and section 314ABA in item 87.

Question—That Schedule 1, item 2; section 287G in item 11; Subdivision C and sections 302M and 302N in item 33; items 40, 75 and 76; and section 314ABA in item 87 stand as printed—put and negatived.

Senator Waters moved the following amendments together by leave:

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

2. Schedule 1 The first 1 July that occurs on or after the day on which this Act receives the Royal Assent.

Schedule 1, page 3 (before line 7), before item 1, insert:

1AA At the end of Part I

Add:

4E Concurrent operation of State and Territory laws

This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

Schedule 1, item 4, page 4 (line 12), omit “$13,500”, substitute “$1,000”.

Schedule 1, items 5 and 6, page 4 (lines 16 to 21), omit the items, substitute:

5 Subsection 287(1) (definition of gift)

Repeal the definition, substitute:

gift means any disposition of property made by a person to another person, being a disposition made without consideration in money or money’s worth or with inadequate consideration, and includes:

(a) the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration; and
(b) an annual subscription paid to a political party, to a State branch of a political party or to a division of a State branch of a political party by a person in respect of the person’s membership of the party, branch or division; and
(c) a payment in respect of attendance at a fundraiser or similar event held by, or for the benefit of, a political entity;
but does not include:
(d) a payment under Division 3; or
(e) any visit, experience or activity provided for the purposes of a political exchange program.

Debate ensued.

Question—That the amendments be agreed to—put and negatived.

Senator Waters moved the following amendment:

Schedule 1, page 55 (after line 32), after item 64, insert:

64A  After section 305B

Insert:

305C  Real-time disclosure of gifts

(1) If a person or entity makes a gift to:
(a) a registered political party; or
(b) a State branch of a registered political party;
the person or entity must, in accordance with this section, notify the Electoral Commission of the gift.

Note 1: A contravention of this civil penalty provision may be a continuing contravention (see section 93 of the Regulatory Powers Act).

Note 2: A restricted donor is not permitted to make gifts to political entities. See section 302EA.

Note 3: Persons and entities other than restricted donors are not permitted to make gifts that exceed the disclosure threshold to political entities. See section 302EB.

Civil penalty: 60 penalty units.

(2) For the purposes of subsection (1), a person or entity who makes a gift to any person or body with the intention of benefiting a particular registered political party or a State branch of a registered political party is taken to have made that gift directly to that party or branch.

(3) The notification must be made as soon as practicable after the gift is received.

(4) The notification must set out the following:
(a) the amount or value of the gift;
(b) the date on which it was made;
(c) the name and address of the registered political party or branch.

(5) The notification must be in the approved form.

(6) The Electoral Commission must publish the notification on its website, in a readily accessible format, as soon as practicable after receiving the notification.

Debate ensued.
Question—That the amendment be agreed to—put.

The committee divided—

AYES, 10

Senators—

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NOES, 33

Senators—

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* Tellers

Question negatived.

Senator Waters moved the following amendments together by leave:

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

*restricted donor* means:

(a) a person or entity that carries on:
   (i) a property development business; or
   (ii) a mining business; or
   (iii) a business manufacturing tobacco products; or
   (iv) a business manufacturing alcoholic products; or
   (v) a business providing gambling services; or
   (vi) a business providing banking services; or
   (vii) a business manufacturing pharmaceutical products; or
   (viii) a business manufacturing defence products; or
(b) an associate (within the meaning of the *Corporations Act 2001*) of such a person or entity.

Schedule 1, item 33, page 42 (after line 5), after section 302E, insert:

**302EA. Donations to political entities by restricted donors**

(1) A person or entity (the **donor**) contravenes this subsection if:
   (a) the donor is a restricted donor; and
   (b) the donor makes a gift to, or for the benefit of, a political entity.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 302R).

**Offence**

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

Penalty: 2 years imprisonment or 800 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 or entity is liable to a civil penalty if the person or entity contravenes subsection (1).

Civil penalty:

The higher of the following:

(a) 800 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.

(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.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 10

Senators—
Faruqi  McKim  Siewert*  Waters
Griff  Patrick  Steele-John  Whish-Wilson
Hanson-Young  Rice

NOES, 33

Senators—
Bilyk  Fawcett  Lines  Seselja
Brockman  Fierravanti-Wells  McAllister  Singh
Bushby  Fifield  McCarthy  Smith, David
Carr  Gallacher  McGrath  Smith, Dean
Chisholm  Hanson  McKenzie  Stokes
Colbeck  Hinch  Molan  Urquhart
Cormann  Hume  Reynolds  Watt*
Duniam  Keneally  Ryan  Williams
Farrell

*Tellers

Question negatived.

Senator Waters moved the following amendment:

Schedule 1, item 33, page 42 (before line 6), before section 302F, insert:

302EB Donations to political entities by donors other than restricted donors

(1) A person or entity (the donor) contravenes this subsection if:

(a) the donor is not a restricted donor; and
(b) the donor makes, in a financial year, gifts totalling more than the disclosure threshold to, or for the benefit of, a political entity.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 302R).

Offence

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

Penalty: 2 years imprisonment or 800 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 or entity is liable to a civil penalty if the person or entity contravenes subsection (1).

Civil penalty:

The higher of the following:
(a) 800 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.

(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.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

**AYES, 8**

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**NOES, 38**

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*Tellers

Question negatived.

Bill, as amended, debated.

Limitation of debate: The time allotted for consideration of the bill expired.

The following amendment circulated by the Australian Conservatives was negatived:

Schedule 1, page 51 (after line 31), after item 35, insert:

**35A After section 303**

Insert:

**303A Live disclosure of gifts**

(1) This section applies if a political entity or political campaigner is required under this Division, at any time, to make a disclosure in relation to a gift received by the entity or campaigner, as the case may be.
(2) Within 14 days of receiving the gift, the recipient must:
   (a) publish on its website; and
   (b) disclose to the Electoral Commission, in the approved form;
   the following information:
   (c) the amount or value of the gift;
   (d) the identity of the person or entity who made the gift.

The following amendment circulated by Centre Alliance was negatived:
Schedule 1, page 53 (before line 11), before item 46, insert:

45AA After section 304

Insert:

304A Monthly disclosure of gifts and loans

Gifts

(1) If, in a calendar month, a political entity or a political campaigner receives one or more gifts, the recipient must notify the Electoral Commission, in the approved form, of the total value of those gifts within 10 days after the end of the calendar month.

(2) If, in a calendar month, a political entity or a political campaigner receives a gift whose value exceeds the disclosure threshold, the recipient must notify the Electoral Commission, in the approved form, of the following within 10 days after the end of the calendar month:
   (a) the value of the gift;
   (b) the name and address of the person who made the gift.

Loans

(3) If, in a calendar month, a political entity or a political campaigner receives one or more loans, the recipient must notify the Electoral Commission, in the approved form, of the total amount of those loans within 10 days after the end of the calendar month.

(4) If, in a calendar month, a political entity or a political campaigner receives a loan the amount of which exceeds the disclosure threshold, the recipient must notify the Electoral Commission, in the approved form, of the following within 10 days after the end of the calendar month:
   (a) the amount of the loan;
   (b) the name and address of the person who made the loan.

The following amendments circulated by Pauline Hanson’s One Nation were negatived:
Clause 2, page 2 (at the end of the table), add:

4. Schedule 2 The day after this Act receives the Royal Assent.

Page 79 (after line 18), at the end of the bill, add:

Schedule 2—Further amendments

Commonwealth Electoral Act 1918

1 Paragraph 126(2)(d)

Repeal the paragraph.
2 Subsection 133(2)
Repeal the subsection.

3 Part XX (heading)
Repeal the heading, substitute:

**Part XX—Election financial disclosure**

4 Division 3 of Part XX
Repeal the Division.

Bill, as amended, agreed to and reported with amendments.

Question—That the remaining stages of this bill be agreed to and this bill be now passed with amendments—put and passed.

Bill read a third time.

*General business was called on.*

31 **Australian Broadcasting Corporation Amendment (Appointment of Directors) Bill 2018**

Order of the day read for the adjourned debate on the motion of Senator Storer—That this bill be now read a second time.

Debate resumed.

Debate adjourned till the next day of sitting, Senator O’Neill in continuation.

*General business concluded.*

32 **Committee reports and government responses—Orders of the day—Consideration**

The following orders of the day relating to committee reports and government responses were considered:

- Education and Employment References Committee—Wage theft?! What wage theft?!  The exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies—Report. Motion of Senator Cameron to take note of report called on. Debate adjourned till the next day of sitting.
- Economics References Committee—Commitment to the Senate issued by the Business Council of Australia—Report. Motion of Senator Stoker to take note of report agreed to.
- Community Affairs References Committee—My Health Record system—Report. Motion of Senator Siewert to take note of report called on. Debate adjourned till the next day of sitting.
- Education and Employment References Committee—They never came home—The framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia—Report. Motion of the chair of the committee (Senator Marshall) to take note of report called on. Debate adjourned till the next day of sitting.
Future of Work and Workers—Select Committee—Hope is not a strategy – our shared responsibility for the future of work and workers—Report. Motion of Senator Watt to take note of report agreed to.

National Disability Insurance Scheme—Joint Standing Committee—Market readiness for provision of services under the NDIS—Report. Motion of Senator Urquhart to take note of report called on. Debate adjourned till the next day of sitting.

Education and Employment References Committee—Work health and safety of workers in the offshore petroleum industry—Report. Motion of Senator Urquhart to take note of report agreed to.

Economics References Committee—Future of Australia’s naval shipbuilding industry—Final report. Motion of the chair of the committee (Senator Ketter) to take note of report called on. Debate adjourned till the next day of sitting.

Rural and Regional Affairs and Transport References Committee—Increasing use of so-called Flag of Convenience shipping in Australia—Government response. Motion of Senator Sterle to take note of document agreed to.

Education and Employment References Committee—Penalty rates—Government response. Motion of Senator Cameron to take note of document called on. Debate adjourned till the next day of sitting.

33 Auditor-General’s reports—Orders of the day—Consideration
The following order of the day relating to reports of the Auditor-General was considered:

Auditor-General—Audit report no. 11 of 2018-19—Performance audit—Design and implementation of the VET Student Loans program: Department of Education and Training. Motion of Senator Ketter to take note of document agreed to.

34 Committee membership
The Deputy President (Senator Lines) informed the Senate that the President had received letters requesting changes in the membership of committees.

The Minister for Regional Services, Sport, Local Government and Decentralisation (Senator McKenzie), by leave, moved—That senators be discharged from and appointed to committees as follows:

**Fair Dinkum Power—Select Committee**—
Appointed [with effect from 28 November 2018]—
Senators Hanson-Young and Storer
Participating members: Senators Di Natale, Faruqi, McKim, Siewert, Steele-John, Waters and Whish-Wilson

**Legal and Constitutional Affairs References Committee**—
Appointed—
Substitute member: Senator Fierravanti-Wells to replace Senator Molan for the committee’s inquiry into discrimination by faith-based educational institutions
Participating member: Senator Molan.

Question put and passed.
Adjournment
The Deputy President (Senator Lines) proposed the question—That the Senate do now adjourn.
Debate ensued.
The Senate adjourned at 7.34 pm till Monday, 26 November 2018 at 10 am.

Attendance

RICHARD PYE
Clerk of the Senate

Published by authority of the Senate