The Parliament of the
Commonwealth of Australia

THE SENATE

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

(Amendments to be moved by Senator Waters, on behalf of the Australian Greens, in committee of the whole)

(1) 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.

[commencement]

(2) 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.

[relationship with State and Territory laws]

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

[disclosure threshold]

(4) 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.

[meaning of gift]

(5) 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.

[restricted donors]

(6) 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.

(7) 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.
(8) Schedule 1, items 60 to 63, page 54 (line 20) to page 55 (line 28), omit the items, substitute:

60 Section 305B (heading)
Omit “parties”, substitute “campaigners”.

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 the same political campaigner, the person or entity must, in accordance with this section, provide a return to the Electoral Commission within 20 days after the end of the financial year, covering all the gifts that the person or entity made to that 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 political campaigner is taken to have made that gift directly to that campaigner.

62 Paragraph 305B(3)(c)
Omit “registered political party or branch”, substitute “political campaigner”.

63 Subsection 305B(3A)
Repeal the subsection, substitute:

(3A) The return must also set out the relevant details of any gift received by the person or entity at any time if:
(a) the gift was used wholly or partly to make another gift (the later gift) in a financial year to the same political campaigner; and
(b) the amount or value of the later gift is more than the disclosure threshold.

[gifts to political campaigner]

(9) 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. [real-time disclosure]