THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

ELECTORAL LEGISLATION AMENDMENT (ELECTORAL FUNDING AND DISCLOSURE REFORM) BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Finance, Senator the Hon Mathias Cormann)
# Contents

GENERAL OUTLINE .................................................................................. 3  
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS ...................... 5  
NOTES ON CLAUSES .............................................................................. 9  
Schedule 1 – Electoral funding and disclosure reform ................................. 11  
Chapter 1: Interpretation and definitions .................................................... 11  
Definitions ....................................................................................... 11  
Other general interpretational provisions ................................................. 17  
Simplified outline ............................................................................. 18  
Objects ............................................................................................ 18  
Requirement to register ...................................................................... 18  
The registration process ...................................................................... 22  
Administration of the Registers .......................................................... 24  
Application and transitional ............................................................... 25  
Chapter 3: Agents and financial controllers ............................................. 26  
Simplified outline ............................................................................. 26  
Appointing an agent ......................................................................... 26  
Nominating a financial controller ........................................................ 28  
Requirements for, and process of, appointment or nomination .............. 29  
Chapter 4: Public election funding .......................................................... 30  
Simplified Outline ............................................................................ 30  
Election funding entitlements ............................................................... 30  
Claims for election funding ................................................................ 32  
Payment of election funding ................................................................ 35  
Miscellaneous .................................................................................. 35  
Chapter 5: Foreign donation restrictions .................................................. 37  
Simplified outline ............................................................................. 37  
Interpretation ................................................................................... 37  
Object ............................................................................................. 37  
Key political actors .......................................................................... 38  
Third party campaigners and certain political campaigners ................. 39  
Foreign property restriction and anonymous donations limit ................. 42  
Exceptions and ancillary provisions .................................................... 44  
Chapter 6: Disclosure .......................................................................... 46  
Simplified outline ............................................................................. 46  
Interpretation ................................................................................... 46  
Disclosure of gifts ........................................................................... 46  
Anonymous gifts and loans ................................................................. 49  
Repayment of gifts in cases of insolvency .............................................. 50  
Disclosure of electoral expenditure ....................................................... 50  
Annual returns ................................................................................ 51  
Miscellaneous .................................................................................. 54  
Referendum (Machinery Provisions) Act 1984 ........................................ 58  
Division 2 – Application and transitional provisions ................................. 59
1. The integrity, real and perceived, of Australia’s electoral system is critical to our system of government. However, Australia’s regulatory approach to political finance has not kept pace with international and domestic developments.

2. Election campaigning has radically changed through the professionalisation of politics and the proliferation of media advertising. New political actors neither endorse candidates nor seek to form government, yet actively seek to influence the outcome of elections. While a positive indicator of the strength of Australian civil society and civic engagement, these new actors lack the public accountabilities of more traditional actors, such as registered political parties or parliamentarians.

3. Internationally, media reports increasingly document foreign attempts to influence elections around the world. This is problematic, because the real and perceived integrity and fairness of elections is critical to peaceful democratic government.

4. The Joint Standing Committee on Electoral Matters (JSCEM) considered this issue in its Second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations (the second interim report). The JSCEM made the following recommendations:
   a) donation reform should be aligned with Australia’s sovereign interests;
   b) donation reform should be transparent, clear, consistent and enforceable;
   c) donations from foreign citizens and foreign entities to political parties and their associated entities and third parties should be banned;
   d) an extension of the foreign ban to prevent ‘channelling’ should be considered as part of JSCEM’s broader inquiry into donations and disclosure; and
   e) penalties for non-compliance should be increased.

5. Public confidence in Australia’s political processes can be enhanced by increasing the accountability and transparency of those involved in political finance, particularly in relation to election campaigns. The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (the Bill) builds on the Electoral and Other Legislation Amendment Act 2017 to improve the consistency of regulation applying to the financed election campaigns of key political actors. The Bill will also reduce perceived and actual foreign influence on Australian political actors by restricting the ability of foreign money to finance domestic election campaigns, and reduce opportunities for election funding to be used for private gain.

6. In summary, the Bill:
   a) establishes public registers for key non-party political actors;
   b) enhances the current financial disclosure scheme in the Commonwealth Electoral Act 1918 (the Electoral Act) by requiring non-financial particulars, such as senior staff and discretionary government benefits, to be reported;
   c) prohibits donations from foreign governments and state-owned enterprises being used to finance public debate;
d) requires wholly political actors to verify that donations over $250 come from:

i. an organisation incorporated in Australia, or with its head office or principal place of activity in Australia; or

ii. an Australian citizen or Commonwealth elector;

e) prohibits other regulated political actors from using donations from foreign sources to fund reportable political expenditure;

f) limits public election funding to demonstrated electoral spending;

g) modernises the enforcement and compliance regime for political finance regulation; and

h) enables the Electoral Commissioner to prescribe certain matters by legislative instrument.

Financial impact statement

7. Implementation costs are estimated to be $70 million over the forward estimates.

Statement of compatibility with human rights

8. A Statement of Compatibility with Human Rights has been completed in relation to the amendments in this Bill and assesses that the amendments are compatible with Australia’s human rights obligations.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

2. The Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (the Bill) amends the funding and disclosure provisions of the Commonwealth Electoral Act 1918 (the Electoral Act). The Bill introduces new measures to improve transparency and accountability in relation to political donations.

3. The Bill contains provisions that will:
   a) establish public registers for key non-party political actors;
   b) enhance the Electoral Act’s current financial disclosure scheme by requiring non-financial particulars, such as senior staff and discretionary government benefits, to be reported;
   c) prohibit donations from foreign governments and state-owned enterprises being used to finance public debate;
   d) require wholly political actors to verify that donations over $250 come from:
      i. an organisation incorporated in Australia, or with its head office or principal place of activity in Australia; or
      ii. an Australian citizen or Commonwealth elector;
   e) prohibit other regulated political actors from using donations from foreign sources to fund reportable political expenditure;
   f) limit public election funding to demonstrated electoral spending;
   g) modernise the enforcement and compliance regime for political finance regulation; and
   h) enable the Electoral Commissioner to prescribe certain matters by legislative instrument.

Human rights implications

4. The Bill engages the following rights as provided for in the International Covenant on Civil and Political Rights (ICCPR):
   a) the right of citizens to take part in public affairs and elections, as contained in article 25;
   b) the right to freedom of opinion and expression, as contained in article 19;
c) the prohibition on interference with privacy and attacks on reputation, as contained in article 17; and

d) the right to freedom of association with others, as contained in article 22.

5. The Bill’s requirements, addressed in turn in the below sections, are objective, legitimate and proportional because they:

a) are provided for by law;

b) serve a genuine public interest by protecting:

   i. the free, fair and informed voting essential to Australia’s system of representative government;

   ii. national security; and

c) apply to an objectively defined group of entities who freely choose to play a prominent role in political debate, or provide financial or administrative support to those who do.

Registration of key non-party political actors

6. Registration of key non-party political actors promotes the rights of citizens to participate meaningfully in elections by assisting them to understand the source of political communication. These key non-party actors are already required to identify themselves in political communications with the public under the Electoral and Other Legislation Amendment Act 2017 (Authorisation Amendment Act). Registration will complement the Authorisation Amendment Act’s transparency reforms by:

a) allowing voters to distinguish between political opinions popular because of their merits, and those that are common in public debate because their promoters incurred significant political expenditure;

b) allowing voters to form a view on the effect that political expenditure is having on the promotion of a particular political opinion, as opposed to opinions that are being debated without financial backing; and

c) discouraging corruption and activities that may pose a threat to national security.

7. Internationally, it is relatively common for liberal democracies to require those with significant electoral expenditure to publically register with the electoral management body prior to committing significant campaign funds. Registration facilitates a compliance approach based on education rather than enforcement, allowing electoral laws governing the campaign period to be implemented in the least rights-restrictive way possible.

8. Registration of key non-party political actors also engages the right to privacy, as it may require personal information to be published. Registration, however, is required only in a limited regulatory context, and only those with a direct involvement with elections will be required to register. The Bill allows the Electoral Commissioner to determine, by legislative instrument, additional information to be published on the registers. However, this legislative instrument is subject to mandatory prior consultation with the Privacy Commissioner.
9. The Bill requires limited non-financial particulars to be disclosed in addition to the financial information currently disclosed. These non-financial particulars are details of:

   a) senior staff of candidates and Senate groups on ballots; and

   b) discretionary government benefits, such as payments and grants, received in the past 12 months.

10. Making this information publicly available engages the right to privacy of the candidates and their senior staff. However, these limitations are justifiable on the basis that they promote transparency of the electoral system, with the corresponding public benefits outlined in paragraph 6.

11. It is important to remember that the individuals whose privacy is impacted freely choose to play a prominent role in public debate and put themselves, or those they represent, forward for public office. It is therefore appropriate, objective, legitimate and proportional that the public has access to this information.

Foreign donations restrictions

12. Genuine freedom to vote at elections requires freedom from undue influence or interference. Foreign-sourced political funds amount to undue influence in a domestic public political debate, particularly in the context of an election. Therefore, it is appropriate to require political donors to have a meaningful connection to Australia, and to make it unlawful to knowingly retain or use foreign donations to finance political expenditure in Australia.

13. The offences are necessary for protecting public order. Public order encompasses the rules which ensure the peaceful and effective functioning of society, or the set of fundamental principles on which society is founded. Accepting foreign donations creates a conflict of interest, or the perception thereof, among key figures in electoral debate and campaigning and can therefore undermine democracy. Elections serve not only to select the winner but also to convince the unsuccessful candidates and their supporters that they lost fairly. Therefore, perceptions of fairness, integrity and accuracy are as important as the reality for elections to result in peaceful transitions of power in democracies. As Kofi Annan stated in Deepening Democracy (2012) ‘legitimacy is the crucial currency of government in our democratic age… victory without legitimacy is no victory at all.’

14. The right to take part in public affairs by donating to key political actors must be balanced against the need for transparency and accountability in the political system and the overarching importance of public confidence in, and the integrity of, political institutions and the democratic system. It is also worth noting that, as this measure targets those without strong links to Australia, very few people within Australia’s jurisdiction will be impacted by the foreign donations restrictions.

Limitation of public election funding

15. This measure does not engage human rights.

Changes to the compliance and enforcement regime

16. The Bill decriminalises many existing offences in Part XX of the Electoral Act. The new civil penalty provisions do not constitute criminal penalties for the purposes of human rights law as they are not classified as criminal under Australian law and are restricted to people in a specific regulatory context.
17. In these circumstances the relevant provisions are not unreasonable within the meaning of article 25 and therefore do not offend the right to take part in public affairs. The relevant provisions do not subject political actors to arbitrary or unlawful interference with their privacy, and therefore do not offend the prohibition on interference with privacy.

Conclusion

18. The Bill is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.
NOTES ON CLAUSES

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

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AEC</td>
<td>Australian Electoral Commission</td>
</tr>
<tr>
<td>Authorisation Amendment Act</td>
<td>Electoral and Other Legislation Amendment Act 2017</td>
</tr>
<tr>
<td>Electoral Act</td>
<td>Commonwealth Electoral Act 1918</td>
</tr>
<tr>
<td>registered charity or organisation</td>
<td>Organisations registered under the Australian Charities and Not-for-Profits Commission Act 2012 or the Fair Work (Registered Organisations) Act 2009.</td>
</tr>
<tr>
<td>the Act</td>
<td>Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2017</td>
</tr>
<tr>
<td>the Registers</td>
<td>The Register of Political Campaigners, the Register of Third Party Campaigners, and the Register of Associated Entities. Note this does not include the Register of Political Parties.</td>
</tr>
</tbody>
</table>

Clause 1 – Short title

This clause provides that the short title of the Bill, when enacted, will be Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2017 (the Act).

Clause 2 – Commencement

This clause sets out the commencement provisions for the Act, in accordance with the table in subclause 2(1) (the commencement table).

Item 1 of the commencement table provides that sections 1 to 3 of the Act and anything in this Act not covered elsewhere by this table commence the day the Act receives the Royal Assent.

Item 2 of the commencement table provides that Schedule 1, Part 1 of the Act commences on the earlier of two alternative dates; the first 1 July that occurs on or after the day on which this Act receives the Royal Assent, or 28 days after this Act receives the Royal Assent.

Item 3 of the commencement table provides that Schedule 1, Part 2 of the Act commences on the first 1 July that occurs on or after the day on which this Act receives the Royal Assent.

A note is included under the commencement table to clarify that it relates only to the provisions of the Act as originally enacted, and will not be amended to deal with later amendments of the Act.
Subclause 2(2) provides that any information in column 3 of the commencement table is not part of the Act. Information may be inserted in column 3, or information in it may be edited, in any published version of the Act.

Clause 3 – Schedules

Clause 3 is an enabling provision which provides that legislation specified in a Schedule to the Act is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this Act has effect according to its terms. Notably, these terms include application and transition provisions in Division 2 of Parts 1 and 2 of Schedule 1.
Schedule 1 – Electoral funding and disclosure reform

Chapter 1: Interpretation and definitions

Division 1 – Amendments

Commonwealth Electoral Act 1918

Part 1 – Registration of political campaigners, third party campaigners and associated entities:

Item 1 – Subsection 4(1)
Item 2 – Subsection 287(1)
Item 3 – Subsection 287(1) (definition of associated entity)
Item 4 – Subsection 287(1)
Item 5 – Subsection 287(1) (definition of gift)
Item 6 – Subsection 287(1) (at the end of the definition of gift)
Item 7 – Subsection 287(1)
Item 8 – At the end of section 287
Item 9 – After section 287
Item 10 – At the end of Division 1 of Part XX

Note: Items 11-13 are dealt with in the Chapter 2: the Registers.

Part 2 – Other Amendments:

Item 14 – Subsection 17A(1)
Item 15 – Before section 287
Item 16 – Subsection 287(1)
Item 17 – Subsection 287(1) (definition of financial controller)
Item 18 – Subsection 287(1) (paragraphs (a), (b) and (c) of the definition of financial controller)

Definitions

10 These items insert defined terms into subsection 4(1) and section 287 to assist with interpretation of new provisions. Consolidating defined terms with other definitions for general application will assist readers and make Part XX more navigable.

Allowable amount

11 Item 2 provides that allowable amount, of a person or entity for a financial year, means any amount received during the financial year, or to which they have access. Entity is defined in subsection 287(1) to mean a body (whether incorporated or not), or the trustee of a trust.

12 The concept of allowable amount is intended to act as a proxy for the quantum of an entity’s domestic revenue and savings. Accordingly, gifts received from non-allowable, foreign donors are excluded from the definition, as are loans (lines of credit) to which the entity has access. Loans are excluded from the definition as an anti-avoidance mechanism, preventing a situation where foreign donations are used to finance debt instruments in order to avoid the Bill’s foreign donations restrictions.
Item 8 inserts new subsection 287(9) which provides that, in working out a person or entity’s allowable amount for a financial year, a gift is taken to have been made by an allowable donor to the person or entity during the financial year if all of the following apply:

- the gift was made to the person or entity during the financial year by a donor who is not an allowable donor (subparagraph (a)(i));
- the person or entity obtained appropriate donor information in accordance with section 302P establishing that the donor was an allowable donor (subparagraph (a)(ii));
- the person did not, at any time during the period of six weeks after receiving the gift, know, or have reasonable grounds to believe, that the donor was not an allowable donor (subparagraph (a)(iii)); and
- the amount or value of the gift is less than $250 (paragraph (b)).

— As an anti-avoidance measure, all gifts from the same donor to the same recipient in a financial year are aggregated for the purposes of the $250 threshold. The $250 test is intended to operate as a materiality threshold so that small donations can continue to be made anonymously.

This provision allows recipients to assume that a gift was from an allowable donor for the purposes of working out their allowable amount during the six-week grace period afforded under the concept of allowable action in relation to restrictions on foreign donations.

Allowable donor

Item 9 provides that allowable donor has the meaning given by section 287AA of the Electoral Act. Item 9 inserts the new section 287AA after section 287 of the Electoral Act, providing in subsection (1) that:

- an individual is an allowable donor if they are:
  - an elector or Australian citizen;
  - unless the Minister has otherwise determined, Australian permanent residents;
- an incorporated association, including an incorporated trust, is an allowable donor if they are incorporated in Australia; and
- an unincorporated association is an allowable donor if it has its head office or principal place of activity in Australia. Head office is defined in subsection 287(1);
- for unincorporated trusts, or an unincorporated foundation, out of which a gift is made, the person or entity is an allowable donor.

New paragraph (d) of the definition of allowable donor allows the regulations to prescribe additional classes of persons or entities that are allowable donors. Entity retains its current definition in Part XX’s dictionary, that is, an incorporated or unincorporated body, or the trustee of a trust.

However, new subsections (2) and (3) interact with the list of allowable donors in subsection (1). New subsection (2) provides the Minister with the power to determine, by disallowable legislative instrument, that Australian permanent residents are not allowable donors.
New subsection (3) provides foreign political entities are never allowable donors by excluding the following persons and entities from the definition of allowable donor, whether or not they meet the criteria in subsection (1):

- a body politic of a foreign country, such as a country’s central government;
- a body politic of a part of a foreign country, such as a local or provincial government;
- a part of a body politic mentioned above, such as a political party in a foreign country or in a local government;
- a foreign public enterprise, defined later in Part XX’s dictionary to have the same meaning as in section 70.1 of the Criminal Code.

**Associated entity**

Item 3 inserts the defined term *associated entity* into Part XX’s dictionary, to mean an entity that is registered as an associated entity under new section @287L. A note alerts readers to new section @287H, which sets out the circumstances in which a person or entity must register as an associated entity.

**Australian resident**

Item 4 inserts the defined term *Australian resident* into Part XX’s dictionary to mean a permanent resident of Australia. Permanent residents hold permanent visas under the *Migration Act 1958*.

**Civil penalty order**

Item 1 inserts the defined term *civil penalty order* into subsection 4(1), providing that the term has the meaning given by subsection 82(4) of the *Regulatory Powers Act* each time it appears in the Electoral Act.

**Credit card**

Item 4 moves the defined term *credit card* from its current location in section 306A of the Electoral Act into Part XX’s interpretation section. This amendment reflects that the term *credit card* is used by the Bill more broadly than in section 306A, and does not change the meaning of credit card outside of Part XX.

**Disclosure threshold**

Item 4 inserts the defined term *disclosure threshold* into subsection 287(1) of the Electoral Act, to mean $13,500. A note is included to explain this amount is indexed under section 321A of the Electoral Act.

**Electoral expenditure**

Item 16 inserts the defined term *electoral expenditure* into Part XX’s interpretation section, providing that the term has the meaning given in subsection 308(1). This amendment is designed to assist the reader by consolidating the defined terms in Part XX into a single section at the beginnings of Part XX. This does not change the meaning of electoral expenditure.

**Financial controller**

Items 17 and 18 amend the definition of *financial controller* to reflect that persons who do not meet Part XX’s definition of an *entity* may have a financial controller. A person must meet this definition to be nominated as a financial controller under new section 292F.

**Foreign public enterprise**
Item 4 inserts the defined term foreign public enterprise into subsection 287(1) of the Electoral Act, to have the same meaning given by section 70.1 of the Criminal Code. This term is used in relation to the definition of allowable donor.

Gift

Item 5 expands the definition of gift to include bequests.

Item 6 amends the definition of gift in Part XX’s dictionary to exclude any visit, experience or activity provided for the purposes of a political exchange program. These exchange programs, for example, the programs administered by the Australian Political Exchange Council, are similar to student exchange programs and aim to develop Australia’s future generations of political leaders.

Head office

Item 7 inserts the defined term head office into Part XX’s dictionary to mean the place of business where central management and control of the entity are exercised. Head office is used in the definition of allowable donor in section 287AA, and is most relevant to unincorporated associations, as the place of incorporation is intended to determine whether an incorporated association is an allowable donor. Central management and control is the control and direction of an entity’s operations. The key element is the making of high-level decisions that set the entity’s mission, general policies, and determine the direction of its operations and the type of activities in which it will engage.

Merely because a person has the power to appoint those who control and direct an entity’s operations, does not by itself mean the person controls and directs the entity’s operations and activities.

Loan

Item 7 moves the definition of loan from existing section 306A to Part XX’s dictionary. A loan continues to mean any of the following financial arrangements:

- an advance of money;
- a provision of credit or any other form of financial accommodation;
- a payment of an amount for, on account of, on behalf of or at the request of, a beneficiary, if there is an express or implied obligation to repay the amount; or
- a transaction (whatever its terms or form) which in substance effects a loan of money.

Loans made on non-commercial terms, for example, at a non-market interest rate, are not simply loans for the purposes of the Electoral Act. Instead, the interest foregone on non-commercial loans is a gift, and the borrowed money is a loan. Similarly, only money can be loaned. Borrowed equipment or real-estate is not a loan where the beneficiary does not pay the owner for its use (that is, the equipment or real-estate is not rented), it is a gift.

A note underneath the definition of loan alerts readers to new subsection 287(10), which has been moved from existing subsection 306A(7). New subsection (10) treats each transaction on a credit card as a separate loan for the purposes of Part XX.
Political campaigner

34 Item 7 inserts the defined term political campaigner into Part XX’s dictionary, to mean a person or entity that is registered as a political campaigner under new section @287L. Note 1 alerts readers to new subsection 287(8), which clarifies that a political campaigner that has branches is to be treated as a single political campaigner, and new section @287C (political campaigners and third party campaigners that are not incorporated). Note 2 alerts readers to new section @287F, which sets out the circumstances in which a person or entity must register as a political campaigner.

Political entity

35 Item 7 inserts the defined term political entity into Part XX’s dictionary, to mean a person who is any of the following:

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

Political expenditure

36 Item 7 inserts the defined term political expenditure into Part XX’s dictionary, to mean expenditure incurred for one or more political purposes. A note is included under the definition of political expenditure pointing readers to new section @287J. New section 287HA deems the political expenditure of those who did not comply with a registration requirement to have occurred in a later year, so that non-compliance with registration in a year does not absolve an entity of their reporting obligation.

Political purpose

37 Item 7 inserts the defined term political purpose into Part XX’s dictionary, to include any of the following purposes:

- the public expression by any means of views on a registered political party, a candidate in an election or a member of the House of Representatives or the Senate;
- the public expression by any means of views on an issue that is, or is likely to be, before electors in an election (whether or not a writ has been issued for the election);
- the communicating of any electoral matter (not being matter referred to in paragraph (a) or (b)) for which particulars are required to be notified under section 321D;
- the broadcast of political matter (not being matter referred to in paragraph (c)) in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the Broadcasting Services Act 1992; or
- the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors.

38 These purposes are currently contained in subsection 314AEB(1), as amended by the Authorisation Amendment Act. Similarly to the exemptions provided by the Authorisation Amendment Act, the following exemptions are provided in relation to political purposes:

- the sole or predominant purpose of the expression of the views, or the communication, broadcast or research, is the reporting of news, the presenting of current affairs or any editorial content in news media; or
- the expression of the views, or the communication, broadcast or research, is solely for genuine satirical, academic or artistic purposes.
These exemptions are intended to ensure that the press, academia, artists and entertainers are not required to register as a political actor by virtue of carrying on their core business. In order to meet these exemptions, the person incurring the expenditure must not do so in order to affect voting in an election. The news media exemption requires that the sole or predominant purpose must be the reporting of news, or presentation of current affairs and editorial content. The satire, academic and artistic exemption is narrower, requiring that the sole purpose must be those activities. In the event that there are multiple purposes, then the communication cannot be solely for genuine satirical, academic or artistic purposes.

Defendants will bear an evidentiary burden of proof if they wish to rely on exemptions. This is appropriate, as the intent of persons engaging in these activities as part of their business is particularly within the knowledge of the defendant. It would be significantly more difficult and costly for the prosecution, or applicant in a civil case, to prove the defendant intended to influence the election results than for the defendant to establish the expenditure was incurred as part of normal business activity.

Registers of associated entities, political campaigners and third party campaigners

Item 7 inserts the defined terms Register of Associated Entities, Register of Political Campaigners and Register of Third Party Campaigners into Part XX’s dictionary, to mean the Registers of those name established and maintained under section @287N.

Senior Staff

Item 7 inserts the defined term senior staff into Part XX’s dictionary, to mean a person or entity’s directors, or if the person or entity does not have directors, any person who makes or participates in making decisions that affect the whole or a substantial part of the operations of the person or entity. For example, subject to the way decisions are made within a candidate’s campaign, their senior staff might be the campaign’s communications director, and/or its financial controller.

Third party campaigner

Item 7 inserts the defined term third party campaigner into subsection 287(1) of the Electoral Act, to mean an entity that is registered as a third party campaigner under section @287L. Item 8 inserts new paragraph 287(8), to clarify that a third party campaigner that has branches is, for the purposes of Part XX, to be treated as a single third party campaigner. Note 1 refers readers to section @287C (political campaigners and third party campaigners that are not incorporated). Note 2 refers readers to section @287G for those circumstances in which a person or entity is required to be registered as a third party campaigner.
Other general interpretational provisions

*Simplified outline of Part XX*

44 Item 15 inserts new section 286A, which provides a simplified outline of Part XX. This simplified outline is designed to give readers an overview of, and introduce important concepts in, Part XX of the Electoral Act.

*Application to entities that are not incorporated*

45 Item 10 inserts the new section 287C at the end of Division 1 of Part XX of the Electoral Act. This section clarifies the application of the Electoral Act and Regulatory Powers Act to political campaigners and third party campaigners that are legal persons. New section 287C provides that campaigner’s expenditure can be attributed to entities that are not legal persons and that the financial controller of an entity that is not a legal person will be held responsible for any contraventions of Part XX. For this attribution to occur, the expenditure must be incurred by or with the authority of any member, agent, or officer (however described) of the entity who, acting in his or her actual or apparent authority, incurred the expense.

*Annual reports by the Electoral Commissioner*

46 Item 14 updates the references to offences in existing subsection 17A(1) to reflect the new civil penalty provisions introduced by this Bill. This has the effect that the Electoral Commissioner can include information in his or her annual report relating to the new civil penalty provisions, as well as the existing offences under the Electoral Act.
Chapter 2: The Registers

Item 11 – After Division 1 of Part XX

47 Item 11 inserts new Division 1A (Registration of political campaigners, third party campaigners and associated entities) after Division 1 of Part XX of the Electoral Act.

Simplified outline

Subdivision A – Simplified outline of this Division

48 New section @287D provides a simplified outline of new registration requirements, designed to give readers an overview of, and introduce important concepts in, new Division 1A.

Objects

49 New section @287E specifies that the objects of the new registration requirements are, by providing for the registration of more key participants in election campaigns, to support the transparency of:

- the foreign donations restrictions established by new Division 3A of Part XX;
- the financial disclosure scheme under Part XX; and
- requirements relating to the authorisation of electoral matter under Part XXA, as amended by the Authorisation Amendment Act.

Requirement to register

Subdivision B – Requirement to register as a political campaigner, third party campaigner or associated entity

@287F Requirement to register as a political campaigner

50 Except for political entities and sitting Commonwealth parliamentarians, new section @287F requires a person or entity to be registered for a financial year as a political campaigner if they fall into one of the two categories provided.

51 Paragraph (1)(a) requires a person or entity to register as a political campaigner if their political expenditure during the current, or in any of the previous three, financial years was $100,000 or more. Paragraph (1)(b) requires an entity to register as a political campaigner if:

- their political expenditure in the current financial year is $50,000 or more, and
- their political expenditure during the previous financial year was at least 50 per cent of their allowable amount (as defined in new subsection 287(1)).

52 A note alerts readers that political expenditure may be deemed to be incurred in a later financial year under section @287J.

53 Subsection (3) provides that, subject to the 28 day grace period set out in subsection (2), incurring further political expenditure without being registered is subject to a maximum civil penalty of 240 penalty units. A note is included to remind the reader that, under section @287C, the financial controller of the entity may contravene this subsection if the entity is not legal person.
Subsection (4) provides that each day that a person or entity is required to register as a political campaigner and has not, including the day of registration, is a separate contravention of subsection (3). This provision is designed to have a similar effect to section 93 of the Regulatory Powers Act (continuing contraventions), and means the maximum applicable penalty is 240 penalty units for each day they are in breach of subsection (3).

Example 1:

Joseph’s political expenditure in 2016-17 was $40,000 and his allowable amount was $60,000. This was the first year in which he incurred political expenditure.

Joseph plans to spend $10,000 per month in political expenditure in 2017-18. Joseph must register as a political campaigner for 2017-18 before he incurs $50,000. According to his expectation of his spending pattern, this will occur in mid-November 2017.

Given the 28 day grace period for registration in subsection 287F(2), Joseph will need to register as a political campaigner no later than 28 days after this time, which is likely to be in mid-December 2017.

Example 2:

Joseph’s deadline for registration as a political campaigner was 14 December 2017. He misses this deadline, applying for registration on 25 January 2018. He is registered on 30 January 2018.

Joseph contravened section 287F for 47 days, and so may be subject to a maximum civil penalty of 11,280 penalty units (47 days x 240 penalty units, approximately $2.4 million).

@287G Requirement to register as a third party campaigner

Except for political entities and sitting Commonwealth parliamentarians, new section @287G requires a person or entity to be registered as a third party campaigner if their political expenditure for a financial year is more than the disclosure threshold. However, the registers of third party and political campaigners are mutually exclusive. This means that if the entity is, or is required to be registered, as a political campaigner, it is not necessary to also register as a third party. A note is included to remind readers that, under @287J, not registering in a financial year when required to do so may trigger registration obligations in the next financial year.

Subsection (3) provides that, subject to the 28 day grace period set out in subsection (2), a person or entity that is required to be registered as a third party campaigner must not incur further political expenditure until they are registered as a third party campaigner. A note is included to remind the reader that, under section @287C, the financial controller of the entity may contravene this subsection if the entity is not legal person. The civil penalty for contravention of subsection (2) is 120 penalty units. Similarly to section @287F, subsection (4) indicates subsection (2) is to be treated in a similar manner as continuing contraventions.
@287H Requirement to register as an associated entity

57 Except for political parties and their State branches, new section @287H requires entities to be registered as an associated entity for a financial year if any of the following apply:

- the entity is controlled by one or more registered political parties;
- the entity operates wholly, or to a significant extent, for the benefit of one or more registered political parties;
- the entity is a financial member of a registered political party;
- another person is a financial member of a registered political party on behalf of the entity;
- the entity has voting rights in a registered political party;
- another person has voting rights in a registered political party on behalf of the entity.

58 These criteria replicate the existing definition of associated entity in subsection 287(1) of the Electoral Act. Paragraph (b) of the definition is clarified by new subsection (5), which sets out circumstances in which an entity is deemed to operate wholly, or to a significant extent, for the benefit of one or more registered political parties. These circumstances include where the entity, or an officer of the entity acting in his or her actual or apparent authority, has stated that the entity is to operate:

- for the benefit of one or more registered political parties or an endorsed candidate; or
- to the detriment of one or more registered political parties or endorsed candidates in a way that benefits one or more political parties.

Statements about an entity’s operations that meet @287H(5)(a)

59 Paragraph (5)(a) applies to statements by the entity, or an officer of the entity acting in his or her actual or apparent authority. What constitutes a statement for the purposes of this paragraph should be broadly interpreted. Statements may include oral, visual, graphic, written, digital electronic and pictorial communications, and could be communicated in a public, professional or private setting. Statements by officers not authorised by the entity to determine the desired outcome of its operations would not cause the entity to be required to register as an associated entity. For example:

Example 1:
Jane is the chief executive officer of a privately-run business that sells humorous t-shirts. In election years, the business sells many shirts making fun of well-known endorsed candidates and political parties. Jane is recorded stating in an employee meeting that, even though some of the business’ t-shirts make fun of the Garment Party, the business’ real mission is to insidiously support the Garment Party, a registered political party.

The t-shirt business is an associated entity of the Garment Party because:
- Jane has the authority to state the purpose of the business’ operations; and
- Jane has stated the purpose of those operations is to benefit a registered political party.
Example 2: Max volunteers with a charity. One of Max’s activities as a volunteer is to door-knock during an election period to raise awareness of the charity’s position on an election issue. Max tells several people he visits as part of his door-knocking that his charity’s strategy is to ensure no candidates from the Garment Party are elected.

The charity is not an associated entity because of Max’s statements because:
- Max does not have the authority to state the purpose of the charity’s operations; and
- even if Max did have this authority, there is no evidence that the opposition to the Garment Party would benefit one or more political parties (i.e. it may not be possible to determine to whom the charity would be associated).

In addition to circumstances involving statements, paragraph (5)(b) provides that an entity will be deemed to operate wholly, or to a significant extent, for the benefit of one or more registered political parties where the entity’s total expenditure wholly or predominantly consists of political expenditure, and that political expenditure is used wholly or predominantly:
- to promote one or more registered political parties, or the policies of one or more registered political parties; or
- to oppose one or more registered political parties, or the policies of one or more registered political parties, in a way that benefits one or more registered political parties; or
- to promote an endorsed candidate; or
- to oppose an endorsed candidate, in a way that benefits one or more registered political parties.

Association can be inferred from negative campaign techniques in some circumstances

Where an entity operates to the detriment of, or to oppose, a candidate or registered political party, they must do so in a way that benefits one or more political parties in order to be deemed an associated entity under subsection (5). The entity is associated with the party or parties that benefited from the entity’s negative campaigning. For an entity to be associated with a registered political party because of negative campaign techniques (that is, the entity opposes a party, or operates to its detriment), intent to benefit is not required in order for an association to exist. For example, if an election is contested by a limited number of parties, and an entity operates predominantly to the detriment of a contesting party, the entity may be an associated entity of the other contesting party or parties.

Other elements of the requirement to register as an associated entity

Subsection (3) provides that, subject to the 28 day grace period set out in subsection (2), incurring any political expenditure without being registered is subject to a maximum civil penalty of 240 penalty units. A note is included to remind the reader that, under section @287C, the financial controller of the entity may contravene this subsection if the entity is not legal person. Similarly to section @287F, subsection (4) indicates subsection (3) is to be treated in a similar manner as continuing contraventions.

It is possible to be registered as an associated entity and either a political campaigner or a third party campaigner simultaneously. However, as previously outlined, no-one will be simultaneously registered as a political campaigner and third party campaigner.
The registration process

@287J Expenditure incurred by persons and entities that are not registered when required to be so

64 New section @287J is a deeming provision. It is intended to ensure that failure to register does not absolve a person or entity of its other obligations under Part XX, which are a consequence of registration. Subsection (1) provides that a person or entity is taken to have incurred an amount of political expenditure in a financial year (the current financial year) if:

- the person or entity incurred that amount of political expenditure in a previous financial year (paragraph (a)); and
- as a result of incurring that political expenditure, the person or entity was required to be registered as a political or third party campaigner in the previous financial year (paragraph (b)); and
- the person or entity was not so registered:
  — in the previous financial year (subparagraph (c)(i)); or
  — if the person or entity was required to be registered as a political or third party campaigner and the 28-day grace period ended after the end of the previous financial year—by the end of the grace period (subparagraph (c)(ii)).

65 Subsection (2) provides that subsection (1) ceases to apply at the end of the financial year in which they register, so that entities that cease to meet the applicable registration criteria do not continue to trigger this deeming provision.

@287K Application for registration

66 New section @287K allows a person or entity to apply to the Electoral Commissioner to be registered as a political campaigner, a third party campaigner, or an associated entity.

67 Subsection (2) requires that the application must:

- be in the form approved by the Electoral Commissioner;
- identify the entity or person’s financial controller; and
- for applications for registration as an associated entity, identify any associations with registered political parties.

@287L Determining an application for registration

68 New section @287L requires the Electoral Commissioner to register an entity within a reasonable period of time if certain conditions are satisfied. Generally, if the application complies with subsection (2) and does not trigger subsection (4), the Electoral Commissioner must register an entity within a reasonable period.

69 To ensure a person or entity does not appear simultaneously on the third party and political campaigner registers, if the Electoral Commissioner registers a person or entity on one of these registers when it is already registered on the other register, subsection (3) requires the Electoral Commissioner to deregister the person or entity from the first register.

70 However, if a person or entity has applied to be registered as a third party campaigner, and the Electoral Commissioner knows the applicant is a political campaigner, paragraph (1)(b) provides that the Electoral Commissioner is not required to register the applicant as a third party campaigner. To avoid doubt, subsection (2) clarifies that paragraph (1)(b) does not limit the Electoral Commissioner’s discretion to register an applicant in accordance with its application.
Example:
The Electoral Commissioner receives an application for registration as a third party campaigner from an entity currently on the Register of Political Campaigners. The applicant submitted a return in relation to the previous financial year detailing political expenditure in excess of $2 million.

The Electoral Commissioner is not required to register the applicant as a third party campaigner, because the Electoral Commissioner knows, based on the annual return provided by the applicant in relation to the previous financial year, that the applicant continues to meet the criteria for registration as a political campaigner.

However, if the Electoral Commissioner does register the applicant as a third party campaigner, the Electoral Commissioner must remove the applicant from the Register of Political Campaigners at that time.

New subsection (2) also clarifies that voluntary or early registration is possible; an entity does not have to be required to be registered under one of new sections @287F to @287H in order to register.

Example 1:
Josh is planning on raising at least $150,000 to spend on his best friend’s election campaign. He’s not sure if he will actually raise this money, or how much of it he will spend in this year versus the next financial year, so he applies to be registered as a political campaigner with the AEC just in case.

Example 2:
A group of university students decide to door-knock on an issue they learn about in class. They do not, or plan to, incur any political expenditure. However, they wish to, and can, register as a third party campaigner so there is a public record of their activity.

Refusing registration

The Electoral Commissioner must refuse to register an applicant under new subsection (4) in certain, specified circumstances. If the Electoral Commissioner would be required to refuse the registration if it was made in relation to a registered political party, the Electoral Commissioner cannot register the entity as a political campaigner, associated entity, or third party campaigner. This provision is intended to protect the object of transparency, as confusing registrant names would run counter to the objects of this Division.

An exception to this rule applies in relation to registrant names longer than six words. This is given effect by the reference to subsection 129(1)(a), which operates in relation to a registrant’s name longer than six words. This requirement applies to registration of registered political party names, and is necessary for practical reasons related to ballot printing. As the length of name is not impractical for the new Registers, this is not included as grounds for the Electoral Commissioner to refuse registration under new section @287K.

New subsection (5) allows for applications under this Division to be varied in the same way as applications for registration as a registered political party (see section 131 of the Electoral Act).

New subsection (6) provides that decisions regarding registration are reviewable by the Administrative Appeals Tribunal under section 141 of the Electoral Act.
Applications for deregistration

New section @287M provides that a registrant may apply to the Electoral Commissioner to be deregistered. If the application is in an approved form, the Electoral Commissioner must deregister the person or entity as a political campaigner, third party campaigner or an associated entity.

Administration of the Registers
Subdivision C—Register of Political Campaigners, Register of Third Party Campaigners and Register of Associated Entities

Register of Political Campaigners, Register of Third Party Campaigners and Register of Associated Entities

New section @287N requires the Electoral Commissioner to establish and maintain a Register of Political Campaigners, a Register of Third Party Campaigners and a Register of Associated Entities.

New subsections (2),(3) and (4) set out the content of the registers. The registers will contain:

- the name of each registrant (paragraphs (a));
- the name of the registrants’ financial controllers (paragraphs (b));
- details of any links between the Registers, for example, where an entity appears on both the associated entity register and the political campaigner register (paragraphs (c)); and
- any other information determined by the Electoral Commissioner under subsection (6) (subsection (5)).

New subsections (5) and (6) allow the Electoral Commissioner to prescribe, by legislative instrument, additional information to be included in the Registers. However, in order to safeguard the privacy of individual’s personal information, given that the Registers are published, subsection (7) requires the Electoral Commissioner to consult the Information Commissioner in relation to any matters that relate to his/her privacy functions prior to making any such instrument. For example, if the Electoral Commissioner wished to publish the addresses of the financial controllers on the Registers, he/she would need to first consult the Information Commissioner. The Information Commissioner’s privacy functions are set out in section 9 of the Australian Information Commissioner Act 2010, and relate primarily to the privacy of an individual.

Obligation to notify Electoral Commissioner of changes to information on register

New section @287P requires registered entities to notify the Electoral Commissioner within 28 days if any of their information on the Registers ceases to be correct or complete. Failure to notify is subject to a civil penalty of 60 penalty units per day. For example, if an entity’s financial controller changed, the entity must notify the Electoral Commissioner of the change within 28 days of the old financial controller ceasing their duties.

Registers to be made public etc.

New section @287Q allows the Registers to be maintained electronically, and requires the Registers to be made publicly available. The publication requirement is expected to be met by publishing the Registers on the AEC’s website and mobile applications, allowing the public easy access to the most up-to-date information.
82 Subsection @287R provides that an entry in the Register of Political Campaigners, the Register of Third Party Campaigners or the Register of Associated Entities is prima facie evidence of the information contained in the entry. This is similar to other provisions in the Electoral Act, such as current subsection 391(2), and assists with efficient administration.

**Item 12 – Section 314AA (definition of amount)**

83 Item 12 amends the definition of *amount* specific to Division 5A to exclude bequests as a consequential amendment of item 5 (see Chapter 1, definition of *gift*).

Application and transitional

**Division 2 – Application and transitional provisions**

**Item 13 – Application and transitional provisions**

84 Except where otherwise specified in the item, item 13, subsections (1) and (2) provide that the amendments to the Electoral Act made by this Part apply on and after the commencement of this item. These provisions interact with the commencement table in item 2 to allow the registers to be established prior to the commencement of the requirement to register. This ‘soft start’ will assist in implementation.

85 Subsection (3) provides that, if Part 1 commences before Schedule 1 to the Authorisation Amendment Act, paragraph (c) of the definition of political purpose in subsection 287(1) of the Electoral Act, as inserted by this Part, applies until that commencement as if that paragraph referred instead to “the printing, production, publication or distribution of any material (not being material referred to in subparagraph (i) or (ii)) that is required under section 328, 328A or 328B to include a name, address or place of business”. This allows for the possibility that relevant provisions of the Authorisation Amendment Act will commence after this Bill.

*Note: Items 14-18 are dealt with in Chapter 1: Interpretation and Definitions*
Chapter 3: Agents and financial controllers

Part 2 – Other Amendments

*Note: Items 14-18 are dealt with in Chapter 1: Interpretation and Definitions*

**Item 19 – Division 2 of Part XX (heading)**
**Item 20 – Before section 288**

Simplified outline

*Subdivision A – Simplified outline of this Division*

86 Item 19 expands the title of Division 2 to reflect that financial controllers are covered by this Division. Item 20 provides for new section @287V, which provides a simplified outline of this Division, designed to give readers an overview of, and introduce important concepts in, this Division.

Appointing an agent

**Item 21 – Section 288A to 290**

*Subdivision B – Appointment of agents*

Existing section 288A Principal agents

87 Item 21 repeals section 288A, which set out the appointment of agents for the Australian Democrats. This provision has ceased to have any practical effect as the Australian Democrats are no longer a registered political party.

Section 289 Appointment of agents by candidates and groups

88 Item 21 replaces the existing provisions governing the appointment of agents for candidates and groups with new section 289. New section 289 requires these entities to have agents. This does not impact candidate’s ability to act as their own agent, or alter the current deeming rules. These deeming rules provide that where:

- a candidate does not appoint an agent, they are taken to be their own agent (subsection (2));
- a Senate group for which a single registered political party has endorsed all the listed candidates does not appoint an agent, the agent of the party’s Senate group is taken to be the agent of the State branch of the party (paragraph (4)(a)); and
- a Senate group has unendorsed or multiple endorsing political parties, the candidate whose name is to appear first on the ballot is taken to be the agent of the group (paragraph (4)(b)).

— If the person whose name appears first on the ballot dies, the next highest candidate in the Senate group is taken to be the agent.

89 The deeming provisions for candidates and Senate groups operate in parallel. This means that candidates in Senate groups will have an agent for the purposes of their candidature, and an agent for their Senate group. A note is included under new subsection 289(1) to alert readers to this. The agent of a Senate candidate and their Senate group may be the same person. Persons who become agents by virtue of the deeming provisions in subsections (2) and (4) do not need to provide a notice, signed form of consent, or declaration under section 292F.
Existing section 290 Requisites for appointment

90 Item 21 repeals existing section 290. Item 26 moves key elements of this existing provision into new Subdivision D.

Item 22 – Paragraphs 292(2)(b) and (3)(b)

91 This item updates the references to the requisites for appointment in section 292 to reflect the amendment made by items 21 and 26.

Item 23 – Section 292B(a)

92 This item adds new Division 3A to the list of divisions under which an agent bears an obligation, in order to clarify what happens when that office becomes vacant.

Item 24 – Subsection 292(4)

93 This item updates references to the requisites for appointment in section 292 to reflect the amendment made by items 21 and 26.

Item 25 – Section 292D

94 This item amends section 292D to separate the requirements relating to action that must be taken following the death or resignation of an agent of a candidate or group. Agent vacancy for registered political parties is dealt with in section 292B.

95 New subsection (1) does provides that, where a candidate or group agent dies, the candidate or a group member must, without delay, notify the Electoral Commission in writing of the death. This is the current requirement.

96 New subsection (2) provides that, where a candidate or group agent resigns, the resigning agent must, without delay, notify the Electoral Commission in writing of their resignation.

Item 26 – At the end of Division 2 of Part XX

97 This item inserts new Subdivisions C and D into Division 2.
Nominating a financial controller

Subdivision C – Nomination of financial controllers

Section 292E Financial controllers of political campaigners, third party campaigners and associated entities

98 New section 292E requires political campaigners, third party campaigners and associated entities to nominate a financial controller. If the campaigner or entity is an individual, he or she may nominate him or herself as the financial controller. If the campaigner or entity is not a legal person, an individual acting on behalf of the campaigner or entity must nominate the financial controller of the campaigner or entity. Subsection 287(1) provides that a person or entity’s financial controller is:

- in the case of a company – the secretary of the company;
- in the case of the trustee of a trust – the trustee; and
- in other cases – the person responsible for maintaining the financial records of the entity.

99 The financial controller is a matter of fact. Nominating someone to be the financial controller, when that person is not the secretary, trustee, or responsible for maintaining financial records (as relevant), does not make them the financial controller. Rather, nominating a financial controller assists entities to meet their obligations, and the AEC to effectively administer Part XX, by making the financial controller known to the AEC for education and compliance activities. In practice, it is expected that nomination of a financial controller will occur during registration, or updating of changed registration details, under new Division 1A.

Example:
Ben is the Chairperson of a political campaigner, while Humphrey is the Treasurer. As Chairperson, part of Ben’s role is to approve the electoral communications of the political campaigner, including associated expenses. As Treasurer, Humphrey’s role is to keep the group’s books up-to-date, and to advise Ben as to whether the group has sufficient funds for a proposed activity.

Humphrey is the financial controller of the political campaigner, and must be nominated as such under new subsection 289A.

If Ben was incorrectly nominated as the financial controller, Humphrey would still be responsible for meeting the obligations of a financial controller.
New section 292F expands the requisites for appointment of an agent or nomination of a financial controller. Unless a person has been deemed to be an agent or financial controller under subsection 289(2) or (4), an appointment or nomination must meet the following conditions:

- the person appointed or nominated must:
  - be an individual who is at least 18 years old (paragraph (1)(a)). Organisations and individuals younger than 18 cannot be appointed or nominated;
  - not be someone convicted of a criminal offence under Part XX (subsection (4)), which includes persons convicted of any Part XX contravention prior to commencement, and persons convicted of a Division 3A offence after commencement;
  - have signed a form of consent and declaration of eligibility (paragraph (1)(d);

- the Electoral Commission must be notified in writing of the nomination or appointment (paragraph (1)(b)). These notices must include the appointee/nominee’s name and full street address and suburb or locality (paragraph (1)(c)), and be given by the person with the relevant authority (paragraph (1)(b)), that is:
  - for an appointment made by a registered political party or a State branch of a registered political party, the notice must be given by the party or branch making the appointment;
  - for an appointment made by a candidate, the candidate; and
  - for an appointment made by a Senate group, each member of the group.

Persons deemed to be an agent under subsection 289(2) or (4) do not have to meet the requirements in subsection (1).
Chapter 4: Public election funding

Item 27 – Sections 294 and 297

102 This item repeals and replaces sections 294 and 297 with new subdivisions relating to the amount of public election funding to which a candidate or party is entitled, and the new claim process.

Simplified Outline

Subdivision A – Simplified outline of this Division

Section 292G  Simplified outline of this Division

103 New section 292G provides a simplified outline of the public election funding arrangement, designed to give readers an overview of, and introduce important concepts in, new Division 3.

Election funding entitlements

Subdivision B – Election funding

Section 293 Election funding for registered political parties

104 New section 293 outlines the election funding payable to a registered political party. A note alerts readers that a claim must be made in order for funding to be paid.

105 Subsection (1) contains the requirements in existing section 297, as applied to registered political parties. That is, it provides that public election funding is payable in relation to a registered political party where the total number of formal first preference votes for candidates it has endorsed is at least four per cent of the overall total of formal first preference votes cast in the election (paragraph (1)(a)). Where the endorsed candidates are part of a Senate group, the four per cent threshold applies in relation to above and below the line votes cast for all the candidates in the group, whether or not it is a joint Senate group (paragraph (1)(b)).

106 Subsection (2) provides that once a registered political party meets the threshold requirements in subsection (1), the amount of the public election funding that can be paid is the lesser of:

- $2.70479 for each formal first preference vote received counted as at the day the determination on the claim is made (the public funding rate amount; paragraph (2)(a));
  
  As indicated by the note under subsection (2), the public funding rate will continue to be indexed under section 321. The progress of indexation will not be impacted by the Bill; and

- the amount of electoral expenditure incurred in the election period that has been claimed for all elections held on that day and accepted by the Electoral Commission under new section 298C (paragraph (2)(b)).

107 Paying according to the status of the count on the day of the determination allows those eligible to receive election funding to balance their cash flow needs against the progress of the count when deciding when to make a claim.
Joint Senate groups

108 Joint Senate group funding is payable through the participating political parties. Different claims must not include the same expenditure, although splitting an incurred cost across parties is possible if this reflects how the cost was incurred.

Example 1:
Parties A, B and C endorse candidates in a joint Senate group. The Senate group receives ten per cent of formal first preference votes cast in the election, and so is eligible for public election funding.
Parties A, B and C agreed the cost of producing and distributing the group’s how-to-vote cards would be met by Party A. Party A should include the costs of the how-to-vote cards in their claim. Parties B and C should not include these costs in their claims.

Example 2:
Parties A, B and C agreed the cost of producing and distributing the group’s how-to-vote cards would be split, with Party A paying for 60 per cent, and Parties B and C paying for 20 per cent each. Party A should include 60 per cent of the how-to-vote card costs in their claim, and Parties B and C should each include 20 per cent of the costs in their claims.

Section 294 Election funding for unendorsed candidates

109 New section 294 outlines the election funding payable to an unendorsed candidate, who is not a member of a Senate group. Subsection (1) provides that these candidates are entitled to public election funding for all elections where the total number of formal first preference votes for the candidate is at least four per cent of the overall total of formal first preference votes cast in the election for either the House of Representatives or the Senate. A note alerts readers that a claim must be made in order for funding to be paid.

110 Subsection (2) provides that once a candidate meets the threshold requirements in subsection (1), the amount of public election funding that can be paid is the lesser of:

- the public funding rate amount (see section 293); and
- the amount of electoral expenditure incurred in the election period that has been claimed and accepted by the Electoral Commission under new section 298C.

Section 295 Election funding for unendorsed groups

111 New section 295 outlines the election funding payable to an unendorsed group. A note alerts readers that a claim must be made in order for funding to be paid. For this section to apply:

- none of the group’s members can have been endorsed by a registered political party (paragraph (1)(a)); and
- the total number of formal first preference votes for the group is at least four per cent of the overall total of formal first preference votes cast in the Senate election.

112 Subsection (2) provides that once an unendorsed group meets the threshold requirements in subsection (1), the amount of the public election funding that can be paid is the lesser of:
• the public funding rate amount (see section 293); and
• the amount of electoral expenditure incurred in the election period that has been claimed and accepted by the Electoral Commission under new section 298C.

Claims for election funding

Subdivision C – Claims for election funding

Section 297 Need for a claim

113 New section 297 requires an agent to lodge a claim with the Electoral Commission prior to payment of election funding. Subsection (2) provides that an agent may make an interim claim, a final claim, or both. A note underneath subsection (2) points readers to subsections 298C(3) and (4), in the instance that only an interim claim is made.

114 Subsection (3) provides that a final claim for public election funding must specify all of the electoral expenditure against which the claim is to be assessed, even if some or all of it has been included in an interim claim. However, subsection (4) provides that a final claim is able to incorporate, by reference, electoral expenditure that has been included in the interim claim.

115 In order to streamline administration of public funding payments, subsection (5) provides that only one interim and one final claim can be made.

Section 298 Electoral expenditure incurred

116 New section 298 requires claims to specify electoral expenditure incurred for which public election funding is sought.

Section 298A Form of claim

117 New section 298A requires a claim to:

• specify whether the claim is an interim claim or final claim (paragraph (a));
• be in the form approved by the Electoral Commissioner (paragraph (b));
• specify the person or persons to whom the election funding is payable (paragraph (c)), and where the election funding is payable to more than one person, specify the percentages in which the election funding is payable to each person (paragraph (d)). This option to specify percentages is expected to be most relevant in the case of joint Senate groups and political parties with federated structures who wish to share funding amongst branches. It replaces existing section 299, and significantly simplifies payment arrangements and provides flexibility for future intra-party governance arrangements; and
• provide all the information and be accompanied by any documents, required by the form.

Section 298B Lodging of claim

118 New section 298B sets out the time period during which a claim can be made, that is:

• no earlier than 20 days after polling day; and
• no later than six months after polling day.

119 Claims lodged outside of these time periods will not be considered by the Electoral Commission, and no election funding will be paid.
Section 298C Determination of claim

120 New section 298C sets out rules relating to the Electoral Commission’s decision on claims for public election funding. New section 298H provides for application for external review of this decision by the Administrative Appeals Tribunal, as is available for reviewable decisions under section 141.

121 Subsection (1) provides that the Electoral Commission must decide whether to accept, in whole or in part, a claim for public election funding within 20 days of receiving the claim. To the extent that the Electoral Commission accepts the claim, the amount required by sections 298D or 298E must also be paid within this time period.

122 Subsection (2) provides that, in deciding whether or not to accept the claim, the Electoral Commission must only have regard to the following matters. These are:

- whether expenditure claimed meets the definition of electoral expenditure, as prescribed by the Electoral Act and applicable regulations (if any);
- where expenditure is electoral expenditure, whether:
  - the claimed electoral expenditure was actually incurred; and
  - any duplication with another claim, that is, whether the electoral expenditure has been specified in a claim made by another agent.

123 Subsections (3) and (4) provide that, where only an interim claim is lodged, the interim claim will be deemed to be the final claim and no further funding will be payable. If the interim claim was accepted in part or refused, the refused part of the claim will be deemed to be a refused final claim refused, triggering:

- the provision of reasons for the refused part of the claim under section 298F;
- the opportunity for the agent to apply for reconsideration of the decision under 298G and 298H.

124 The process under subsections (3) and (4) will finalise any claim for public election funding.

125 However, if the Electoral Commission becomes satisfied that there was an overpayment and decides to vary the decision under subsection 301(1), the excess funds paid may be recovered as a debt to the Commonwealth under subsection 301(3). This decision is also subject to sections 298F, 298G and 298H.

126 If the interim claim is taken to be the final claim under subsection (3), section 141 will apply to the interim claim as if it were the final claim.

127 Subsection (5) clarifies that, where an interim claim is deemed to be a final claim under subsection (3), the public funding rate amount does not need to be recalculated to reflect the progress of the count as at the day the deeming occurs.

Section 298D Payment to be made following acceptance of an interim claim

128 New section 298D provides that in relation to an interim claim, the Electoral Commission must pay 95 per cent of the public funding rate amount within 20 days of receiving the claim, as set out in sections 293 to 295, and section 298A.
Section 298E  Payment to be made following acceptance of a final claim

129  Section 298E provides that in relation to a final claim, the Electoral Commission must pay the public funding rate amount, as set out in sections 293 to 295 reduced by any amount that has been paid in accordance with section 298D. In other words, the balance of the funding will be paid at this point, provided that the amount of accepted electoral expenditure is equal to, or greater than, the entitlement.

130  If the Electoral Commission becomes satisfied that there was an overpayment based on the interim claim, that is, the final payment is a negative number once it has been reduced by the amount paid in relation to the interim claim, the Electoral Commission may rely on the variation power in new section 301 to recover the excess funds paid.

131  A note alerts readers to a claim’s ability to specify to whom the funding is paid, including the ability to specify percentages (see section 298A). If the specified person is the agent of a registered political party, another note alerts readers to section 299A.

Section 298F  Refusing a final claim

132  New section 298F provides that if a final claim is refused, in whole or in part, the Electoral Commission must notify the agent that the claim has been refused and provide reasons for the refusal to the agent. The intent of this provision is to ensure that only the decision on a final claim attracts review rights and facilitate the exercise of those rights through the provision of reasons for a refusal to pay an amount claimed in a final claim.

133  However, it is important to note that an interim claim will be taken to be a final claim in some instances under paragraph 298C(3)(b). If an interim claim is taken to be a final claim, refusal of the claim will be accompanied by reasons under new section 298F, and attract review rights, as if it had been lodged as a final claim.

Section 298G  Application for reconsideration of decision to refuse a final claim

134  New section 298G provides for the reconsideration of decisions made by the Electoral Commission on a final claim for public election funding. Reconsideration will be undertaken by the Electoral Commission in a review process that is similar to the review of other administrative decisions made under the Electoral Act.

135  Subsection (1) provides that where a final claim has been refused, the agent (and only the agent) may apply to the Electoral Commission for reconsideration of the decision. This is not affected by someone other than the agent being specified by a claim to receive the election funding under paragraph 298A(c).

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

137  Subsection (3) provides that an application for reconsideration must be made within 28 days of the agent being notified of the delegate’s decision, unless an extension has been granted by the Electoral Commission.

Section 298H  Reconsideration by Electoral Commission

138  New section 298H sets out how the Electoral Commission is to deal with an application for the reconsideration of a decision on a final claim.

139  Subsection (1) provides that the Electoral Commission is to reconsider the delegate’s decision that refused all or part of a final claim for public election funding and has the power to affirm, vary, or set aside and replace that decision with another decision.
Subsection (2) provides that the Electoral Commission is required to give the agent written reasons for its decision on the application. Subsection (3) provides that if the Electoral Commission’s decision results in any additional payment of public election funding, that payment must be made within 20 days of its decision.

Subsection (4) provides that the Electoral Commission is unable to delegate its power to undertake a reconsideration of a final claim for public election funding if it has received an application under subsection (1).

Subsection (5) provides that subsections 141(5) to (6A) apply in relation to a decision under this section in the same way as those subsections apply to a reviewable decision made by the Electoral Commission under subsections 141(2) or (4). This means that application can be made to the Administration Appeals Tribunal to review the Electoral Commission’s decision, but that the standard composition of the Tribunal is not applicable. Instead, the Tribunal is to have three members, at least one of whom must be a Judge of the Federal Court.

Payment of election funding
Subdivision D – Payments of election funding

Item 28 – Section 299

This item repeals existing section 299 to reflect the new system of claims for public election funding. New section 299 provides that election funding paid to a person not entitled to receive it, in whole or in part, is recovered by the Commonwealth as a debt due to the Commonwealth by action against the person in a court of competent jurisdiction.

Item 29 – Subsections 299A(1)
Item 31 – Subsections 299A(8)

These items remove the references to section 299 and “or principal agent”, to reflect the repeal of existing sections 299 and 288A.

Item 30 – At the end of subsection 299A(1)

This item inserts a note under subsection 299A(1) to alert readers that funding will no longer be paid automatically to agents. Instead, funding will only be paid based on an accepted claim, and will be paid to the person or persons specified in paragraph 298A(c).

Item 32 – Sections 300 and 301

Miscellaneous
Subdivision E – Miscellaneous

Item 32 repeals sections 300 and 301, substituting new sections to reflect the new claims process. The new provisions also simplify the process for paying funds with respect to a deceased candidate and provide for varying a decision on an accepted claim.

Section 300 Death of candidates or group members

New section 300 sets out how payments of public election funding are to be made if a candidate dies.
Subsections (1) and (3) provide that a payment may be made with respect to a candidate or group, even if a candidate dies. See new paragraph 289(4)(b) for deeming arrangements in relation to the death of a deemed Senate group agent.

Subsection 300(2) provides that where a candidate was his or her own agent (for example because he or she was not endorsed by a registered political party and not a member of a group), the payment of public election funding may be made to the candidate’s legal personal representative. A candidate’s legal personal representative is likely to be the Executor of the deceased candidate’s estate.

Section 301 Varying decisions accepting claims

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

Subsection (1) provides that the Electoral Commission is able to vary decisions previously made on final claims for public election funding. Given the timeframes specified in the Act for making decisions and paying of public election funding, it is likely that situations will arise where the basis of claims will be questioned after payment has been made. Accordingly, the Electoral Commission is given a specific power to be able to revisit previous decisions made under section 298C and to vary the amount of payments that had previously been approved.

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

Subsection (3) provides that where the decision under subsection (1) results in a decrease in the amount of the entitlement to public election funding, the amount of the previous overpayment can be recovered as a debt due to the Commonwealth.
Chapter 5: Foreign donation restrictions

Item 33 – After Division 3 of Part XX

154 This item inserts new Division 3A of Part XX titled ‘Requirements relating to donations’.

Simplified outline

Subdivision A – Interpretation

155 New section @302A provides a simplified outline of the new foreign donations restrictions, designed to give readers an overview of, and introduce important concepts in, new Division 3A.

Interpretation

Section @302B Interpretation

156 New subsection @302B(1) defines the terms acceptable action and appropriate donor information, which are specific to Division 3A. Acceptable action applies in relation to a gift that would otherwise contravene this Division. If a recipient is unable to satisfy themselves that a gift complies with this Division, acceptable action means to relinquish it (or an amount of equivalent value), by either returning it to the donor, the person who made the gift, or transferring it to the Commonwealth. Appropriate donor information has the meaning given by new section @302P.

157 New subsection @302B(2) extends, for the purposes of Division 3A, the period for which a person is considered to be a candidate in an election, or persons are taken to constitute a group in an election, to 30 days after the polling day in the election. Similarly to the concept of disclosure period used in Part XX, this ensures that the offences and civil penalty provisions continue for an appropriate period after polling day and reduces the risk of avoidance strategies.

Object

Section @302C Objects of this Division

158 New section @302C specifies the object of new Division 3A and how the provision aims to achieve that object. The object is to secure and promote the actual and perceived integrity of the Australian electoral process. Perceptions of fairness, integrity and accuracy are as important as the reality for elections to result in peaceful transitions of power in democracies. This is because elections serve not only to select the winner but also to convince the unsuccessful candidates and their supporters that they lost fairly.

159 The object is operationalised through the offences and civil penalty provisions contained in Subdivisions B and C of Division 3A. These provisions have been designed to recognise that while generally the basis of democratic participation in Australia is individual citizens, the right to participate through donating is broader than the right to vote and should encompass Australian-based organisations. Donating to a participant in public debate is an indirect and valuable way of participating in public affairs for Australian electors and organisations, as it allows for the aggregation of political opinion, a critical function in a democratic system of government.
Australian businesses and unincorporated associations with a head office or principal place of activity in Australia have a legitimate interest in the direction of public policy in Australia, as their Australian activities are subject to Australian law. However, as submissions to the Joint Standing Committee on Electoral Matters and public debate on domestic and overseas incidents have repeatedly demonstrated, the public expects that those with no legitimate connection to Australian public affairs should be prevented from influencing their course through political finance.

To ensure that the burden in respect of these offences and civil penalty provisions is appropriate and proportionate, specific exceptions are provided for in Subdivision D.

Key political actors

Section 302D Donations to registered political parties, candidates, Senate groups and political campaigners

New section @302D provides a criminal offence and civil penalty provision concerning donations to registered political parties, candidates, Senate groups and political campaigners. A person who contravenes subsection (1) commits a criminal offence with a penalty of 10 years imprisonment or 600 penalty units, or both, or is liable to a civil penalty of 1,000 penalty units. A contravention is not a continuing offence or civil penalty under section 4K of the Crimes Act 1914 or section 93 of the Regulatory Powers Act.

Subsection (1) specifies that an agent of a political entity, or a financial controller of a political campaigner (see Chapter 3: Agents and financial controllers), will contravene this subsection where the political entity or political campaigner receive a gift (paragraph (1)(a)) if:

- a gift is made to, or for the benefit of, the political entity or political campaigner during a financial year (paragraph (1)(b)). The inclusion of the words ‘for the benefit of’ are intended to capture more indirect forms of making gifts, for example, through fundraising events or bodies. In these cases, the donor’s intent for the gift to benefit the recipient is relevant;

- the gift is made by, or on behalf of, a donor (paragraph (1)(c)). The inclusion of the words ‘or on behalf of’ are intended to capture circumstances where a person attempts to channel a gift through an allowable donor as an avoidance strategy;

- the donor is not an allowable donor (paragraph (1)(d)). Allowable donor is defined in new section 287AA. Where the donor does not provide information establishing that they are an allowable donor, it is irrelevant whether they actually are in fact an allowable donor or not; and

- the amount or value of the gift is at least $250 at the time the gift is made, or the amount or value of all gifts made by the donor during the financial year to the gift recipient is at least $250 (paragraph (1)(e)). These thresholds are intended to allow the receipt of small, anonymous gifts, which may or may not be from allowable donors. It is also intended to prevent amounts over $250 from being split into smaller amounts as an avoidance strategy;

- acceptable action has not been taken in relation to the gift before the end of six weeks after the gift is made (paragraph (1)(f)). Acceptable action is defined in new subsection @302B(1).

Notes are inserted to alert readers to the exceptions in section @302M and @302N, and new sections @302Q and @302R.
New paragraph (1)(g) provides that a contravention will not occur if, at the time the gift is made, the gift recipient is a registered charity or organisation. This has the effect that these organisations can accept foreign gifts, but can only use them subject to the requirements in new section 302E.

Third party campaigners and certain political campaigners

Section 302E  Donations to third party campaigners and certain political campaigners

New section 302E provides a criminal offence and civil penalty provision with respect to donations from non-allowable donors expressly for political purposes, or incurring political expenditure beyond their allowable amount. A person who contravenes subsection (1) commits a criminal offence with a penalty of 10 years imprisonment or 600 penalty units, or both, or is liable to a civil penalty of 1,000 penalty units. A contravention is not a continuing offence or civil penalty under section 4K of the Crimes Act 1914 or section 93 of the Regulatory Powers Act.

Subsection (1) specifies that a financial controller of a political campaigner or third party campaigner (see Chapter 3: Agents and financial controllers) will contravene this subsection where their campaigner receives a gift (paragraph (1)(a)) if:

- a gift is made to, or for the benefit of, the political campaigner or third party campaigner during a financial year (paragraph (1)(b)). The inclusion of the words ‘for the benefit of’ are intended to capture more indirect forms of making gifts, for example, through fundraising events or bodies. In these cases, the donor’s intent for the gift to benefit the recipient is relevant;
- the gift is made by, or on behalf of, a donor (paragraph (1)(c)). The inclusion of the words ‘or on behalf of’ are intended to capture circumstances where a person attempts to channel a gift through an allowable donor as an avoidance strategy;
- the donor is not an allowable donor (paragraph (1)(d)). Allowable donor is defined in new section 287AA. Where the donor does not provide information establishing that they are an allowable donor, it is irrelevant whether they actually are in fact an allowable donor or not;
- at the time the gift is made, the gift recipient is a third party campaigner, or a political campaigner that is a registered charity or organisation (paragraph (1)(e)); and
- either:
  - the amount of political expenditure incurred, and the total amount or value of gifts made to political entities or political campaigners, by the gift recipient during the financial year is more than the gift recipient’s allowable amount for the financial year (paragraph (1)(f) and paragraph (2)(a)). This means that third party campaigners and certain political campaigners do not need to know whether each donation was from an allowable donor. Instead, they need to know that, for each financial year, that their political expenditure is not greater than the sum of:
    - the gifts that are taken to be from allowable donors, in accordance with subsection 287(9); and
    - their savings and capital (but not lines of credit to which they have access; see definition of allowable amount) from previous financial years; or
— the gift is expressly made (whether wholly or partly) for one or more political purposes and is at least $250, or all gifts made from the same donor during the financial year total at least $250 (paragraph (1)(f) and subparagraph (2)(b)). This means that where gifts earmarked for a political purpose, such as a conditional grant where the specified activity falls within the definition of political purpose, the recipient must know that gift is from an allowable donor.

- acceptable action has not been taken in relation to the gift before the end of six weeks after the gift is made (paragraph (g)). Acceptable action is defined in new subsection @302B(1).

168 Notes are inserted to alert readers to the exception in new section 302M, and new sections @302Q and @302R.

Section @302F Donations to political campaigners that are registered charities and organisations

169 Section @302F provides a criminal offence and civil penalty provision with respect to donations from using the same account for transactions relating to receiving foreign gifts, and for domestic political purposes. A person who contravenes subsection (1) commits a criminal offence with a penalty of 10 years imprisonment or 600 penalty units, or both, or is liable to a civil penalty of 1,000 penalty units. A contravention is not a continuing offence or civil penalty under section 4K of the Crimes Act 1914 or section 93 of the Regulatory Powers Act.

170 Subsection (1) specifies that the financial controller of a political campaigner that is a registered charity or organisation (see Chapter 3: Agents and financial controllers) will contravene this subsection where the political campaigner receives a gift (paragraph (1)(a)) if:

- the gift is made by, or on behalf of, a person (paragraph (1)(b)). The inclusion of the words ‘or on behalf of’ are intended to capture circumstances where a person attempts to channel a gift through an allowable donor as an avoidance strategy;

- the person is not an allowable donor (paragraph (1)(c)). Allowable donor is defined in new section 287AA. Where the donor does not provide information establishing that they are an allowable donor, it is irrelevant whether they actually are in fact an allowable donor or not;

- the gift is paid into the same account used to finance political expenditure, or make gifts to political entities or other political campaigners (paragraphs (1)(c) and (d)); and

- acceptable action has not been taken in relation to the gift before the end of six weeks after the gift is made (paragraph (1)(e)). Acceptable action is defined in new subsection @302B(1).

171 This provision is intended to ensure that gifts from persons who are not allowable donors are not paid into the same account that political expenditure is paid from. Equally, the provision aims to ensure such accounts are not used as a mechanism for routing donations from non-allowable donors to other political campaigners, or to political entities. Requiring entities to use separate accounts will assist in ensuring proper consideration of the sources of funding for political expenditure, boosting compliance with new section @302E.

172 Notes are inserted to alert readers to the exception in section @302M, and new section @302R.
Section @302G Soliciting gifts from non-allowable donors

173 New section @302G prohibits soliciting gifts from non-allowable donor in certain circumstances. A person who contravenes subsection @302G(1) commits a criminal offence with a penalty of 5 years imprisonment or 300 penalty units, or both, or is liable to a civil penalty of 500 penalty units.

174 Subsection (1) specifies that the following is required for a person to contravene this subsection:

- the person (the first person) solicits another person to make a gift or have a gift made on behalf of a non-allowable donor (paragraphs (1)(a) and (1)(b)). In this context, it is irrelevant whether or not the gift is actually made. Allowable donor is defined in new section 287AA;
- the first person solicits the gift with the intention that all or part of the gift, or of the amount or value of the gift to be transferred to political entity, a political campaigner, or any other person for one or more political purposes (paragraph (1)(c)). Relevant terms are defined in subsection 287(1), as amended.

175 New paragraph (1)(d) provides that a contravention will not occur if, at the time the gift is made, the gift recipient is a registered charity or organisation. This has the effect that a fundraiser can solicit foreign gifts for these organisations, but can only use them subject to the requirements in new section 302E.

176 Notes are inserted to alert readers to the exception relating to seeking information about a donor’s status in section @302M, and new sections @302Q and @302R.

177 Subsection (2) provides an exception in relation to gifts the first person intended the recipient to use for personal purposes in their private capacity. A note alerts readers that a person who wishes to rely on this subsection bears the evidential burden are inserted under the subsections. This is appropriate, as the private domain of individuals and the intent behind their actions relating to their personal relationships is particularly within the knowledge of the defendant. It would be significantly more difficult, costly and invasive to the privacy of individuals who may meet the exception for the prosecution, or applicant in a civil case, to seek to prove the defendant does not meet the exception than for the defendant to provide evidence that they do.

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

178 New section @302H prohibits receiving gifts from non-allowable donors in order to transfer the gifts in certain circumstances. A person who contravenes subsection @302H(1) commits a criminal offence with a penalty of 5 years imprisonment or 300 penalty units, or both, or is liable to a civil penalty of 500 penalty units.

179 Subsection (1) specifies that the following is required for a person to contravene this subsection:

- a gift is made to the person (the first person) by, or on behalf of, a non-allowable donor (paragraphs (a) and (b)). The inclusion of the words ‘or on behalf of’ are intended to capture circumstances where a gift is channelled through another party rather than being made directly. Allowable donor is defined in new section 287AA;
- the first person receives the gift in order for all or part of the gift, or of the amount or value of the gift, to be transferred to a political entity, a political campaigner, or any other person for one or more political purposes. Relevant terms are defined in subsection 287(1), as amended.
Notes are inserted to alert readers to the exception relating to seeking information about a donor’s status in section @302M, and new sections @302Q and @302R.

Subsection (2) provides an exception in relation to gifts the first person intended the recipient to use for personal purposes in their private capacity. A note alerts readers that a person who wishes to rely on this subsection bears the evidential burden are inserted under the subsections. This is appropriate, as the private domain of individuals and the intent behind their actions relating to their personal relationships is particularly within the knowledge of the defendant. It would be significantly more difficult, costly and invasive to the privacy of individuals who may meet the exception for the prosecution, or applicant in a civil case, to seek to prove the defendant does not meet the exception than for the defendant to provide evidence that they do.

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

New section @302J provides a criminal offence and civil penalty provision with respect to forming, or participating in the formation of a body corporate in Australia, solely or predominantly for the purposes of making an unlawful gift under new Division 3A. Those who enable or commission a contravention of section @302J, such as lawyers or other professionals participating in the formation of a body corporate covered by section @302J, may be covered by section 11.2 of the Criminal Code or section 92 of the Regulatory Powers Act. That is, to the extent that someone aids, abets, counsels or procures the commission of a contravention of @302J by another person, the first person is taken to have committed that offence and is punishable accordingly.

A note is inserted under subsection (1) to alert readers to section @302R. A person who contravenes subsection (1) commits a criminal offence with a penalty of 5 years imprisonment or 300 penalty units, or both, or is liable to a civil penalty of 500 penalty units.

Foreign property restriction and anonymous donations limit

Subdivision C – Other offences and civil penalty provisions

Section @302K  Donations from foreign bank accounts, or donations made while in a foreign country

New section @302K provides a criminal offence and civil penalty provision with respect to receiving donations from foreign bank accounts or by transfer by a person while in a foreign country. A person who contravenes subsection @302K(1) commits a criminal offence with a penalty of 10 years imprisonment or 600 penalty units, or both, or is liable to a civil penalty of 1,000 penalty units. A contravention is not a continuing offence or civil penalty as section 4K of the Crimes Act 1914 and section 93 of the Regulatory Powers Act.

Subsection (1) specifies that an agent of a political entity or a financial controller of a political campaigner (see Chapter 3: Agents and financial controllers) will contravene this subsection where (paragraph (1)(a)):

- a gift is made to, or for the benefit of, the political entity or political campaigner during a financial year (paragraph (1)(b)). The inclusion of the words ‘for the benefit of’ are intended to capture more indirect forms of making gifts, for example, through fundraising events or bodies. In these cases, the donor’s intent for the gift to benefit the recipient is relevant;
- the gift is made either:
directly from an account with a bank, credit union, building society or similar institution that is held in a foreign country. This is intended to capture accounts held with the foreign equivalent of authorised deposit-taking institutions, in the sense of the term in the Banking Act 1959 (subparagraph (1)(c)(i)); or

— by telegraphic or electronic transfer by a person who is in a foreign country at the time of making the gift (except if the gift is made from an account held by a bank, credit union, building society or similar institution in Australia). For example, payment may be made using a software component that enables a user to make a variety of electronic payments to a vendor, as by a credit or debit card. The physical location of the person making the gift is considered to be more relevant to the person’s connection to Australia than the location of the electronic infrastructure that supports the making of a payment, such as a desktop computer, a smartphone or the cloud. Subparagraph (1)(c)(ii) is intended to include the following categories of payments:

- purchase payment facilities, such as PayPal and Western Union’s online services where the person making the gift is in a foreign country; and

- transactions in digital currencies or fungible forms of exchange that may not be issued by or with the authority of a government, such as Bitcoin where the person making the gift is in a foreign country.

- acceptable action has not been taken in relation to the gift before the end of six weeks after the gift is made (paragraph (d)). *Acceptable action* is defined in new subsection @302B(1).

Notes are inserted under this provision to alert readers to the exception in section @302N, and new sections @302Q and @302R.

There are several exceptions to the contravention in subsection (1), namely where:

- the recipient is a political campaigner that is a registered charity or organisation at the time the gift was made (paragraph (1)(e));

- the exception in section @302N relating to personal use in a private capacity.

This has the effect that political campaigners who meet this test will not be subject to the requirement not to receive foreign gifts from foreign accounts or via other forms of transfer by a person who is in a foreign country, but rather will be subject to the requirements in new section @302E and @302F.

**Section @302L Donations of at least $250 etc. without appropriate donor information**

New section @302L provides a criminal offence and civil penalty provision with respect to donations of at least $250 without appropriate donor information. A person who contravenes subsection (1) commits a criminal offence with a penalty of 10 years imprisonment or 600 penalty units, or both, or is liable to a civil penalty of 1,000 penalty units. A contravention is not a continuing offence or civil penalty under section 4K of the *Crimes Act 1914* or section 93 of the *Regulatory Powers Act*.

Subsection (1) specifies that an agent of a political entity or a financial controller of a political campaigner (see Chapter 3: Agents and financial controllers) will contravene this subsection where (paragraph (1)(a)):

- a gift is made to, or for the benefit of, the political entity or political campaigner during a financial year (paragraph (1)(b)). The inclusion of the words ‘for the benefit of’ are intended to capture more indirect forms of making gifts, for example, through
fundraising events or bodies. In these cases, the donor’s intent for the gift to benefit the recipient is relevant;

- the gift is made by, or on behalf of, a donor (paragraph (1)(c)). The inclusion of the words ‘or on behalf of’ are intended to capture circumstances where a gift is channelled through another party rather than being made directly.

- at the time the gift is made, its amount or value is at least $250, or the all gifts made from the same donor during the financial year total at least $250 (paragraph (1)(d));

- before the end of six weeks after the gift is made, appropriate donor information was not obtained in accordance with section @302P establishing that the donor was an allowable donor (paragraph (1)(e));

- acceptable action has not been taken in relation to the gift before the end of six weeks after the gift is made (paragraph (f)). ‘Acceptable action’ is defined in new subsection @302B(1).

Notes are inserted under this provision to alert readers to the exception in section @302N, and new sections @302Q and @302R.

There are two exceptions to the contravention in subsection (1), which include where:

- the recipient is a political campaigner that is a registered charity or organisation at the time the gift was made (paragraph (1)(g)); and

- the exception in section @302N relating to personal use in a private capacity.

Exceptions and ancillary provisions

Subdivision D – Exceptions and other provisions relating to offences and civil penalty provisions

Section @302M Exception – seeking information about allowable donor status

New section @302M provides an exception to subsections @302D(1), @302E(1), @302F(1), @302G(1) or @302H(1) where a person has sought appropriate donor information in accordance with section @302P from the relevant donor establishing that the donor was an allowable donor. The exception also requires that at the relevant time specified in the provision, the person did not know, or have reasonable grounds to believe, that the donor was not an allowable donor. This exception is intended to exempt donors from contraventions where they are reasonably relying on authenticating information provided by donors about their status as allowable donors.

A note is inserted indicating that a person who wishes to rely on this section bears the evidential burden. This is appropriate, as the knowledge of the defendant is particularly within the knowledge of the defendant. It would be significantly more difficult and costly for the prosecution, or applicant in a civil case, to seek to prove the defendant does not meet the exemption than for the defendant to provide evidence that they do.

Section @302N Exception: gifts made in private capacity

New section @302N provides an exception to @302D(1), @302K(1) or @302L(1) where the gift was made in a private capacity to the gift recipient for personal use. This exception is intended to ensure that donors are excepted from contraventions where they are acting purely in a private capacity, rather than as a political actor engaged in political activity. Examples include gifts from friends and relatives for birthdays or other holiday occasions.
196 A note is inserted indicating that a person who wishes to rely on this section bears the evidential burden. This is appropriate, as the private domain of individuals and the intent behind their actions relating to their personal relationships is particularly within the knowledge of the defendant. It would be significantly more difficult, costly and invasive to the privacy of individuals who may meet the exception for the prosecution, or applicant in a civil case, to seek to prove the defendant does not meet the exception, than for the defendant to provide evidence that they do.

Section @302P Information relating to allowable donor status

197 New section @302P sets out what is appropriate donor information in relation to establishing that a donor is an allowable donor. Paragraph (1)(a) (in conjunction with subsection (2)) provides that a statutory declaration declaring that the donor is an allowable donor is appropriate donor information unless the regulations provide otherwise.

198 Paragraph (1)(b) establishes a regulation-making power to determine information that the first person may seek from the other person in order to establish other forms of appropriate donor information.

199 A note is included to alert readers that a person who obtains appropriate donor information may not commit a criminal offence or contravene a civil penalty provision under Division 3A.

200 This exception often operates alongside a reasonable grounds provision (see, for example @302M), so that @302P cannot be relied on if a person has reasonable grounds to believe a gift is not from an allowable donor, despite receiving information they were an allowable donor under @302P.

Section 302Q Debts due to the Commonwealth

201 New section @302Q specifies that the amount or value of a gift (determined at the time the gift is made) that is unlawful due to contravention of sections @302D to @302L (except @302J dealing with incorporating a body corporate) is payable to the Commonwealth by the gift recipient and may be recovered by the Commonwealth as a debt due to the Commonwealth by action in a court of competent jurisdiction. This ensures that unlawful gifts made under Division 3A cannot be retained by their recipients as a windfall gain, and operates in addition to any pecuniary penalty.

Section 302R Physical elements of offences

202 New section @302R provides that for the purposes of applying Chapter 2 of the Criminal Code, which concerns the general principles of criminal responsibility, to the offences in Division 3A, the physical elements of the offence are set out in the relevant provision.
Chapter 6: Disclosure

Simplified outline

**Item 34 – Before section 303**

203 This item inserts new section @302V, which provides a simplified outline of Division 4 of Part XX, which concerns disclosure of donations.

**Interpretation**

**Item 35 – At the end of section 303**

204 This item inserts a note after section 303, which is an interpretive provision indicating that a gift made to or received by a candidate is read as not including a reference to a gift made to or received for the benefit of a group of which the candidate is a member. The note alerts readers to subsection 318(2A) which indicates that certain particulars furnished to the Electoral Commission under subsection 318(2) may be taken as a return, which may be relevant to this interpretive provision.

**Disclosure of gifts**

**Item 36 – Subsection 304(2)**

**Item 37 – At the end of subsection 304(2)**

205 These items amend subsection 304(2) concerning the disclosure of gifts in candidates’ election returns, to specify that all requirements in section 304 must be complied with in furnishing a relevant return and that failure to comply with subsection 304(2) is a civil penalty of 180 penalty units. This may be a continuing contravention under section 93 of the Regulatory Powers Act.

**Item 38 – Subsection 304(3)**

**Item 39 – At the end of subsection 304(3)**

206 These items amend subsection 304(3) concerning the disclosure of gifts in Senate groups’ election returns, to specify that all requirements in section 304 must be complied with in furnishing a relevant return and that failure to comply with subsection 304(3) is a civil penalty of 180 penalty units. This may be a continuing contravention under section 93 of the Regulatory Powers Act.

**Item 40 – After subsection 304(3)**

207 This item inserts new subsection 304(3AA) which includes additional details that must be disclosed in election returns lodged by candidates under subsection 304(2) and Senate groups under subsection 304(3). In particular, details of senior staff employed or engaged by or on behalf of the person or group, and their membership of registered political parties must be included in these returns. Discretionary benefits received from the Commonwealth, a State or a Territory during the period of 12 months before polling day must also be included in these returns. Discretionary benefits are expected to include grants, contracts, payments and other benefits requiring the exercise of discretion by the Commonwealth or State or Territory, in contrast to a statutory entitlement.
Item 41 – Subparagraph 304(5)(b)(ii)

Item 42 – Paragraph 304(5)(c)

Item 43 – Subsection 304(5) (note)

Item 44 – Paragraph 304(6)(b) and (c)

Item 45 – Subsection 304(6) (note)

208 These items update references to the dollar amounts relating to disclosure, and repeal related notes. These references and notes are updated or repealed due to the inclusion of disclosure threshold as a defined term in subsection 287(1).

Item 46 – Paragraph 305A(1)(a)

209 This item inserts references to by-election in paragraph 305A(1)(a) so that a person must provide a return if they make relevant gifts during the disclosure period in relation to a by-election to any candidate in the by-election or a member of a group. This ensures that relevant gifts in relation to a by-election are treated in the same way as gifts to candidates in a general election, and enhances transparency for the public in relation to by-elections.

Item 47 – Subparagraph 305A(1)(b)(ii)

210 This item updates a reference to the dollar amount relating to disclosure and substitutes it with a reference to disclosure threshold, which is a defined term in subsection 287(1), as amended.

Item 48 – Paragraph 305A(1)(c)

211 This item amends paragraph 305A(1)(c) to refer to a political entity and associated entity as being excluded, in accordance with the definitions in subsection 287(1), rather than referring to each type of entity in turn. The same types of entities are covered by the exclusion in the provision, as amended.

Item 49 – Subsection 305A(1) (note)

212 This removes a note referring to the dollar amount relating to disclosure. This note is no longer required due to the inclusion of disclosure threshold as a defined term in subsection 287(1).

Item 50 – Paragraph 305A(1A)(a)

213 This item inserts a reference to by-election in paragraph 305A(1)(a) so that a person must provide a return if they receive a gift during the disclosure period in relation to a by-election. This ensures that relevant gifts in relation to a by-election are treated in the same way as gifts in a general election, and enhances transparency for the public in relation to by-elections.

Item 51 – Subparagraph 305A(1A)(b)(ii)

214 This item updates a reference to the dollar amount relating to disclosure and substitutes it with a reference to disclosure threshold which is a defined term in subsection 287(1), as amended.

Item 52 – Subparagraph 305A(1A)(c)

215 This item amends paragraph 305A(1A)(c) to refer to a political entity and associated entity as being excluded, in accordance with the definitions in subsection 287(1), rather than referring to each type of entity in turn. The same types of entities are covered by the exclusion in the provision, as amended.
Item 53 – Subsection 305A(1A) (note)

216 This item removes a note referring to the dollar amount relating to disclosure. This note is no longer required due to the inclusion of disclosure threshold as a defined term in subsection 287(1).

Item 54 – Subsection 305A(2)
Item 55 – Subsection 305A(2)(b)
Item 56 – Subsection 305A(2) (note)

217 These items amend subsection 305A(2) concerning the provision of returns to the Electoral Commission in respect of gifts to candidates under subsection 305A(1), other persons or bodies specified in a legislative instrument under subsection 305A(1A) and gifts received and used to enable the person to make, or reimburse the person for making relevant gifts. The amendments:

- specify that all requirement in section 305A must be complied with in furnishing a return under subsection 305A(2);

- omit a reference to the dollar amount relating to disclosure and substitute a reference to disclosure threshold, which is a defined term in subsection 287(1), as amended, and repeals a related note; and

- provide that failure to comply with subsection 305A(2) is a civil penalty of 60 penalty units. This may be a continuing contravention under section 93 of the Regulatory Powers Act.

Item 57 – Subsection 305A(2A)
Item 58 – Subsection 305A(3)(a)

218 These items amend subsection 305A(2A) and paragraph 305A(3)(a), to refer to by-elections, in addition to elections.

Item 59 – Subsection 305A(5)

219 This item repeals subsection 305A(5), which specified that section 305A did not apply to gifts made before 1 July 1992, as it is no longer required.

Item 60 – Section 305B (heading)
Item 61 – Subsections 305B(1) and (2)
Item 62 – Paragraph 305B(3)(c)

220 These items repeal and substitute subsections 305B(1), (2) and (3A) and amend paragraph 305B(3)(c) so that the requirements concerning donor annual returns apply to relevant gifts made to, or for the benefit of, political campaigners, in addition to registered political parties and State branches of registered political parties. The heading to section 305B is updated to reflect this change. These items also decriminalise failure to provide donor annual returns under subsection 305B(1), replacing the existing criminal offence with a continuous civil penalty provision of 60 penalty units. This means that a maximum civil penalty order of 60 penalty units per day can be made in relation to donor annual returns not provided within 20 weeks after the end of the financial year.
Item 63 – Subsection 305B(3A)

221  This item repeals and substitutes subsection 305B(3A) to improve presentation and apply it to gifts made to political campaigners. It also updates a reference to the dollar amount relating to disclosure and substitutes it with a reference to disclosure threshold which is a defined term in subsection 287(1), as amended.

Item 64 – Subsection 305B(5)

222  This item amends subsection 305B(5) to refer to gifts made by a political entity and associated entity as being excluded, in accordance with the definitions in subsection 287(1), rather than referring to each type of entity in turn. The same types of entities are covered by the exclusion in the provision, as amended.

Anonymous gifts and loans

Item 65 – Section 306

223  This item repeals section 306, which made it unlawful for political parties, state branches of political parties, candidates, members of Senate groups, or persons acting on behalf of one of these entities to receive donations without knowing or obtaining the name and address of the person giving the gift. This is no longer required as particulars of gifts of at least $250, as determined by for the purposes of section @302P, will need to be obtained by gift recipients under section @302L. It is expected that section @302L will prevent anonymous gifts as previously achieved by section 306, and a lower threshold of $250 will apply.

Item 66 – Subsection 306A(1)

224  This item repeals and substitutes subsection 306A(1), which makes it unlawful to receive loans unless certain details are recorded in accordance with subsection 306A(3), to improve clarity and apply it to gifts made to political campaigners. It also updates a reference to the dollar amount relating to disclosure and substitutes it with a reference to disclosure threshold, which is a defined term in subsection 287(1), as amended.

Item 67 – Subsection 306A(2)

Item 68 – Subsection 306A(2) (note)

225  These items update references to the dollar amounts relating to disclosure and repeal related notes. These references and notes are updated or repealed due to the inclusion of disclosure threshold as a defined term in subsection 287(1), as amended.

Item 69 – Subsection 306A(3)

226  This item repeals and substitutes subsection 306A(3) to improve clarity and clarify that the different requirements around keeping information in relation to a loan in paragraph 306A(4)(b) will be as the relevant case requires, and that a record of the terms and conditions of the loan will need to be kept in all cases.

Item 70 – Subsection 306A(4)

227  This item amends subsection 306A(4), which takes a person who is a candidate in an election to remain a candidate for 30 days after polling day for the purpose of subsection 306A(2), to refer to the polling day of a by-election, in addition to an election. This reflects the application of section 306A, as amended, to by-elections in addition to elections.

Item 71 – Paragraph 306A(6)(a)
This item repeals and substitutes paragraph 306A(6)(a) concerning unlawful loans to improve presentation and apply it to loans for the benefit of political campaigners and their financial controllers.

**Item 72 – Paragraph 306A(8) (definitions of credit card and loan)**

This item repeals the definitions of *credit card* and *loan* from paragraph 306A(8). These definitions have been relocated to subsection 287(1), as amended.

Repayment of gifts in cases of insolvency

**Item 73 – Section 306B**

This item repeals and substitutes section 306B, concerning the repayment of gifts from a corporation which is wound up in insolvency, or by the court on other grounds, so that it applies to political campaigners. This application is in addition to registered political parties, candidates and members of a Senate group. This ensures that political campaigners are subject to consistent requirements with respect to the repayment of these gifts. The item also revises the section for clarity and refers to the *disclosure threshold*, reflecting its inclusion in subsection 287(1) as a defined term, and omits a related note. A note concerning the commencement of the section is also omitted, as it is no longer required.

Disclosure of electoral expenditure

**Item 74 – Before section 308**

New section 307A provides a simplified outline of Division 5 of Part XX, designed to give readers an overview of, and introduce important concepts in, this Division.

**Item 75 – At the end of subsection 308(1)**

**Item 76 – At the end of subsection 308**

These items amend the definition of *electoral expenditure*, in relation to an election, to include any other event or activity prescribed by the regulations, in addition to those matters already covered by 308(1)(a) to 308(1)(g). This provides flexibility for additional matters to be prescribed in the regulations as electoral expenditure, which must be included in returns of electoral expenditure in accordance with Division 5. A note is inserted at the end of section 308 alerting readers that additional particulars provided under current subsection 318(2) may be taken to be part of the relevant return provided under Division 5.

**Item 77 – Subsection 309(2)**

**Item 78 – At the end of subsection 309(2)**

**Item 79 – Subsection 309(3)**

**Item 80 – At the end of subsection 309(3)**

These items decriminalise the returns of electoral expenditure that candidates and groups are required to provide under current section 309, replacing the criminal offence with continuous civil penalty provisions of 180 penalty units. This means that a maximum civil penalty order of 180 penalty units per day can be made in relation to election returns not provided within 15 weeks of polling day. A note is inserted alerting readers that this may be a continuing contravention under section 93 of the Regulatory Powers Act.

**Item 81 – At the end of subsection 309**

This item inserts subsection 309(4) which includes additional details that must be disclosed in returns of electoral expenditure lodged in respect of candidates under
subsection 309(2), Senate groups under subsection 309(3). In particular, details of senior staff employed or engaged by or on behalf of the person or group, and their membership of registered political parties must be included in these returns. Discretionary benefits received from the Commonwealth, a State or a Territory during the period of 12 months before polling day must also be included in these returns. Discretionary benefits include grants, contracts, payments and other benefits requiring the exercise of discretion by the Commonwealth or State or Territory, and do not include statutory entitlements.

**Item 82 – Subsection 311A(2)**
**Item 83 – Subsection 311A(2) (note)**

235 These items update a reference to the dollar amounts relating to disclosure and repeal a related note. This reference and note are updated or repealed due to the inclusion of disclosure threshold as a defined term in subsection 287(1), as amended.

**Annual returns**

**Item 84 – Before section 314AA**

236 New section 314AAA provides a simplified outline of this Division 5A, which relates to annual returns of registered political parties and other persons. This outline is designed to give readers an overview of, and introduce important concepts in, this Division.

**Item 85 – Section 314AA**
**Item 86 – At the end of section 314AA**

237 These items amend section 314AA to clarify that where a person becomes, or ceases to be, a political campaigner, third party campaigner or an associated entity during a financial year, they are required to provide a return under Division 5A in relation to the whole financial year. A note is inserted at the end of section 341AA alerting readers to subsection 318(2A) which indicates that certain particulars provided under subsection 318(2) may be taken as a return under Division 5A.

**Item 87 – Section 314AB**

*Political party and political campaigner returns*

238 This item repeals and substitutes section 314AB, which required agents of registered political parties to file annual returns, with new requirements applicable to both registered political parties and political campaigners. In addition to the financial particulars currently required of political parties in their annual returns, these new requirements include:

- details of senior staff employed or engaged by or on behalf of the person or group, and their membership of registered political parties;
- discretionary benefits received from the Commonwealth, a State or a Territory during the period of 12 months before polling day being included in these returns. Discretionary benefits include grants, contracts, payments and other benefits requiring the exercise of discretion by the Commonwealth or State or Territory, and do not include statutory entitlements.
- an auditor’s report prepared in accordance with section 314ABA; and
- in the case of a return by a political campaigner that is registered under the Australian Charities and Not-for-Profits Commission Act 2012 or the Fair Work (Registered Organisations Act 2009), a signed statement about compliance with section @302E and @302F.
Failure to provide a relevant annual return is decriminalised by amendments to subsection 314AB(1), with the criminal offence being replaced with a continuous civil penalty provision of 360 penalty units. This means that a maximum civil penalty order of 360 penalty units per day can be made in relation to annual returns not provided within 16 weeks after the end of the financial year. A note is inserted alerting readers that this may be a continuing contravention under section 93 of the Regulatory Powers Act.

New subsection 314AB(3) specifies that where a political expenditure is taken to have been incurred giving rise to a need for a return, it is to be provided as a separate return in respect of the relevant financial year, rather than being consolidated into a single return.

These items amend sections 314AC and 314AE to:

- update references to the dollar amounts relating to disclosure, and repeal related notes. These references and notes are updated or repealed due to the inclusion of disclosure threshold as a defined term in subsection 287(1), as amended; and
- reflect that political campaigners will now also need to lodge annual returns, consistent with the requirements for registered political parties.

These items amend section 314AEA, concerning annual returns by associated entities, to specify new requirements including:

- details of senior staff employed or engaged by or on behalf of the person or group, and their membership of registered political parties;
- discretionary benefits received from the Commonwealth, a State or a Territory during the period of 12 months before polling day being included in these returns. Discretionary benefits include grants, contracts and other benefits requiring the exercise of discretion by the Commonwealth or State or Territory, rather than being a statutory entitlement.

Failure to provide a relevant annual return is a continuous civil penalty of 180 penalty units. This means that a maximum civil penalty order of 180 penalty units per day can be made in relation to annual returns not provided within 16 weeks after the end of the financial year. A note is inserted alerting readers that this may be a continuing contravention under section 93 of the Regulatory Powers Act.

References to provisions of subsection 314AB(2) are updated to reflect the structure of that subsection, as amended, and the inclusion of political campaigners in addition to registered political parties.
New subsection 314AEA(6) provides that a return is not required to be provided by an associated entity for a financial year if, the entity was also a political campaigner during that year and a return was provided under section 314AB.

Item 100 – Section 314AEB (heading)
Item 101 – Subsections 314AEB(1) and (2)
Item 102 – At the end of subsection 314AEB(3)
Item 103 – At the end of section 314AEB

Third party campaigner returns

These items amend current section 314AEB so that it applies to third party campaigners, and links to the definition of political expenditure in subsection 287(1) as amended, as an indicator of whether an annual return must be provided. New requirements are also included concerning:

- details of senior staff employed or engaged by or on behalf of the person or group, and their membership of registered political parties;
- discretionary benefits received from the Commonwealth, a State or a Territory during the period of 12 months before polling day must also be included in these returns. Discretionary benefits include grants, contracts, and other benefits requiring the exercise of discretion by the Commonwealth or State or Territory, and do not include statutory entitlements; and
- a signed statement about compliance with section @302E and @302F.

Failure to provide a relevant annual return is a continuous civil penalty of 180 penalty units. This means that a maximum civil penalty order of 180 penalty units per day can be made in relation to annual returns not within 20 weeks after the end of the financial year. A note is inserted alerting readers that this may be a continuing contravention under section 93 of the Regulatory Powers Act.

New paragraph 314AEB(3)(c) provides that if the campaigner is required to provide a return under section 314AEC relating to gifts received for political expenditure, they are required to include that return in their annual return, and not as a separate return. This ensures that there is no duplication of penalties relating to annual returns.

New subsection 314AEB(4) specifies that where a political expenditure is taken to have been incurred giving rise to a need for a return, it is to be provided as a separate return in respect of the relevant financial year, rather than being consolidated into a single return.

Item 104 – Section 314AEC

This item repeals and substitutes section 314AEC so that it applies to third party campaigners, reflects the amendments to section 314AEB, and improves its presentation and clarity. Specifically, new section 314AEC:

- updates references to the dollar amounts relating to disclosure and repeals related notes. These references and notes are updated or repealed due to the inclusion of disclosure threshold as a defined term in subsection 287(1).
- clarifies that where the total amount of all gifts received from at least one single person during the financial year is more than the disclosure threshold, an entity must provide a return under section 314AEB. This ensures that gifts cannot be split to avoid disclosure under this provision, which was previously provided by subsection 314AEC(4).
A note is inserted under subsection 314AEC(1) alerting readers that a return under section 314AEC must be included in the return provided under section 314AEB, and not as a separate return. The relevant timeframes are provided for in 314AEB. This ensures that there is no duplication of penalties relating to annual returns.

**Item 105 – Subsection 314AG(2)**

**Regulations relating to annual returns**

This item makes a consequential amendment subsection 314AG(2) to update a reference, given the amendments to subsection 314AB.

**Miscellaneous**

**Item 106 – Section 314A**

This item replaces the current interpretation section in Division 6 with a simplified outline of this Division, designed to give readers an overview of, and introduce important concepts in, this Division. The operative provision previously in section 314A is now given effect in new subsection 318(2A).

**Item 107 – Section 315**

**Offences**

This item repeals and substitutes section 315, which previously contained certain offences relevant to the requirements of Divisions 3, 4, 5 and 5A of Part XX, and requirements around requirements to refund payments under Division 3. As the criminal offences have been replaced with civil penalties located in the relevant provisions, these offences are no longer necessary. The capacity for a court of competent jurisdiction to order a person subject to a conviction under section 137.1 or a civil penalty order to refund amounts wrongfully obtained under Division 3 has been retained in section 315, and its application has been expanded to the amount or value of any gift made in contravention of Part XX. This ensures that amounts wrongfully obtained cannot be retained as a windfall gain.

**Item 108 – Subsection 315A(1)**

**Recovery of payments**

This item amends subsection 315A(1), which specifies that actions in a court to recover an amount due to the Commonwealth may be brought in the name of the Commonwealth by the Electoral Commissioner. This subsection is updated to refer to amounts due to the Commonwealth under section 299 (election funding to be recovered) or @302Q (debts due to the Commonwealth) or under a civil penalty order made in relation to a contravention of a civil penalty provision in Part XX.
Item 109 – Subsection 316(2A)
Item 110 – Paragraphs 316(2A)(a) and (aa)
Item 111 – Subsection 316(2B)
Item 112 – Subsection 316(3)
Item 113 – Paragraph 316(3A)(a)
Item 114 – Paragraph 316(3A)(b)
Item 115 – Paragraph 316(7)(a)
Item 116 – Paragraphs 316(8)(b) and (11)(a)

Investigation

256 These items amend section 316 which deals with investigation and related matters. These amendments:

- allow a person authorised by the Electoral Commission (authorised officer) to serve a notice requiring production of a document or other things, or appearance before the authorised person to give evidence and produce documents, to the agent of the candidate or group and the financial controller or officer of a political campaigner or third party (subsection 316(2A)). This reflects the functions and duties of agents and financial controller under Part XX, as amended;

- allow agents and financial controllers to attend proceedings under subsection 316(2A), or nominate persons to attend on their behalf, where an officer of their entity is required to appear (subsection 316(2B));

- allow an authorised officer to serve a notice requiring particular action by any person where the authorised officer has reasonable grounds to believe that the person is capable of producing a document or other things, or giving evidence, relating to a contravention of a civil penalty provision in Part XX (subsection 316(3));

- allow an authorised officer to serve a notice requiring particular action by a financial controller or past financial controller of a political campaigner, third party campaigner or associated entity. The authorised officer must have reasonable grounds to believe that the person is capable of producing documents or other things, or giving evidence, relating to whether an entity is or was a political campaigner, third party campaigner or associated entity (subsection 316(3A)). This expands the operation beyond financial controllers of associated entities which was previously provided for, consistent with the new arrangements for political campaigners and third party campaigners; and

- expand the provisions around the applications for, and issuing of, warrants in certain circumstances relating to evidence in of contraventions of civil penalty provisions in, or a criminal offence against, Part XX (subsections 316(7), 316(8) and 316(11)). This reflects the expanded use of civil penalties in Part XX, as amended.

Item 117 – Section 317

Record keeping

257 This item repeals and substitutes section 317 to provide for new record keeping provisions for those persons who are subject to civil penalty provisions in Part XX. Records will be required to kept for five years following the end of a reporting period, polling day for a claim for election funding and or relevant gifts being made. The Electoral Commissioner may determine, by legislative instrument, certain records relating to compliance within Division 3A, and record keeping requirements in relation to compliance with the Part more generally, and records must be kept in accordance with such a determination.
The period of five years is consistent with arrangements under similar Commonwealth schemes, and ensures that the relevant period extends beyond the typical timeframe for an election cycle. Failure to keep records is subject to a civil penalty of 1,000 penalty units.

Item 118 – Subsection 318(1)
Item 119 – After subsection 318(2)
Item 120 – Subsection 318(3A)

Inability to complete returns

These items amend section 318 which deals with particular circumstances where a person is unable to obtain particulars required for the preparation of a return. Consequential amendments are made to remove references to offences that were previously under subsection 315(2) and refer to Part XX more generally.

New subsection 318(2A) specifies that particulars that were not provided in a return under Division 4, 5 or 5A of Part XX, but were provided to the Electoral Commission following the issuing of a notice under subsection 318(2), are taken to be a return under the relevant Division.

Amendment of claims and returns

These items amend section 319A which deals with the amendment of claims and returns. Consequential changes are made to ensure that requests to make amendments to claims and returns can be made by the financial controller of a political campaigner, third party campaigner or associated entity. Consequential changes are also made to ensure that where a claim or return is amended, there is no effect on whether a civil penalty order can be made against a person arising out of the claim or return.

Item 124 – Section 320

Publication of election funding determinations, refusal notices and returns

This item repeals and substitutes section 320 to modernise requirements relating to the publishing of annual returns, election returns and claims. Publication by the Electoral Commission must be in accordance with the timeframes specified in subsection (1). There is no general entitlement to peruse or obtain a copy of a determination, notice or return referred to in subsection (1) before the determination, notice or return is published.

Similarly, the Electoral Commission will no longer be required to keep a copy of the claims for inspection at its Canberra office. The form of publication is a matter for the AEC and may involve making the relevant material available on the Electoral Commission’s website.

Item 125 – Subsection 321(1) (definition of relevant amount)
Item 126 – Subsection 321(1) (definition of relevant period)

Indexation

These items amend the definitions of relevant amount and relevant period in subsection 321(1) to ensure the public funding rate specified in sections 293-295 continues to be indexed as would have occurred in the absence of the Bill.
Item 127 – Section 321A (heading)
Item 128 – Subsection 321A(1)
Item 129 – Subsections 321A(2) and (3)
Item 130 – Subsection 321A(7) (definition of indexation year)

265 This item reflects the replacement of the amount $10,000 with the new term disclosure threshold (see Chapter 1). Accordingly, item 127 amends the title of section 321A to ‘Indexation of disclosure threshold’. As with the amendments to section 321 in relation to the public funding rate, new section 321A will continue to index the disclosure threshold as would have occurred in the absence of the Bill.

Item 131 – Section 321B (paragraphs (g) and (h) of the definition of disclosure entity)
Item 132 – Section 321B (note at the end of the definition of disclosure entity)

Disclosure entities for authorisation purposes

266 These items amend the definition of disclosure entity, as introduced by the Authorisation Amendment Act, to reflect the changes to section 314AEB and the introduction of the terms political expenditure and third party campaigner. Items 131 and 132 make technical, consequential amendments and are not intended to impact the operation of section 321B.

Item 133 – Subsection 384(1)
Item 134 – Subsection 384(2)
Item 135 – Subsection 384(3)

Prosecution of offences

267 These items amend section 384, which allows a court of summary jurisdiction to hear and determine certain proceedings that would generally be indictable offences. The amendments remove references to a criminal offence against subsection 315(3), which is omitted, and limits the application of section 384 to a criminal offence against section 326 for bribery.

268 Consistent with current drafting practice, the pecuniary penalty in subsection 384(3) is updated to be expressed in penalty units.

Item 136 – Subsection 384A(1)
Item 137 – Subsection 384A(2)
Item 138 – At the end of section 384A

Application of Regulatory Powers Act

269 These items amend section 384A to provide that all civil penalty provisions under the Act are enforceable under Parts 4 and 6 of the Regulatory Powers Act.

270 New subsections 384A(3) and (4) allow the Electoral Commissioner to delegate his or her powers and functions as an authorised applicant and authorised person for the purposes of Parts 4 and 6 of the Regulatory Powers Act to an SES employee, or acting SES employee, of the Electoral Commission. A person exercising the Electoral Commissioner’s powers under the delegation must comply with any directions of the Electoral Commissioner. Allowing the Electoral Commissioner to delegate his or her powers and functions in this manner will allow for more efficient administration of civil penalty provisions.
Referendum (Machinery Provisions) Act 1984

Item 139 – Section 110A (paragraphs (e) and (d) of the definition of disclosure entity)
Item 140 – Section 110A (paragraph (e) of the definition of disclosure entity)
Item 141 – Section 110A (note at the end of the definition of disclosure entity)

These items amend the definition of disclosure entity which is relied on to determine particulars that may be required to be notified under section 110C, which concerns the authorisation of certain referendum matter. The amendments:

- make consequential changes to the definition and related note to reflect the amendments to section 314AEB of the Electoral Act and its application to third party campaigners; and

- refer to the disclosure threshold within the meaning of Part XX of the Electoral Act to reflect its inclusion as a defined term in subsection 287(1), as amended.

Item 142 – At the end of section 140AAA

This item inserts new subsections 140AAA(3) and (4) which allow the Electoral Commissioner to delegate his or her powers and functions as an authorised applicant and authorised person for the purposes of Parts 4 and 6 of the Regulatory Powers Act to an SES employee, or acting SES employee, of the Electoral Commission. A person exercising the Electoral Commissioner’s powers under the delegation must comply with any directions of the Electoral Commissioner. Section 110C, which is enforceable under Parts 4 and 6 of the Regulatory Powers Act concerns the authorisation of certain referendum matter. Allowing the Electoral Commissioner to delegate his or her powers and functions in this manner will allow for more efficient administration of enforcement of section 110C.
Division 2 – Application and transitional provisions

Item 143 – Application of amendments

Death and resignation of agents

273 Subitem (1) provides that the amendments to section 292D apply to resignations after the first 1 July that occurs on or after the day on which this Act receives the Royal Assent.

Appointment of financial controllers and requirement to publish determinations, notices and returns

274 Subitem (2) provides for the requirement in new section 292E for political campaigners, third party campaigners and associated entities to have a financial controller to apply on and after the first 1 July that occurs on or after the day on which this Act receives the Royal Assent. New section 320, the requirement to publish returns and claims, will also apply from this date.

Gifts and loans

275 Subitem (3) provides the following amendments apply in relation to gifts and loans made on and after the first 1 July that occurs on or after the day on which this Act receives the Royal Assent:

- new Division 3A of Part XX, which sets out the requirements relating to foreign donations (see Chapter 5);
  — an exception to this is provided by subitems 143(3)-(5);
- the amendments of Division 4 of Part XX, which sets out requirements relating to the disclosure of donations.

Annual returns

276 Subitem (4) provides the following amendments apply in relation to financial years commencing at or after the first 1 July that occurs on or after the day on which this Act receives the Royal Assent:

- new sections @302D and @302E, to the extent that it relates to those sections, as inserted by this Part;
- the amendments of Division 5A of Part XX, which sets out requirements relating to annual returns.

Soliciting gifts

277 Subitem (5) provides that, to the extent that is relevant, new section @302G, and new Division 3A of Part XX apply in relation to the soliciting of gifts after the first 1 July that occurs on or after the day on which this Act receives the Royal Assent.

Forming bodies corporate

278 Subitem (6) provides that, to the extent that is relevant, new section @302J, and new Division 3A of Part XX apply in relation to the forming of bodies corporate after the first 1 July that occurs on or after the day on which this Act receives the Royal Assent.
Disclosure of electoral expenditure

279 Subitem (7) provides that the amendments of Division 5 of Part XX, which relate to the disclosure of electoral expenditure, apply in relation to returns provided after the first 1 July that occurs on or after the day on which this Act receives the Royal Assent.

Requirement to refund payments

280 Subitem (8) provides that new section 315 applies in relation to penalties imposed, or civil penalty orders made, after the first 1 July that occurs on or after the day on which this Act receives the Royal Assent.

Keeping records

281 Subitem (9) provides that new section 317 applies in relation to records made after the first 1 July that occurs on or after the day on which this Act receives the Royal Assent.

282 Subitem (10) provides that, despite the repeal of section 317, that section, as in force immediately before its repeal, continues to apply after the first 1 July that occurs on or after the day on which this Act receives the Royal Assent in relation to records made before that date.

Indexation

283 To avoid doubt, subitem (11) provides that sections 321 and 321A apply from the first 1 July that occurs on or after the day on which this Act receives the Royal Assent.

Item 144 – Transitional – notices given under subsection 290(1)

284 This item provides that a notice of an appointment of an agent of a political party, candidate or group that is in force immediately before the first 1 July that occurs on or after the day on which this Act receives the Royal Assent will be taken to be in force under new subsection 392F(1). This will allow existing appointments to continue following commencement without additional written notice being provided.