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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Commonwealth Electoral Amendment
(Cleaning up Political Donations) Bill
2022**

No. , 2022

(Mr Wilkie)

**A Bill for an Act to amend the *Commonwealth
Electoral Act 1918*, and for related purposes**

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A Bill for an Act to amend the *Commonwealth Electoral Act 1918*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Commonwealth Electoral Amendment (Cleaning up Political Donations) Act 2022*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The first 1 July occurring after the 28th day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted.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

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Disclosure threshold

Commonwealth Electoral Act 1918

1 Subsection 287(1) (definition of *disclosure threshold*)

Omit “\$13,800”, substitute “\$1,000”.

2 Subsection 314AC(2)

Repeal the subsection.

3 Transitional provision

Section 321A of the *Commonwealth Electoral Act 1918* (indexation of disclosure threshold) applies to:

- (a) the indexation year starting 12 months after the commencement of this item; and
- (b) later indexation years.

Schedule 2—Real-time disclosure of donations

Commonwealth Electoral Act 1918

1 After Division 4 of Part XX

Insert:

Division 4A—Real-time disclosure of receipt of gifts

307AA Interpretation

In this Division:

agent or financial controller:

- (a) of a political party, candidate or group means the agent of the political party, candidate or group; or
- (b) of an entity that is not a political party or group means the financial controller of the entity; or
- (c) of an individual that is not a candidate means the individual.

disclosure gift from a person or entity means a gift from the person or entity that is equal to or more than the disclosure threshold.

disclosure sum from a person or entity means:

- (a) a disclosure gift received from the person or entity; or
- (b) a sum of gifts (whether or not any of the gifts is a disclosure gift) received from the person or entity that is equal to or more than the disclosure threshold.

reporting entity means any of the following:

- (a) a political entity;
- (b) a group;
- (c) an associated entity;
- (d) a senator or a member of the House of Representatives.

307AB Disclosure of certain gifts to reporting entities*Returns after receiving disclosure sum*

- (1) If a reporting entity receives a disclosure sum from a person or entity during a financial year, the reporting entity's agent or financial controller must provide a return in accordance with this section within 2 business days after the day:
 - (a) the reporting entity receives the first gift (the **threshold-exceeding gift**) (whether or not a disclosure gift) that makes the sum of gifts received during the financial year a disclosure sum; and
 - (b) of each subsequent gift (a **post-threshold gift**) after the threshold-exceeding gift the reporting entity receives from the person or entity during the financial year.

Form of the return

- (2) The return must:
 - (a) be in the approved form; and
 - (b) in the case of a return required under subsection (1) because of a threshold-exceeding gift:
 - (i) set out the disclosure sum received; and
 - (ii) set out the amount or value of each gift that makes up the disclosure sum; and
 - (iii) set out the date on which each of those gifts was received;
 - (c) in the case of a return required under subsection (1) because of a post-threshold gift:
 - (i) set out the amount or value of the post-threshold gift that was received; and
 - (ii) set out the date on which the post-threshold gift was received.
- (3) The return must set out:
 - (a) if the person or entity was an unincorporated association, other than a registered industrial organisation:
 - (i) the name of the association; and

- (ii) the names and addresses of the members of the executive committee (however described) of the association; or
- (b) if the gift or gifts from the person or entity was paid out of a trust fund or paid out of the funds of a foundation:
 - (i) the names and addresses of the trustees of the fund or of the foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; or
- (c) in any other case—the name and address of the person or entity.

Civil penalty

- (4) An agent or financial controller of a reporting entity must not contravene subsection (1).

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of gifts not disclosed—3 times that amount or value.
- (5) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (4) of this section.

307AC Disclosure of certain gifts to significant third parties or third parties

Returns after use of gift

- (1) If a significant third party or third party has used any part of a disclosure sum from a person or entity for a covered purpose during a financial year, the significant third party's or third party's financial controller must provide a return in accordance with this section within 2 business days after:
 - (a) if a part of a gift that makes up the sum has been used for a covered purpose before the sum is a disclosure sum—the day the sum became a disclosure sum; or

(b) otherwise—the day after a part of the sum is used for a covered purpose.

(2) If:

(a) a significant third party or third party uses during a financial year a part of a gift (a *post-disclosure sum gift*) received from a person or entity for a covered purpose; and

(b) before receiving the post-disclosure sum gift, the significant third party or third party had made a return required under subsection (1) in relation to the use of a disclosure sum from the person or entity for a covered purpose during the financial year;

the significant third party's or third party's financial controller must provide a return in accordance with this section within 2 business days after the day the part of the post-disclosure sum gift is used.

Covered purposes

(3) The following purposes are *covered purposes*:

(a) to enable a significant third party or third party to incur electoral expenditure, or create or communicate electoral matter;

(b) to reimburse a significant third party or third party for incurring electoral expenditure, or creating or communicating electoral matter.

Form of return

(4) The return must:

(a) be in the approved form; and

(b) in the case of a return required under subsection (1):

(i) set out the disclosure sum received; and

(ii) set out the amount or value of each gift that makes up the disclosure sum; and

(iii) set out the date on which each of those gifts was received; and

(iv) set out how the disclosure sum, in whole or part, was used for a covered purpose; and

(c) in the case of a return required under subsection (2):

- (i) set out the amount or value of the post-disclosure sum gift that was received; and
 - (ii) set out the date on which the post-disclosure sum gift was received; and
 - (iii) set out how the post-disclosure sum gift, in whole or part, was used for a covered purpose.
- (5) The return must set out:
 - (a) if the person or entity was an unincorporated association, other than a registered industrial organisation:
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; or
 - (b) if the gift or gifts from the person or entity was paid out of a trust fund or paid out of the funds of a foundation:
 - (i) the names and addresses of the trustees of the fund or of the foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; or
 - (c) in any other case—the name and address of the person or entity.

Civil penalty

- (6) A financial controller of a significant third party or third party must not contravene subsection (1) or (2).

Civil penalty:

The higher of the following amounts:

- (a) 60 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount or value, of gifts not disclosed—3 times that amount or value.
- (7) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (6) of this section.

307AD Exception—private capacity

This Division does not apply to a gift made in a private capacity to an individual for the individual’s personal use.

2 Subsection 320(1) (after table item 4)

Insert:

4A	each return provided under Division 4A	as soon as reasonably practicable after receiving the return.
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Schedule 3—Prohibited donors

Commonwealth Electoral Act 1918

1 After Division 5A of Part XX

Insert:

Division 5B—Prohibited donations

314AH Simplified outline of this Division

This Division sets out the various types of business entities which are prohibited donors. It is unlawful for a prohibited donor to make a political donation. A political donation includes a gift or loan made to or for the benefit of a political entity, a member of the Commonwealth Parliament, an associated entity or a significant third party.

Unlawful political donations may be recovered by the Commonwealth as a debt due to the Commonwealth.

314AI Definitions

In this Division:

close associate of a corporation means each of the following:

- (a) a director or officer of the corporation or the spouse of such a director or officer;
- (b) a related body corporate of the corporation;
- (c) a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20%, or the spouse of such a person;
- (d) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to that stapled security;

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- (e) if the corporation is a trustee, manager or responsible entity in relation to a trust—a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust).

electoral expenditure has the same meaning as in Division 5.

fossil fuel extraction industry business entity means:

- (a) a corporation engaged in a business undertaking that involves the exploration, prospecting, discovery, development, extraction or exportation of fossil fuels; or
- (b) a person who is a close associate of a corporation referred to in paragraph (a).

gambling industry business entity means:

- (a) a corporation engaged in a business undertaking that involves wagering, betting or other gambling (including the manufacture of machines used primarily for that purpose); or
- (b) a person who is a close associate of a corporation referred to in paragraph (a).

liquor industry business entity means:

- (a) a corporation engaged in a business undertaking that involves the manufacture or sale of liquor products; or
- (b) a person who is a close associate of a corporation referred to in paragraph (a).

officer, in relation to a corporation, has the same meaning as in the *Corporations Act 2001*.

political donation has the meaning given by section 314AJ.

prohibited donor means:

- (a) a fossil fuel extraction industry business entity; or
- (b) a gambling industry business entity; or
- (c) a liquor industry business entity; or
- (d) a tobacco industry business entity; or
- (e) an industry representative organisation, if the majority of the organisation's members are prohibited donors referred to in any of paragraphs (a) to (d).

related body corporate has the same meaning as in the *Corporations Act 2001*.

spouse of a person includes a de facto partner of that person.

Note: For **de facto partner**, see section 21 of the *Acts Interpretation Act 1901*.

stapled entity means an entity the interests in which are traded along with the interests in another entity as stapled securities and (in the case of a stapled entity that is a trust) includes any trustee, manager or responsible entity in relation to the trust.

State branch includes a division of a State branch.

tobacco industry business entity means:

- (a) a corporation engaged in a business undertaking that involves the manufacture or sale of tobacco or inhaled nicotine products; or
- (b) a person who is a close associate of a corporation referred to in paragraph (a).

voting power has the same meaning as in the *Corporations Act 2001*.

314AJ Meaning of *political donation*

For the purposes of this Division, a **political donation** is:

- (a) a gift made to or for the benefit of a political party or a State branch of a political party; or
- (b) a gift made to or for the benefit of a member of the Commonwealth Parliament; or
- (c) a gift made to or for the benefit of a candidate (including a member of a group); or
- (d) a gift made to or for the benefit of an associated entity of a registered political party; or
- (e) a gift made to or for the benefit of a significant third party; or
- (f) a gift made to or for the benefit of an entity or other person (not being a party, elected member, group or candidate), the whole or part of which was used or is intended to be used by the entity or person:

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- (i) to enable the entity or person to make, directly or indirectly, a political donation or to incur electoral expenditure in relation to an election; or
 - (ii) to reimburse the entity or person for making, directly or indirectly, a political donation or incurring electoral expenditure in relation to an election; or
- (g) a loan:
- (i) that, if it had been a gift, would have been a political donation under this section; and
 - (ii) that was not made by a financial institution (within the meaning of section 306A).

314AK Political donations by prohibited donors unlawful

- (1) It is unlawful for a prohibited donor to make a political donation.
- (2) It is unlawful for a person to make a political donation on behalf of a prohibited donor.
- (3) It is unlawful for a person to accept a political donation that was made (wholly or partly) by a prohibited donor or by a person on behalf of a prohibited donor.
- (4) It is unlawful for a prohibited donor to solicit another person to make a political donation.
- (5) It is unlawful for a person to solicit another person on behalf of a prohibited donor to make a political donation.
- (6) If a person receives a gift that, under this section, it is unlawful for the person to receive, an amount equal to the amount or value of the gift is payable by that person to the Commonwealth and may be recovered by the Commonwealth as a debt due to the Commonwealth by action, in a court of competent jurisdiction, against:
 - (a) in the case of a gift to or for the benefit of a political party or a State branch of a political party:
 - (i) if the party or branch, as the case may be is a body corporate—the party or branch, as the case may be; or
 - (ii) in any other case—the agent of the party or branch, as the case may be; or

- (b) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.

314AL Offences—political donations

- (1) A person (the *defendant*) commits an offence if:
 - (a) the defendant is a prohibited donor; and
 - (b) the defendant makes a gift; and
 - (c) the gift is a political donation.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

- (2) A person (the *defendant*) commits an offence if:
 - (a) the defendant makes a gift on behalf of another person; and
 - (b) the gift is a political donation; and
 - (c) the other person is a prohibited donor.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

- (3) A person (the *defendant*) commits an offence if:
 - (a) the defendant accepts a gift; and
 - (b) the gift is a political donation; and
 - (c) the gift was given (wholly or partly) by, or by a person on behalf of, a prohibited donor.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

- (4) A person (the *defendant*) commits an offence if:
 - (a) the defendant is a prohibited donor; and
 - (b) the defendant solicits another person to make a gift; and
 - (c) the gift is, or would be, a political donation.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

- (5) A person (the *defendant*) commits an offence if:
 - (a) the defendant solicits another person to make a gift; and
 - (b) the defendant does so on behalf of another person (the *donor*); and
 - (c) the donor is a prohibited donor; and
 - (d) the gift is, or would be, a political donation.

Penalty: Imprisonment for 2 years or 400 penalty units, or both.

Fault element

- (6) The fault element for the following paragraphs is knowledge by the defendant:
- (a) paragraphs (1)(a) and (c);
 - (b) paragraphs (2)(b) and (c);
 - (c) paragraphs (3)(b) and (c);
 - (d) paragraphs (4)(a) and (c);
 - (e) paragraphs (5)(c) and (d).

Civil penalty

- (7) A person is liable to a civil penalty if the person contravenes subsections (1) to (5).

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount or value, or an estimate of the amount of value, of the gift at the time the gift is made—3 times that amount or value.

314AM Offence—scheme to circumvent prohibitions

- (1) A person commits an offence if the person enters into or carries out a scheme (whether alone or with others) for the purpose of circumventing a prohibition or requirement of this Division.

Penalty: Imprisonment for 2 years.

- (2) It does not matter whether the person also enters into or carries out the scheme for other purposes.

- (3) In this section:

scheme includes an arrangement, an understanding or a course of conduct.

314AN Electoral Commission may determine that a person is presumed not to be a prohibited donor

- (1) The Electoral Commission may determine, in writing, that a person (the *donor*) is presumed not to be a prohibited donor for the purposes of this Division if:
 - (a) a donor or another person (the *applicant*) applies to the Commission for the determination to be made; and
 - (b) the Commission is satisfied that it is more likely than not that the donor is not a prohibited donor.
- (2) The Electoral Commission can decide whether or not to make a determination under subsection (1) on the basis of information provided by the applicant and their own inquiries.
- (3) A determination under subsection (1) remains in force for 12 months after it is made, unless it is revoked earlier.
- (4) The Electoral Commission may, by written notice to the applicant, revoke a determination under subsection (1) if the Commission is no longer satisfied of the matter in paragraph (1)(b). Subsection (2) does not apply to a decision of whether or not to revoke a determination under this subsection.

Effect of presumption

- (5) If a person is, under a determination made under subsection (1), presumed not to be a prohibited donor, then sections 314AK, 314AL and 314AM do not apply in relation to a gift made by or on behalf of the person.
- (6) However, subsection (5) does not apply to a person who knows that information provided to the Electoral Commission in connection with the making of the determination was false or misleading in a material particular.
- (7) The onus of proving that a person is not presumed not to be a prohibited donor under a determination made under subsection (1) is born by:
 - (a) in proceedings under section 314AK—the Commonwealth;
or

- (b) in proceedings for an offence against section 314AL or 314AM—the prosecution.

Register of determinations

- (8) The Electoral Commission must maintain, and publish on the Commission’s website, a register of determinations made under subsection (1).

Determination is not a legislative instrument

- (9) A determination made under subsection (1) is not a legislative instrument.

2 Subsection 315A(1)

After “or subsection 301(3)”, insert “or 314AK(6)”.

Schedule 4—Capping donations

Commonwealth Electoral Act 1918

1 Before Division 6 of Part XX

Insert:

Division 5C—Capping donations

314AO Simplified outline of this Division

This Division places a cap on political donations of \$50,000 from any one donor within a donation period. Political donations to the same registered political party, member of the Commonwealth Parliament, candidate (including a member of a group), significant third party or associated entity are aggregated together for the purpose of calculating the donation cap.

Political donations are also attributed to the relevant registered political party for the purpose of aggregating political donations.

It is unlawful for a registered political party, member of the Commonwealth Parliament, candidate, group, associated entity or significant third party to accept a political donation if the donation would exceed the donation cap individually or when aggregated with other relevant donations.

Unlawful political donations may be recovered by the Commonwealth as a debt due to the Commonwealth.

314AP Definitions

In this Division:

donation cap means \$50,000.

donation period: the donation period:

- (a) begins 31 days after the polling day for a general election;
and
- (b) ends 30 days after the polling day of the next general election.

State branch includes a division of a State branch.

314AQ Capping of political donations

A political donation made to, or for the benefit of, any of the following:

- (a) a political party or a State branch of a political party;
- (b) a member of the Commonwealth Parliament;
- (c) a candidate (including a member of a group);
- (d) a significant third party;
- (e) an associated entity;

must not exceed the donation cap for each donation period.

314AR Aggregating political donations

- (1) This section applies to the dollar amount mentioned in the definition of *donation cap* in section 314AP.

Aggregation of donations

- (2) A political donation made by a donor of an amount equal to or less than the donation cap is to be treated as a political donation that exceeds the donation cap if that political donation and other separate political donations made by that donor within the donation period to the same:
 - (a) registered political party; or
 - (b) member of the Commonwealth Parliament; or
 - (c) candidate (including a member of a group); or
 - (d) significant third party; or
 - (e) associated entity;would exceed the donation cap if aggregated together.
- (3) For the avoidance of doubt, political donations made to the same person in their capacity as a member of the Commonwealth

Parliament or in their capacity as a candidate in an election are to be aggregated for the purpose of calculating the donation cap.

Attribution of donations

- (4) A political donation made to:
- (a) a member of the Commonwealth Parliament; or
 - (b) a candidate (including a member of a group); or
 - (c) a group that is endorsed by a registered political party; or
 - (d) a State branch of a political party; or
 - (e) an associated entity;
- must also be included as a donation to the relevant registered political party for the purpose of aggregating political donations.
- (5) A political donation to a candidate or a member of a group must also be included as a donation to the group for the purpose of aggregating political donations.

Excluded donations

- (6) For the purpose of aggregating political donations, a gift is excluded from the calculation if the gift is accepted by an associated entity or significant third party for a purpose that does not involve election expenditure.

314AS Exceeding donation cap unlawful

- (1) Except as provided in this section, it is unlawful for a registered political party, member of the Commonwealth Parliament, candidate, group, associated entity or significant third party to accept a political donation if:
- (a) the political donation; or
 - (b) the political donation when aggregated in accordance with section 314AR;
- would exceed the donation cap during a donation period.
- (2) It is not unlawful for a registered political party, member of the Commonwealth Parliament, candidate, group, associated entity or significant third party to accept a political donation if:

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- (a) the political donation would exceed the donation cap only if aggregated with other political donations from the donor in the donation period; and
 - (b) the registered political party, member of the Commonwealth Parliament, candidate, group, associated entity or significant third party did not know and could not reasonably have known of the other political donation included in the aggregation; and
 - (c) an amount equal to the amount by which the aggregated political donation exceeded the donation cap was returned by the recipient of the political donation to the donor within 5 business days of the recipient discovering the donation exceeded the donation cap.
- (3) If a person receives a political donation that, under this section, it is unlawful for the person to receive, an amount equal to the amount or value of the political donation is payable by that person to the Commonwealth and may be recovered by the Commonwealth as a debt due to the Commonwealth by action, in a court of competent jurisdiction, against:
- (a) in the case of a political donation to or for the benefit of a political party or a State branch of a political party:
 - (i) if the party or branch is a body corporate—the party or branch; or
 - (ii) in any other case—the agent of the party or branch; or
 - (b) in the case of a political donation to or for the benefit of an associated entity or significant third party:
 - (i) if the associated entity or significant third party is a body corporate—the associated entity or significant third party; or
 - (ii) in any other case—the agent of the associated entity or significant third party; or
 - (c) in any other case:
 - (i) the candidate or a member of the group; or
 - (ii) the agent of the candidate or of the group.

2 Subsection 315A(1)

After “or subsection 301(3)”, insert “or 314AS(3)”.

Schedule 5—Definition of gift

Commonwealth Electoral Act 1918

1 Subsection 287(1) (definition of *gift*)

Repeal the definition, substitute:

gift has the meaning given by section 287AAA.

2 After section 287

Insert:

287AAA Meaning of *gift*—general

In this Act, *gift*:

- (a) subject to paragraph (b), means:
 - (i) any disposition of property made by a person to another person, being a disposition made without consideration in money or money's worth or with inadequate consideration; or
 - (ii) the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration; or
 - (iii) without limiting subparagraph (ii)—the provision of professional services, by an individual who is a member of the relevant profession, for no consideration or for inadequate consideration; or
 - (iv) an amount paid by a person as a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fundraising venture or function if the amount forms part of the proceeds of the venture or function; or
 - (v) something that is a gift under section 287AAB or 287AAC; and
- (b) does not include:
 - (i) a payment under Division 3; or
 - (ii) an annual subscription paid to a political party, to a State branch of a political party or to a division of a

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- State branch of a political party by a person in respect of the person's membership of the party, branch or division; or
 - (iii) any visit, experience or activity provided for the purposes of a political exchange program.

287AAB Meaning of *gift*—gifts to political entities

Scope of this section

- (1) If:
 - (a) the person does a thing (including incurring expenditure) for the dominant purpose of promoting a political entity; and
 - (b) the person does the thing for no consideration or for inadequate consideration; and
 - (c) the value of the thing (less any consideration) is at least \$1,000;

the doing of the thing is taken to be a **gift** made by the person to the political entity, to the extent that the thing done relates to a federal election.

Note: A political entity can be promoted by opposing another political entity.
- (2) However, a reference in this Part to the political entity receiving a gift does not include a reference to receiving a thing that is taken to be gift only because of subsection (1) if:
 - (a) the political entity does not know:
 - (i) that the thing is done; or
 - (ii) the matters mentioned in paragraphs (1)(a), (b) and (c) in relation to the thing; and
 - (b) this lack of knowledge is reasonable in the circumstances.
- (3) A reference in this section to a thing done by a person includes a reference to a thing done by a person on behalf of the members of an unincorporated association.
- (4) For the purposes of this section:
 - (a) a thing done for the dominant purpose of promoting a registered political party is taken not to be done for the purpose of promoting:

- (i) a State Branch of that party; or
 - (ii) a candidate endorsed by that party; and
 - (b) a thing done for the dominant purpose of promoting a State Branch of a registered political party is taken not to be done for the purpose of promoting a candidate endorsed by that State Branch; and
 - (c) a thing done for the dominant purpose of promoting a group is taken not to be done for the purpose of promoting a candidate in a federal election; and
 - (d) it does not matter whether a political entity knows the identity of the person who does a thing.
- (5) This section does not apply for the purposes of:
- (a) subsections 314AK(3) and (6) (about prohibited donors); or
 - (b) section 314AS (about the donations cap).
- (6) In this section:

federal election means an election of a member of the House of Representatives or of Senators for a State or Territory.

287AAC Meaning of *gift* to member of Parliament

Scope of this section

- (1) If:
- (a) the person does a thing (including incurring expenditure) for the dominant purpose of promoting a member of the Commonwealth Parliament; and
 - (b) the person does the thing for no consideration or for inadequate consideration; and
 - (c) the value of the thing (less any consideration) is at least \$1,000;

the doing of the thing is taken to be a ***gift*** made by the person to the member.

Note: A member of the Commonwealth Parliament can be promoted by opposing a political entity.

- (2) However, a reference in this Part to the member receiving a gift does not include a reference to receiving a thing that is taken to be gift only because of subsection (1) if:
- (a) the member does not know:
 - (i) that the thing is done; or
 - (ii) the matters mentioned in paragraphs (1)(a), (b) and (c) in relation to the thing; and
 - (b) this lack of knowledge is reasonable in the circumstances.
- (3) A reference in this section to a thing done by a person includes a reference to a thing done by a person on behalf of the members of an unincorporated association.
- (4) For the purposes of this section:
- (a) a thing done for the dominant purpose of promoting a registered political party or a State Branch of a registered political party is taken not to be done for the purpose of promoting a member of the Commonwealth Parliament who belongs to that party or State Branch; and
 - (b) it does not matter whether a member of the Commonwealth Parliament knows the identity of the person who does a thing.
- (5) This section does not apply for the purposes of:
- (a) subsections 314AK(3) and (6) (about prohibited donors); or
 - (b) section 314AS (about the donations cap).

Schedule 6—Capping electoral expenditure

Commonwealth Electoral Act 1918

1 Part XX (heading)

After “Election funding”, insert “, electoral expenditure”.

2 After Division 5 of Part XX

Insert:

Division 5AA—Capping electoral expenditure

314AAAA Definitions

In this Division:

acts in concert: see subsection 314AAAE(5).

election means:

- (a) a general election; or
- (b) a House of Representatives election for an Electoral Division; or
- (c) a Senate election for a State or Territory.

expenditure cap period:

- (a) for:
 - (a) a general election; or
 - (ii) a House of Representatives election that is part of a general election; or
 - (iii) a Senate election that has the same polling day as a general election;means the 18 months ending on the polling day for the election; and
- (b) for any other election—means the period:
 - (i) starting on the day of the issue of the writ or writs for the election; and
 - (ii) ending on the polling day for the election.

314AAAB Capping of political expenditure in general elections

- (1) A registered political party contravenes this subsection if the total amount of electoral expenditure incurred:
- (a) by or with the authority of the political party; and
 - (b) in relation to a general election; and
 - (c) during the expenditure cap period for the election;
- exceeds \$40 million.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the excess mentioned in this subsection—3 times that excess.
- (2) A person contravenes this subsection if:
- (a) the person is:
 - (i) a significant third party; or
 - (ii) a third party; and
 - (b) the total amount of electoral expenditure incurred:
 - (i) by or with the authority of the person; and
 - (ii) in relation to a general election; and
 - (iii) during the expenditure cap period for the election;exceeds \$5 million.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the excess mentioned in paragraph (b) of this subsection—3 times that excess.
- (3) A reference in subsection (1) or (2) to electoral expenditure in relation to a general election includes a reference to:

- (a) electoral expenditure in relation to a particular House of Representatives election that forms part of the general election; or
- (b) electoral expenditure in relation to a particular Senate election (if any) that has the same polling day as the general election.

314AAAC Capping of political expenditure in Senate elections

Political parties

- (1) A registered political party contravenes this subsection if:
 - (a) the political party endorses one or more candidates in a Senate election for a particular State or Territory; and
 - (b) the total amount of electoral expenditure incurred:
 - (i) by or with the authority of the political party; and
 - (ii) in relation to the Senate election for the State or Territory; and
 - (iii) during the expenditure cap period for the election; exceeds the amount worked out by multiplying \$500,000 by the number of candidates in the Senate election for the State or Territory that the political party endorses.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the excess mentioned in paragraph (b) of this subsection—3 times that excess.
- (2) If the Senate election has the same polling day as a general election, subsection (1) only applies to electoral expenditure that:
 - (a) is for advertising or other material that:
 - (i) explicitly mentions the Senate election or the name of a candidate in the Senate election; and
 - (ii) is communicated to electors in the State or Territory; and

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- (iii) is not mainly communicated to electors outside the State or Territory; or
 - (b) disregarding subsection 314AAAE(1), is incurred by or with the authority of:
 - (i) a candidate in the Senate election who is endorsed by the political party; or
 - (ii) a person acting in concert with such a candidate.

Groups

- (3) A candidate in a Senate election contravenes this subsection if:
 - (a) the candidate is a member of a group; and
 - (b) the candidate is not endorsed by a registered political party; and
 - (c) the total amount of electoral expenditure incurred:
 - (i) by or with the authority of the candidate or another member of the group; and
 - (ii) in relation to the election; and
 - (iii) during the expenditure cap period for the election; exceeds the amount worked out by multiplying \$500,000 by the number of members of the group.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the excess mentioned in paragraph (c) of this subsection—3 times that excess.

Other candidates

- (4) A candidate in a Senate election for a State or Territory contravenes this subsection if:
 - (a) the candidate is not endorsed by a registered political party; and
 - (b) the candidate is not a member of a group; and
 - (c) the total amount of electoral expenditure incurred:

- (i) by or with the authority of the candidate; and
- (ii) in relation to the election; and
- (iii) during the expenditure cap period for the election; exceeds \$500,000.

Note: Expenditure incurred by a candidate who is endorsed by a registered political party is taken to be incurred by the party: see subsection 314AAAE(1).

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the excess mentioned in paragraph (c) of this subsection—3 times that excess.

Significant third parties and third parties

- (5) A person contravenes this subsection if:
- (a) the person is:
 - (i) a significant third party; or
 - (ii) a third party; and
 - (b) the total amount of electoral expenditure incurred:
 - (i) by or with the authority of the person; and
 - (ii) in relation to the Senate election for a particular State or Territory; and
 - (iii) during the expenditure cap period for the election; exceeds \$250,000.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the excess mentioned in paragraph (b) of this subsection—3 times that excess.

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- (6) If the Senate election has the same polling day as a general election, subsection (5) only applies to electoral expenditure that is for advertising or other material that:
- (a) explicitly mentions the Senate election or the name of a candidate in the Senate election; and
 - (b) is communicated to electors in the State or Territory, and
 - (c) is not mainly communicated to electors outside the State or Territory.

314AAAD Capping of political expenditure in House of Representatives elections

Political parties

- (1) A registered political party contravenes this subsection if:
- (a) the political party endorses a candidate in a House of Representatives election for a particular Electoral Division; and
 - (b) the total amount of electoral expenditure incurred:
 - (i) by or with the authority of the political party; and
 - (ii) in relation to the House of Representatives election for the Electoral Division; and
 - (iii) during the expenditure cap period for the election; exceeds \$250,000.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the excess mentioned in paragraph (b) of this subsection—3 times that excess.
- (2) If the House of Representatives election is part of a general election, subsection (1) only applies to electoral expenditure that:
- (a) is for advertising or other material that:

- (i) explicitly mentions the Electoral Division or the name of a candidate in the House of Representatives election; and
 - (ii) is communicated to electors in the Electoral Division; and
 - (iii) is not mainly communicated to electors outside the Electoral Division; or
- (b) disregarding subsection 314AAAE(1), is incurred by or with the authority of:
- (i) a candidate in the House of Representatives election who is endorsed by the political party; or
 - (ii) a person acting in concert with such a candidate.

Candidates

- (3) A candidate in a House of Representatives election contravenes this subsection if:
- (a) the candidate is not endorsed by a registered political party; and
 - (b) the total amount of electoral expenditure incurred:
 - (i) by or with the authority of the candidate; and
 - (ii) in relation to the election; and
 - (iii) during the expenditure cap period for the election; exceeds \$250,000.

Note: Expenditure incurred by a candidate who is endorsed by a registered political party is taken to be incurred by the party: see subsection 314AAAE(1).

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
- (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the excess mentioned in paragraph (b) of this subsection—3 times that excess.

Significant third parties and third parties

- (4) A person contravenes this subsection if:
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- (a) the person is:
 - (i) a significant third party; or
 - (ii) a third party; and
 - (b) the total amount of electoral expenditure incurred:
 - (i) by or with the authority of the person; and
 - (ii) in relation to a House of Representatives election for a particular Electoral Division; and
 - (iii) during the expenditure cap period for the election; exceeds \$100,000.

Civil penalty:

The higher of the following amounts:

- (a) 200 penalty units;
 - (b) if there is sufficient evidence for the court to determine the amount, or an estimate of the amount, of the excess mentioned in paragraph (b) of this subsection—3 times that excess.
- (5) If the House of Representatives election is part of a general election, subsection (4) only applies to electoral expenditure that is for advertising or other material that:
- (a) explicitly mentions the Electoral Division or the name of a candidate in the House of Representatives election; and
 - (b) is communicated to electors in the Electoral Division; and
 - (c) is not mainly communicated to electors outside the Electoral Division.

314AAAE Aggregating electoral expenditure

- (1) For the purposes of this Division, expenditure incurred by or with the authority of:
 - (a) a candidate in an election who is endorsed by a registered political party; or
 - (b) a State Branch of a registered political party; or
 - (c) a division of a State Branch of a registered political party;is taken to be incurred by the registered political party.

- (2) For the purposes of this Division, expenditure incurred by or with the authority of an associated entity is taken to be incurred by each registered political party with which the entity is associated.

Persons acting in concert

- (3) If:
- (a) 2 or more persons act in concert to incur, or to authorise the incurring of, electoral expenditure in relation to an election during the capped expenditure period for the election; and
 - (b) any of those persons is:
 - (i) a registered political party; or
 - (ii) a State Branch of registered political party; or
 - (iii) a division of a State Branch of a registered political party; or
 - (iv) a candidate in the election who is endorsed by a registered political party; or
 - (v) an associated entity that is associated with a registered political party;

the expenditure is taken to have been incurred by the registered political party.

- (4) If:
- (a) 2 or more persons act in concert to incur, or to authorise the incurring of, electoral expenditure in relation to an election during the capped expenditure period for the election; and
 - (b) none of those persons is a person mentioned in paragraph (3)(b); and
 - (c) any of those persons is a significant third party or a third party;

the expenditure is taken to have been incurred by the significant third party or the third party (or by each of those significant third parties or third parties).

- (5) For the purposes of this Division, a person *acts in concert* with another person if the person acts under an agreement (whether formal or informal) with the other person to campaign with the object, or principal object, of:
- (a) having a particular party or candidate elected; or

(b) opposing the election of a particular party or candidate.

314AAAF When electoral expenditure is incurred

- (1) For the purposes of this Division, electoral expenditure is taken to be incurred when the services for which the expenditure is incurred are actually provided or the goods for which the expenditure is incurred are actually delivered.
- (2) In particular:
 - (a) expenditure on advertising is incurred when the advertising is broadcast or published; and
 - (b) expenditure on the production and distribution of election material is incurred when the material is distributed; and
 - (c) expenditure on the employment of staff is incurred during the period of their employment; and
 - (d) expenditure of a class prescribed by the regulations is incurred at the time so prescribed.

Schedule 7—Penalties

Commonwealth Electoral Act 1918

1 After subsection 384A(1)

Insert:

- (1A) The pecuniary penalty that a court may impose under the Regulatory Powers Act on a body corporate that has contravened a civil penalty provision of this Act must not be more than 5 times the pecuniary penalty specified for the civil penalty provision.