

2022

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Commonwealth Electoral Amendment  
(Stop the Lies) Bill 2022**

**No.     , 2022**

*(Ms Steggall)*

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



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

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act is the *Commonwealth Electoral Amendment (Stop the*  
6                     *Lies) Act 2022*.

7     **2 Commencement**

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

| <b>Column 1</b>          | <b>Column 2</b>  | <b>Column 3</b>     |
|--------------------------|--|---------------------|
| <b>Provisions</b>        | <b>Commencement</b>                                    | <b>Date/Details</b> |
| 1. The whole of this Act | The 28th day after this Act receives the Royal Assent. |                     |

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

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

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule  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

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1 **Schedule 1—Amendments**  
2

3 ***Commonwealth Electoral Act 1918***

4 **1 After Part XXA**

5 Insert:

6 **Part XXB—Misleading and deceptive political**  
7 **advertising**  
8

9 **321J Definitions**

10 In this Part:

11 ***election participant***: see subsection 321L(3).

12 ***engage in conduct*** means:

- 13 (a) do an act; or  
14 (b) omit to perform an act.

15 ***publish*** means communicate by any means, including by print,  
16 radio, television, internet or telephone.

17 ***referendum*** has the same meaning as in the *Referendum*  
18 *(Machinery Provisions) Act 1984*.

19 ***referendum matter***: see section 321K.

20 **321K Meaning of *referendum matter***

21 (1) ***Referendum matter*** means matter communicated or intended to be  
22 communicated for the dominant purpose of influencing the way  
23 electors vote in a referendum, including by promoting or opposing:

- 24 (a) any of the referendum options; or  
25 (b) a person or entity associated with any of the referendum  
26 options.

27 Note: Communications whose dominant purpose is to educate their audience  
28 on a public policy issue, or to raise awareness of, or encourage debate

1 on, a public policy issue, are not for the dominant purpose of  
2 influencing the way electors vote in a referendum (as there can be  
3 only one dominant purpose for any given communication).

4 (2) For the purposes of subsection (1), each creation, recreation,  
5 communication or recommunication of matter is to be treated  
6 separately for the purposes of determining whether matter is  
7 referendum matter.

8 Note: For example, matter that is covered by an exception under  
9 subsection (5) when originally communicated may become  
10 referendum matter if recommunicated for the dominant purpose  
11 referred to in subsection (1).

12 *Rebuttable presumption for matter that expressly promotes or*  
13 *opposes referendum options etc.*

14 (3) Without limiting subsection (1), the dominant purpose of the  
15 communication or intended communication of matter that  
16 expressly promotes or opposes:  
17 (a) any of the referendum options; or  
18 (b) a person or entity associated with any of the referendum  
19 options;  
20 is presumed to be the purpose referred to in subsection (1), unless  
21 the contrary is proved.

22 *Matters to be taken into account*

23 (4) Without limiting subsection (1), the following matters must be  
24 taken into account in determining the dominant purpose of the  
25 communication or intended communication of matter:  
26 (a) whether the communication or intended communication is or  
27 would be to the public or a section of the public;  
28 (b) whether the matter contains an express or implicit comment  
29 on any of the referendum options or any person or entity  
30 associated with any of the referendum options;  
31 (c) whether the communication or intended communication is or  
32 would be received by electors near a polling place;  
33 (d) how soon a referendum is to be held after the creation or  
34 communication of the matter;  
35 (e) whether the communication or intended communication is or  
36 would be unsolicited.



*Exceptions*

- (5) Despite subsections (1) and (3), matter is not *referendum matter* if the communication or intended communication of the matter:
- (a) forms or would form part of the reporting of news, the presenting of current affairs or any genuine editorial content in news media; or
  - (b) is or would be by a person for a dominant purpose that is a satirical, academic, educative or artistic purpose, taking into account any relevant consideration including the dominant purpose or any other communication of matter by the person; or
  - (c) is or would be a private communication by a person to another person who is known to the first person; or
  - (d) is or would be by or to a person who is a Commonwealth public official (within the meaning of the *Criminal Code*) in that person's capacity as such an official; or
  - (e) is or would be a private communication to a political entity (who is not a Commonwealth public official) in relation to public policy or public administration; or
  - (f) occurs or would occur in the House of Representatives or the Senate, or is or would be to a parliamentary committee.

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

**321L Electoral matter or referendum matter that is misleading or deceptive etc.**

*Electoral matter or referendum matter that is misleading or deceptive etc.*

- (1) A person must not print, publish or distribute, or cause, permit or authorise to be printed, published or distributed, electoral matter or referendum matter if the matter contains a statement in relation to a matter of fact (including an implied statement) that is:
- (a) misleading or deceptive to a material extent; or
  - (b) likely to mislead or deceive to a material extent.

Example 1: Electoral matter that states that a candidate in an election made a statement that the candidate did not make.

1 Example 2: Referendum matter that states that a person or entity associated with  
2 any of the referendum options made a statement that that person or  
3 entity did not make.

4 Note: See also section 329 (Misleading or deceptive publications etc. in  
5 relation to the casting of a vote) of this Act and section 122  
6 (Misleading or deceptive publications etc.) of the *Referendum*  
7 (*Machinery Provisions*) Act 1984.

8 *Impersonating or passing-off*

9 (2) Without limiting subsection (1), a person must not engage in  
10 conduct if:

11 (a) the conduct is likely to cause another person to believe any of  
12 the following in relation to electoral matter or referendum  
13 matter that is printed, published or distributed:

14 (i) the electoral matter is printed, published or distributed  
15 by a particular election participant;

16 (ii) the referendum matter is printed, published or  
17 distributed by a particular person or entity associated  
18 with any of the referendum options;

19 (iii) a particular election participant caused, permitted or  
20 authorised the electoral matter to be printed, published  
21 or distributed;

22 (iv) a particular person or entity associated with any of the  
23 referendum options authorised the referendum matter to  
24 be printed, published or distributed;

25 (v) the electoral matter is authorised by a particular election  
26 participant;

27 (vi) the referendum matter is authorised by a particular  
28 person or entity associated with any of the referendum  
29 options; and

30 (b) that belief would be incorrect.

31 Example 1: Electoral matter that purports to have been published by the campaign  
32 of a candidate in an election but is actually published by someone  
33 opposed to the candidate.

34 Example 2: A pre-recorded telephone message that consists of a voice recording  
35 of someone impersonating a candidate in an election.

36 Example 3: Referendum matter that purports to have been published by a person  
37 or entity associated with any of the referendum options but is actually  
38 published by someone opposed to that person or entity or opposed to  
39 one or more of the referendum options.

1                   Example 4: A pre-recorded telephone message that consists of a voice recording  
2                   of someone impersonating a person or entity associated with any of  
3                   the referendum options.

- 4                   (3) Each of the following is an *election participant*:
- 5                   (a) a political entity;
  - 6                   (b) a significant third party (within the meaning of section 287);
  - 7                   (c) a member or official of the Electoral Commission (see  
8                   section 6).

9                   **321M Complaints**

10                   Any person may make a written complaint to the Electoral  
11                   Commissioner that another person has breached section 321L.

12                   **321N Powers of Electoral Commissioner**

13                   *Electoral Commissioner may investigate possible breaches*

- 14                   (1) The Electoral Commissioner may investigate (whether in response  
15                   to a complaint made under section 321M or on the Electoral  
16                   Commissioner’s own initiative) a possible breach of section 321L  
17                   if the Commissioner is satisfied on reasonable grounds that the  
18                   investigation would be in the public interest.

19                   *Electoral Commissioner may request person to end breaches*

- 20                   (2) If the Electoral Commissioner is satisfied on reasonable grounds  
21                   (whether or not following an investigation under subsection (1) of  
22                   this section) that a person has breached section 321L, the Electoral  
23                   Commissioner may:
- 24                   (a) ask the person not to print, publish or distribute the relevant  
25                   electoral matter or referendum matter, or not to cause, permit  
26                   or authorise the relevant electoral matter or referendum  
27                   matter to be printed, published or distributed; or
  - 28                   (b) ask the person to publish, or cause to be published, a  
29                   retraction or correction in specified terms and in a specified  
30                   way; or
  - 31                   (c) publish a correction.

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**321P Powers of courts**

- (1) On application by:
  - (a) the Electoral Commissioner; or
  - (b) a person who has made a complaint under section 321M; a court of competent jurisdiction that is satisfied on reasonable grounds that a person has contravened section 321L may order the person:
    - (c) not to print, publish or distribute the relevant electoral matter or referendum matter, or not to cause, permit or authorise the relevant electoral matter or referendum matter to be printed, published or distributed; or
    - (d) to publish, or cause to be published, a retraction or correction in specified terms and in a specified way.
- (2) The Electoral Commissioner must not make an application under paragraph (1)(a) in relation to a contravention of section 321L unless the Electoral Commissioner has made a request under subsection 321N(2) in relation to the contravention.
- (3) Without limiting the powers of a court in dealing with an application made under paragraph (1)(b), the court may dismiss such an application if the application:
  - (a) is frivolous, vexatious, misconceived or lacking in substance; or
  - (b) has no reasonable prospects of success; or
  - (c) is otherwise an abuse of the process of the court.

**321Q Offence**

- (1) A person commits an offence if:
    - (a) the person is subject to a requirement under section 321L; and
    - (b) the person engages in conduct; and
    - (c) the person’s conduct breaches the requirement.
- Penalty: 50 penalty units.
- (2) In a prosecution of a person for an offence against subsection (1), it is a defence if the defendant:

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1 (a) took no part in determining the content of the electoral matter  
2 or referendum matter to which the offence relates; and

3 (b) could not reasonably be expected to have known that the  
4 statement to which the offence relates was misleading or  
5 deceptive, or was likely to mislead or deceive.

6 Note: The defendant bears an evidential burden in relation to the matters  
7 mentioned in this subsection (see subsection 13.3(3) of the *Criminal*  
8 *Code*).

9 (3) If a person is found guilty of an offence against subsection (1) of  
10 this section, the court must take the person's response to any  
11 relevant request under subsection 321N(2) into account in deciding  
12 the penalty for the offence.

13 (4) Section 15.2 of the *Criminal Code* (extended geographical  
14 jurisdiction—category B) applies to an offence against  
15 subsection (1) of this section.

## 16 **2 Section 329 (at the end of the heading)**

17 Add, “in relation to the casting of a vote”.

## 18 **3 After subsection 383(10)**

19 Insert:

20 *This section does not apply in relation to contraventions of*  
21 *Part XXB*

22 (10A) This section does not apply in relation to a contravention of, or an  
23 offence against, Part XXB (Misleading and deceptive political  
24 advertising).