

September 2022

Compliance Review Report

EMILY's List Australia

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Purpose of this report

Pursuant to s 316(2A) of the *Commonwealth Electoral Act 1918* (Electoral Act), this report provides the financial controller of EMILY's List Australia (the entity) with the Australian Electoral Commission's (AEC) assessment of the level of compliance of the 2018–19 annual disclosure return lodged on behalf of the entity with disclosure obligations under s 314AEA of the Electoral Act.

Associated entity

The annual disclosure return for the financial year 2018–19 lodged in relation to the entity identified it as an associated entity of the registered political party known as the Australian Labor Party (ALP).

Disclosure obligations

Registered political parties and associated entities are required under Part XX of the Electoral Act to furnish returns.

Section 314AEA of the Electoral Act requires the financial controller of an associated entity to furnish a return within 16 weeks after the end of each financial year, disclosing:

- the total amount received by, or on behalf of, the entity, during the financial year, together with the details specified by s 314AC of the Electoral Act;
- the total amount paid by, or on behalf of, the entity, during the financial year; and
- the total outstanding amount, as at the end of the financial year, of all debts incurred by or on behalf of, the entity, together with the details specified by s 314AE of the Electoral Act.

By virtue of s 314AEA(5) of the Electoral Act, ss 314AC and 314AE apply to a return for an associated entity in the same way as they apply to a return for a registered political party.

Section 314AC of the Electoral Act provides that if the sum of all amounts received by, or on behalf of, the entity from a person or organisation during a financial year is more than the threshold amount specified therein, the annual disclosure return must include the particulars of that sum.

Section 314AE of the Electoral Act provides that if the sum of all outstanding debts incurred by, or on behalf of, the entity to a person or an organisation during a financial year is more than the threshold amount specified therein, the annual disclosure return must include the particulars of that sum.

For the 2018–19 financial year, the threshold was for sums in excess of \$13,800.

The Electoral Act is available in full in the following link:

<https://www.legislation.gov.au/Series/C1918A00027>

Conduct of the review

The authorised officer of the AEC has authority under s 316(2A) to require the production of documents and giving of evidence for the purpose of assessing compliance with the disclosure obligations required of registered political parties and associated entities under Part XX of the Electoral Act.

Subsection 316(2A) requires the financial controller of an associated entity to produce the documents or other things referred to in a notice served by the authorised officer within the period and in the manner specified in the notice or to appear, at the time and place specified in the notice, before the authorised officer to give evidence, either orally or in writing, and to produce the documents or other things referred to in the notice.

As part of this process, the authorised officer of the AEC served a notice on the financial controller under s 316(2A) requiring the entity to provide its financial records and other documents in relation to its financial operations for 2018–19.

Scope of the review

The records which were requested by the AEC from the entity were limited to those which enabled the AEC to assess the following aspects of compliance with its disclosure obligations under Part XX of the Electoral Act:

- the timeliness of lodgement of the annual disclosure return
- the completeness and accuracy of the following information disclosed in the entity's annual disclosure return for the 2018–19 financial year:
 - total receipts
 - total gifts in kind
 - individual receipts above \$13,800
 - total payments
 - total debts
 - individual debts above \$13,800
 - discretionary benefits

The AEC did not examine other aspects of the financial operations of the entity such as the existence or effectiveness of internal controls.

Stakeholder engagement

The AEC's general practice is to communicate with the relevant officer of the entity by phone, email and/or face to face meetings as appropriate to cover the following topics:

- financial reports and documentation available from the entity's accounting system
- compliance issues arising from the AEC review of the financial reports and documentation provided by the entity
- required and suggested amendments to the annual disclosure return which arise from the compliance review
- potential enhancements in the entity's understanding of disclosure obligations and accounting processes to improve future compliance.

During the review the entity did not provide the requested documentation to the AEC in a timely manner, and in some cases, the requested documentation was not provided. This significantly extended the time required to undertake the review.

A draft compliance review report was issued by the authorised officer of the AEC on 10 March 2022. The entity was provided with an opportunity to comment on the draft report by 22 March 2022. The entity did not provide any comment and lodged a request for amendment on 4 April 2022.

Review outcomes

1. Timely lodgement

Subsection 314AEA(1) of the Electoral Act requires the financial controller of the associated entity to lodge an annual disclosure return with the AEC within 16 weeks after the end of the financial year. As lodgement occurred on 27 November 2019 which is after the due date of 20 October 2019, the return did not comply with the requirement under s 314AEA(1) to lodge a return for an associated entity within 16 weeks after the end of the financial year.

2. Accuracy in reporting – amendments

After examining the documents provided by the entity for the review, the authorised officer of the AEC identified several issues relating to compliance with disclosure obligations under section 314AEA of the Electoral Act. The issues are discussed in detail below.

Total Receipts and Total Payments

Paragraph 314AEA(1)(a) of the Electoral Act requires the financial controller to report the total amount received by, or on behalf of, the entity during the financial year, together with the details required by s 314AC. To satisfy this, the entity must account for all transactions that result in receipts

from external entities. These transactions must be accounted for on a gross basis without any offsetting, inclusive of GST. All non-cash benefits received by the entity must also be included in total receipts.

Paragraph 314AEA(1)(b) of the Electoral Act requires the financial controller to report the total amount paid by, or on behalf of, the entity during the financial year. To satisfy this, the entity must account for all transactions that result in payments to external entities. These transactions must be accounted for on a gross basis without any offsetting, inclusive of GST.

Transactions within the entity, including those between its individual bank accounts, represent internal transfers. Such transactions should be eliminated from the calculation of total receipts and total payments to avoid inflating the total amounts reported in the return.

Total reportable receipts by the entity were under-stated in the entity's 2018–19 annual disclosure return. The amount recorded as total receipts in the return is required to be amended by the entity in order to ensure compliance with the Electoral Act.

Total reportable payments by the entity were under-stated in the entity's 2018–19 annual disclosure return. The amount recorded as total payments and outlays on the entity's behalf in the return is required to be amended by the entity in order to ensure compliance with the Electoral Act.

The relevant amendments are set out below.

Part 1a: Total Receipts AND Part 3: Total payments – amendments		
	Total receipts	Total payments
Total disclosed in return	\$341,519	\$313,663
Amended total	\$546,810	\$547,110

Total Debts

Paragraph 314AEA(1)(c) of the Electoral Act requires the financial controller to report the total outstanding amount as at the end of the financial year of all debts incurred by or, on behalf of, the entity.

Total reportable debts of the entity were under-stated in the entity's 2018–19 annual disclosure return. The amount recorded as total debts in the return is required to be amended by the entity in order to ensure compliance with the Electoral Act. The relevant amendment is set out below.

Part 4: Total Debts – amendment	
Total disclosed in return	\$0
Amended total	\$54,584

Debts of more than \$13,800

By virtue of s 314AEA(5) of the Electoral Act, s 314AE applies to a return for an associated entity in the same way as it applies to a return for a registered political party.

Section 314AE of the Electoral Act provides that if the sum of all outstanding debts, incurred by, or on behalf of, the entity to a person or an organisation during a financial year is more than the threshold, the return must include the particulars of that sum.

Individual debts exceeding the threshold were under-disclosed in the entity's 2018–19 annual disclosure return. An amendment to individual debts exceeding the \$13,800 threshold is required in order to ensure compliance with the Electoral Act. The relevant amendment is set out below.

Part 5: Debts of more than \$14,300 – amendments				
Entry	Name	Address	Amount Owed	Financial/Non-financial institution
New entry no. 1	Australian Taxation Office	GPO Box 9990, CANBERRA ACT 2600	\$50,306	Non-financial institution

Matters requiring future action

It is recommended the entity ensures the accuracy of future annual disclosure returns and therefore improve compliance with Part XX of the Electoral Act by:

- calculating total receipts and payments from a complete listing of bank account receipts and payments respectively
- including all amounts received in the calculation of total receipts, regardless of the nature of the amounts received
- including all amounts paid in the calculation of total payments, regardless of the nature of the amounts paid
- including all debts listed in the trial balance as owing to other persons and entities in the calculation of total debts, other than amounts owed for staff entitlements, regardless of the age of the debt
- examining all debts listed in the trial balance as owing to other persons and entities in identifying individual debts exceeding the threshold for disclosure
- checking the accuracy of all calculations of amounts for disclosure in the annual disclosure return.

Conclusion

The authorised officer of the AEC for the purposes of s 316(2) of the Electoral Act has assessed the 2018–19 annual disclosure return for the entity lodged with the AEC on 27 November 2019 did not comply with the requirement under s 314AEA(1) of the Electoral Act to lodge a return for an associated entity within 16 weeks after the end of the financial year.

In view of the lodgement by the financial controller on 4 April 2022, of an amendment to the entity's 2018-19 annual disclosure return, the authorised officer of the AEC has assessed that the disclosure return (as amended) accurately includes the information required to be disclosed under the provisions of s314AEA of the Electoral Act.

Given the AEC's previous review of the entity's 2015–16 annual disclosure return also identified similar discrepancies, the entity should take immediate action to address the 'Matters requiring future action' outlined in this report.

Joanne Reid
Assistant Commissioner
Australian Electoral Commission

26 September 2022