

April 2021

Compliance Review Report

KP Independents Limited

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Purpose of this report

Pursuant to s 316(2A) of the *Commonwealth Electoral Act 1918* (the Electoral Act), this report provides the financial controller of KP Independents Limited (the political campaigner) with the Australian Electoral Commission's (AEC) assessment of the level of compliance of the 2018-2019 annual disclosure return lodged on behalf of the political campaigner with disclosure obligations under ss 314AB, 314AC and 314AE of the Electoral Act.

Disclosure obligations

Registered political campaigners are required under Part XX of the Electoral Act to furnish annual returns.

Section 314AB of the Electoral Act requires the financial controller of the political campaigner 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 political campaigner, 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 political campaigner during the financial year;
- the total outstanding amount, as at the end of the financial year, of all debts incurred by or on behalf of, the political campaigner together with the details specified by s 314AE of the Electoral Act;
- the total amount of electoral expenditure incurred by or with the authority of the political campaigner; and
- details of any discretionary benefits received by, or on behalf of the political campaigner from the Commonwealth, a State or a Territory during the financial year.

Section 314AC of the Electoral Act provides that if the sum of all amounts received by, or on behalf of, the political campaigner 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 314AC(4) of the Electoral Act provides that where the political campaigner is a person or organisation registered under the *Australian Charities and Not-for profits Commission Act 2012*, an amount received greater than the threshold does not need to be disclosed if no part of it was used during the financial year to:

- incur electoral expenditure; or
- create or communicate electoral matter; or
- reimburse the political campaigner for incurring electoral expenditure or creating or communicating electoral matter.

Section 314AE of the Electoral Act provides that if the sum of all outstanding debts incurred by, or on behalf of, the political campaigner 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 [here](#)

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 campaigners under Part XX of the Electoral Act.

Subsection 316(2A) requires the financial controller of a political campaigner 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 political campaigner 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 financial controller 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 political campaigner'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

- total electoral expenditure
- discretionary benefits

The AEC did not examine other aspects of the financial operations of the political campaigner 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 political campaigner by phone, email and/or face to face meetings as appropriate to cover the following topics:

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

During the review the political campaigner provided documentation to the AEC as requested and within set timeframes.

A draft compliance review report was issued by the authorised officer of the AEC on 17 February 2021. The political campaigner was provided with an opportunity to comment on the draft report by 12 March 2021. On 15 March 2021, the financial controller made comments on the draft report and lodged a request for amendment on 1 April 2021. A second draft report was issued by the authorised officer of the AEC on 8 April 2021, which incorporated the comments received and the amendment lodged on 1 April 2021. The financial controller was provided with an opportunity to comment on the second draft by 12 April 2021.

The political campaigner did not provide any further comment.

Review outcomes

1. Timely lodgement

Subsection 314AB(1) of the Electoral Act requires the financial controller of the political campaigner to lodge an annual disclosure return with the AEC within 16 weeks after the end of the financial year.

As lodgement occurred on 21 October 2019 which is on the due date of 21 October 2019 the return complied with the requirement under s 314AB(1) to lodge a return for the political campaigner within 16 weeks after the end of the financial year.

2.Accuracy in reporting – amendments

After examining the documents provided by the financial controller for the review, the authorised officer of the AEC identified several issues relating to compliance with disclosure obligations under sections 314AB(2), 314AC and 314AE of the Electoral Act. The issues are discussed in detail below.

Total Payments

Paragraph 314AB(2) of the Electoral Act requires the financial controller to report the total amount paid by, or on behalf of, the political campaigner during the financial year. To satisfy this, the financial controller 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 payments disclosed by the financial controller were over-stated in the political campaigner'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 political campaigner in order to ensure compliance with the Electoral Act.

The relevant amendments are set out below.

Part 3: Total payments – amendments	
Total disclosed in return	\$720,377
Amended total	\$672,224

Receipts of more than \$13,800

Section 314AC of the Electoral Act provides that if the sum of all amounts received by, or on behalf of, the political campaigner from a person or organisation during a financial year is more than the threshold, the annual disclosure return must include the particulars of that sum. Furthermore, that sum is to include only those individual amounts which exceed the threshold.

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

Part 2: Amounts of more than \$13,800 received – amendments				
Entry	Name	Address	Amount received	Receipt Type
New entry no. 1	Jackie Stricker-Phelps	C/- Level 6, 9 Barrack Street, SYDNEY NSW 2000	\$25,000	Other receipt
New entry no. 2	Australian Electoral Commission	PO Box 6172, KINGSTON ACT 2604	\$60,759	Other receipt
New entry no. 3	Jackie Stricker-Phelps	C/- Level 6, 9 Barrack Street, SYDNEY NSW 2000	\$20,000	Other receipt
New entry no. 4	Jackie Stricker-Phelps	C/- Level 6, 9 Barrack Street, SYDNEY NSW 2000	\$30,000	Other receipt
New entry no. 5	Jackie Stricker-Phelps	C/- Level 6, 9 Barrack Street, SYDNEY NSW 2000	\$20,000	Other receipt
New entry no. 6	Australian Taxation Office	GPO Box 9990, CANBERRA ACT 2600	\$18,268	Other receipt

Total Debts

Paragraph 314AB(2)(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 political campaigner.

Total reportable debts of the political campaigner were over-stated in the political campaigner's 2018–19 annual disclosure return. The amount recorded as total debts in the return is required to be amended by the political campaigner 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	\$125,833
Amended total	\$111,885

Debts of more than \$13,800

Section 314AE of the Electoral Act provides that if the sum of all outstanding debts, incurred by, or on behalf of, the political campaigner 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 political campaigner’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 \$13,800 – amendments				
Entry	Name	Address	Amount Owed	Financial/Non-financial institution
Original entry no. 1	Dr Kerryn Phelps	Apartment 1503, 81 MacLeay Street, POTTS POINT NSW 2011	\$95,000	Non-financial institution
Amended entry no. 1	Dr Kerryn Phelps	C/- Level 6, 9 Barrack Street, SYDNEY NSW 2000	\$100,204	Non-financial institution

Total Electoral Expenditure

Section 314AB(2) of the Electoral Act provides for the disclosure of the total amount of electoral expenditure incurred by, or with the authority of the political campaigner.

Section 287AB of the Electoral Act defines electoral expenditure as being:

“expenditure incurred for the dominant purpose of creating or communicating electoral matter,…”

Section 4AA of the Electoral Act defines electoral matter as being:

“matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in an election (a **federal election**)…”

Total electoral expenditure disclosed by the political campaigner was under-stated in the political campaigner’s 2018–19 annual disclosure return. The relevant amendment is set out below.

Part 6: Total Electoral Expenditure – amendment	
Total disclosed in return	\$281,944
Amended total	\$557,963

Matters requiring future action

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

- including all amounts paid in the calculation of total payments, regardless of the nature of the amounts paid
- examining all amounts received by the entity in identifying receipts above the threshold for disclosure
- examining all debts listed in the trial balance as owing to other persons and entities in identifying individual debts exceeding the threshold for disclosure
- examining all expenses listed in the trial balance to ensure that all electoral expenditure is identified and disclosed

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 political campaigner lodged with the AEC on 21 October 2019 complied with the requirement under s 314AB(1) of the Electoral Act to lodge a return for political campaigner within 16 weeks after the end of the financial year.

However, in view of the discrepancies identified, the return did not comply with the provisions of ss 314AB(2), 314AC and 314AE of the Electoral Act.

In view of the lodgement by the financial controller on 1 April 2021, of an amendment to the political campaigner'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 sections 314AB(2), 314AC and 314AE of the Electoral Act.

Joanne Reid
Assistant Commissioner
Australian Electoral Commission

15 April 2021