

December 2017

Compliance Review Report

**Pilliwinks Pty Ltd as Trustee National Party
Foundation**

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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 Pilliwinks Pty Ltd as Trustee National Party Foundation (the entity) with the Australian Electoral Commission's (AEC) assessment of the level of compliance of the 2015–16 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 2015–16 lodged in relation to the entity identified it as an associated entity of the registered political party known as the National Party of Australia - Victoria.

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 2015–16 financial year, the threshold was for sums in excess of \$13,000.

The Electoral Act is available in full in [here](#).

Conduct of the review

The authorised officer of the AEC has authority under s 316(2A) of the Electoral Act 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.

Sub-section 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 2015–16.

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 2015–16 financial year:
 - total receipts
 - total gifts in kind
 - individual receipts above \$13,000
 - total payments
 - total debts
 - individual debts above \$13,000

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 records
- 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 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 16 November 2017. The entity was provided with an opportunity to comment on the draft report by 1 December 2017. The entity did not provide any comment prior to this date and lodged a request for amendment on 29 November 2017.

Review outcomes

1. Timely lodgement

Sub-section 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 by the due date of 20 October 2016, it complied 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 ss 314AEA, 314AC and 314AE 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 2015–16 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 2015–16 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 2a: Total Receipts AND Part 4: Total payments – amendments		
	Total receipts	Total payments
Total disclosed in return	\$32,860	\$51,236
Amended total	\$1,035,877	\$1,090,713

Gifts-in-kind

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. The total amount received must also include the value of a *gift* (donation), loan or bequest in accordance with the definition at s 314AA.

Section 287 of the Electoral Act defines *gift* as being:

“any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money’s worth or with inadequate consideration and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration...”.

Therefore, goods or services provided free of charge or at less than commercial rates constitute a gift that must be disclosed as a receipt by the entity.

Total reportable gifts-in-kind received by the entity were under-stated in the entity's 2015–16 annual disclosure return. The amount recorded as total gifts-in-kind in the disclosure 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 2b: Total Gifts in kind – amendment	
Total disclosed in return	\$0
Amended total	\$32,452

Amounts of more than \$13,000 received

By virtue of s 314AEA(5) of the Electoral Act, s 314AC applies to a return for an associated entity in the same way as it applies 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, 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 entity's 2015–16 annual disclosure return. Two amendments to individual receipts exceeding the \$13,000 threshold is required in order to ensure compliance with the Electoral Act. The relevant amendments are set out below.

Part 3: Amounts of more than \$13,000 received – amendments				
Entry	Name	Address	Amount received	Receipt Type
New entry no. 1	National Party of Australia-Victoria	Level 5, 30 Collins St MELBOURNE VIC 3000	\$32,452	Donation
Original entry no. 1	Morgan Stanley Wealth Management Australia Pty Ltd	Level 14, 120 Collins Street MELBOURNE VIC 3000	\$20,110	Other Receipt
Amended entry no. 1	Morgan Stanley Wealth Management Australia Pty Ltd	Level 14, 120 Collins Street MELBOURNE VIC 3000	\$941,137	Other Receipt

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 2015–16 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 5: Total Debts – amendment	
Total disclosed in return	\$521,295
Amended total	\$596,966

Debts of more than \$13,000

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 2015–16 annual disclosure return. Two amendments to individual debts exceeding the \$13,000 threshold are required in order to ensure compliance with the Electoral Act. The relevant amendments are set out below.

Part 6: Debts of more than \$13,000 – amendments				
Entry	Name	Address	Amount Owed	Financial/Non-financial institution
Original entry no. 1	National Party of Australia - Victoria	Level 5, 30 Collins St Melbourne VIC 3000	\$441,528	Non-Financial
Amended entry no. 1	National Party of Australia - Victoria	Level 5, 30 Collins St Melbourne VIC 3000	\$596,966	Non-Financial
Original entry no. 2 (to be removed)	National Party of Australia - Victoria	Level 5, 30 Collins St Melbourne VIC 3000	\$79,767	Non-Financial
Amended entry no.2				

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 and investment cash management account receipts and payments respectively

- including all amounts received in the calculation of total receipts, including proceeds from share trading
- including all amounts paid in the calculation of total payments, including share purchases
- examining all amounts received by the party in identifying receipts above the threshold for disclosure
- including all debts listed in the financial statements as owing to other persons and entities in the calculation of total debts, regardless of the age of the debt
- examining all debts listed in the financial statements as owing to other persons and entities in identifying individual debts exceeding the threshold for disclosure
- identifying gifts-in-kind and including the value in the calculation of total receipts
- ensuring that gifts-in-kind received which are greater than the threshold are disclosed as receipts above the threshold

Conclusion

The authorised officer of the AEC for the purposes of s 316(2) of the Electoral Act has assessed the 2015–16 annual disclosure return for the entity lodged with the AEC on 11 October 2016 complied 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.

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

In view of the lodgement by the financial controller on 29 November 2017, of an amendment to the entity's 2015–16 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 provision of ss 314AEA, 314AC and 314AE of the Electoral Act.