

Election Funding and Disclosure Report

2014 Western Australian
Senate Election

January 2015

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2014 Western Australian
Senate Election

Report pursuant to subsection 17(2) of the
Commonwealth Electoral Act 1918

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December 2014

Senator the Hon Michael Ronaldson
Special Minister of State
Parliament House
CANBERRA ACT 2600

Dear Minister

In accordance with section 17(2) of the *Commonwealth Electoral Act 1918* (the Act) we submit the Australian Electoral Commission's (the AEC) report of the operation of Part XX in relation to the half-Senate election for Western Australia held on 5 April 2014.

In accordance with subsection 17(2C) particulars of the operation of subsection 316(2A) of the Act are included in the report.

Yours sincerely

The Hon Peter Heerey AM QC
Chairperson

Tom Rogers
A/g Electoral Commissioner

Key terms

AEC	Australian Electoral Commission
CDPP	Commonwealth Director of Public Prosecutions
CPI	Consumer Price Index
Disclosure threshold	The disclosure threshold applied to the 2013 federal election is amounts of “more than \$12 400”
DRO	Divisional Returning Officer
Endorsed candidate or Senate group	A candidate or Senate group that was endorsed by a registered political party
FAD	<p>Funding and Disclosure. A descriptor for the election funding and financial disclosure provisions of Part XX of the Electoral Act.</p> <p>Funding and Disclosure is also the name of the Branch in the AEC responsible for administering Part XX of the Electoral Act.</p>
Independent candidate or Senate group	A candidate or Senate group that was not endorsed by a registered political party
JSCEM	Joint Standing Committee on Electoral Matters
Minister	Special Minister of State
the Commission	The AEC is managed by a three-person Australian Electoral Commission. The commission is headed by a chairperson, who must be an active or retired judge of the Federal Court of Australia. The other members are the Electoral Commissioner and a non-judicial member.
the Electoral Act	The <i>Commonwealth Electoral Act 1918</i>
the Register	The Register of Political Parties

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Data used to collate this report is current as at 1 October 2014.

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Background

General reporting obligations

Section 17 of the *Commonwealth Electoral Act 1918* (the Electoral Act) prescribes reports which are to be made by the Australian Electoral Commission. The section is as follows:

17 Reports by the Commission

- (1) The Commission shall, as soon as practicable, after 30 June in each year, prepare and furnish to the Minister a report of the operations of the Commission during the year that ended on that 30 June.
- (1A) A report under subsection (1) in relation to the operations of the Commission for the year ending on 30 June 2001, and for each subsequent year, must include particulars for that year of:
 - (a) each person or organisation to whom the Commission has provided a copy of a Roll under subsection 90B(1); and
 - (b) each person or organisation to whom the Commission has given a copy of a Roll, or an extract of a Roll, under subsection 90B(4).
- (2) The Commission shall, as soon as practicable after the polling day in:
 - (a) a general election and any Senate election that had the same polling day as that general election; or
 - (b) a Senate election (other than a Senate election referred to in paragraph (a));prepare and furnish to the Minister a report on the operation of Part XX in relation to that election or those elections.
- (2A) A report under subsection (2) in relation to an election must include a list of the names of all persons who, in the opinion of the Commission, are or may be required to furnish a return under subsection 305A(1) or (1A) in relation to that election.
- (2B) The Commission may prepare and furnish to the Minister, otherwise than under subsection (2), such reports on the operation of Part XX as the Commission thinks appropriate.
- (2C) Subject to section 17A, the Commission must include in any report under this section particulars of the operation of subsection 316(2A) since the preparation of the last report under this section that included particulars of the operation of that subsection.
- (3) Section 34C of the *Acts Interpretation Act 1901* does not apply in relation to a report under subsection (2).
- (4) The Minister shall cause a copy of a report furnished under subsection (1), (2) or (2B) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.
- (5) A report under this section need not include particulars of a matter if those particulars have been included in an earlier report under this section.

The Report

This report has been prepared and is furnished to the Minister pursuant to s.17(2) of the Electoral Act. It reports on the operation of Part XX of the Electoral Act in relation to the Western Australian Senate election held on 5 April 2014 (the 2014 WA Senate election).

The scope of the 2014 WA Senate election and relevant key dates in relation to the operation of Part XX are provided at Appendix A. Other information which is required to be provided in accordance with ss.17(2A) and 17(2C) of the Electoral Act has been included in this report.

Part XX

Part XX of the Electoral Act sets out a legislative regime to manage election funding and financial disclosure obligations in respect of federal elections. Part XX is structured as follows:

Division 1: Preliminary

Division 2: Agents

Division 3: Election funding

Division 4: Disclosure of donations

Division 5: Disclosure of electoral expenditure

Division 5A: Annual returns by registered political parties and other persons

Division 6: Miscellaneous

The relevant provisions of Part XX of the Electoral Act for the purposes of this report are:

- (1) Division 3 – ss.294, 297 and 299 (which concern election funding entitlements).
- (2) Division 4 – s.304 (Disclosure of gifts) and s.305A (Gifts to candidates).
- (3) Division 5 – s.309 (Returns of electoral expenditure).
- (4) Division 6 – s.316 (Investigation).

Election funding

Authority

Division 3 of Part XX of the Electoral Act provides for the payment of election funding for candidates who have contested an election for the House of Representatives or the Senate and have reached the threshold of first preference votes which attracts election funding payments. The relevant provisions for the purposes of this report are ss.294, 297 and 299 of the Electoral Act. These sections are set out in full in Appendix B.

Operation of the relevant provisions

Entitlement

Section 294 of the Electoral Act provides a general entitlement to election funding for each first preference vote given for a candidate in a House of Representatives or Senate election.

Election funding entitlements are calculated by multiplying the number of formal first preference votes received by relevant candidates, or Senate groups as a whole, by the funding rate applicable to the period in which an election is held.

Indexation is calculated in accordance with the provisions contained in s.321 of the Electoral Act.

For the 2014 WA Senate election the funding rate was 252.781 cents per eligible vote.¹

Election funding is an entitlement under the Electoral Act once the prescribed eligibility criteria have been met. The Electoral Act does not require those who have met the eligibility criteria to provide evidence that funds were either committed or spent in the running of an election campaign.

Eligibility

To be eligible to receive a payment of an election funding entitlement a candidate for the House of Representatives must receive at least four per cent of the formal first preference votes cast in the electorate contested by that candidate (s.297(1) of the Electoral Act).

For a Senate group to be eligible the group as a whole must receive a total of at least four per cent of the formal first preference votes in the Senate election in the state or territory contested (s.297(2) of the Electoral Act).

Formal first preference votes cast in favour of candidates and/or Senate groups who fail to reach the four per cent threshold of total formal first preference votes are not eligible votes for the purpose of election funding. Votes rejected and declared as informal in the election concerned are also not eligible first preference votes (s.294(4) of the Electoral Act).

¹ This represents an increase of 1.6 per cent compared to the 2013 federal election funding rate of 248.800 cents per eligible vote.

General election payment arrangements

Under s.287B of the Electoral Act, the registered officer of a registered political party can notify the AEC that they are choosing to be treated as a “designated federal party”.² This then allows the national body of the party to receive, under s.299(1)(bb) and s.299(4)(aab) respectively, the candidate and Senate group election funding entitlements on behalf of all their state branches. This is an arrangement similar to that which exists for the Liberal Party under s.299(1)(b) and s.299(4)(aa) of the Electoral Act.

Under s.299(1)(d) of the Electoral Act, the payment of election funding entitlements of eligible candidates and Senate groups that were endorsed by registered political parties are made to the agent of the state or territory branch of the party unless other arrangements, such as those detailed below, are in place for the redirection of those payments.

Section 299 of the Electoral Act includes specific provisions for the Liberal Party of Australia and the Australian Democrats under which payments for all state branches of those parties are to be paid to the federal body of the party. Similarly, the federal body of any party group can, under s.287B, apply to be treated as a ‘designated federal party’ so that payments for all state branches of those parties are paid to the federal party.

Under s.299A(1) of the Electoral Act, political parties are entitled to receive their election funding by direct credit or cheque. Subsection 299A(2) requires that for an account to be eligible to receive election funding by direct credit, it must be operated by the party in Australia with an authorised deposit taking institution and held in the name of the party. Otherwise, payments are required by s.299A(1)(b) to be paid by cheque payable to the party.

Given the eligibility requirements under s.299A(2) of the Electoral Act, the direct credit payment option is available only to political parties and not to independent candidates or independent Senate groups. Independent candidates and Senate groups, therefore, receive election funding payments by cheque.

Under s.299(1)(b) and s.299(4)(aa) respectively, candidate and Senate group election funding entitlements of all state branches of the Liberal Party of Australia may be paid to the party agent of the federal division of the party. Subsection 299(5E) enables the party agent of the Liberal Party to give to the Australian Electoral Commission (AEC) a written notice determining specified percentages of election funding payments which are to be paid between the federal party and a state branch.

Subsection 299(2) of the Electoral Act requires that payment of election funding for independent candidates or independent Senate groups must be made to the agent of the candidate. Under s.299(3) payment of election funding must be made to the agent of the Senate group. Where no candidate agent is appointed for a candidate, under s.289(3), a candidate is deemed to be their own agent. Where no agent is appointed for a Senate group,³ under s.289(4), the candidate listed first on the ballot paper is deemed to be the agent of the group.

² Section 287B of the Electoral Act defines *designated federal party* as a registered political party, other than the Liberal Party, that has two or more State branches and has lodged a written notice with the AEC choosing to be treated as a designated federal party.

³ Under s.289(2A) where all members of a Senate group have been endorsed by the same registered political party, the agent of the relevant state branch of the party is deemed to be the agent for the group.

Subsections 299(4)(ac)(i), (ad)(i), (ae)(i), (af)(i) and (b)(i) of the Electoral Act allow for members of groups endorsed by two registered parties to divide payments for election funding into agreed shares as determined either by the agents of the relevant parties or, in the absence of a formal agreement, by the AEC. In accordance with the requirements of s.299(5) these agreements must be signed by relevant agents and lodged with the AEC before the 20th day after the election polling date.

Subsection 299(5A) of the Electoral Act allows the agents of two different political parties to lodge a notice with the AEC requesting that the entitlements of one party be paid to the other. Unlike other provisions under s.299, a notice under s.299(5A) is not limited to payments being redirected to the federal body of a political party but allows election funding payments to be redirected between any political parties, including, unrelated parties.

Subsection 299(5D)(a) of the Electoral Act requires the AEC to pay at least 95 per cent of the entitlement calculated on the basis of the votes counted as at the 20th day after polling day. The payment must be made as soon as possible after the 20th day. Any remaining balance must be paid as soon as possible once the amount of the full entitlement is known.

Subsection 299(5H) of the Electoral Act enables the party agent of a designated federal party to give to the AEC a written notice determining specified percentages of election funding payments which are to be paid between the party and a state branch.

Payments for the 2014 WA Senate Election

Method of payment

No notice requesting payment of specified percentages between the federal and the Western Australian State branch was lodged with the AEC by the Liberal Party under s.299(5A) of the Electoral Act for the 2014 WA Senate election. Therefore the full entitlements for the 2014 WA Senate election were paid to the federal division of the Liberal Party in accordance with s.299(4)(aa) of the Electoral Act.

The Family First Party and the Australian Labor Party were the only registered political parties for the 2014 WA Senate election that had notices in force with the AEC to be treated as designated federal parties in respect of their election funding entitlements. No notice for the 2014 WA Senate election was lodged with the AEC by either the Family First Party or the Australian Labor Party under s.299(5H) of the Electoral Act. Payment of election funding entitlements for these parties was made, in full, to the designated federal parties in accordance with s.299(4)(aab) of the Electoral Act.

No notices were lodged under s.299(5A) of the Electoral Act for payment redirection between political parties.

No Senate groups at the 2014 WA Senate election were endorsed by more than one registered political party.

Candidates paid

For the 2014 WA Senate election the AEC made no election funding payments to independent candidates under s.299 of the Electoral Act.

Payment by cheque or credit

For the 2014 WA Senate election the AEC made election funding payments to four registered political parties. Three political parties which had nominated bank accounts which met the eligibility criteria under s.299(A)(2) of the Electoral Act chose to receive election funding by direct credit. The remaining political party received their election funding by cheque. The details of such payments are set out below in Table 1.

Table 1: Credit and cheque payments to political parties

Payment	Parties
Direct credit	Liberal Party of Australia
	Australian Labor Party
	The Greens (WA) Inc
Cheque	Palmer United Party

Payments made

Subsection 299(5D)(a) of the Electoral Act requires at least 95 per cent of the entitlement to be paid as soon as possible after the 20th day after polling day. The AEC's policy in administering this provision is to pay up to 99 per cent of each party's and candidate's funding entitlement calculated as at the 20th day after polling day and withhold the greater of 1 per cent or \$200 from the first payment. This approach maximises the early release of funds to political parties and candidates while still withholding a sufficient proportion of the initial entitlement to avoid the risk of possible overpayments following the finalisation of the vote count.

The first payment totalling \$2 671 177.54 was based on the vote count as at the close of business on Friday 25 April 2014 with payments processed the following week. In accordance with s.299(5D)(b), the final payment could not be made until the full entitlement was known at the finalisation of the counting of votes. Payment of the balance of entitlements totalling \$27 037.19 was finalised on 9 May 2014.

New Parties: eligibility for funding

Three new parties were registered with the AEC between the 2013 federal election and the 2014 WA Senate election. These were the 21st Century Party, the Natural Medicine Party and the Single Parents' Party. None of these parties qualified for election funding at the 2014 WA Senate election.

Table 2 provides a list of the election funding payments distributed at the 2014 WA Senate election, listed in order of the largest to the smallest amount paid.

Table 2: Summary of payments – 2014 WA Senate election

Recipients	First Payment (\$)	Final Payment (\$)	Total Payment (\$)
Parties			
Liberal Party of Australia	1 089 141.93	11 011.54	1 100 153.47
Australian Labor Party	688 411.49	6 973.87	695 385.36
Australian Greens	498 882.24	5 056.91	503 939.15
Palmer United Party	394 741.88	3 994.87	398 736.75
Total	2 671 177.54	27 037.19	2 698 214.73

Financial disclosure

Authority

Divisions 4 and 5 of Part XX of the Electoral Act set out the requirements for financial disclosure. The relevant provisions which apply in respect of an election are ss.304, 305A and 309 of the Electoral Act. These sections are set out in full, along with other relevant legislative provisions relevant to this report, in Appendix B. A summary of these provisions however, is set out below to provide a context for the operation of these provisions in relation to the 2014 WA Senate election.

Operation of the relevant provisions

Candidates and Senate groups

Section 304 of the Electoral Act requires that, the agent of each person (including a member of a group) who was a candidate in an election or by-election shall, within 15 weeks after polling day in the election, furnish to the AEC a return, in an approved form, setting out the total amount or value of all gifts, the number of persons who made gifts, and the relevant details of each gift above the disclosure threshold, received by the person during the disclosure period for the election.

Section 321A of the Electoral Act provides for the indexation of the dollar amounts of the disclosure threshold referred to in ss.304(5)(b)(ii), 304(5)(c), 304(6)(b) and (c) and s.305A. For the 2014 WA Senate election the dollar amount was \$12 400.

Subsection 304(3) of the Electoral Act provides that subject to subsection (3A), the agent of each group shall, within 15 weeks after the polling day in the election in relation to which the members of the group had their names grouped in the ballot papers, furnish to the AEC a return, in an approved form, setting out the total amount or value of all gifts, the number of persons who made gifts, and the relevant details of each gift above the disclosure threshold, received by the group during the disclosure period for the election.

Subsection 304(3A)(a) of the Electoral Act provides that in the case of a group of all whose members were endorsed by the same registered political party, the gift will be taken to have been received by the relevant state branches of the party where there are two or more branches. Under s.304(3A)(b) it will be taken, in any other case, to have been received by the party.

Subsection 304(4) of the Electoral Act requires that in providing details of members of various types of groups (such as an unincorporated association or a trust fund) which make gifts, names and addresses of members of the executive committee or names or addresses of the trustees of the trust must be provided. An exemption is provided however, under s.304(5) to the general disclosure requirements of s.304, where the gift is made in a private capacity to a candidate and the candidate has not or will not use the gift solely or substantially for a purpose related to an election or by-election.

Section 309 of the Electoral Act requires returns of electoral expenditure by agents of each group or candidate in an election to be furnished within 15 weeks of polling day. Section 309 does not require details of expenditure on ancillary activities in relation to an election, such as hire of temporary office space, staff, equipment hire, and phone costs.

Under s.309 of the Electoral Act the agent of each person who was a candidate in an election, other than those that were members of a Senate group, is required to lodge a return concerning electoral expenditure. Returns by candidates and Senate groups that are either, jointly endorsed or are not endorsed by a party, are required under both s.304 and s.309 to be in an approved form. The AEC developed one form for both returns under s.304 and s.309 so that candidates and Senate groups can furnish such return requirements simultaneously.

Sections 307 and 313 of the Electoral Act both provide that where no details are required to be included in a return by a candidate or Senate group under the applicable Division, (these being Divisions 4 and 5, which respectively concern disclosure of donations and disclosure of electoral expenditure), the candidate or Senate group shall, nevertheless, lodge a return and include a statement to the effect that no gifts or expenditure of a kind that is required to be disclosed were received or expended. These returns are termed “nil” returns.

Historically, in the majority of cases, candidates endorsed by a registered political party have lodged a ‘nil’ return as their financial transactions are made by their party campaign committees and therefore fall within the scope of s.287A of the Electoral Act. Section 287A provides that campaign committees are to be treated as part of a state branch of a party under Divisions 4, 5 and 5A. This means that information concerning gifts received by candidates through a campaign committee is included in the annual return lodged by the party under s.314AB of the Electoral Act. This requires disclosure of such information to the AEC within 16 weeks of the end the financial year in which the gift is received.

Subsections 304(3A) and 309(1) of the Electoral Act require that financial transactions in respect of Senate groups endorsed by a single party (which in actual terms constitute the majority of Senate groups) are incorporated into the annual return of the endorsing party lodged under s.314AB. These financial transactions are therefore not included in a return under s.304(3A) or s.309(1A).

Donors to candidates

Under s.305A of the Electoral Act (excluding under s.305A(1A)(c)), a person who is not a registered political party or a state branch of a registered political party, an associated entity, a candidate in an election or member of a Senate group, who donates amounts in excess of the disclosure threshold to candidates, including members of Senate groups, must report details of those donations. Under s.305A(2) election donors are also required to report donations that they received above the disclosure threshold and used, in whole or in part, to make donations to candidates including to members of Senate groups.

Table 3 summarises the information that was required under the various provisions of the Electoral Act in candidate, Senate group and election donor returns for the 2014 WA Senate election.

Table 3: Information required in 2014 WA Senate election returns

Election returns	
Candidates	
s.304(2)	Number and amount of donations received
s.304(4)	Details of donations received of more than \$12 400
s.309(2)	Amounts of electoral expenditure spent on certain categories
Senate groups	
s.304(3)	Number and amount of donations received
s.304(4)	Details of donations received of more than \$12 400
s.309(3)	Amounts of electoral expenditure spent on certain categories
Donors	
s.305A(1)&(4)	Details of donations totalling more than \$12 400 made to candidates
s.305A(2)&(4)	Details of donations received of more than \$12 400 used to make donations to candidates

Note: For endorsed groups (other than jointly endorsed groups) transactions are included on the party's annual return.

Table 4 shows the dates by which information was required to be disclosed and the publication of returns which applied to the 2014 WA Senate election in accordance with the timeframes prescribed under the Electoral Act.

Table 4: Key dates for disclosure and publication of the 2014 WA Senate election returns

Return	Disclosure date	Period covered	Public release
Candidates	21 July 2014 (1st working day, 15 weeks after polling day – s.304(2))	Donations received commencement date to 30 days after polling day	22 September 2014 (1st working day, 24 weeks after polling day)
		Expenditure from the issue of the writ until polling day	
Senate groups	21 July 2014 (1st working day, 15 weeks after polling day – s.304(3))	Donations received from the date the request to the AEC to be grouped until 30 days after polling day	22 September 2014 (1st working day, 24 weeks after polling day)
		Expenditure from the issue of the writ until polling day	
Donors	21 July 2014 (1st working day, 15 weeks after polling day – s.305A(3)(a))	The disclosure period relating to the candidate to whom the gift was made. That is, from the announcement of their candidacy	22 September 2014 (1st working day, 24 weeks after polling day)

Disclosure returns for the 2014 WA Senate election

Candidate and Senate group returns

There were 77 candidates at the 2014 WA Senate election. This was comprised of 32 party endorsed groups and 1 unendorsed group along with 2 ungrouped independents.

All 77 candidates, as well as the unendorsed Senate group, were required to lodge returns with the AEC (the finances of endorsed Senate groups are disclosed in the annual returns of the relevant political party).

For the 2014 WA Senate election 68 candidates (88 per cent) lodged a 'nil' return. The high percentage of 'nil' returns was due to the majority of gifts being made directly to political parties or their campaign committees and those political parties and campaign committees incurring expenditure on behalf of their endorsed candidates. Political parties, pursuant to s.314AB of the Electoral Act, must have lodged annual financial disclosure returns for the 2013–14 financial year by 20 October 2014.

Subsections 304(2), 304(3), 309(2) and 309(3) of the Electoral Act require candidate and Senate group returns to be lodged within 15 weeks after polling day. For the 2014 WA Senate election this date was Saturday 19 July 2014. As the last day to lodge candidate and Senate group returns fell on a Saturday, s.36(2) of the *Acts Interpretation Act 1901* (Interpretation Act) applies. The effect of s.36(2) of the Interpretation Act is to allow disclosure returns to be lodged by a candidate and Senate groups on the first business day after Saturday 19 July 2014, this being Monday 21 July 2014.

Table 5: Candidate, Senate group and election donor returns – 2014 WA Senate election

Candidate returns	Number	% of total
Number of candidates	77	
Number of returns received	77	100
Number of outstanding returns	0	0
Number of 'nil' returns	69	90
Number of returns disclosing transactions	8	10
Senate Group returns		
Number of groups	33	
Number of groups required to lodge	1	
Number of returns received	1	100
Number of outstanding returns	0	0
Other returns received		
Returns of donations made	0	
Total election returns received as at 1 October 2014	78	100

Tables 6 and 7 provide a summary of data as reported in candidate and Senate group returns for the 2014 WA Senate election.

Table 6: Summary of donations – 2014 WA Senate election

Candidate returns	
Total number of donations reported	17
Total amount of donations reported	\$5 120
Number of individually detailed donations	0
Percentage of number of donations individually detailed	0
Total of individually detailed donations	0
Percentage of amount of donations individually detailed	0
Senate Group returns	
Total number of donations reported	0
Total amount of donations reported	0
Number of individually detailed donations	0
Percentage of number of donations individually detailed	0
Total of individually detailed donations	0
Percentage of amount of donations individually detailed	0

Table 7: Summary of expenditure – 2014 WA Senate election

Category	Candidates (\$)	Senate groups (\$)
Broadcast advertisements	5 074	0
Published advertisements	875	0
Displayed advertisements		0
Production of campaign material	3 088	0
Direct mailing		0
Polling & research	200	0

Publication

Subsection 320(1) of the Electoral Act requires the AEC to keep a copy of returns furnished under Divisions 4 and 5. The AEC meets this requirement by keeping the returns in hard copy and also publishing returns on its website. Subsection 320(4) does not allow a person to peruse or obtain a copy of a return under Division 4 or 5 until after the end of 24 weeks after the polling day in the election to which the return relates. At the end of the 24 week period the AEC makes returns available on its website. Returns relating to the 2014 WA Senate election were therefore published on the AEC website on 22 September 2014.

Supporting compliance with Part XX

The AEC has introduced a number of initiatives to support compliance of lodging disclosure returns under Part XX of the Electoral Act. These initiatives include:

- the promotion of eReturns to agents of candidates and groups as a means of lodging their return, including eReturns Quick Reference Guides
- publication of financial disclosure guides which include both details of the financial disclosure requirements and step by step instructions on how to complete a return
- the adoption of email as the primary means of correspondence with agents of candidates and groups to enable the fast turnaround of advice and support
- an approach of providing early notification to, and follow-up with, agents of candidates and groups to remind them of their obligation to lodge a return, and
- prompt follow-up with agents of candidates and groups who fail to lodge by the due date and identifying appropriate opportunities for the AEC to assist them to lodge returns where possible.

Election donor returns

Subsection 17(2A) of the Electoral Act provides that a report under s.17(2) must include a list of the names of all persons who, in the opinion of the Commission, are or may be required to furnish a return under ss.305A (1) or (1A)⁴ in relation to that election.

Candidate and Senate group returns for the 2014 WA Senate election did not identify any persons that may be required to furnish such a return and no returns were lodged with the AEC. The Commission therefore did not provide a list of persons under s.17(2A) of the Electoral Act.

⁴ Section 305A(1A) relates to donations made to any person or organisation specified by legislative instrument by the AEC. No person or organisation is presently specified so currently there is no requirement for any return to be lodged under s.305A(1A).

Investigations: report under section 17(2C)

Requirements under the Electoral Act

Subsection 17(2C) of the Electoral Act requires the Commission to include particulars of the operation of s.316(2A) in this report since the last reporting on the section. Subsection 316(2A) provides as follows:

- (2A) An authorised officer may, for the purpose of finding out whether a prescribed person, the financial controller of an associated entity or the agent of a registered political party has complied with this Part, by notice served personally or by post on:
- (a) the agent or any officer of the political party; or
 - (aa) the financial controller of the associated entity or any officer of the associated entity; or
 - (b) the prescribed person or, if the prescribed person is a body corporate, any of its officers;

as the case may be, require the agent, financial controller, person or officer:

- (c) to produce, within the period and in the manner specified in the notice, the documents or other things referred to in the notice; or
- (d) to appear, at a 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.

Where a political party operates party units, such as local branches, a s.316(2A) notice may seek records from a sample of these party units.

Objective of s.316(2A) investigations

The purpose of investigating documents and evidence produced in response to the notices issued under s.316(2A) of the Electoral Act is to determine whether the person lodging the disclosure return has complied with their obligations under Part XX. Under s.314AB(1) the person responsible for lodging an annual return for a political party is the party agent, and in respect of an associated entity, under s.314AEA(1) the responsible person is the financial controller. A s.316(2A) notice allows for any documents and evidence in the possession of the particular political party or associated entity to be obtained in order to assess the completeness and accuracy of disclosures in respect of:

- total receipts
- total payments
- total debts
- receipts above the disclosure threshold (detailed receipts)
- debts totalling above the threshold (detailed debts).

The last report under s.17(2C) of the Electoral Act which included particulars of the operation of s.316(2A) was the *Election Funding and Disclosure Report, Federal Election 2013*. That report contained particulars of the operation of s.316(2A) investigations for notices issued between 1 July 2011 and 1 April 2014.

This report, therefore, sets out particulars of the operations of s.316(2A) between 1 April 2014 and up to 1 October 2014.

Between 1 April 2014 and 1 October 2014 the AEC issued eight s.316(2A) notices in respect of registered political parties, state branches of registered political parties and associated entities. As at the date of the publication of this report, no final reports had been issued on these eight compliance investigations.

The AEC's policy is to support, wherever reasonably possible, those who are required to comply so that they can meet their compliance obligations to disclose fully and accurately as required under Part XX of the Electoral Act. Therefore, where the AEC forms a view, based on its analysis of documents provided under s.316(2A) that errors have been made in the disclosure return, the AEC writes to the relevant party agent or financial controller highlighting such errors and suggests that they should consider lodging a request with the AEC under s.319A(2) of the Electoral Act.

A request made under s.319A(2) allows the AEC under s.319A(4) to permit an amendment to the disclosure return to which the request relates. The effect of such an amendment is to correct the disclosure return so that it is accurate.

At the time of writing, the most recent compliance investigations have not been finalised. Therefore, no findings have been made in respect of those disclosure returns currently being investigated under s.316(2A) of the Electoral Act.

Appendix A – Key election dates

The electoral event held on 5 April 2014 was a half-Senate election in the State of Western Australia.

Key dates for this election are detailed below.

Last day for registration of Political Parties (the day before the writ is issued)	Thursday 27 February 2014
Issue of the Writ	Friday 28 February 2014
Close for appointment of Agents (close of nominations)	midday, Thursday 13 March 2014
Polling Day	Saturday 5 April 2014
Calculation of interim election funding entitlements (20 days after polling day)	Friday 25 April 2014
Conclusion of donations disclosure period (30 days after polling day)	Monday 5 May 2014
Writ returned and political party registration resumed	Thursday 1 May 2014
Final payment of balance of election funding entitlements	Tuesday 9 May 2014
Candidates', Senate groups' & Donors' returns due (15 weeks after polling day)	Monday 21 July 2014
Public inspection of disclosure returns begins (24 weeks after polling day)	Monday 22 September 2014

Appendix B – Legislation

Part XX Division 3 – Election funding

294 General entitlement to funds

- (1) Subject to this Division, \$1.50 is payable for each first preference vote given for a candidate in a House of Representatives election.
- (2) Subject to this Division, \$1.50 is payable for each first preference vote given for a candidate or group in a Senate election.
- (4) A reference in this section to a first preference vote shall be read as not including a reference to a vote that has been rejected as informal in the poll concerned.

297 Payment not to be made in certain circumstances

- (1) A payment under this Division shall not be made in respect of votes given in an election for a candidate unless the total number of eligible votes polled in the candidate's favour is at least 4% of the total number of eligible votes polled in favour of all of the candidates in the election.
- (2) A payment under this Division shall not be made in respect of votes given in an election for a group unless the total number of eligible votes polled in favour of the group is at least 4% of the total number of formal first preference votes cast in the election.

299 Making of payments

- (1) If an amount is payable under this Division in respect of votes given in an election or elections for a candidate or candidates endorsed by a registered political party, the Electoral Commission must:
 - (a) if:
 - (i) the party is the Liberal Party or a State branch of the Liberal Party; and
 - (ii) a notice for the election is in force under subsection (5E) in relation to the State branch of the Liberal Party that is organised on the basis of the State or Territory in which the candidate or candidates stood for election;
pay the applicable federal percentage of the amount to the agent of the Liberal Party and the applicable State percentage of the amount to the agent of the State branch of the Liberal Party mentioned in subparagraph (ii); or
 - (b) if paragraph (a) does not apply and the party is the Liberal Party or a State branch of the Liberal Party—pay the amount to the agent of the Liberal Party; or
 - (ba) if:
 - (i) the party is a designated federal party or a State branch of a designated federal party; and
 - (ii) a notice for the election is in force under subsection (5H) in relation to the State branch of the designated federal party that is organised on the basis of the State or Territory in which the candidate or candidates stood for election;

pay the applicable federal percentage of the amount to the agent of the designated federal party and the applicable State percentage of the amount to the agent of the State branch of the designated federal party mentioned in subparagraph (ii); or

(bb) if:

- (i) paragraph (ba) does not apply; and
- (ii) the party is a designated federal party or a State branch of a designated federal party;

pay the amount to the agent of the designated federal party; or

- (c) if the party is the Australian Democrats and there is a principal agent appointed under section 288A—pay the amount to the principal agent; or
- (d) in any other case—pay the amount to the agent of the State branch of the party that is organised on the basis of the State or Territory in which the candidate or candidates stood for election.

(2) Where an amount is payable under this Division in respect of votes given in an election for a candidate, the Electoral Commission shall make the payment to the agent of the candidate.

(3) Where an amount is payable under this Division in respect of votes given in a Senate election for a group, the Electoral Commission shall make the payment to the agent of the group.

(4) Where an amount is payable under this Division in respect of votes given in a Senate election for a group, the Electoral Commission shall:

(a) if:

- (i) the members of the group were endorsed by one registered political party and that party is the Liberal Party or a State branch of the Liberal Party; and
- (ii) a notice for the election is in force under subsection (5E) in relation to the State branch of the Liberal Party that is organised on the basis of the State or Territory in which the members of the group stood for election;

pay the applicable federal percentage of the amount to the agent of the Liberal Party and the applicable State percentage of the amount to the agent of the State branch of the Liberal Party mentioned in subparagraph (ii); or

(aa) if:

- (i) paragraph (a) does not apply; and
- (ii) the members of the group were endorsed by one registered political party and that party is the Liberal Party or a State branch of the Liberal Party;

pay the amount to the agent of the Liberal Party; or

(aaa) if:

- (i) the members of the group were endorsed by one registered political party and that party is a designated federal party or a State branch of a designated federal party; and

- (ii) a notice for the election is in force under subsection (5H) in relation to the State branch of the designated federal party that is organised on the basis of the State or Territory in which the members of the group stood for election;

pay the applicable federal percentage of the amount to the agent of the designated federal party and the applicable State percentage of the amount to the agent of the State branch of the designated federal party mentioned in subparagraph (ii); or

(aab) if:

- (i) paragraph (aaa) does not apply; and
- (ii) the members of the group were endorsed by one registered political party and that party is a designated federal party or a State branch of a designated federal party;

pay the amount to the agent of the designated federal party; or

(ab) if paragraphs (a), (aa), (aaa) and (aab) do not apply and the members of the group were endorsed by one registered political party:

- (i) if the party is the Australian Democrats and there is a principal agent appointed under section 288A—pay the amount to the principal agent; or
- (ii) in any other case—pay the amount to the agent of the State branch of the party that is organised on the basis of the State or Territory in which the members of the group stood for election; or

(ac) if the members of the group were endorsed by 2 registered political parties, one of those parties is the Liberal Party or a State branch of the Liberal Party, and a notice for the election is in force under subsection (5E) in relation to the State branch of the Liberal Party that is organised on the basis of the State or Territory in which the members of the group stood for election:

- (i) divide the payment into such shares as are agreed upon between the agents of the State branches of those parties that are organised on the basis of the State or Territory in which the members of the group stood for election or, in the absence of agreement, into such shares as the Electoral Commission determines; and
- (ii) in the case of the share applicable to a State branch of the Liberal Party in accordance with that agreement or determination, as the case may be—pay the applicable federal percentage of the share to the agent of the Liberal Party and the applicable State percentage of the share to the agent of the State branch of the Liberal Party; and
- (iii) in the case of the share applicable to the agent of the other party in accordance with that agreement or determination, as the case may be—pay the share to the agent of the other party; or

(ad) if paragraph (ac) does not apply, the members of the group were endorsed by 2 registered political parties, and one of those parties is the Liberal Party or a State branch of the Liberal Party:

- (i) divide the payment into such shares as are agreed upon between the agents of the State branches of those parties that are organised on the basis of the State or Territory in which the members of the group stood for election or,

- in the absence of agreement, into such shares as the Electoral Commission determines; and
- (ii) in the case of the share applicable to a State branch of the Liberal Party in accordance with that agreement or determination, as the case may be—pay the share to the agent of the Liberal Party; and
 - (iii) in the case of the share applicable to the agent of the other party in accordance with that agreement or determination, as the case may be—pay the share to the agent of the other party; or
- (ae) if the members of the group were endorsed by 2 registered political parties, only one of those parties is a designated federal party or a State branch of a designated federal party, and a notice for the election is in force under subsection (5H) in relation to the State branch of the designated federal party that is organised on the basis of the State or Territory in which the members of the group stood for election:
- (i) divide the payment into such shares as are agreed upon between the agents of the State branches of those parties that are organised on the basis of the State or Territory in which the members of the group stood for election or, in the absence of agreement, into such shares as the Electoral Commission determines; and
 - (ii) in the case of the share applicable to a State branch of the designated federal party in accordance with that agreement or determination, as the case may be—pay the applicable federal percentage of the share to the agent of the designated federal party and the applicable State percentage of the share to the agent of the State branch of the designated federal party; and
 - (iii) in the case of the share applicable to the agent of the other party in accordance with that agreement or determination, as the case may be—pay the share to the agent of the other party; or
- (af) if paragraph (ae) does not apply, the members of the group were endorsed by 2 registered political parties, and only one of those parties is a designated federal party or a State branch of a designated federal party:
- (i) divide the payment into such shares as are agreed upon between the agents of the State branches of those parties that are organised on the basis of the State or Territory in which the members of the group stood for election or, in the absence of agreement, into such shares as the Electoral Commission determines; and
 - (ii) in the case of the share applicable to a State branch of the designated federal party in accordance with that agreement or determination, as the case may be—pay the share to the agent of the designated federal party; and
 - (iii) in the case of the share applicable to the agent of the other party in accordance with that agreement or determination, as the case may be—pay the share to the agent of the other party; or
- (b) if paragraphs (ac), (ad), (ae) and (af) do not apply and the members of the group were endorsed by 2 registered political parties:
- (i) divide the payment into such shares as are agreed upon between the agents of the State branches of those parties that are organized on the basis of the

State or Territory in which the members of the group stood for election or, in the absence of agreement, into such shares as the Electoral Commission determines; and

- (ii) pay to each of those agents the share applicable to the agent in accordance with that agreement or that determination, as the case may be.
- (5) An agreement referred to in subparagraph (4)(ac)(i), (ad)(i), (ae)(i), (af)(i) or (b)(i) does not have effect unless a copy of the agreement signed by the agents referred to in that subparagraph is lodged with the Electoral Commission before the 20th day after the polling day in the election.
- (5A) A notice may be lodged with the Electoral Commission for the purposes of this section requesting that payments that would otherwise be made to the agent of a party specified in the notice are to be paid instead to the agent of another party specified in the notice. In this subsection, **party** means a registered political party or a State branch of a registered political party.
- (5B) A notice under subsection (5A):
- (a) must be signed by the agent of each of the parties specified in the notice; and
 - (b) can only be withdrawn by a notice lodged with the Electoral Commission and signed by the agent of each of those parties.
- (5C) If a notice is lodged under subsection (5A), payments under this section must be made in accordance with the notice for any election for which the polling day is:
- (a) after the day on which the notice was lodged; and
 - (b) before the day (if any) on which the notice is withdrawn.
- (5D) Where the Electoral Commission is required to make a payment under this section in respect of an entitlement:
- (a) at least 95% of the entitlement (calculated on the basis of the votes counted as at the 20th day after the polling day in the election) must be paid as soon as possible after that 20th day; and
 - (b) any balance must be paid as soon as possible after the amount of the full entitlement is known.
- (5E) The agent of the Liberal Party may, before the polling day for an election, give the Electoral Commission a written notice determining that, for the purposes of the application of this section to the election:
- (a) a specified percentage is the federal percentage applicable to a specified State branch of the Liberal Party; and
 - (b) a specified percentage is the State percentage applicable to a specified State branch of the Liberal Party.
- (5F) For the purposes of subsection (5E), the sum of:
- (a) the federal percentage applicable to a particular State branch of the Liberal Party; and
 - (b) the State percentage applicable to the State branch of the Liberal Party;
- must be 100%.
- (5G) A notice under subsection (5E) has effect accordingly.

- (5H) The registered officer of a designated federal party may, before the polling day for an election, give the Electoral Commission a written notice determining that, for the purposes of the application of this section to the election:
- (a) a specified percentage is the federal percentage applicable to a specified State branch of the party; and
 - (b) a specified percentage is the State percentage applicable to a specified State branch of the party.
- (5J) For the purposes of subsection (5H), the sum of:
- (a) the federal percentage applicable to a particular State branch of a designated federal party; and
 - (b) the State percentage applicable to the State branch of the party;
- must be 100%.
- (5K) A notice under subsection (5H) has effect accordingly.
- (6) Where a payment is made under this Division and the recipient is not entitled to receive the whole or a part of the amount paid, that amount or that part of that amount may be recovered by the Commonwealth as a debt due to the Commonwealth by action against the person in a court of competent jurisdiction.

299A Method of making payments

Payment by direct credit or by cheque

- (1) If the Electoral Commission is required to pay an amount under section 299 to the agent or principal agent of a party, the Electoral Commission must pay the amount:
- (a) if the party has nominated a bank account for the purposes of this section—to the credit of that account; or
 - (b) otherwise—by cheque payable to the party.

Nominated bank account

- (2) A bank account nominated by a party for the purposes of this section must satisfy the following conditions:
- (a) the account must be maintained by the party;
 - (b) the account must be with a bank;
 - (c) the account must be kept in Australia;
 - (d) the account name must consist of, or include:
 - (i) if the account is maintained by a registered political party—the name of the party as it appears in the Register of Political Parties; or
 - (ii) if the account is held by a State branch of a political party, and the branch is not a registered political party—the name of the State branch.

Name on cheque

- (3) For the purposes of this section, a cheque is taken not to be payable to a party unless:
- (a) if the party is a registered political party—the cheque is made out:
 - (i) if a determination under subsection (4) is in force in relation to the name of the party—in the special abbreviation of the name of the party; or
 - (ii) otherwise—in the name of the party, being the name as it appears in the Register of Political Parties; or
 - (b) if the party is a State branch of a political party, and the branch is not a registered political party—the cheque is made out:
 - (i) if a determination under subsection (4) is in force in relation to the name of the State branch—in the special abbreviation of the name of the State branch; or
 - (ii) otherwise—in the name of the State branch.

Abbreviation of party names

- (4) The Electoral Commission may, by notice published in the *Gazette*, determine that a specified abbreviation of the name of a party is a ***special abbreviation*** of the name of the party for the purposes of this section.
- (5) The Electoral Commission must publish a copy of a notice under subsection (4) on the internet.
- (6) Before making a determination under subsection (4) in relation to a party, the Electoral Commission must consult the party.
- (7) To avoid doubt, if a cheque under this section is made out in the special abbreviation of the name of a party, the cheque is as valid as it would have been if it had been made out in the name of the party.

Dispatch of cheques

- (8) To avoid doubt, if a cheque under this section is payable to a party, this section does not prevent the Electoral Commission from dispatching the cheque to the agent or principal agent of the party.

Definitions

- (9) In this section:

bank means a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

party means a registered political party or a State branch of a registered political party.

Part XX Division 4 — Disclosure of donations

304 Disclosure of gifts

- (2) The agent of each person (including a member of a group) who was a candidate in an election or by-election shall, within 15 weeks after the polling day in the election, furnish to the Electoral Commission a return, in an approved form, setting out the total amount or value of all gifts, the number of persons who made gifts, and the relevant details of each gift, received by the person during the disclosure period for the election.
- (3) Subject to subsection (3A), the agent of each group shall, within 15 weeks after the polling day in the election in relation to which the members of the group had their names grouped in the ballot papers, furnish to the Electoral Commission a return, in an approved form, setting out the total amount or value of all gifts, the number of persons who made gifts, and the relevant details of each gift, received by the group during the disclosure period for the election.
- (3A) In the case of a group all of whose members were endorsed by the same registered political party, a gift received by the group shall be taken to have been received:
 - (a) if the party has 2 or more State branches—by the relevant State branch of the party; and
 - (b) in any other case—by the party.
- (4) For the purposes of this section, a reference to the relevant details, in relation to a gift, shall be read as a reference to the amount or value of the gift, the date on which the gift was made and:
 - (a) in the case of a gift made on behalf of the members of 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;
 - (b) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation:
 - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
 - (ii) the title or other description of the trust fund or the name of the foundation, as the case requires; and
 - (c) in any other case—the name and address of the person who made the gift.
- (5) Notwithstanding subsections (2) and (3), the agent of a candidate or group is not required, in a return under subsection (2) or (3), as the case may be, to set out the relevant details of a gift if:
 - (b) in the case of a gift made to a candidate (including a member of a group):
 - (i) the gift was made in a private capacity to the candidate for his or her personal use and the candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election or a by-election; or
 - (ii) the amount or value of the gift is \$10,000 or less; or

- (c) in the case of a gift made to a group—the amount or value of the gift is \$10,000 or less.

Note: The dollar amounts mentioned in this subsection are indexed under section 321A.

- (6) Subparagraph (5)(b)(ii) or paragraph (5)(c) does not apply in relation to a return under subsection (2) or (3), as the case may be, in relation to a gift made by a person if:
 - (b) in the case of a gift made to a candidate (including a member of a group)—the sum of the amount or value of that gift and of all other gifts (not being gifts of the kind referred to in subparagraph (5)(b)(i)) made by that person to that candidate during the period to which the return relates exceeds \$10,000; or
 - (c) in the case of a gift made to a group—the sum of the amount or value of that gift and of all other gifts made by that person to that group during the period to which the return relates exceeds \$10,000.

Note: The dollar amounts mentioned in this subsection are indexed under section 321A.

- (8) Notwithstanding subsection (2), the agent of a person is not required, in a return under subsection (2), to set out the total amount or value of, or the number of persons who made, gifts of the kind referred to in subparagraph (5)(b)(i).

305A Gifts to candidates etc.

- (1) A person must provide a return in accordance with this section if:
 - (a) the person makes a gift or gifts, during the disclosure period in relation to an election, to any candidate in the election or a member of a group; and
 - (b) the total amount or value of the gift or gifts was:
 - (i) equal to or more than the amount prescribed for the purposes of this paragraph; or
 - (ii) if no amount is prescribed—more than \$10,000; and
 - (c) at the time the person makes the gift or gifts the person is not:
 - (i) a registered political party; or
 - (ii) a State branch of a registered political party; or
 - (iii) an associated entity; or
 - (iv) a candidate in an election; or
 - (v) a member of a group.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (1A) A person must provide a return in accordance with this section if:
 - (a) the person makes a gift or gifts, during the disclosure period in relation to an election, to any person or body (whether incorporated or not) specified, by legislative instrument, by the Electoral Commission; and
 - (b) the total amount or value of the gift or gifts was:
 - (i) equal to or more than the amount prescribed for the purposes of this paragraph; or
 - (ii) if no amount is prescribed—more than \$10,000; and

- (c) at the time the person makes the gift or gifts the person is not:
 - (i) a registered political party; or
 - (ii) a State branch of a registered political party; or
 - (iii) an associated entity; or
 - (iv) a candidate in an election; or
 - (v) a member of a group.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (2) The person must provide to the Electoral Commission a return setting out the required details of:
 - (a) all gifts covered by subsections (1) and (1A) made during the disclosure period; and
 - (b) all gifts of more than \$10,000, received by the person at any time, that the person used during the period (either wholly or partly):
 - (i) to enable the person to make the gifts mentioned in paragraph (a); or
 - (ii) to reimburse the person for making such gifts.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.

- (2A) For the purposes of subsection (2), 2 or more gifts made, during the disclosure period in relation to an election, by the same person to another person are taken to be one gift.
- (3) The return must:
 - (a) be provided to the Electoral Commission before the end of 15 weeks after the polling day for the election; and
 - (b) be in the approved form.
- (4) For the purposes of this section, the required details of a gift are its amount or value, the date on which it was made and:
 - (a) if the gift was made to 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 was purportedly made to a trust fund or paid into 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 organisation.
- (5) This section does not apply to a gift made before 1 July 1992.

Part XX Division 5 — Disclosure of electoral expenditure

309 Returns of electoral expenditure

- (1) This section does not apply to electoral expenditure incurred by or with the authority of a registered political party or a State branch of a registered political party.
- (1A) Where electoral expenditure in relation to an election is incurred by or with the authority of members of a group all the members of which are endorsed by the same registered political party, this section applies as if the expenditure had been incurred by or with the authority of:
 - (a) if the party has 2 or more State branches—the relevant State branch of the party; and
 - (b) in any other case—the party.
- (2) The agent of each person who was a candidate in an election (not being a member of a group) shall, before the expiration of 15 weeks after the polling day in the election, furnish to the Electoral Commission a return, in an approved form, setting out details of all electoral expenditure in relation to the election incurred by or with the authority of the candidate.
- (3) The agent of each group shall, before the expiration of 15 weeks after the polling day in an election in relation to which the members of the group have their names grouped in the ballot papers, furnish to the Electoral Commission a return, in an approved form, setting out details of all electoral expenditure in relation to the election incurred by or with the authority of members of the group.

Part XX Division 6 — Miscellaneous

316 Investigation etc.

- (1) In this section:

authorised officer means a person authorised by the Electoral Commission under subsection (2).

prescribed person means a person whose name is included in a list in a report mentioned in subsection 17(2A).
- (2) The Electoral Commission may, by instrument in writing signed by the Electoral Commissioner on behalf of the Electoral Commission, authorize a person or a person included in a class of persons to perform duties under this section.
- (2A) An authorised officer may, for the purpose of finding out whether a prescribed person, the financial controller of an associated entity or the agent of a registered political party has complied with this Part, by notice served personally or by post on:
 - (a) the agent or any officer of the political party; or
 - (aa) the financial controller of the associated entity or any officer of the associated entity; or
 - (b) the prescribed person or, if the prescribed person is a body corporate, any of its officers;as the case may be, require the agent, financial controller, person or officer:

- (c) to produce, within the period and in the manner specified in the notice, the documents or other things referred to in the notice; or
 - (d) to appear, at a 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.
- (2B) If a notice under paragraph (2A)(a) requires an officer of a political party (other than the agent) to appear before an authorised officer under paragraph (2A)(d), then the agent of the political party is entitled:
- (a) to attend at the proceeding under paragraph (2A)(d); or
 - (b) to nominate another person in writing to attend on behalf of the agent.
- (2C) Failure of the agent or nominee to attend under subsection (2B) does not affect the powers of the authorised officer to conduct the proceeding under paragraph (2A)(d).
- (2D) Where a body corporate, unincorporated body or individual has made a gift or disposition of property of \$25,000 or more to a registered political party or candidate, an authorised officer must conduct an investigation of that gift or disposition of property in accordance with this section.
- (3) Where an authorized officer has reasonable grounds to believe that a person is capable of producing documents or other things or giving evidence relating to a contravention, or possible contravention, of section 315, or relating to matters that are set out in, or are required to be set out in, a claim or return under this Part, the authorized officer may, by notice served personally or by post on that person, require that person:
- (a) to produce, within the period and in the manner specified in the notice, such documents or other things as are referred to in the notice; or
 - (b) to appear, at a time and place specified in the notice, before the authorized officer to give evidence, either orally or in writing, and to produce such documents or other things as are referred to in the notice.
- (3A) If:
- (a) an authorised officer has reasonable grounds to believe that a person is capable of producing documents or other things, or giving evidence, relating to whether an entity is, or was at a particular time, an associated entity; and
 - (b) the person is, or has at any time been, the financial controller or an officer of the entity;
- the authorised officer may, by notice served personally or by post on the person, require the person:
- (c) to produce, within the period and in the manner specified in the notice, such documents or other things as are specified in the notice; or
 - (d) to appear, at a time and place specified in the notice, before the authorised officer to give evidence, whether orally or in writing, and to produce the documents or other things specified in the notice.

The notice must not require the person to produce documents, or to appear, until after the end of the period of 14 days beginning on the day on which the notice was received, and must set out the person's right to request a review under subsection (3B).

- (3B) A person who is given a notice under subsection (3A) may request that the Electoral Commission review the decision to issue the notice. The request must be:
- (a) in writing; and
 - (b) given to the Electoral Commission during the period of 14 days beginning on the day on which the notice was received.
- (3C) The Electoral Commission must:
- (a) review the decision as soon as practicable after receiving a request under subsection (3B); and
 - (b) affirm, vary or set aside the decision; and
 - (c) notify the person in writing of its decision on the review.
- (3D) If a person requests a review of a decision, the person is not taken to have refused or failed to comply with the notice to which the review relates at any time before the Electoral Commission has notified the person of its decision on the review.
- (4) An authorized officer may require any evidence that is to be given to him or her in compliance with a notice under subsection (2A), (3) or (3A) to be given on oath or affirmation and for that purpose the authorized officer may administer an oath or affirmation.
- (5) A person is guilty of an offence if the person refuses to comply with a notice under subsection (2A), (3) or (3A) to the extent that the person is capable of complying with the notice.
- Penalty: \$1,000.
- (5A) A person is guilty of an offence if the person fails to comply with a notice under subsection (2A), (3) or (3A) to the extent that the person is capable of complying with the notice.
- Penalty: \$1,000.
- (5B) Strict liability applies to an offence against subsection (5A).
- Note: For **strict liability**, see section 6.1 of the *Criminal Code*.
- (5C) Subsection (5) or (5A) does not apply if the person has a reasonable excuse.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (5C) (see subsection 13.3(3) of the *Criminal Code*).
- (6) A person shall not, in purported compliance with a notice under subsection (2A), (3) or (3A), give evidence that is, to the knowledge of the person, false or misleading in a material particular.
- Penalty: \$1,000 or imprisonment for 6 months, or both.
- (7) Where:
- (a) an authorized officer has reasonable grounds for suspecting that there may be, at any time within the next following 24 hours, upon any land or upon or in any premises, vessel, aircraft or vehicle, a document or other thing that may afford evidence relating to a contravention of section 315; and
 - (b) the authorized officer has reasonable grounds to believe that, if a notice under this section were issued for the production of the document or other thing, the document or other thing might be concealed, lost, mutilated or destroyed;

the authorized officer may make an application to a magistrate for the issue of a warrant under subsection (8).

- (8) Subject to subsection (9), where an application under subsection (7) is made by an authorized officer to a magistrate, the magistrate may issue a warrant authorizing the authorized officer or any other person named in the warrant, with such assistance as the officer or person thinks necessary and if necessary by force:
 - (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
 - (b) to search the land, premises, vessel, aircraft or vehicle for documents or other things that may afford evidence relating to a contravention of section 315, being documents or other things of a kind described in the warrant; and
 - (c) to seize any documents or other things of the kind referred to in paragraph (b).
- (9) A magistrate shall not issue a warrant under subsection (8) unless:
 - (a) an affidavit has been furnished to the magistrate setting out the grounds on which the issue of the warrant is being sought;
 - (b) the authorized officer applying for the warrant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
 - (c) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (10) Where a magistrate issues a warrant under subsection (8), the magistrate shall state on the affidavit furnished in accordance with subsection (9) which of the grounds specified in that affidavit he or she has relied on to justify the issue of the warrant and particulars of any other grounds so relied on.
- (11) A warrant issued under subsection (8) shall:
 - (a) include a statement of the purpose for which the warrant is issued, which shall include a reference to the contravention of section 315 in relation to which the warrant is issued;
 - (b) state whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
 - (c) include a description of the kind of documents or other things authorized to be seized; and
 - (d) specify a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.
- (12) Where a document or other thing is seized by a person pursuant to a warrant issued under subsection (8):
 - (a) the person may retain the document or other thing so long as is reasonably necessary for the purposes of the investigation to which the document or other thing is relevant; and
 - (b) when the retention of the document or other thing by the person ceases to be reasonably necessary for those purposes, the person shall cause the document or other thing to be delivered to the person who appears to the first-mentioned person to be entitled to possession of the document or other thing.