

## UNDERTAKING TO THE ELECTORAL COMMISSIONER

Undertaking to the Electoral Commissioner given for the purposes of s 114 of the *Regulatory Powers (Standard Provisions) Act 2014* in relation to an enforceable provision under the *Commonwealth Electoral Act 1918*

by

**Briony Davis as agent for EMILY's List**

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### 1. Glossary

- 1.1 In this Undertaking, unless the contrary intention appears, the definitions in s 4 of the Act and this clause apply:

**Act** means the *Commonwealth Electoral Act 1918* (Cth).

**AEC** means the Australian Electoral Commission.

**Business day** means that is not a Saturday a Sunday or a declared public holiday in the Australian Capital Territory.

**Regulatory Powers Act** means the *Regulatory Powers (Standard Provisions) Act 2014* (Cth).

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### 2. Background

#### *Person giving undertaking*

- 2.1 This Undertaking is given to the Electoral Commissioner by Briony Davis, for the purposes of s 114 of the Regulatory Powers Act.
- 2.2 Briony Davis is the financial controller for EMILY's List (the **Entity**), an associated entity registered with the AEC.

#### *Failure to comply with a s316(2A) notice*

- 2.3 Under the Act, an authorised officer may serve a s 316(2A) notice on the financial controller of an associated entity, requiring them to:
- 2.3.1 produce, within the period and in the manner specified in the notice, the documents or other things referred to in the notice
- 2.4 On 4 November 2020, an authorised officer of the Electoral Commissioner served a s 316(2A) notice on the financial controller of EMILY's List.
- 2.5 The associated entity failed to produce the following documents, which were requested in the s 316(2A) notice:
- 2.5.1 Trial balances as at 30 June 2018 and 30 June 2019
- 2.5.2 Bank statements (2018-19 financial year)
- 2.5.3 Bank reconciliations for 'Joan Kirner' investment account as at 30 June 2018 and 30 June 2019

- 2.5.4 Bank reconciliations for 'ME Term Deposit' account as at 30 June 2018 and 30 June 2019
  - 2.5.5 Accrued liabilities report
  - 2.5.6 Working documents
- 2.6 Under the Act, the s 316(2A) notice provides that the notice can stipulate the period that the documents can be produced. The s 316(2A) notice required these documents by close of business 20 November 2020. The entity failed to comply with the s 316(2A) notice on time, and never provided the documents requested as listed in 2.5.1 – 2.5.6.
- 2.7 Section 316(2A) notice is a civil penalty provision in accordance with s 316(5).

***Failure to provide an accurate annual 2018-19 return***

- 2.8 On 27 November 2019, the entity lodged their 2018/19 annual return. The total receipts disclosed were \$341,519, total payments were disclosed as \$313,663, and nil debts were disclosed by the entity.
- 2.9 On 3 November 2020, the AEC commenced a compliance review of the entity. The compliance review found that the entity had under-disclosed: total receipts by \$205,291, total payments by \$233,447, and total debts by \$54,584.
- 2.10 A failure to provide an accurate annual return within 16 weeks after the end of the financial year in accordance with ss 314AEA(1)(a)-(b) is a civil penalty provision.
- 2.11 Section 314AEA(1) is a civil penalty provision.

***Failure to keep records***

- 2.12 Under s 317(1) of the Act, the Entity must keep records that allow the entity to provide an accurate return under Part XX and any records required for the purposes of allowing the Electoral Commissioner to determine whether the person has complied with Part XX.
- 2.13 Under s 317(2) of the Act, a record kept under ss 317(1) or 317(1A) must be kept for 5 years after the end of that financial year.
- 2.14 The documents requested in the s 316(2A) notice, which the entity failed to provide, are documents that the entity is required to keep in accordance with ss 317(1)(a) and ss 317(1)(c).
- 2.15 Subsections 317(1) and 317(2) of the Act are each civil penalty provisions.

***Civil Penalty Provisions***

- 2.16 Under s 384A of the Act, each civil penalty provision of the Act is enforceable under Parts 4 and 6 of the Regulatory Powers Act.

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### **3. Undertaking**

- 3.1 Under s 114 of the Regulatory Powers Act, the Electoral Commissioner as the authorised person for the Act may accept any of the following undertakings in respect of contravention of s 316(2A), 314AEA, and 317(1) of the Act:
- 3.1.1 a written undertaking given by a person that the person will, in order to comply with a provision enforceable under Part 6 of the Regulatory Powers Act, take specified action;
  - 3.1.2 a written undertaking given by a person that the person will, in order to comply with a provision enforceable under Part 6 of the Regulatory Powers Act, refrain from taking specified action;
  - 3.1.3 a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene a provision enforceable under Part 6 of the Regulatory Powers Act, or is unlikely to contravene such a provision, in the future.

#### ***Future annual returns to be made to the AEC***

- 3.2 Should Briony Davis remain the financial controller for the Entity, Briony Davis will ensure that the Entity meets its obligations under Part XX of the Act, and:
- 3.2.1 comply with any future s 316(2A) notice; and
  - 3.2.2 keep records as necessary to comply with s 317(1) and s 317(2); and
  - 3.2.3 submit an accurate return in accordance with the requirements set out in s 314AEA.

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### **4. Acknowledgements**

- 4.1. Briony Davis acknowledges that:
- 4.1.1 the AEC will make this Undertaking publicly available on the Transparency Register as set out in s 384A(2A) of the Act;
  - 4.1.2 the Electoral Commissioner and Officials of the AEC may, from time to time, make public reference to this Undertaking and the circumstances giving rise to this Undertaking;
  - 4.1.3 the Entity will bear all costs associated in complying with this Undertaking;
  - 4.1.4 where an event or issue occurs that may prevent the fulfilment of clause 3 of the Undertaking, the Electoral Commissioner will not consent to vary clause 3 of the Undertaking unless a request that outlines the event or issue and reasons why the variation is required is submitted in writing as soon as reasonably practicable after the event or issue occurs, but no later than three business days prior to the specified date; and
  - 4.1.5 breaching the Undertaking may result in the Electoral Commissioner enforcing the Undertaking by applying to the Federal Court of Australia for an order under s 115(2) of the Regulatory Powers Act.

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**5. Duration of Undertaking**

5.1. This Undertaking comes into effect when:

5.1.1 the Undertaking is executed by Briony Davis as financial controller for the Entity;  
and

5.1.2 the Electoral Commissioner accepts the Undertaking so executed by Briony Davis

5.2 This Undertaking ceases to have effect at the commencement of the financial year following the financial year in which the Entity ceases to be registered with the AEC as an associated entity.

**Executed by**

*Briony Davis*

Briony Davis as financial controller for EMILY's List, an associated entity.

Date: 17/10/2022

**Accepted by the Electoral Commissioner pursuant to s 114 of the Regulatory Powers Act**

  
Name: \_\_\_\_\_  
Electoral Commissioner

Date: 21/10/22