

Compliance Review Report

Family First Party

March 2014



AEC

Australian Electoral Commission

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Review details

Location of review: Australian Electoral Commission
West Block, Queen Victoria Terrace
PARKES ACT 2600

AEC review officers: Brad Edgman
Alan Page
Mary-Ann Waters

Party staff involved: Mr Christopher Baker,

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Background

Registered Political Parties and Associated Entities are required under the provisions of the *Commonwealth Electoral Act 1918* (the Act) to lodge annual disclosure returns. The Australian Electoral Commission (AEC) has powers under the Act to review records and gather relevant information to assess whether disclosure obligations have been met.

The purpose of the review was to assess whether the disclosure return for the 2011-12 financial year lodged on behalf of the Family First Party (the Party) complies with disclosure obligations as set out in the Act.

Compliance and cooperation with the review

During the review, AEC staff examined financial records of the Branch Office for the 2011-12 financial year. The Party fully complied with the s316(2A) notice in delivering requested records to the AEC by the due date.

Review findings requiring amendment

Total receipts and gifts-in-kind

Section 314AB(2)(a) of the Act requires the agent of a registered political party to report the total amount received by, or on behalf of, the party during the financial year. The amount received must include the value of a gift, loan or bequest in accordance with s314AA of the Act.

To ensure full compliance with the above provisions, the Party must include in its final total receipts figure all amounts received by the National Office from external sources as well as those amounts received by State branches that have ceased to have separate reporting obligations to the AEC. The total receipts figure must also reflect the value of any goods and services received in kind.

Analysis of the Party's financial records determined that total receipts had been materially underreported by \$73,317. It is apparent from the review that this error has occurred because figures have been taken from the Party's financial statements, which have different reporting requirements in certain respects than disclosure returns and so are generally unsuitable for this purpose.

The bulk of the error is due to the omission of non-cash receipts of gifts of goods and services received, the value of which has been estimated at \$67,426. These gifts-in-kind are made up of:

- interest foregone on loans made to the party;
- rent free accommodation for the party;
- a 50% discount on audit and accountancy fees; and
- a loan forgiven by the Queensland branch of the party.

Calculations for total receipts and the values of the identified gifts-in-kind can be found at **Attachment A**.

In view of the above, to reflect the total receipts figure accurately, Parts 1(a) & (b) of the Request for Amendment form should be completed to show the total amounts as set out below:

Required amendments

Amended total receipts	\$194 325
Amended gifts-in-kind	\$ 67 426

Total debts

Section 314AB of the Act requires the agent of a registered political party to report the total outstanding amount, as at the end of the financial year, of all debts incurred by, or on behalf of, the party together with the details required by section 314AE. The Party, therefore, must include in its total debts any amount owed to external sources. This includes any amounts owed by branches of the Party.

Following our analysis of information included in the balance sheet, we identified inconsistencies between the total amount of debt reported in the annual return and documentation provided. The total liability amount reported on the balance sheet was used as the basis for our calculation of the total outstanding amount. We are unable to reconcile how the figure disclosed in the return was arrived at.

From documentation and financial records provided by the party, it was noted that the loan from Mr Day was recorded under a number of different titles. i.e. B & B Day; B & B Day Pty Ltd; the signed loan agreement is in the name of Robert John Day and the loan disclosed in the annual disclosure return shows the loan owing to B. Day. This could be construed as being various loans owed by the party to different people/orgnsisations.

Based on this document, it is our opinion that Part 4 of the Request for Amendment form should be completed to show the total amount of debts as set out below, which is identical to the figure reported in the Party's balance sheet.

Required amendment

Amended total debts	\$1 089 442
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Debts above the disclosure threshold

Section 314AE of the Act requires a political party to report the particulars of the sum if the sum of all outstanding debts incurred by, or on behalf of, the party to a person or organisation during a financial year is more than the threshold. For the 2011-12 financial year the threshold was \$11 900.

As mentioned previously, the name disclosed in this document must reflect to true identity of the person, or persons or entity for which the party owes the debt. Therefore Part 5 of the *Request for Amendment* form should be completed to include the details of the debt.

In the absence of any contrary evidence, it is our view that the debt is owed to Robert John Day personally in accordance with the loan agreement.

Required amendment

Name	Address	Amount
Robert John Day	7 Williams Street Houghton SA 5089	\$1 089 000

Records of loans from non-financial institutions

Section 306A of the Act provides that it is unlawful for a political party or a person acting on behalf of a political party to receive a loan of more than \$11 900 in the 2011-12

financial year from a person or entity other than a financial institution unless the receiver of the loan keeps a record in accordance with the provisions under s306A(3). Subsection (3) provides that a party must keep a record of the terms and condition of the loan and the name and address of the person or organisation providing the loan.

In the copy of the executed loan agreement between the party and Robert John Day clause three states that *"in the event that the donations and/or public funding is insufficient to cover the above mentioned loan, Robert John Day agrees to fully waive any or all of the debt owed to the party ..."*. Has the party utilised this clause of the agreement, if not, it is recommended that a new agreement be drafted and executed by all parties concerned.

Matters requiring future action

The following matters need to be addressed before lodgement of disclosure returns in the future.

Pattern of findings

Findings in previous compliance reviews of the Party, completed in 9 January 2011 and 14 December 2011 are consistent with the current finding in this current review, excerpts from these reports can be viewed at **Attachment B**. The recent outcome reveals a continuing pattern of findings, resulting in material discrepancies, which suggests, at the least, that the legal responsibility of lodging complete and accurate disclosure returns is not being accorded adequate priority within the Party.

Any further continuation of the same failures in disclosure will oblige the AEC to consider enforcement through the offences provisions of the Act.

Given this history of repeated failures it would appear necessary for the Party to institute formal practices for recording and disclosing gifts-in-kind received. One means of this would be to establish a register of gifts-in-kind to log all gifts of goods and services (i.e. non-cash receipts that are not recorded in the Party's normal books of account). An advantage of having formalised arrangements that form part of the Party's financial recording practices would be that it avoids this legal responsibility being forgotten by ongoing staff or overlooked during the hand-over to new staff.

Examples of gifts-in-kind that require disclosure include:

- items or services donated for auction at fundraisers
- interest charged on loans below commercial rates
- function venue or office space provided for free
- advertising space provided at a discount over and above normal commercial discounted rates
- legal or accounting services provided for free

- bills of the Party paid for by a third party

Conclusion

Except for the matters noted above, nothing has come to our attention that causes us to believe that the Party has not complied, in all material respects, with its disclosure obligations under the Act. However to ensure future compliance with the Act, the matters noted above must be remedied.

For your convenience, a '*Request for Amendment – Political Party Disclosure Return*' form for the financial year 2011-12 has been completed and enclosed. The form incorporates all the agreed amendments, as outlined in the report above. Please sign the attached amendment form and return it to the AEC, by **Friday, 28 March 2014**.

Enquiries and assistance

Should the Party require any assistance regarding its disclosure obligations under the Act, please contact the AEC's, Funding and Disclosure Section either on telephone number (02) 6271 4552 or by email to fad@aec.gov.au.

Attachment A

Total receipts

Data Source	Total amounts \$
Bank statements	
6 [REDACTED]	\$126 899
Add gift in kind	\$ 67 426
TOTAL	\$194 325

Gifts-in-Kind Calculations:

<u>Item</u>	<u>Particulars</u>	<u>Amount</u>	<u>Workings</u>
Rent		\$17 500.00	Rent free provided by party official 50 sqm ² @ \$350sqm ² (Based on actual figures from realestate.com)
Interest free loan*	B & B Day	\$28 853.68	Calculated on daily rate of 2.75%
"	Macade P/L	\$137.50	Calculated on daily rate of 2.75%
"	Hardel P/L	\$275.00	Calculated on daily rate of 2.75%
Audit Fees	LBH Accountants	\$660.00	Only charged ½ fee
Loan Forgiven	FFP- (QLD)	\$20 000.00	Financial statements show nil balance owing as at end of FY. (Qld party officials confirm loan forgiven)
	TOTAL	\$67 426	

- In calculating the value of interest forgone, an equivalent commercial interest rate would normally be most appropriate. For these calculations the Reserve Bank of Australia's official cash interest rate of 2.75 per cent has been used

Attachment B

Taken from report dated 14 December 2011 on financial year 2009-10

Matters requiring future action

As part of the documentation requested for the review, the Party provided a loan agreement it had entered into with the loan provider, Mr Bob Day. The terms of agreement suggest that in the event the Party were not to secure sufficient public funding following the 2010 Federal Election, the full amount of the loan or unrepaid portion of the loan would be waived by Mr Bob Day. The possible disclosure obligations that may arise due to such an agreement are discussed below.

Interest free loans and loans forgiven

Section 287 of the Act defines *gift* as any disposition of property made by a person to another person, without adequate consideration in money or money's worth. In other words, goods or services provided free of charge or at less than commercial rates constitute a gift (donation) that must be disclosed as a receipt by the party.

The valuation of a gift-in-kind should, wherever possible, be at market price. In the case of a loan, that would be the rate charged by a market lender such as a bank. The amount of interest foregone, therefore, needs to be calculated by the Party based on prevailing market rates. The Party is advised to retain details of all calculations as a working document that will be required to be produced to the AEC for future compliance reviews.

In future disclosure returns lodged on behalf of the Party, the sum of interest foregone must be included in the total of all amounts received by the Party.

In the event of the entire or part of the loan being forgiven by a person or an organisation, the principal amount of the loan, or part of the loan, with its foregone interest component, will need to be classified as a gift (donation) and be included as part of the total receipts to fulfil the obligations under s314AA of the Act which states that the amount received must include the value of a gift.

Such an event would also trigger under the Act a donor disclosure obligation for a person or an organisation discharging the party from its obligations to repay the loan.

Taken from report dated 4 Jan 2011 on financial year 2008-09

2. Total Gifts-in-kind

You are required to report the total gifts-in-kind included in the total receipts. Your return had a total of nil gifts-in-kind.

Loans for low, or no, interest lead to a gift-in-kind of interest that would otherwise be paid, if the money had been obtained at commercial rates. Three loans were identified that fit this category.

Based on the amounts outstanding on the loan agreements, minus repayments in 2008/09, and at the interest rate you supplied of 9.45%, we have calculated the gifts in kind as follows:

Lender	Principal (as at 30/6/09)	Gift-in-kind
Maccade Pty Ltd	70,000.00	6615.00
Burrell & Family Pty Ltd	70,000.00	6615.00
Hardel Pty Ltd	13,500.00	1275.75
Total		14,505.75

In view of the above, the party is required to amend Part 1 of the *Request for Amendment* to show the total figures as set out below.

REDACTION CODES

- 1 Personal Information (name) redacted.
- 2 Personal Information (facsimile of signature) redacted
- 3 Personal Information (facsimile of manuscript initialling) redacted
- 4 Personal Information (Individual's address)
- 5 Personal information (individual's telephone number)
- 6 Business information (Bank Account details) redacted.
- 7 Business information (Billing Account details) redacted.
- 8 Legal Professional Communication redacted.
- 9 Deliberative material redacted.
- 10 Irrelevant material redacted.