

# Compliance Investigation Report

Foundation 51 Pty Ltd

2012–13 Annual Disclosure Return

June 2015



**AEC**

Australian Electoral Commission

## Contents

Purpose of this report.....	2
Associated entity.....	2
Compliance obligation.....	2
Power to investigate.....	3
Stakeholder engagement.....	3
Scope of the investigation.....	4
Relevant documents.....	4
Draft Report.....	5
AEC's opinion.....	5
Observations.....	6
1. Disparity in reporting – total receipts.....	6
2. Disclosure of amounts less than the threshold.....	6
Conclusion.....	7

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## Purpose of this report

This report provides the financial controller of the associated entity Foundation 51 Pty Ltd (Foundation 51), Mr Graeme Lewis, with the Australian Electoral Commission's (AEC) opinion as to whether he has complied with his obligation under s.314AEA of the *Commonwealth Electoral Act 1918* (the Act).

## Associated entity

The 2012–13 annual disclosure return lodged by Mr Lewis identifies Foundation 51 as an associated entity of the registered political party known as Country Liberals (Northern Territory).

## Compliance obligation

Section 314AEA, Part XX of the Act, requires certain information to be provided on behalf of an associated entity within 16 weeks after the end of the financial year. Section 314AEA provides:

- (1) If an entity is an associated entity at any time during the financial year, the entity's financial controller must furnish a return to the Electoral Commission, in the approved form, within 16 weeks after the end of the financial year, setting out:
  - (a) the total amount received by, or on behalf of, the entity during the financial year, together with the details required by section 314AC; and
  - (b) the total amount paid by, or on behalf of, the entity during the financial year; and
  - (c) if the entity is an associated entity at the end of the financial year—the total outstanding amount, as at the end of the financial year, of all debts incurred by or on behalf of the entity, together with the details required by section 314AE.
- (2) Amounts received or paid at a time when the entity was not an associated entity are not to be counted for the purposes of paragraphs(1)(a) and (b).
- (3) If any amount required to be set out under paragraph (1)(b):
  - (a) was paid to or for the benefit of one or more registered political parties; and
  - (b) was paid for out of funds generated from capital of the associated entity;
 the return must also set out the following details about each person who contributed to that capital after the commencement of this section:
  - (c) the name and address of the person;
  - (d) the total amount of the person's contributions to that capital, up to the end of the financial year.
- (4) Subsection (3) does not apply to contributions that have been set out in a previous return under this section.
- (5) Sections 314AC and 314AE apply for the purposes of paragraphs (1)(a), (b) and (c) of this section to a return for an associated entity in the same way as they apply for the purposes of paragraphs 314AB(2)(a), (b) and (c) to a return for a registered political party.

Section 314AC, in its application to an associated entity, requires that if the sum of all amounts received by, or on behalf of, the associated entity from a person or organisation during a financial year is more than the disclosure threshold, the return must include the particulars of that sum.

Section 314AE provides that if the sum of all outstanding debts incurred by, or on behalf of, the associated entity to a person or an organisation during a financial year is more than the disclosure threshold, the return must include particulars of that sum. The disclosure threshold mentioned in s.314AC and s.314AE is indexed annually and for the 2012–13 financial year amounts above \$12 100 were required to be disclosed.

## Power to investigate

The AEC's power to investigate and find out whether there has been compliance with the disclosure requirements as prescribed under Part XX of the Act is authorised by s.316(2A) of the Act. Section 316(2A) sets out the powers of the AEC 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.

## Stakeholder engagement

The AEC's general practice, prior to commencing an investigation, is for the AEC's Funding and Disclosure Branch to contact the relevant officer of the associated entity (or political party when investigating a political party) to discuss the scope of the investigation. This contact may, in some instances, involve face to face meetings.

Prior to this compliance investigation commencing a meeting was held between staff of the AEC Funding and Disclosure Branch and Mr Lewis to discuss the scope of the investigation process.

It is also AEC's practice to discuss with the relevant officer of the associated entity or political party, its opinion on compliance issues. Where there are any errors and omissions the AEC will discuss with the relevant officer how they might have occurred.

The objective of such discussions is to encourage the associated entity or political party to examine its internal processes and systems in order to improve the accuracy of future annual disclosure returns and thereby improve its compliance with Part XX of the Act.

A meeting was held with Mr Lewis to afford him the opportunity to discuss this report before finalising this investigation.

## Scope of the investigation

The AEC's investigation was limited to those financial records which were considered to be relevant to determine the completeness and accuracy of the information disclosed in the Foundation 51's annual disclosure return for the 2012–13 financial year.

The AEC does not have authority under Part XX to, and therefore did not, examine any other aspects of Foundation 51's financial operations such as the existence or effectiveness of internal controls. However, as noted above, the AEC generally discusses this issue with the relevant officer of the associated entity or party where it is relevant to their compliance with the Act.

## Relevant documents

On 25 February 2015 the AEC issued a notice under s.316(2A) to Mr Lewis in his capacity as the financial controller of Foundation 51 to produce copies of its financial records in relation to its operations for the financial year 2012–13. The financial records requested were:

1. Reports from the Entity's accounting system:
  - a. Trial Balance Summary;
  - b. Cash Receipts and Cash Payments Journals;
  - c. Bank Deposit Slips for any sums greater than \$12 100;
  - d. Aged Creditor Summary Report;
  - e. Audit Trial; and
  - f. any other report used in the compilation of the disclosure return.
2. Documents or other records not maintained as part of the accounting system but used in the compilation of the disclosure return, including, but not limited to:
  - a. excel spreadsheets;
  - b. extracts from any database system/s maintained in conjunction with the accounting system; and
  - c. manual records, such as deposit slips and receipts.
3. Statements of all bank/financial institutions accounts including:
  - a. any investment accounts;
  - b. loan accounts; and
  - c. broker accounts, if applicable.
4. Bank reconciliation statements for:
  - a. each account as at 30 June 2012; and
  - b. each account as at 30 June 2013.
5. Audited financial statements for the 2012–13 financial year.

6. Terms and conditions of all loans outstanding as at 30 June 2013.
7. A list of all gifts-in-kind received during the period 1 July 2012 to 30 June 2013, including the calculations of the valuation ascribed to each gift.
8. The working documents clearly demonstrating how the final total receipts, total payments and total debts figures shown on the Entity's 2012–13 annual disclosure return were derived.
9. A completed and signed Document Checklist to be returned with these documents.

The documents requested, including the addition of an extract of the ledger from the accounting system, were supplied except the following which, in each case, Mr Lewis explained did not exist. These were:

- audit trail;
- bank deposit slips;
- manual records used in the compilation of the disclosure return;
- terms and conditions of any outstanding loans (the AEC was advised there were no outstanding loans);
- a list of all gifts-in-kind received (the AEC was advised there were no gifts-in-kind).

Mr Lewis also supplied Profit and Loss and Balance Sheet financial statements. However he advised that these statements were not audited. In delivering the available documents to the AEC on 25 March 2015 Mr Lewis complied with the due date set out in the s.316(2A) notice.

## Draft Report

On 1 June the AEC provided Mr Lewis with a draft of the report for his consideration and comment. Mr Lewis was asked to provide his comments by 8 June 2015. A response was received and the AEC proceeded to finalise the report.

## AEC's opinion

Subsection 314AEA(1) of the Act requires associated entities to lodge a return within 16 weeks after the end of the financial year. In order to comply with s.314AEA(1), the 2012–13 disclosure return should have been submitted by Mr Lewis by 20 October 2013. Mr Lewis lodged the 2012–13 annual disclosure return on 28 November 2014. This date was over thirteen months after the required date for lodgement. Mr Lewis has therefore not complied with his obligations under Part XX to lodge within the prescribed period.

Paragraph 315(1)(b) of the Act provides that where a person fails to lodge a return within the time required by Part XX, the person is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1 000. Under s.315(1A) strict liability applies to an offence against s.315(1).

Instances of non-compliance with the prescribed date for lodging a return may be referred to the Commonwealth Director of Public Prosecutions (CDPP) on a case by case basis taking into account the primary objective of the Act is to obtain disclosure. The AEC will now consider whether it refers the failure by Mr Lewis to lodge the annual disclosure return by the prescribed

date of 20 October 2013 to the CDPP. Mr Lewis will be advised of the AEC's decision on this issue in due course.

## Observations

### 1. Disparity in reporting – total receipts

Paragraph 314AEA(1)(a) of the Act requires the financial controller of an associated entity to report the total amount received by, or on behalf of, the entity during the financial year. The amount received must include the value of a gift, loan or bequest in accordance with s.314AA.

In the 2012–13 annual disclosure return lodged with the AEC, the amount of \$286 208 was reported for total receipts. Examination of the financial records provided by Mr Lewis for the investigation revealed that when compiling the sum of total receipts for Foundation 51 during 2012–13, the opening balance for cash was not eliminated. This consequently resulted in the figure reported in the disclosure return for total receipts being overstated by \$1 066.

It has come to the AEC's attention that this amount is not consistent with the amount of \$285 142 reported for total receipts in the 2012–13 annual disclosure return lodged with the Northern Territory Electoral Commission.

### 2. Disclosure of amounts less than the threshold

Section 314AC of the Act provides that if the sum of all amounts received by, or on behalf of, an associated entity from a person or organisation during a financial year is more than the threshold, the return must include the particulars of that sum. For the 2012–13 financial year the threshold sum was for amounts more than \$12 100.

The wording of s.314AC can potentially lead to confusion. One could possibly conclude that each individual amount which, when aggregated, adds up to more than the threshold must be disclosed. This, however, is not the case as made clear by s.314AC(2) which states that each individual amount to be disclosed must be more than the dollar indexed figure. For the financial year 2012–13, this amount was \$12 100. In disclosing amounts below the disclosure threshold (i.e. \$12 100) associated entities and political parties do not breach any compliance requirements. However, such disclosure is unnecessary.

The particulars of five organisations from which Foundation 51 had received amounts during the financial year 2012–13 were reported in its disclosure return. However, two of the reported amounts included receipts for individual amounts of less than \$12 100.

The first of these was for the total sum of \$19 250 disclosed for Randazzo Properties Pty Ltd. This sum consisted of individual receipt amounts of \$11 000 and \$8 250 which did not require disclosure as both amounts are less than the threshold amount of \$12 100.

Similarly, the sum of \$16 416 disclosed for the Australian Taxation Office consisted of individual receipt amounts of \$13 032 and \$3 384. Only the receipt of \$13 032 is more than the disclosure threshold. Therefore, only this amount needed to be disclosed.

## Conclusion

Based on the records examined the AEC is of the opinion that Mr Lewis failed to comply with the requirement of s.314AEA to lodge the 2012–13 annual disclosure return on behalf of Foundation 51 within the required time frame of 20 October 2013.

The issue of the differing amount reported for total receipts between the returns lodged with the AEC and the Northern Territory Electoral Commission has been eliminated with Mr Lewis lodging an amended return finalising this report and the investigation in general.

4

Seema Srivastava  
Assistant Commissioner  
Funding and Disclosure Branch  
Australian Electoral Commission

26 June 2015



## REDACTION CODES

- 1 Personal Information (name) redacted.
- 2 Personal Information (date of birth) redacted.
- 3 Personal Information (photograph) redacted
- 4 Personal Information (facsimile of signature) redacted.
- 5 Personal Information (facsimile of manuscript initialling) redacted.
- 6 Personal Information (Individual's address) redacted.
- 7 Personal Information (individual's telephone number) redacted.
- 8 Personal Information (individual's opinion) redacted.
- 9 Personal Information (opinion about individual) redacted.
- 10 Personal Information (employment history) redacted.
- 11 Personal Information (qualifications) redacted.
- 12 Personal Information (health) redacted.
- 13 Business information (Bank Account details) redacted.
- 14 Business information (Billing Account details) redacted.
- 15 Legal Professional Communication redacted.
- 16 Deliberative material redacted.
- 17 Irrelevant material redacted.

Released under the Freedom of Information Act 1982