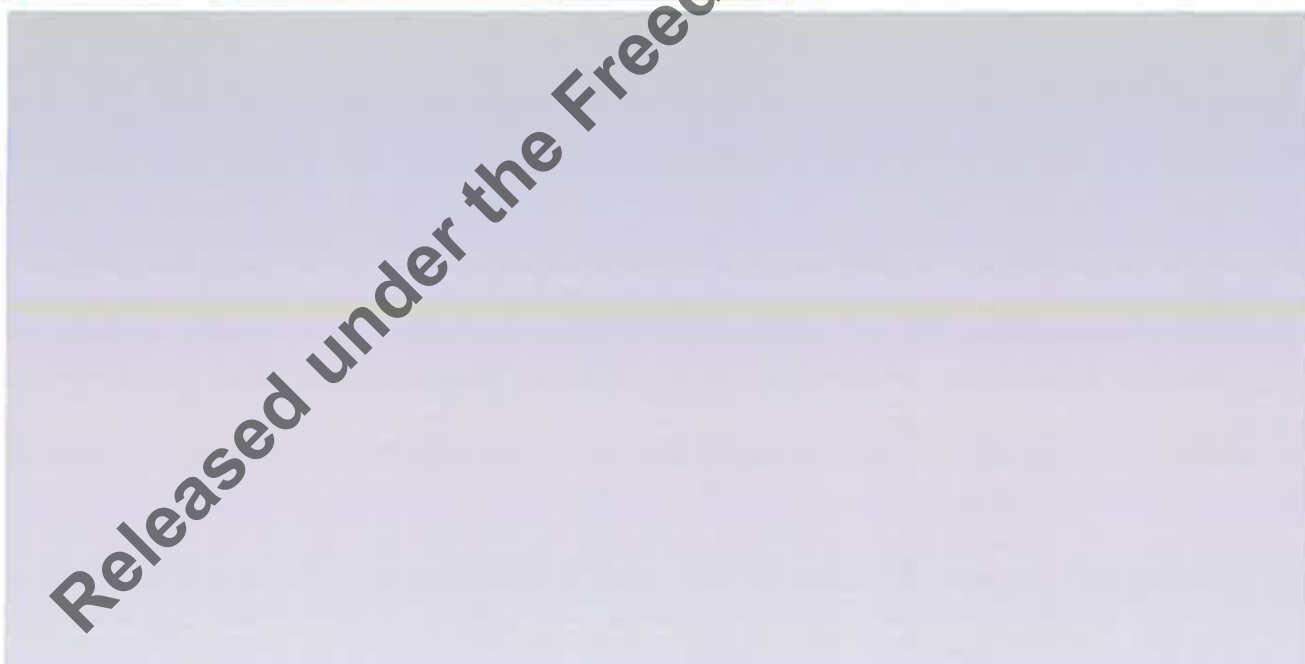


Compliance Investigation Report

21st Century Australia

2013–14 Annual Disclosure Return

October 2015



AEC

Australian Electoral Commission

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Released under the Freedom of Information Act 1982

Purpose of the report

This report provides the party agent of the registered political party 21st Century Australia (the Party), Ms Fabianne Keily, with the Australian Electoral Commission's (the AEC) opinion as to whether the 2013-14 annual disclosure return lodged on behalf of the Party has complied with obligations under sections 314AB, 314AC and 314AE of the *Commonwealth Electoral Act 1918* (the Act).

Disclosure obligations

Registered political parties are required under the provisions of the Act to lodge annual disclosure returns.

Section 314AB of the Act requires the agent of a registered political party and each state branch of the registered party to report after the end of each financial year:

- the total amount received by, or on behalf of, the party
- the total amount paid by, or on behalf of, the party
- the total outstanding amount of all debts incurred by, or on behalf of, the party.

Section 314AC of the Act also provides that if the sum of all amounts received by, or on behalf of, the party from a person or organisation during a financial year is more than the threshold, the annual disclosure return must include the particulars of that sum.

Section 314AE of the Act provides that if the sum of all outstanding debts incurred by, or on behalf of, the party to a person or an organisation during a financial year is more than the threshold, the annual disclosure return must include the particulars of that sum.

Extracts of the texts of these provisions of the Act are reproduced in *Attachment A* to this report.

Conduct of the investigation

The AEC has authority under s.316 (2A) of the Act to review records and gather relevant information to assess whether these disclosure obligations have been met. Section 316(2A) requires the agent of a registered party to produce the documents requested in a notice from the AEC within the period and in the manner specified in the notice.

As part of this process, the AEC issued a notice to Ms Keily under s.316 (2A) which required the Party to provide its financial records and other documents in relation to its financial operations for 2013-14. The original notice was sent to the Party's previous address, however, in order to meet the obligations under the Act, a second copy of the original notice was later forwarded to the new and correct address.

A copy of the letter issuing the notice to the correct address, and a copy of the notice issued under s.316 (2A) of the Act are provided at *Attachments B* and *C* of this report respectively.

Scope of the investigation

The AEC's investigation was limited to those financial records and documents which were considered relevant to determine the completeness and accuracy of information reported in the Party's 2013-14 annual disclosure return in accordance with the requirements of sections 314AB, 314AC and 314AE of the Act.

The AEC does not have the authority under Part XX of the Act to examine any other aspects of the financial operations of the Party such as the existence or effectiveness of internal controls.

Stakeholder engagement

The AEC's general practice, prior to commencing an investigation, is to contact the relevant officer of the political party to discuss the scope of the investigation. This contact may involve face to face meetings.

Prior to commencement of this compliance investigation staff of the AEC contacted Ms Kelly by telephone to discuss the scope of the investigation process.

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

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

The AEC notes that some delays were experienced by AEC staff in receiving responses from Ms Kelly.

The AEC's Opinion

After examining the documents provided by Ms Kelly for the investigation, the AEC identified several issues relevant to compliance with disclosure obligations under sections 314AB, 314AC and 314AE of the Act. The issues are detailed below.

1. Timely lodgement

Subsection 314AB (1) of the Act requires the agent of each registered political party to lodge a return within 16 weeks after the end of the financial year. In order to comply with s.314AB (1) the 2013-14 annual disclosure return should have been submitted by Ms Kelly by 20 October 2014. Ms Kelly lodged the 2013-14 disclosure return on 17 November 2014, 28 days after the required date for lodgement.

The AEC recommends that Ms Kelly lodge future annual disclosure returns for the Party by the due date in order to fully comply with s. 314AB (1) of the Act.

2. Accuracy in reporting – amendment required

Paragraph 314AB (2) (a) of the Act requires the Party agent to report the total amount received by, or on behalf of, the Party during the financial year. To satisfy this, the Party must account for all transactions that result in receipts from external entities. These transactions must be accounted for on a gross basis without any offsetting, inclusive of GST.

Paragraph 314AB (2) (b) of the Act requires the Party agent to report the total amount paid by, or on behalf of, the Party during the financial year. To satisfy this, the Party must account for all transactions that result in payments to external entities. These transactions must be accounted for on a gross basis without any offsetting, inclusive of GST.

Paragraph 314AB (2) (c) of the Act requires the Party agent to report the total incurred debts by, or on behalf of, the Party during the financial year. To satisfy this, the Party must account for all transactions that resulted in amounts owing to external entities.

The 21st Century Australia party was not registered until 7 November 2013. Therefore, the 2013-14 annual disclosure return lodged by the Party should have included amounts received and paid by, or on behalf of the Party, or debts incurred by, or on behalf of, the Party only during the period 7 November 2013 to 30 June 2014.

On 24 August 2015 Ms Keily advised the AEC that the return lodged on 17 November 2014 had included disclosure of amounts received and paid during the period prior to the Party's registration date of 7 November 2013. This was also evident from accounting records provided by Ms Keily to the AEC. On 1 September 2015, Ms Keily further advised the AEC that the Party had neither received nor paid any monies, received any gift in kind, nor incurred any debts during the period from 7 November 2013 to 30 June 2014. The AEC determined therefore that the Party had no financial activity during the period from 7 November 2013 to 30 June 2014 and recommended to Ms Keily that the Party lodge a nil amended annual disclosure return to correct the following over-disclosures:

Required Amendment		
Total Receipts and Payments		
Part 2 and Part 3	Receipts	Payments
Amount disclosed in return	\$14 470	\$192 153
Amended total	\$ 0	\$ 0

Ms Keily lodged the amended annual disclosure return as recommended on 3 September 2015.

Conclusion

Based on the records examined, it is the AEC's opinion that Ms Keily has not completed the requirement of s.314AB (1) to lodge the 2013-14 annual disclosure return on behalf of 21st Century Australia by 20 October 2014. It is also the AEC's opinion that an amendment to the 21st Century Australia party's 2013-14 annual disclosure return to correct the over-disclosures outlined above was required to ensure that the return accurately set out the information required to be disclosed under the provisions of sections 314AB, 314AC and 314AE of the Act.

In view of the subsequent lodgement by Ms Keily on 3 September 2015 of the amendment to the Party's 2013-14 annual disclosure return, the AEC is of the opinion that the return now accurately sets out the information required to be disclosed under the provisions of sections 314AB, 314AC and 314AE of the Act.

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Tim Courtney
A/g First Assistant Commissioner
Australian Electoral Commission

13th October 2015

Released under the Freedom of Information Act 1982

Extracts from the *Commonwealth Electoral Act 1918*

314AB Annual returns by registered political parties

- (1) Subject to this Division, the agent of each registered political party and of each State branch of each registered political party must, within 16 weeks after the end of each financial year beginning on or after 1 July 1992, furnish to the Electoral Commission a return:
 - (a) that is in an approved form; or
 - (b) that is constituted by the audited annual accounts of the registered political party or the State branch, in a form that is approved by the Electoral Commission.
- (2) A return under paragraph (1)(a) or (1)(b) must set out the following:
 - (a) the total amount received by, or on behalf of, the party during the financial year, together with the details required by section 314AC;
 - (b) the total amount paid by, or on behalf of, the party during the financial year;
 - (c) 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.

314AC Amounts received

- (1) If the sum of all amounts received by, or on behalf of, the party from a person or organisation during a financial year is more than \$10,000, the return must include the particulars of that sum.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.
- (2) In calculating the sum, an amount of \$10,000 or less need not be counted.

Note: The dollar amount mentioned in this subsection is indexed under section 321A.
- (3) The particulars of the sum required to be furnished under subsection (1) are the amount of the sum and:
 - (a) if the sum was received from 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 sum was purportedly paid 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 foundation; and
 - (ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; or
 - (ba) if the sum was received as a result of a loan—the information required to be kept under subsection 306A(3), or the name of the financial institution, as the case requires; or
 - (c) in any other case—the name and address of the person or organisation.

314AE Outstanding amounts

- (1) If the sum of all outstanding debts incurred by, or on behalf of, the party to a person or an organisation during a financial year is more than \$10,000, the return must include the particulars of that sum.

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

- (2) The particulars of a sum required to be furnished under subsection (1) are the amount of the sum and:
- (a) if the sum was owed 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 sum was purportedly incurred as a debt to a trust fund or to 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.

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.



Our Ref: 15/272 RF



Ms Fabianne Keily
Party Agent
21st Century Australia
Level 8 100 Albert Road
SOUTH MELBOURNE VIC 3205

Dear Ms Keily

Disclosure Compliance Investigation

I am writing in regard to the Australian Electoral Commission (AEC) compliance investigation of the disclosure return lodged on behalf of the 21st Century Australia for the 2013–14 financial year. I am aware that you received an electronic copy of the formal notice of the compliance investigation issued under s.316(2A) of the Act on 4 May 2015. This notice listed the documents required to be delivered to the AEC at our Canberra offices. Unfortunately the formal notice that was sent in the mail was sent to your former address.

In order to meet our obligations under the Act I am forwarding a copy of the original notice to you. I understand you have already provided documentation in response to this request and one of my staff will contact you to discuss the investigation as it progresses. No further action is required from you at this stage.

Should you have any queries please contact Chris Byrne, Assistant Director, on (02) 6271 4745 or by email at: ad@aec.gov.au

Yours sincerely

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Seema Srivastava
Assistant Commissioner
Funding and Disclosure Branch

25 June 2015

West Block Offices
Queen Victoria Terrace
Parkes ACT

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Kingston ACT 2604

Tel: 02 6271 4552
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COMMONWEALTH ELECTORAL ACT 1918 – SECTION 316(2A)

NOTICE TO PRODUCE DOCUMENTS
DISCLOSURE RETURN 2013–14

To: Ms Fabianne Keily
Party Agent
21st Century Australia
Unit 4, Level 9 222 Kings Way
SOUTH MELBOURNE VIC 3205

I, Seema Srivastava, an authorised officer within the meaning of s.316 of the *Commonwealth Electoral Act 1918* (the Act), for the purpose of finding out whether you, as the party agent of the 21st Century Australia (the Party), have complied with Part XX of the Act, hereby require you, pursuant to s.316(2A) of the Act, to produce the information referred to below within the period and in the manner specified in this notice.

Information to be produced in relation to Financial Year ending 30 June 2014

1. Reports from the Party's accounting system in electronic format listed in Attachment A.
(Attachment A to this notice lists the reports, the file format required and instructions on how to download and provide the data).
2. Reports from the Party's accounting system not listed in Attachment A but used in the compilation of the disclosure return.
3. 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;
 - c. manual records, such as deposit slips, receipts, register of non-cash gifts received.
4. Statements of all bank / financial institutions accounts including:
 - a. any investment accounts;
 - b. loan accounts; and
 - c. broker accounts, if applicablefor the period from 1 July 2013 to 31 July 2014 (i.e. 13 Months).
5. Bank reconciliation statements for:
 - a. each account as at 30 June 2013; and
 - b. each account as at 30 June 2014
6. Audited financial statements for the 2013–14 financial year.

7. Terms and conditions of all loans outstanding as at 30 June 2014.
8. A list of all gifts-in-kind received during the period 1 July 2013 to 30 June 2014, including the calculations of the valuation ascribed to each gift.
9. The working documents clearly demonstrating how the final total receipts, total payments and total debts figures shown on the Party's 2013–14 annual disclosure return were derived.
10. A completed and signed *Document Checklist* provided at Attachment B.

Timing and manner of production

You are required to produce the documents referred to in this notice to

Attention: Ralph Fayed
 Compliance Section
 Funding and Disclosure Branch
 Australian Electoral Commission
 Level 2, 50 Marcus Clarke Street
 CANBERRA CITY ACT 2600

by no later than **5pm, 1 June 2015**.

Refusal or failure to comply with this notice

It is an offence for you to refuse or fail to comply with this notice to the fullest extent capable—s.316(5) and (5A). It is also an offence to supply false or misleading evidence in purported compliance with this notice—s.316(6).

Dated: 1 May 2015

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Seema Srivastava
 Assistant Commissioner
 Funding and Disclosure Branch

An authorised officer for the purposes of section 316 of the Act.

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