

# Compliance Investigation Report

CFMEU Construction and General Division  
(WA Branch)

November 2015

Released under the Freedom of Information Act 1982



**AEC**

Australian Electoral Commission

## Contents

Purpose of this report .....	2
Associated entity .....	2
Compliance obligations .....	2
Authority to investigate .....	2
Stakeholder engagement .....	8
Scope of the investigation .....	3
AEC's opinion.....	3
1. Timely lodgement .....	4
2. Accuracy in reporting – amendments required .....	4
Conclusion .....	8
Attachment A .....	9
Attachment B .....	12
Attachment C .....	14
Attachment D .....	15
Attachment E .....	16

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## Purpose of this report

This report provides the current State Secretary of the CFMEU Construction and General Division – (WA Branch) (the Entity), Mr Michael Buchan, with the Australian Electoral Commission's (the AEC) opinion as to whether the 2012–13 annual disclosure return lodged on behalf of the Entity has complied with his obligation under sections 314AEA, 314AC and 314AE of the *Commonwealth Electoral Act 1918* (the Act).

## Associated entity

The annual disclosure return for the financial year 2012–13 lodged by Mr Buchan identifies the CFMEU Construction & General Division (WA Branch) as an associated entity of the registered political party known as the Australian Labor Party (Western Australian Branch).

## Compliance obligations

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

Section 314AEA of the Act requires the financial controller of an Associated Entity to report after the end of each financial year:

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

Section 314AC of the Act also provides that if the sum of all amounts received by, or on behalf of, the Entity 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 Entity 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.

The text of these provisions is reproduced in *Attachment A* to this report.

## Authority to investigate

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 financial controller of an associated entity 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 one notice to Mr Buchan under s.316 (2A) as follows:

- the notice required the Entity to provide its financial records and other documents in relation to its financial operations for 2012-13.

A copy of the notice issued under s.316 (2A) of the Act is provided at *Attachment B* to this report.

## Stakeholder engagement

The AEC's general practice, prior to commencing an investigation, is for the AEC's Compliance area to contact the relevant officer of the associated entity to discuss the scope of the investigation.

Prior to this compliance investigation commencing, AEC staff contacted Mr Buchan to discuss the scope of the investigation process.

It is also the AEC's practice to discuss with the relevant officer of the associated entity, 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. This contact may involve face to face meetings.

The objective of such discussions is to encourage the associated entity 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.

Throughout the investigation, the reporting entity has been co-operative and made available its staff and external accountant as and when required.

On 6 May 2015, a meeting was conducted between AEC staff and the Entity's executive staff and financial controller at the entity's Perth headquarters. Following this meeting and prior to finalisation of the investigation, the Entity voluntarily lodged a request for amendment on 11 August 2015. On finalising the investigation, the AEC identified several further amendments.

## Scope of the investigation

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

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

## AEC's opinion

The AEC's opinion relates only to its investigation of information required to be set out under sections 314AEA, 314AC and 314AE of the *Commonwealth Electoral Act 1918*.

After examining the documents provided by Mr Buchan 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

The 2012–13 annual disclosure return for the Entity was lodged on 23 September 2013. As lodgement occurred by the due date of 20 October 2013, it complied with the requirement under s.314AEA (1) to lodge a return for an associated entity within 16 weeks after the end of the financial year.

## 2. Accuracy in reporting – amendments required

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

During the course of the investigation, AEC staff identified that total receipts and total payments were substantially under-disclosed. This was due to the non-inclusion, in total receipts and total payments, of cash transactions for the transfer of assets, and the entry of net transactions in the ledger. It was explained to the external accountant that, while in practical terms, a transaction may appear as a conversion of assets, the actual inflows and outflows of cash are required to be disclosed in full.

No explanation was provided during the investigation for the non-disclosure of total debts, or for incorrect disclosures or non-disclosures of individual receipts or debts exceeding the threshold.

During a meeting conducted at the Entity's Perth headquarters on 5 May 2015, and subsequent correspondence and discussions, the Entity's executive staff and financial controller have acknowledged that the amendments listed below would ensure full disclosure of the information required of Mr Buchan under the provisions of sections 314AEA, 314AC and 314AE of the Act.

### Total Receipts

Total reportable receipts by the Entity were under-stated in the Entity's 2012-13 annual disclosure return. The AEC recommends an amendment of the figure reported for total receipts in the Entity's 2012–13 annual disclosure return to \$21 314 947. A full breakdown of the amended amount can be viewed at *Attachment C*.

On 11 August 2015, the Entity lodged an amendment of the total receipts amount to \$21 354 927. The AEC considers a second amendment is required to accurately reflect total receipts. The amendment made by the Entity on 11 August 2015 and the recommended second amendment are set out below.

#### Part 2a: Total Receipts – amendment lodged 11 August 2015

Original entry	Total receipts as per Annual Disclosure Return lodged 23 September 2013	\$18 173 681
Amended entry	Total receipts as per Request for Amendment lodged 11 August 2015	\$21 354 927

**Part 2a: Total Receipts – amendment recommended**

Original entry	Total receipts as per Request for Amendment lodged 11 August 2015	\$21 354 927
Amended entry	Amended total receipts recommended per this report	\$21 314 947

**Amounts of more than \$12 100 received**

Individual receipts exceeding the threshold were under-disclosed in the Entity's 2012-13 annual disclosure return.

On 11 August 2015, the Entity lodged an amendment of individual receipts exceeding the threshold. The AEC considers a second amendment is required to accurately reflect individual receipts exceeding the threshold. The amendments made by the Entity on 11 August 2015 and the recommended second amendment are set out in the table below.

**Part 3: Amounts of more than \$12 100 received – amendments lodged 11 August 2015**

<i>Name</i>	<i>Address</i>	Amounts as per return lodged 23/09/2013 \$	Amounts per amendment lodged 11/08/2015 \$	Receipt Type
Australand	PO Box 1216 WEST LEEDERVILLE WA 6901	23 100	63,250	Other Rec
Australian Building & Construction (BLF)	16 Campbell Street Bowen Hills QLD 4000	0	15 000	Other Rec
BCITF	PO Box 746 WEMBLEY WA 6913	1 467 689	2 676 019	Other Rec
Cannington Carousel Centre	1382 Albany Hwy Cannington WA 6107	0	34 451	Other Rec
CBUS	Level 28 Casselden Place, 2 Lonsdale St MELBOURNE VIC 3003	50 000	110 000	Other Rec
Ceilcon	303 Selby St OSBORNE PARK WA 6017	83 903	326 415	Other Rec
CFMEU Nat Office	PO Box Q235 QVB PO SYDNEY NSW 2000	13 455	76 775	Other Rec
CSI Pty Ltd	1 Sleat Rd Applecross WA 6153	0	23 500	Other Rec
Delta Corp	218 Campersic Rd HERNE HILL WA 6056	62 028	123,927	Other Rec
Fremantle Constructions	94 Norma Cres KNOXFIELD VIC 3180	20 097	172,098	Other Rec
Global Integrated Resources	PO Box 608 BALCATTWA WA 6021	432 060	1,134,610	Other Rec
H&B Equipment	PO Box 608 BALCATTWA WA 6021	64 350	192,489	Other Rec

**Part 3: Amounts of more than \$12 100 received (continued)  
– amendments lodged 11 August 2015**

<b>Name</b>	<b>Address</b>	<b>Amounts per return lodged 23/09/2013 \$</b>	<b>Amounts per amendment lodged 11/08/2015 \$</b>	<b>Receipt Type</b>
Hertel Modern	PO Box 3144 MALAGA WA 6944	21 288	64,930	Other Rec
JLT P/L	GPO Box E201 PERTH WA 6841	132 000	228,800	Other Rec
Pro-build	49 Labouchere Rd SOUTH PERTH WA 6151	130 900	130 900	Other Rec
Macquarie Bank	235 St George's TCE, PERTH WA 6000	0	6,000,000	Other Rec
Slater & Gordon	32 Saint Georges Terrace PERTH WA 6000	0	36,185	Other Rec
Westpac Bank	45 Royal Street East Perth WA 6004	0	373,913	Other Rec

**Part 3: Amounts of more than \$12 100 received – amendment recommended**

<b>Name</b>	<b>Address</b>	<b>Amounts per Amendment lodged 11/08/2015 \$</b>	<b>Amended receipts amount recommended per this report \$</b>	<b>Receipt Type</b>
		<i>Original entry</i>	<i>Amended entry</i>	
Downer EDI Engineering Power Pty Ltd	PO Box 159 CANNING VALE WA 6970	0	18 227	Other rec
Pro-build	49 Labouchere Rd SOUTH PERTH WA 6151	130 900	467 423	Other Rec
Westpac Bank	45 Royal Street East Perth WA 6004	373 913	573,913	Other Rec

**Total Payments**

Total reportable payments by the Entity were under-stated in the Entity's 2012-13 annual disclosure return. An amendment of the figure reported for total payments in the Entity's 2012-13 disclosure return was lodged by the Entity on 11 August 2015, as set out below. No further amendment of this amount is required. A full breakdown of the amended amount can be viewed at *Attachment D*.

**Part 4: Total Payments - amendment lodged 11 August 2015**

Total payments as per Annual Disclosure Return lodged 23 September 2013	\$14 442 912
Total payments as per Request for Amendment lodged 11 August 2015	\$22 405 170

**Total Debts**

Total reportable debts of the Entity were under-stated in the Entity's 2012-13 annual disclosure return. An amendment of the figure reported for total debts in the Entity's 2012-13 disclosure return was lodged by the Entity on 11 August 2015, as set out below. No further amendment of this amount is required. A full breakdown of the amended amount can be viewed at *Attachment E*.

**Part 5: Total Debts – amendment lodged 11 August 2015**

Total debts as per Annual Disclosure Return lodged 23 September 2013	\$ 0
Total debts as per Request for Amendment lodged 11 August 2015	\$315 323

**Debts of more than \$12 100**

Individual debts exceeding the threshold were under-disclosed in the Entity's 2012-13 annual disclosure return.

On 11 August 2015, the Entity lodged an amendment of individual debts exceeding the threshold. The AEC considers a second amendment is required to accurately reflect individual debts exceeding the threshold. The amendment made by the Entity on 11 August 2015 and the recommended second amendment are set out in the tables below.

**Part 6: Debts incurred of more than \$12 100 - amendment lodged 11 August 2015**

Name	Address	Amount	
Australian Taxation Office	Locked Bag 1936 Albury NSW 1936	\$216 272	New

**Part 6: Debts of more than \$12 100 - amendment recommended**

Name	Address	Amount	
Jeremy Kirk SC	Eleven Wentworth 180 Phillip Street SYDNEY NSW 2000	\$37 583	New
MacLean Legal Pty Ltd	580 Hay St, Perth WA 6000	\$18 194	New



Based on the records examined, it is the AEC's opinion that to ensure full compliance with the Act, the issues noted above should be remedied without delay by the lodgement of a request for amendment to the 2012-13 annual disclosure return for the Entity.

The AEC acknowledges lodgement by Mr Buchan of an amended annual disclosure return on 11 August 2015 following correspondence with the AEC. The AEC recommends the lodgement of a second request for amendment without delay in order to remedy all of the issues noted in this report.

## Conclusion

Based on the records examined, the AEC is of the opinion that the 2012-13 annual disclosure return for the Entity lodged with the AEC on 23 September 2013 complied with the requirement under s.314AEA(1) of the Act to lodge a return for an associated entity within 16 weeks after the end of the financial year.

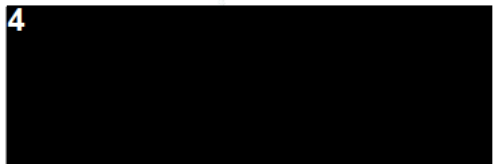
In view of the issues identified during the investigation, the AEC is of the opinion that Mr Buchan did not comply with the obligations under s.314AEA, 314AC and 314AE of the Act in that he failed to lodge a complete and accurate 2012-13 annual disclosure return for the Entity.

AEC staff have recommended to Mr Buchan and his staff, regarding the disclosure requirements of the Act:

- accounting for full, rather than net, transactions for the purposes of ensuring disclosure of all inflows and outflows of cash
- maintenance of records for gifts in kind received by the Entity
- improvement of the accounting system to include transaction identification
- preparation of supporting records for future annual disclosure returns in a manner consistent with easy identification of all transfers between the entity's bank accounts and of all individual receipts and debts above the threshold.

This report is issued following opportunity for comment by the Entity on the draft compliance investigation report.

4



Tim Courtney  
Acting First Assistant Commissioner  
Australian Electoral Commission

27<sup>th</sup> November 2015

## Extracts from the Commonwealth Electoral Act 1918

### 314AA Interpretation

(1) In this Division:

**amount** includes the value of a gift, loan or or bequest.

### 314AEA Annual returns by associated entities

(1) Subject to this Division, If an entity is an associated entity at any time during a financial year, the entity's financial controller 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

(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 associated entity during the financial year, together with the details required by section 314AC;

(b) the total amount paid by, or on behalf of, the associated entity 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 associated 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 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.

### 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.
- (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).

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**ELECTORAL ACT 1918 – SECTION 316(2A)****NOTICE TO PRODUCE DOCUMENTS  
DISCLOSURE RETURN 2012–13**

**To:** Mr Michael Buchan  
 State Secretary  
 CFMEU Construction and General Division (WA Branch)  
 PO Box 6681  
 PERTH WA 6892

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 State Secretary of the CFMEU Construction and General Division (WA Branch) (the Union), 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 2013**

1. Reports from the Union'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 Union'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 applicable

for the period from 1 July 2012 to 31 July 2013 (i.e. 13 Months).
5. Bank reconciliation statements for:
  - a. each account as at 30 June 2012; and
  - b. each account as at 30 June 2013
6. Audited financial statements for the 2012–13 financial year.

7. The working documents clearly demonstrating how the final total receipts, total payments and total debts figures shown on the Union's 2012–13 annual disclosure return were derived.
8. 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: Alan Page  
Australian Electoral Commission  
West Block Offices, Queen Victoria Terrace  
PARKES ACT 2600

by 5:00pm 12 September 2014

**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: 14 August 2014

4

Seema Srivastava  
Assistant Commissioner  
Funding and Disclosure

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

## Total receipts

Data Source: Bank statements	Total receipts \$	Less Internal Bank and other Transfers \$	Total Receipts for disclosure \$
<b>Bank account number ending in</b>			
754	27 979 410	-12 088 257	15 891 153
877	7 562 427	-7 550 000	12 427
770	2 106 681	-4 281	2 102 399
818	988 407	-940 000	48 407
762	81 500	0	81 500
797	621 909	-17 356	604 553
885	160 980	-157 000	3 980
039	17	0	17
064	1 001	-1 000	1
922	10 726	-8 074	2 652
506	70 527	0	70 527
514	81 303	-70 892	10 411
1930	28 841	-28 000	841
3930	3 185 750	-710 226	2 475 524
949	10 555	0	10 555
<b>Amended total receipts</b>			<b>21 314 947</b>

**Total payments**

Data Source: Bank statements	Total Payments \$	Less Internal Bank and other Transfers \$	Total Payments for disclosure \$
<b>Bank account number</b>			
754	27 962 284	-8 617 354	19 344 930
877	7 008 455	-7 008 455	0
770	2 009 707	-2 007 358	2 349
818	90	0	90
762	75 585	-500	75 085
797	658 069	-633 635	24 434
885	966 374	-966 374	0
039	1 505	-1 000	505
064	500	0	500
922	36 793	-36 792	0
506	70 951	-70 892	59
514	3 222	-3 222	0
1930	138 087	-138 074	13
3930	3 044 071	-86 865	2 957 206
949	0	0	0
<b>TD 396,409,359</b>	<b>1 979 430</b>	<b>1 979 430</b>	<b>0</b>
<b>Amended total payments</b>			<b>22 405 170</b>

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**Total debts**

<b>As per Trial Balance - as at 30 June 2013</b>	<b>Total debts for disclosure \$</b>	
<i>Debts owing to the Australian Tax Office:</i>		
Net of GST collected and paid	142 962	
PAYG owing	73,310	216 272
<i>Other debts:</i>		
Trade creditors	92,537	
Sundries, less petty cash	250	
Redundancy	6,264	99 051
<b>Total</b>		<b>315 323</b>

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## 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.

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