

Compliance Review Report
Australian Labor Party (ACT Branch)
2013–14 Annual Disclosure Return
February 2016



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 Australian Labor Party (ACT Branch) (the Party), Mr Matthew Byrne, 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 review

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 Mr Byrne under s.316(2A) requiring the Party to provide its financial records and other documents in relation to its financial operations for 2013-14.

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

Scope of the review

The AEC's review 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 a review, is to contact the relevant officer of the political party to discuss the scope of the review. This contact may involve face to face meetings.

Prior to commencement of this compliance review, staff of the AEC contacted Mr Byrne by telephone to discuss the scope of the review process.

It is also the AEC's practice, prior to finalising a review, 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.

On 18 January 2016 the AEC provided Mr Byrne with a draft of the report for his consideration and comment. Mr Byrne was asked to provide his comments by 1 February 2016. Mr Byrne emailed the AEC on 1 February 2016 to advise that based on the rationale laid out in the draft report, he was happy to comply with the recommendations made in the report.

The AEC's Opinion

1. Timely lodgement

The 2013-14 annual disclosure return for the party was lodged with the AEC on 20 October 2014. As lodgement occurred by the due date of 20 October 2014, it complied with the requirement under s.314AB(1) to lodge a return for a registered political party within 16 weeks after the end of the financial year.

2. Accuracy in reporting – amendments required

After examining the documents provided by Mr Byrne for the review, 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.

Total Receipts and Payments

Section 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.

Section 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.

Transactions within the Party, including those between its individual bank accounts, represent internal transfers. Such transactions should be eliminated from the calculation of total receipts and payments to avoid inflating the total amounts reported in the return.

Total reportable receipts by the Party were under-stated in the Party's 2013-14 annual disclosure return due to the calculation of total receipts being based on total revenue from the profit and loss statement. This amount had been adjusted to exclude a number of items, including gifts in kind and revenues associated with events being run externally to the Party. The AEC recommends the amount of total receipts be amended from \$813 624 to \$962 877.

Total reportable payments by the Party were under-stated in the Party's 2013-14 annual disclosure return due to the calculation of total payments being based on the sum of the cost of sales and total expenses from the profit and loss statement. The AEC recommends the amount of total payments be amended from \$927 897 to \$955 397.

It has been explained to the Party that the AEC does not recommend figures derived from the profit and loss statement as a basis for calculating total receipts and total payments. There are many non-cash transactions that go through the profit and loss (for example depreciation expense, accruals, increases in provisions), and cash transactions which do not go through the profit and loss (eg. the purchase and sale of assets, prepayments). The AEC has also clarified with the Party that all receipts, regardless of source and including gifts in kind, must be included in total receipts.

The recommended amendments to correct the under-disclosures are summarised in the table below. Further details relating to the amendments are included at *Attachment C*.

Required amendment – Part 1a and Part 3: Total Receipts and Payments

	Receipts	Payments
Amount disclosed in return	\$813 624	\$927 897
Amended total	\$962 877	\$955 397

Gifts in kind

Total reportable gifts in kind received by the Party were under-stated in the Party's 2013-14 annual disclosure return. The AEC recommends an amendment of the figure reported for total gifts in kind in the Party's 2013-14 annual disclosure return from \$31 569 to \$39 455, as set out below.

Required amendment - Part 1b: Total Gifts in kind

Amount disclosed in return	\$31 569
Amended total	\$39 455

Individual Receipts of more than \$12 400

Section 314AC of the Act 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. Furthermore, where such an amount is received from a trust fund, subsection 314AC(3)(b) of the Act requires the Party agent to report the name of both the trustee and the trust.

The Party's 2013-14 annual disclosure return reported the particulars of a large number of individual receipts that were more than \$12 400 and which totalled \$521 258. One of these receipts was in the amount of \$240 000 and was reported by the party as being received from a trustee company, 1973 Foundation Pty Ltd. This entry should be corrected in the 2013-14 annual disclosure return to reflect the amount as being received from 1973 Foundation Pty Ltd as trustee for The 1973 Foundation (the trust). The recommended amendment is detailed in the table below.

Required amendment – Part 2: Amounts of more than \$12 400 received

	Received from	Address	Amount
Original Entry	1973 Foundation Pty Ltd	GPO Box 1319 CANBERRA ACT 2601	\$240 000
Amended entry	1973 Foundation Pty Ltd ATF The 1973 Foundation	GPO Box 1319 CANBERRA ACT 2601	\$240 000

Total debts

Section 314AB(2)(c) of the Act requires the Party agent 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.

Total reportable debts of the Party were under-stated in the Entity's 2013-14 annual disclosure return. This was mainly due to the exclusion from total debts of a loan from the trust (an associated entity). The party considered the loan to be of an internal nature and not for disclosure as a debt in the annual disclosure return. It has been explained to the party, however, that the trust is a separate legal entity, and therefore that any loan from the entity is a debt for disclosure under s.314AB(2)(c) of the Act.

The AEC recommends an amendment of the figure reported as total debts in the Party's 2013-14 annual disclosure return from \$83 165 to \$387 915. A full breakdown of the amended amount can be viewed at *Attachment D*. The recommended amendment is detailed in the table below.

Required amendment - Part 4: Total debts

Amount disclosed in return	\$83 165
Amended total	\$387 915

Debts of more than \$12 400

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 return must include the particulars of that sum. For the 2013–14 financial year the threshold was for sums in excess of \$12 400.

Individual debts exceeding the threshold were under-disclosed in the Party's 2013-14 annual disclosure return. The AEC recommends an amendment of the Party's 2013-14 annual disclosure return to include two unreported debts above the threshold. The recommended amendment is set out in the table below.

Required amendment - Part 5: Debts incurred of more than \$12 400

Creditor details	Address	Amount owed	Financial or Non-financial institution
1973 Foundation Pty Ltd ATF The 1973 Foundation	GPO Box 1319 CANBERRA ACT 2601	\$279 932	Non-financial institution
Provision for employee entitlements	As per the records of the Party	\$24 081	Non-financial institution

Matters requiring future action

The AEC considers the number and value of the under-disclosures in 2013-14 annual disclosure return of the Party to be of some concern.

It is recommended the Party ensure the accuracy of future annual disclosure returns by:

- using cash receipts and cash payments records as the basis for the calculation of total receipts and total payments
- checking the accuracy of descriptions for all items listed in the annual disclosure return before lodgement
- including all debts listed in the trial balance as owing to other persons and legal entities in the total debts disclosed in the annual disclosure return
- ensuring the disclosure of all individual debts exceeding the threshold in the annual return.

Conclusion

The AEC is of the opinion that the 2013–14 annual disclosure return for the Party lodged with the AEC on 20 October 2014 complied with the requirement under s.314AB(1) of the Act to lodge a return for a political party within 16 weeks after the end of the financial year.

However, in view of the discrepancies identified, the 2013–14 annual disclosure return lodged for the Party on 20 October 2014 did not comply with the provisions of ss.314AB(2), 314AC(3)(b)(ii) and 314AE of the Act.

In view of the lodgement by Mr Byrne on 1 February 2016 of the amendment to the Party's 2013-14 annual disclosure return, the AEC is of the opinion that the disclosure return (as amended) now accurately sets out the information required to be disclosed by a political party 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

4^H February 2016

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.

COMMONWEALTH ELECTORAL ACT 1918 – SECTION 316(2A)**NOTICE TO PRODUCE DOCUMENTS
DISCLOSURE RETURN 2013–14**

To: Mr Matthew Byrne
Party Agent
Australian Labor Party (ACT Branch)
GPO Box 3065
CANBERRA ACT 2601

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 Labor Party of Australia (ACT, Branch (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 complete list of all party units/local branches for the 2013–14 financial year (preferably in Excel format) with details of:
 - a. the party units that have lodged annual returns with the Party;
 - b. the party units that have not lodged annual returns with the Party;
 - c. total of receipts, payments and debt reported by each party unit in its annual return to the Party;
 - d. details of receipts at the disclosure threshold of more than \$12 400;
 - e. details of debts at the disclosure threshold of more than \$12 400.
11. 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 no later than 5:00pm, 28 November 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: 30 October 2014

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Seema Srivastava
Assistant Commissioner
Funding and Disclosure

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

Attachment C

Details of required amendment - Part 1a: Total receipts

Bank account	Receipts per AEC review
13	\$723 805
13	\$29 401
13	\$140 066
13	\$62 560
13	\$250 540
Sub-total all cash receipts	\$1 206 372
Less internal transfers between bank accounts	\$(282 950)
Sub-total cash receipts from external sources	\$923 422
Add: Gifts in kind received	\$39 455
Total receipts from external sources	\$962 877

Details of required amendment - Part 3: Total payments

Bank account	Payments per AEC review
13	\$794 408
13	\$11 854
13	\$139 360
13	\$27 725
13	\$265 000
Sub-total all cash payments	\$1 238 347
Less internal transfers between bank accounts	\$(282 950)
Total payments to external entities	\$955 397

Total debts

As per Trial Balance - as at 30 June 2014	Total debts for disclosure
Trade creditors	\$60 337
PAYG owing	\$10 238
Superannuation payable	\$11 398
Salary sacrifice payable	\$652
Other tax liabilities	\$737
Credit card	\$540
Provision - annual leave	\$24 081
1973 Foundation Pty Ltd ATF The 1973 Foundation	\$279 932
Total debts	\$387 915

Released under the Freedom of Information Act 1982

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