

1 January 2019

# Foreign Donations

## Who is restricted from receiving foreign donations?

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The *Commonwealth Electoral Act 1918* (Electoral Act) restricts the gifts or donations that the following people or entities can receive from foreign donors:

- political entities (registered political parties, candidates and Senate groups)
- political campaigners; and
- third parties.

This fact sheet uses the term 'disclosure threshold' throughout. The disclosure threshold for the period 1 July 2018 to 30 June 2019 is \$13,800.

## Who is a foreign donor?

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A foreign donor is:

- (a) a body politic of a foreign country;
- (b) a body politic of a part of a foreign country;
- (c) a part of a body politic mentioned in paragraph (a) or (b);
- (d) a foreign public enterprise;
- (e) an entity (whether or not incorporated) that does not meet any of the following conditions:
  - (i) the entity is incorporated in Australia;
  - (ii) the entity's head office is in Australia;
  - (iii) the entity's principal place of activity is, or is in, Australia;
- (f) an individual who is none of the following:
  - (i) an elector;
  - (ii) an Australian citizen;
  - (iii) an Australian resident;
  - (iv) a New Zealand citizen who holds a Subclass 444 (Special Category) visa under the *Migration Act 1958* (or if that Subclass ceases to exist, the kind of visa that replaces that Subclass).

## What type of donations are prohibited or restricted?

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Political entities, political campaigners and third parties can receive donations under \$100 (e.g. small donations via fundraising in the form of 'bucket donations') without having to determine whether the donor is a foreign donor.

Political entities and political campaigners are:

- restricted from receiving gifts in the amount of \$100 to \$999.99 from a foreign donor where:
  - the person or entity knows that the foreign donor intends the gift to be used to incur electoral expenditure, or the dominant purpose of creating or communicating electoral matter<sup>1</sup>; or
  - the gift is accepted with the intent of using it to incur electoral expenditure, or for the dominant purpose of creating or communicating electoral matter; and
- prohibited from receiving donations of \$1,000 or more from a foreign donor.

Third parties are:

- restricted from receiving donations of \$100 or more if:
  - the third party knows the donor is a foreign donor; and
  - the third party knows that the foreign donor intends the gift to be used to incur electoral expenditure, or for the dominant purpose of creating or communicating electoral matter; or
  - the gift is accepted with the intent of using it to incur electoral expenditure, or for the dominant purpose of creating or communicating electoral matter.
- restricted from receiving donations equal to or more than the disclosure threshold from a foreign donor, if the donation is used for:
  - incurring electoral expenditure; or
  - for the dominant purpose of creating or communicating electoral matter.

If a political entity, a political campaigner or a third party receives a donation from a foreign donor in contravention of the restrictions in the Electoral Act, the Act provides six weeks from the gift being made for it, or an equivalent amount, to be returned to the donor or transferred to the Commonwealth.

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<sup>1</sup> Refer to separate Fact Sheet on Electoral Matter and Electoral Expenditure for more information on these terms

## What must I do to ensure a donation is not from a foreign donor?

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The Electoral Act does not compel an organisation to obtain information about a donor's status. However, if it transpires that a political entity, political campaigner or third party has received a foreign donation in breach of the legislation, evidence of having undertaken certain specified actions can provide a defence to any legal action.

### **Political entities (registered political parties, candidates, Senate groups) and political campaigners**

For donations from \$1,000 up to the disclosure threshold, the financial controller or agent of the political entity or political campaigner will need to obtain, within six weeks, written affirmation that the donor is not a foreign donor. This could be achieved by including a check box on forms provided to donors when making donations.

#### **Example**

Jean-Paul makes a \$3,000 donation to a registered political party via its website. Prior to entering his credit card details into the payment system, he is required to read and tick a box on the webpage form affirming that he is not a foreign donor under the Electoral Act.

By ticking the box on the party's website, Jean-Paul affirms in writing that he is not a foreign donor and the party can rely on his representation.

For donations equal to or above the disclosure threshold, the financial controller or agent of the party, candidate or Senate group will need to, before the end of six weeks after the donation is made:

- obtain written affirmation that the donor is not a foreign donor; and
- obtain appropriate information establishing that the donor is not a foreign donor or otherwise take reasonable steps (such as cross referencing identification provided by the recipient with the Electoral Roll or a Register of the Australian Securities and Investments Commission (ASIC)) to verify that the donor was not a foreign donor.

#### **Example 1**

Winston makes a \$15,000 donation to a registered political party. He provides his full name (including his middle name) and his residential address to the party, so he can be matched on the Electoral Roll. The political party uses the AEC's online tool for checking enrolments, to cross reference Winston's details with those on the Electoral Roll and confirm he is an elector.

The party has obtained appropriate donor information in relation to Winston, as it has checked his particulars set out on the roll.

### **Example 2**

The Tjapukai Snack Company makes a gift above the disclosure threshold to a registered political party. The registered political party looks up the company on the ASIC website. The listing shows the company is incorporated in Cairns.

The registered political party has obtained appropriate donor information in relation to the Tjapukai Snack Company.

## **Third parties**

For donations received above the disclosure threshold that will be used for incurring electoral expenditure, or the dominant purpose of creating or communicating electoral matter, the responsible person or entity will need to, before the end of six weeks after the donation is made:

- obtain written affirmation from the donor that it is not a foreign donor; and
- obtain appropriate information establishing that the donor is not a foreign donor or otherwise take reasonable steps (such as cross referencing identification provided by the recipient with the Electoral Roll or a Register of ASIC) to verify that the donor was not a foreign donor.

Obtaining written affirmation of a donor's status could be achieved by including a check box on forms provided to donors when making donations but the third party will still need take additional steps to establish or verify the donor was not a foreign donor.

## **Associated entities**

There are generally no restrictions on associated entities receiving gifts from foreign donors, however anti-avoidance provisions in the Electoral Act prevent the channelling of foreign gifts to a political party, candidate, Senate group political campaigner or third party via an associated entity.

# What is appropriate donor information to establish a person or entity is not a foreign donor?

*If the donor is an individual*

Then the appropriate donor information is:

- (a) the particulars relating to the individual set out in the federal Electoral Roll

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- (b) a copy of a passport, of a certificate evidencing the individual's naturalisation, or of any other document evidencing the individual's Australian citizenship; or
- (c) a copy of a visa evidencing the individual's permanent residency in Australia; or
- (d) a copy of the individual's Subclass 444 (Special Category) visa under the *Migration Act 1958* (or if that Subclass ceases to exist, the kind of visa that replaces that visa); or
- (e) any information or a copy of any document prescribed by the regulations for the purposes of the table in subsection 302P(1) of the Electoral Act.

### *If the donor is an incorporated entity*

Then the appropriate donor information is:

- (a) a copy of the certificate of the entity's incorporation in Australia; or
- (b) particulars of the entity's registration with ASIC evidencing the entity's incorporation in Australia; or
- (c) any information or a copy of any document prescribed by the regulations for the purposes of the table in subsection 302P(1) of the Electoral Act.

### *If the donor is an entity (whether or not incorporated)*

Then the appropriate donor information is:

- (a) copies of at least 3 recent minutes or other official documents of the entity, in accordance with subsection 302P(2) of the Electoral Act (i.e. each minute or other document must evidence a different kind of decision), evidencing that high-level decisions of the entity are made in Australia, such as:
  - (i) decisions setting the operational policies of the entity; or
  - (ii) decisions appointing officers of the entity, or granting powers to such officers to carry on the entity's activities; or
  - (iii) directions to persons appointed to carry out the entity's activities as to how to perform functions; or
  - (iv) decisions on matters of finance, such as how profits are to be used; or
- (b) copies of at least 3 official documents of the entity establishing that the entity's activities are principally carried out in Australia, such as:
  - (i) documents recording separately the number of staff or members of the entity in Australia, and overseas, carrying on activities for the entity; or
  - (ii) documents recording separately the scale or volume of the activities carried out in Australia, and overseas, (for example by reference to revenue derived in Australia and overseas); or
- (c) for an entity that is a trust or foundation—a trust deed or other governing document evidencing:
  - (i) the governing law of the trust or foundation as the law of an Australian jurisdiction; or

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- (ii) that the head office is in Australia, or that the principal place of activity is, or is in, Australia; or
- (d) any information or a copy of any document prescribed by the regulations for the purposes of this table item.

## Are there types of foreign donations that can be received?

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Foreign donations are permitted if they are provided by a foreign donor to a recipient in a private capacity with the intention they are for his or her own personal use.

### **Example**

Sieux gives \$1,100 to her grandson, Lee, for his birthday. Lee is a candidate in an upcoming federal election.

Although Sieux is a foreign donor, the gift is made to Lee in a private capacity for his personal use therefore this gift does not contravene the Electoral Act.

Recipients are allowed to receive a foreign donation if the gift is intended only to be used for purposes that are not related to a federal election.

### **Example 1**

A Uruguayan company gives \$20,000 to Party X as part of Party X's campaign to raise funds for an upcoming State election. Party X is a registered political party at both the Commonwealth and State levels of government.

Using the gift for Commonwealth electoral purposes (that is, to incur electoral expenditure, or to create or communicate electoral matter) would be inconsistent with the terms of the gift as the fundraising campaign was explicitly for state electoral purposes. Party X does not contravene the Electoral Act if the gift is used for the purpose for which it was provided.

### **Example 2**

An Icelandic trust gives an Australian not-for-profit organisation \$120 million to plant trees as part of an environmental remediation project. The not-for-profit organisation is a registered political campaigner.

Using the gift to incur electoral expenditure, or to create or communicate electoral matter would be inconsistent with the terms of the gift. The not-for-profit organisation does not contravene the Electoral Act if the gift is used for the purpose for which it was provided.

## Penalties

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The Electoral Act establishes civil and criminal penalties for receiving prohibited foreign donations and not subsequently taking acceptable action in relation to the donation. Acceptable action means either returning the gift, or an amount equivalent to the amount or value of the gift, to the donor or transferring the gift or an amount equivalent to the amount or value of the gift, to the Commonwealth.

## Further information

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Participants in the electoral process should ensure they understand their obligations under the Electoral Act, in particular the funding and disclosure obligations in Part XX of the Act.

Refer to the AEC [website](#) for further information relating to election funding and financial disclosure.

You can also direct your enquiries to [fad@aec.gov.au](mailto:fad@aec.gov.au), or alternatively call the Funding and Disclosure help desk on (02) 6271 4552.