

Foreign donations - referendums

Who is prohibited from receiving foreign donations in relation to a referendum?

The *Referendum (Machinery Provisions) Act 1984* (Referendum Act) prohibits donations that **referendum entities** can receive from foreign donors.

What is a referendum entity?

A person or organisation that incurs referendum expenditure over the disclosure threshold during the referendum expenditure period.

What is the referendum expenditure period?

The period:

- commencing on the day that is six months before the writ for a referendum is issued; and
- ending on the voting day for a referendum.

Who is a foreign donor?

A foreign donor is:

- a body politic of a foreign country (or part of such a body politic);
- a body politic of a part of a foreign country (or part of such a body politic);
- a foreign public enterprise;
- an entity (whether or not incorporated) that does not meet any of the following conditions:
 - the entity is incorporated in Australia;
 - the entity's head office is in Australia;
 - the entity's principal place of activity is, or is in, Australia;

- an individual who is none of the following:
 - an elector;
 - an Australian citizen;
 - an Australian resident;
 - 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 donations are prohibited?

Referendum entities are prohibited from receiving donations from foreign donors of \$100 or more, if the referendum entity knows the donor is a foreign donor and:

- knows that the foreign donor intends the donation to be used to incur referendum expenditure, or for the dominant purpose of creating or communicating referendum matter; or
- accepts the donation with the intent of using it to incur referendum expenditure, or for the dominant purpose of creating or communicating referendum matter.

If a referendum entity is unsure as to the source of a donation received of \$100 or more, it is good practice to obtain information to ensure that they are not receiving foreign donations.

If a referendum entity does not take acceptable action in relation to a donation received, both it and the foreign donor may have committed an offence and could be liable to a penalty.

What is acceptable action by a referendum entity?

Acceptable action is taken in relation to a donation if:

- an amount equal to the amount or value of the donation is transferred to the Commonwealth;
- the donation is returned to the donor or the person who made the donation;
- an amount equal to the amount or value of the donation is transferred to the donor or the person who made the donation.

A referendum entity can take acceptable action within six weeks of the latest of the following:

- the day the donation is made;
- the day that the writ for the referendum is issued;
- the day the relevant person exceeds the disclosure threshold (and becomes a referendum entity) during the referendum expenditure period.

Penalties

The Referendum Act establishes civil and criminal penalties for receiving prohibited foreign donations and not subsequently taking acceptable action in relation to the donation.

Referendum timeframe used in examples (below)



The [Referendum \(Machinery Provisions\) Amendment Bill 2022 Explanatory Memorandum](#) provides an example timeframe, unrelated to a specific referendum, that is shown below:

- The Governor-General **issues the writ** for a referendum on 26 September.
- The **referendum voting day** is set for 29 October.
- As a result, the **referendum expenditure period** will run from 26 March (six months before the issue of the writ) to 29 October (voting day).

Example 1 – foreign donor as an entity

The Local Progress Association (the Association) is an association of local residents and businesses that advocate for their local area.

As a result of referendum expenditure over the referendum disclosure threshold, the Association became a referendum entity on 1 October.

The Association must take acceptable action to divest itself of any foreign donations received at any point during 26 March to 29 October for the purposes of referendum campaigning within the required timeframe.

On 29 September, the Association receives a donation of \$222 from International Progress Inc (International Progress). The Association contacts International Progress to ask about the purpose of the donation. International Progress informs the Association that the donation is to support its referendum campaign.

The Association gathers information and determines that International Progress is an entity that is not incorporated in Australia, does not have its head office in Australia and its activities are not primarily in Australia. International Progress is a foreign donor.

As this donation was received during the referendum expenditure period, is over \$100 and the Association knows the International Progress gave the donation to support its referendum campaigning, the Association must take acceptable action to divest itself of International Progress' donation within six weeks of the latest of the following:

- the day the donation is made (29 September)
- the day that the writ for the referendum is issued (26 September)
- the day the referendum entity exceeds the disclosure threshold during the referendum expenditure period (i.e. the day it becomes a referendum entity) (1 October).

If the Association does not take acceptable action in relation to the donation received, both it and International Progress could be liable to a penalty or offence.

Example 2 – foreign donor as an individual

On 14 October, the Association receives a donation of \$150 from Jan.

Jan has not ticked the check box on the donation form to acknowledge: 'I am *not* a foreign donor'. The Association cross-references details provided by Jan with the federal electoral roll and is unsuccessful in matching the details to determine that Jan is an elector. The Association contacts Jan to ask both about the purpose of the donation and to ascertain whether Jan is an Australian citizen or a permanent visa holder.

Jan emails in response to say that the donation is to support a referendum campaign and that they do not fall within the categories provided by the Association.

The Association ascertains that Jan is a foreign donor.

As this donation was received during the referendum expenditure period, is over \$100 and was given to support referendum campaigning, the Association must take acceptable action to divest itself of Jan's donation within six weeks of the latest of the following:

- the day the donation is made (14 October)
- the day that the writ for the referendum is issued (26 September)
- the day the referendum entity exceeds the disclosure threshold during the referendum expenditure period (i.e. the day it becomes a referendum entity) (1 October).

If the Association does not take acceptable action in relation to the donation received, both it and Jan could be liable to a penalty or offence.

Legislation relating to foreign donations at referendums

The *Referendum (Machinery Provisions) Act 1984* (Referendum Act) regulates foreign donations for referendums. The referendum disclosure scheme is described in Part VIIIA of the Referendum Act.

Further information

Referendum entities should ensure they understand their obligations under the Referendum Act, in particular the disclosure obligations in Part VIIIA.

Refer to the AEC website for further information relating to [referendum disclosure](#).

You can also direct your enquiries to fad@aec.gov.au or alternatively call the Disclosure help desk on (02) 6271 4552.