

# Prohibited political donations policy

*Electoral Disclosure and Funding Act 2023*

## Contents

<b>1.</b>	<b><i>Summary</i></b> .....	<b>2</b>
<b>2.</b>	<b><i>Policy statement</i></b> .....	<b>2</b>
<b>3.</b>	<b><i>Scope</i></b> .....	<b>2</b>
<b>4.</b>	<b><i>Related legislation and documents</i></b> .....	<b>3</b>
<b>5.</b>	<b><i>Recording details of all political donations</i></b> .....	<b>3</b>
<b>6.</b>	<b><i>Prohibited political donations from foreign donors</i></b> .....	<b>4</b>
	Gifts from foreign donors .....	4
	Gifts from foreign donors for the purpose of incurring electoral expenditure .....	5
	Prohibited political donations from foreign donors to third-party campaigners.....	6
	Making a false statement that a donor is not a foreign donor .....	7
<b>7.</b>	<b><i>Other prohibited political donations</i></b> .....	<b>7</b>
	Prohibition on cash donations .....	7
	Political donations to independent candidates by parties, associated entities and persons.....	8
<b>8.</b>	<b><i>Additional determinations by the TEC</i></b> .....	<b>8</b>
<b>9.</b>	<b><i>Responsibilities</i></b> .....	<b>9</b>
<b>10.</b>	<b><i>Version history and review</i></b> .....	<b>9</b>

# 1. Summary

The Tasmanian Electoral Commission (TEC) is responsible for promoting and enforcing the disclosure and funding compliance of electoral participants. This policy supports the interpretation and application of prohibited political donations definitions in Tasmanian parliamentary elections.

# 2. Policy statement

This policy provides the relevant legislative sections and definitions relating to prohibited political donations for parliamentary elections, with additional interpretation where required to provide clarity and guidance for stakeholders that make or receive political donations.

Understanding when a political donation may or may not be accepted is important for electoral participants in parliamentary elections, as penalties apply for the unlawful acceptance of a prohibited donation under the *Electoral Disclosure and Funding Act 2023*.

# 3. Scope

The TEC is an impartial and independent statutory authority. The TEC's work to support political donation education and compliance for electoral participants is performed under the authority provided by the *Electoral Act 2004* and the *Electoral Disclosure and Funding Act 2023*.

Electoral participants are any person, group of people or other entity who either incur electoral expenditure, or make or receive political donations. They can be political parties, Members, candidates, intending candidates, associated entities, third-party campaigners, political donors, party agents or official agents.

This policy applies to:

- The promotion of education and compliance with the prohibited political donations requirements of the *Electoral Act 2004* and the *Electoral Disclosure and Funding Act 2023*
- Officers of the TEC, including contractors and third-party consultants, who are providing education, advice, or any other investigatory or compliance activity involving prohibited political donations in Tasmanian parliamentary elections.

Political donations have specific definitions under the EDFA. Further information about political donations and gifts can be found in the TEC's **Political donations policy**.

Political donations by electoral participants must be disclosed to the TEC in accordance with the EDFA. Disclosure and recording obligations do not fall under the

scope of this policy – further information can be found in the TEC’s **Financial disclosure policy**.

## 4. Related legislation and documents

- *Electoral Act 2004* (“EA”)
- *Electoral Disclosure and Funding Act 2023* (“EDFA”)

## 5. Recording details of all political donations

Receiving any type of political donation is prohibited unless the person accepting the donation records the required details<sup>1</sup>.

A person must not accept a reportable political donation, unless the person<sup>2</sup>:

- Makes a record of the details required in relation to disclosing the donation to the TEC, and
- Provides the donor with a receipt for the donation, which includes information that the donor is required to disclose to the TEC – the specific text of which will be set by regulation.

The above does not apply to a political donation that is not a reportable political donation at the time when it is made, even if the political donation is later aggregated to become a reportable political donation<sup>3</sup>.

A person must not accept a political donation (not including donations of less than \$100), unless the person<sup>4</sup>:

- Records the amount of the donation, the date on which it is made and the person who made the donation, and
- Provides the donor with a receipt for the donation.

All records generated by these requirements must be kept for a period of at least three years<sup>5</sup>.

---

<sup>1</sup> EDFA, section 36

<sup>2</sup> EDFA, section 36(1)

<sup>3</sup> EDFA, section 36(2)

<sup>4</sup> EDFA, section 36(3)

<sup>5</sup> EDFA, section 36(5)

## 6. Prohibited political donations from foreign donors

The EDFA prohibits the acceptance of unlawful political donations from certain sources. If a person accepts an unlawful political donation in relation to a parliamentary election, penalties may apply – including recovery action by the TEC.

A **foreign donor** means<sup>6</sup>:

- A body politic of a foreign country, or a part of that body politic
- A body politic of a part of a foreign country, or a part of that body politic
- A foreign public enterprise
- A person that is not one or more of these:
  - The person is incorporated in Australia
  - The person's head office is in Australia
  - The person's principal place of activity is Australia
- A person who is not one or more of these:
  - An elector
  - An Australian citizen
  - An Australian resident
  - A New Zealand citizen who holds a Subclass 444 (Special Category) visa.

### Gifts from foreign donors

Political donations by foreign donors must not be accepted in certain circumstances. A person (the gift recipient) must not accept a gift if<sup>7</sup>:

- The gift is made by, or on behalf of, a foreign donor
- The gift recipient is a registered party, Member, candidate or associated entity, or the agent of any of these
- The gift is made to, or for the benefit of, the gift recipient during a financial year
- At the time when the gift is made, the amount or value of the gift is equal to \$1,000 or more, and
- Acceptable action has not been taken in relation to the gift within the six weeks after the gift is made.

**Acceptable action** in relation to a gift means taking any of the following actions<sup>8</sup>:

- Returning the gift to the donor or person who made the gift

---

<sup>6</sup> EDFA, section 5

<sup>7</sup> EDFA, section 21(1)

<sup>8</sup> EDFA, section 19

- Transferring an amount equal to the amount or value of the gift to the donor or person who made the gift
- Transferring an amount equal to the amount or value of the gift to the State.

This restriction on accepting a foreign donation does not apply to a gift recipient if they can establish either of the following:

- The gift was made in a private capacity for the gift recipient's own personal use<sup>9</sup>
- Using the gift for the purposes of an election would be inconsistent with the terms of the gift<sup>10</sup>.

Additionally, the restriction on accepting a foreign donation does not apply to a gift recipient if they can establish that, within the six weeks after the gift was made<sup>11</sup>:

- They at no time knew, or ought to have known, that the donor was a foreign donor
- The donor stated, in writing to the gift recipient, that they were not a foreign donor
- For a gift whose amount or value was equal to \$100 or more (at the time when the gift was made), the gift recipient –
  - Took reasonable steps to verify that the donor was not a foreign donor, or
  - The gift recipient obtained appropriate donor information establishing that the donor was not a foreign donor.

**Appropriate donor information** is obtained to establish that a donor is not a foreign donor. Examples of appropriate donor information include a copy of the donor's Australian passport (if the donor is a natural person), or a copy of the certificate of the donor's incorporation in Australia (if the donor is a body corporate). For a full list of appropriate donor information, refer to section 20 of the EDFA.

## Gifts from foreign donors for the purpose of incurring electoral expenditure

This part of the EDFA applies to an electoral participant that is a registered party, Member, candidate, associated entity, or a person who is or becomes a third-party campaigner in relation to an Assembly election (the relevant person).

It is unlawful for the relevant person to accept a gift if<sup>12</sup>:

- The gift is made by, or on behalf of, a foreign donor
- The relevant person knows that the donor is a foreign donor

---

<sup>9</sup> EDFA, section 21(3)

<sup>10</sup> EDFA, section 21(4)

<sup>11</sup> EDFA, section 21(2)

<sup>12</sup> EDFA, section 23(1)

- The gift is to, or for the benefit of, the registered party, Member, candidate, associated entity, or the person who is or becomes a third-party campaigner
- Either of the following applies—
  - The relevant person knows that the foreign donor intends the gift to be used for the purposes of incurring electoral expenditure, or for the dominant purpose of creating or communicating electoral matter, or
  - The relevant person accepted the gift intending to use the gift for the purposes of incurring electoral expenditure, or for the dominant purpose of creating or communicating electoral matter
- The amount or value of the gift is equal to \$100 or more, and
- Acceptable action has not been taken in relation to the gift within the six weeks after the gift is made.

It is unlawful for a donor to make a gift if<sup>13</sup>:

- The donor is a foreign donor
- The donor makes a gift to, or for the benefit of, another person
- The other person is a registered party, Member, candidate, associated entity, or the person who is or becomes a third-party campaigner
- Either of the following applies –
  - The foreign donor intends the gift to be used for the purposes of incurring electoral expenditure, or for the dominant purpose of creating or communicating electoral matter, or
  - The donor knows the other person accepted the gift intending to use the gift for the purposes of incurring electoral expenditure, or for the dominant purpose of creating or communicating electoral matter, and
- Acceptable action has not been taken in relation to the gift within the six weeks after the gift is made.

## **Prohibited political donations from foreign donors to third-party campaigners**

If a gift recipient is, or becomes, a third-party campaigner in relation to an Assembly election, similar restrictions apply on accepting a political donation from a foreign donor as for registered parties, Members, candidates or associated entities. The third-party campaigner (the gift recipient) must not accept a gift if<sup>14</sup>:

- The gift is made by, or on behalf of, a foreign donor
- The gift is made to, or for the benefit of, the gift recipient during an election campaign period

---

<sup>13</sup> EDFA, section 23(2)

<sup>14</sup> EDFA, Section 22(1)

- The gift recipient uses the gift for the purposes of incurring electoral expenditure, or for the dominant purpose of creating or communicating electoral matter, in relation to the election
- At the time when the gift is made, the amount or value of the gift is equal to \$1,000 or more, and
- Acceptable action has not been taken in relation to the gift within the six weeks after the gift is made or within six weeks of the gift recipient becoming a third-party campaigner (whichever occurs last).

The restriction on accepting a foreign donation does not apply to a third-party campaigner if they can establish, within the six weeks after the gift was made or within six weeks of the gift recipient becoming a third-party campaigner (whichever occurs last), that<sup>15</sup>:

- They at no time knew, or ought to have known, that the donor was a foreign donor
- The donor stated, in writing to the gift recipient, that they were not a foreign donor
- The gift recipient –
  - Took reasonable steps to verify that the donor was not a foreign donor, or
  - The gift recipient obtained appropriate donor information establishing that the donor was not a foreign donor.

## **Making a false statement that a donor is not a foreign donor**

A person must not make a statement, or provide appropriate donor information<sup>16</sup>, in relation to a gift if the statement relates to a prohibited political donation from a foreign donor, and the person knows (or ought to have known) that the statement or information is false<sup>17</sup>.

## **7. Other prohibited political donations**

In addition to the restrictions on political donations from foreign donors, the EDFA sets out further prohibitions on specific types of political donations.

### **Prohibition on cash donations**

It is prohibited for a person to make or accept a political donation in cash that exceeds the value of \$100<sup>18</sup>.

---

<sup>15</sup> EDFA, Section 22(2)

<sup>16</sup> EDFA, section 20

<sup>17</sup> EDFA, section 24

<sup>18</sup> EDFA, Section 27

## Political donations to independent candidates by parties, associated entities and persons

It is prohibited for any of the following persons to make a political donation to an independent candidate or an independent Assembly Member<sup>19</sup>:

- A registered party
- An Assembly candidate endorsed by a registered party
- An Assembly Member endorsed by a registered party
- An associated entity in relation to which there is a registered party.

It is prohibited for an independent candidate, or an independent Assembly Member, to accept a political donation made to the candidate by any of the following persons<sup>20</sup>:

- A registered party
- An Assembly candidate endorsed by a registered party
- An Assembly Member endorsed by a registered party
- An associated entity in relation to which there is a registered party.

## 8. Additional determinations by the TEC

While there are currently no additional guidelines in place about the meaning of a prohibited political donation in parliamentary elections, the TEC may consider issuing a guideline<sup>21</sup> to provide further clarity and direction if a particular type of donor or donation or a part of the legislative definition requires a more formal determination.

The TEC may also use data gathered from stakeholder contacts or compliance activities to inform future educational content for electoral participants.

---

<sup>19</sup> EDFA, Section 25(1)

<sup>20</sup> EDFA, Section 25(2)

<sup>21</sup> EDFA, Section 173(1)

## 9. Responsibilities

Who	How
Tasmanian Electoral Commission	<ul style="list-style-type: none"> <li>Approves this policy and associated documents</li> </ul>
Director, Legislation and Compliance	<ul style="list-style-type: none"> <li>Participates in the consultation process</li> <li>Determines policy instrument content and compliance with electoral disclosure and funding laws</li> <li>Communicates policy development and revision with relevant third parties as appropriate</li> </ul>
Manager, Compliance and Investigation	<ul style="list-style-type: none"> <li>Develops and amends policy instruments as required</li> <li>Coordinates administration of the policy development and review process</li> <li>Manages the publication, amendment or archiving of approved policy instruments</li> </ul>

## 10. Version history and review

Version	Date	Changes made	Approved by
1.0	21/03/25	Initial approval	Tasmanian Electoral Commission
2.0	12/12/25	Updated TEC address. Modified version history table.	Tasmanian Electoral Commission