

REFERENDUM 2023

# Disclosure Guide for Referendum Entities

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# Introduction

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The referendum disclosure scheme is established under Part VIIIA of the *Referendum (Machinery Provisions) Act 1984* (Referendum Act).

The disclosure scheme was introduced to increase overall transparency and inform the public about the financial dealings of referendum entities engaged in campaigning and receiving donations and of referendum donors making donations for a referendum.

The disclosure scheme requires referendum entities and referendum donors to lodge disclosure returns with the Australian Electoral Commission (AEC).

The AEC is required to publish referendum returns on the [Transparency Register](#). Referendum returns are published 24 weeks after the voting day for a referendum.

## The Guide

This version of the Disclosure Guide for Referendum Entities (the Guide) applies to returns for the 2023 referendum. **Appendix 1** contains a glossary of terms.

While the guide is intended to assist referendum entities with meeting their disclosure requirements, it does not address the whole of the Referendum Act. Users should familiarise themselves with Part VIIIA of the Referendum Act and seek independent legal advice where necessary.

The guide incorporates text boxes to highlight important information. Each text box is prefaced with a symbol. For example:

	A warning symbol indicates information relating to a legal obligation under the Referendum Act.
	An information symbol indicates a useful tip.
	A timing symbol indicates a due date.

## Referendum disclosure

### What is a referendum entity?

A referendum entity is a person or entity that incurs referendum expenditure during a referendum expenditure period that exceeds the disclosure threshold.

Referendum entities are not required to register with the AEC.



Section [3](#) of the Referendum Act provides the meaning of referendum entity, the referendum expenditure period and disclosure threshold.

### Referendum matter and referendum expenditure

Referendum matter is matter communicated or intended to be communicated for the dominant purpose of influencing voters in a referendum.

Referendum expenditure is expenditure incurred for the dominant purpose of creating or communicating referendum matter.

- [Factsheet: Referendum matter and referendum expenditure](#)



Section [3AA](#) of the Referendum Act provides the meaning of referendum matter, and section [3AAA](#) of the Referendum Act provides the meaning of referendum expenditure.

### Referendum expenditure period

The referendum expenditure period:

- starts on the day that is six months before the writ for a referendum is issued, and
- ends on the voting day for the referendum.



The **referendum expenditure period** relating to the 2023 referendum:

- starts on 11 March 2023, and
- ends on 14 October 2023.

## Disclosure threshold



The disclosure threshold for the 2023 referendum is for amounts of more than \$15,200. The threshold applies during the referendum expenditure period.

## Responsibility for lodging a referendum entity return

The person or entity that incurs referendum expenditure must lodge the referendum entity return (the return). If the donor is an individual, they must lodge the return. If the referendum entity is an entity, the return should be lodged by a person with the authority to do so.

## Due date for lodging returns

Referendum returns can be lodged with the AEC *after* voting day for the referendum.



Completed referendum entity returns must reach the AEC no later than **15 weeks after voting day for a referendum**.

Referendum entity returns relating to the 2023 referendum held on 14 October 2023 are **due by 29 January 2024**.

The AEC has no discretion to extend this legislative deadline.



[Referendum donors](#) have the same due date for returns as referendum entities. Referendum entities may need to notify referendum donors. It is best practice for referendum entities to make donors who have exceeded the threshold aware of their potential disclosure obligation.

## Lodging your return

Referendum entities can prepare and lodge their return online via the eReturns portal. The eReturns portal can be accessed from <https://ereturns.aec.gov.au> *after* voting day for the referendum. This is the easiest way to lodge your return accurately and on time. It is quick, secure, and allows importing/exporting of files which eliminates transcription errors.



Referendum entities that have an eReturns account associated with annual or election returns will **not** be able to use the same account for referendum returns.

For more information about lodging a referendum return online using eReturns please refer to the eReturns Guide for Referendum Entities available on the AEC website *after* voting day for the referendum.

## Important information

### Definition of a donation

A donation has the same meaning as a gift under the Referendum Act. A gift is defined as any disposition of property made by a person to another person, being a disposition made without consideration in money or money's worth or with inadequate consideration and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include a gift by the Commonwealth, a State, or a Territory.

A gift also includes a '**gift-in-kind**' such as the provision of a service (other than volunteer labour) for no consideration.

A donation in relation to the referendum disclosure scheme must meet the above definition **and** requires that either the referendum entity:

- knows that the donor intends for the donation to be used for the purposes of incurring referendum expenditure, or for the dominant purpose of creating or communicating referendum matter; or
- accepted the donation intending to use the donation for the purposes of incurring referendum expenditure, or for the dominant purpose of creating or communicating referendum matter.



**For examples** about the disclosure of referendum donations relating to referendum entities and referendum donors, go to:

- [Referendum disclosure: donations](#)



The meaning of 'gift' in the Referendum Act, is derived from section [287](#)(1) of the *Commonwealth Electoral Act 1918*.

Section [109F](#)(2) of the Referendum Act further explains the requirement for **intention** in relation to a referendum.

### Foreign donations

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 for referendum campaigning; or
- accepts the donation with the intent of using it for referendum campaigning.

A foreign donor is a person or entity who does not have a connection with Australia, such as a person who is not an Australian citizen or an entity that does not have significant business presence in Australia.

- [Factsheet: Foreign donations - referendum](#)



Section [109J](#) of the Referendum Act prohibits referendum entities from receiving gifts from foreign donors.

## Anti-avoidance provisions

It is an offence to establish a scheme to knowingly avoid disclosure obligations and foreign donation restrictions.

The Electoral Commissioner may issue a written notice if:

- a relevant person or entity (alone or with others) enters into, begins to carry out or carries out a scheme
- there are reasonable grounds to conclude the relevant person did so for the sole or dominant purpose of avoiding the application of disclosure obligations and foreign donation restrictions.

A person or entity who commits an offence may be subject to civil or criminal penalties.



Section [109M](#) of the Referendum Act prohibits anti-avoidance schemes.

## Potential additional referendum disclosure obligations

A referendum entity (the first referendum entity) may donate to a second referendum entity. In this situation, if donations total more than the disclosure threshold and occur within the referendum expenditure period, the first referendum entity would need to complete a referendum donor return as well as a referendum entity return.

## Potential additional financial disclosure obligations

Entities that lodge annual returns with the AEC could also be a referendum entity for the purposes of the disclosure requirements of the Referendum Act.



Expenditure and donations related to a referendum, and reported in a referendum return, may also be required to be reported in an annual return.

## The return

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A referendum entity must disclose the following information in relation to the referendum expenditure period:

- referendum expenditure incurred
- the total value of donations received for referendum campaigning
- the total number of donors
- details of donations above the disclosure threshold
- a signed statement of compliance with foreign donations restrictions.

### Disclosure of gross amounts

Amounts must be disclosed on a gross basis inclusive of goods and services tax (GST), if GST applied to that instance, and any merchant fees if applicable.

## Part 1 – Referendum expenditure

Part 1 of the return requires disclosure of the total amount of referendum expenditure incurred by or with the authority of the referendum entity during the referendum expenditure period.



Section [109E](#) of the Referendum Act governs the disclosure of referendum expenditure in referendum entity returns.

### Examples – referendum expenditure

Detailed information on referendum expenditure, including examples, is available in the [Factsheet: Referendum matter and referendum expenditure](#).

## Part 2 – Donations received

Part 2 of the return requires disclosure of donations received during the referendum expenditure period, as follows:

- total value of donations received for referendum campaigning
- total number of donors
- details of donations received from a single source where either:
  - the amount of at least one donation was more than the disclosure threshold, or
  - the total amount of all donations was more than the disclosure threshold.



Section [109F](#) of the Referendum Act governs the disclosure of donations received by referendum entities.

## Amounts received from unincorporated associations, trusts or foundations

Where an amount has been received from an unincorporated association (other than a registered industrial organisation), the name of the association and the names and addresses of all members of the executive committee of the association must be disclosed. Where an amount has been received from a trust fund or foundation fund, the name and description of the trust or foundation and the names and addresses of all trustees must be disclosed.

## Total of donations received

In this part, the total value of all donations (including gifts-in-kind) received during the referendum expenditure period must be disclosed. This includes donations above and below the disclosure threshold (\$15,200 for the 2023 referendum).

Donations received may include, but are not limited to:

- gifts of money
- gifts-in-kind of services or goods.

## Total number of donors

This part requires disclosure of the total number of donors who made the donations included in 'Total of donations received'.

## Donations you have received

This part requires disclosure of the details of donations received from a single source that total more than the disclosure threshold (\$15,200 for the 2023 referendum). The following will need to be reported:

- full name and address details of the person or organisation from whom the donation was received
- the date each donation was received
- the value or amount of each donation.



**For examples** about the disclosure of referendum donations relating to referendum entities and referendum donors, go to:

- [Referendum disclosure: donations](#)

## Examples – gifts-in-kind

Gifts-in-kind may be goods or services received for which no payment (in cash or in kind) or inadequate consideration is made. Inadequate consideration is where the benefits obtained are clearly of a lesser value than the payment made. Inadequate consideration includes discounts provided, that are over and above those that would be offered under normal commercial arrangements.

Gifts-in-kind are to be disclosed for an amount that reflects the fair value. That is, the normal commercial or sale value of the item or service as evidenced by arms-length transaction or comparative quotations or expert assessment.

Examples of gifts-in-kind to be disclosed in the return include (but are not limited to):

- free/discounted services such as legal advice, accounting services or web and IT services
- free/discounted use of premises or equipment and facilities
- free use of a motor vehicle, or free fuel or servicing of a motor vehicle
- free/discounted advertising by a publisher or advertising production service
- free air travel or the free use of a private aircraft
- free/discounted printing, typesetting or associated services
- free/discounted goods or services (for example, travel, artwork, sports memorabilia, or electrical goods) for use in raffles or other fundraising activities.



For further information, go to the ‘**Examples – gifts-in-kind**’:

- [Referendum disclosure: donations](#)

## Items that do not require disclosure

Items that do not need to be disclosed as donations for the purposes of the referendum disclosure scheme include:

- the **details** of donations totalling less than the disclosure threshold (however these need to be included in the total amount and the number of donors)
- donations outside of the referendum expenditure period
- donations:
  - not intended by the donor to be used for the dominant purpose of incurring referendum expenditure or for the dominant purpose of creating or communicating referendum matter, **and**
  - not intended by the referendum entity to be used for the dominant purpose of incurring referendum expenditure or for the dominant purpose of creating or communicating referendum matter, at the time of accepting the donation
- commercial discounts provided in the normal course of business
- volunteer labour, such as persons assisting in campaigning.

## Incomplete returns

Where a referendum entity is unable to obtain all the information required to fully complete the return, a Notice of Incomplete Return **must be completed** and lodged with the incomplete return.

Where it is necessary to submit a Notice of Incomplete Return:

- complete the referendum entity return as fully as possible
- complete the Notice of Incomplete Return
- lodge the Notice of Incomplete Return and the incomplete return with the AEC at the same time.



Lodgement of a Notice of Incomplete Return does not relieve the referendum entity of the responsibility of making reasonable efforts to obtain the information required to complete the return.

The AEC may assess whether the lodgement of a Notice of Incomplete Return was used by a referendum entity to avoid their responsibilities under the Referendum Act.

The Notice of Incomplete Return contains three parts:

Part 1 – requires the full details of the information believed to be missing from the return.

Part 2 – requires the:

- reason the particulars listed in Part 1 were unable to be obtained
- details of all attempts made to obtain the missing information.

Part 3 – requires the:

- full name/s and address details of the person/s believed to possess the missing particulars
- reason why it is believed this person/s possesses the required information.



Section [109V](#) of the Referendum Act provides for when a person who is required to furnish a return is unable to do so.

## Amending returns

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A request may be made to, or by the AEC seeking amendment of a return that has been lodged and subsequently found to be incomplete or incorrect.

Amendments to the return require previously submitted amounts to be provided together with the amended amounts. Amendments are processed through eReturns.



Section [109X](#) of the Referendum Act provides for the amendment of returns.

## Administration

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### Publication of referendum returns

Referendum returns are published on the [Transparency Register](#) 24 weeks after voting day for the referendum. For the 2023 referendum that date is 1 April 2024.

### Record keeping

Referendum entities should have adequate financial recording systems and procedures must be sufficient to enable the referendum entity return, which will be publicly available, to be properly completed.

The Referendum Act makes the referendum entity responsible for record keeping.

All transactions should be supported by source documents recording the details of individual transactions.

### Retention of records

Relevant records, whether formal or informal, must be retained a minimum of 5 years following the end of the reporting period.

A record must also be kept in accordance with any other requirements as determined by the Electoral Commissioner.

Persons or entities who fail to comply with these requirements are subject to civil penalties.



Section 109U of the Referendum Act provides for the keeping and retention of records.

## Penalties

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The Referendum Act imposes civil penalties and, in some cases, criminal penalties if a person or entity contravenes the requirements of the Referendum Act. The AEC provides support, including this guide, to assist referendum entities to comply with their disclosure obligations.

- [Penalties – referendum disclosure](#)

The AEC deals with individual cases as appropriate to the circumstances, including possible referral to the Commonwealth Director of Public Prosecutions for commencement of legal action.

## Compliance reviews

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The AEC may conduct compliance reviews of referendum returns lodged by referendum entities to verify the accuracy and completeness of disclosures. The AEC will issue a notice to request documentation and may hold an interview to discuss the review. A written compliance report will be provided and may include advice to amend the referendum entity's return.

Information on the AEC's [Compliance and enforcement](#) program can be found on the AEC website.



Section [109N](#) of the Referendum Act provides for the conduct of compliance reviews.

## Appendix – Glossary of terms

<b>AEC</b>	Australian Electoral Commission
<b>Disclosure threshold</b>	<p>Disclosure of certain information (e.g., expenditure, details of donations) by referendum entities and donors is required if it is above the disclosure threshold.</p> <p>The threshold applies to the referendum expenditure period.</p>
<b>Donation / gift</b>	Any disposition of property made by a person to another person, being a disposition made without consideration in money or money’s worth or with inadequate consideration and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include a gift by the Commonwealth, a State, or a Territory.
<b>Foreign donation</b>	A donation or gift to a referendum entity from a foreign donor.
<b>Foreign donor</b>	A person who does not have a connection with Australia, such as a person who is not an Australian Citizen or an entity that does not have significant business presence in Australia.
<b>Gift-in-kind</b>	<p>Non-cash donations. For example, receipt of an asset or service, discounts other than in the normal course of business and non-commercial or excessive payment for goods or services (including membership). Gifts-in-kind must be disclosed for an amount that reflects the fair value, that is, normally the commercial or sale value of the item or service.</p> <p>Examples of gifts-in-kind:</p> <ul style="list-style-type: none"> <li>■ the donation of legal advice by a solicitor</li> <li>■ the donation of the use of premises to conduct campaign activities.</li> </ul>
<b>Penalties</b>	The Referendum Act imposes civil penalties and, in some cases, criminal penalties if a person or entity contravenes the requirements of the Referendum Act.
<b>Publication</b>	<p>Disclosure returns are published on the <a href="#">Transparency Register</a>.</p> <p>Referendum returns are made available 24 weeks after polling day.</p>
<b>Referendum Act</b>	<i>Referendum (Machinery Provisions) Act 1984</i>

<b>Referendum donor</b>	A person or entity that makes one or more donations totalling more than the disclosure threshold to a referendum entity during the referendum expenditure period.
<b>Referendum entity</b>	A person or entity that incurs referendum expenditure during a referendum expenditure period that exceeds the disclosure threshold.
<b>Referendum expenditure</b>	Expenditure incurred for the dominant purpose of creating or communicating referendum matter.
<b>Referendum expenditure period</b>	The referendum expenditure period: <ul style="list-style-type: none"> <li>■ starts on the day that is six months before the writ for a referendum is issued; and</li> <li>■ ends on the voting day for the referendum.</li> </ul>
<b>Referendum matter</b>	Matter communicated or intended to be communicated for the dominant purpose of influencing voters in a referendum matter.
<b>Transparency Register</b>	Published register of entities, annual returns, election returns, referendum returns, enforceable undertakings and election funding claims. <ul style="list-style-type: none"> <li>• <a href="#">Transparency Register</a></li> </ul>
<b>Volunteer labour</b>	A service provided free of charge to a referendum entity by any other person where that service is <b>not</b> one for which that person normally receives payment. An example of volunteer labour would be a person assisting with campaigning.