

REFERENDUM 2023

Disclosure Guide for Referendum Donors

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Introduction

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 Donors (the Guide) applies to returns for the 2023 referendum. **Appendix 1** contains a glossary of terms.

While the guide is intended to assist referendum donors 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 donor?

A referendum donor is 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 and the donor intends for the donations to be used:

- for the dominant purpose of incurring referendum expenditure or
- for the dominant purpose of creating or communicating referendum matter.



Section [109G](#) of the Referendum Act provides the meaning of referendum donor.

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.

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 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.

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.

Responsibility for lodging a referendum donor return

The person or entity that made the donation/s must lodge the referendum donor return (the return). If the donor is an individual, they must lodge the return. If the donor 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 donor returns must reach the AEC no later than **15 weeks after voting day for a referendum**.

Referendum donor 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.

Lodging your return

Referendum donors 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.



Donors 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 a donor for a referendum intends for the donations to be used:

- for the dominant purpose 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 [109E](#)(3) 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 financial disclosure obligations

Where a referendum donor is also a financial disclosure entity

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



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

Where a referendum donor donates to a financial disclosure entity

A referendum donor may donate to a referendum entity that is also a financial disclosure entity, such as a political party or a significant third party. Political parties and significant third parties *must* lodge annual returns with the AEC which identify annual donors. Annual donors will need to lodge an annual donor return as well as a referendum donor return. You can find out more about [Annual donors](#).



The current list of political parties and significant third parties are available at 'Register of entities' on the [Transparency Register](#).

The return

A donor in a referendum must disclose details of **donations made** in the return.



Section [109G](#) of the Referendum Act governs the lodgement of referendum donor returns.

A person or entity must lodge a referendum donor return if they made one or more donations totalling more than the disclosure threshold to a referendum entity during the referendum disclosure period **and** the donor intends for the donation to be used for the dominant purpose of incurring referendum expenditure or creating or communicating referendum.

Donations made to two or more referendum entities must be listed on the one single donor return.

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.

Donations made

The return must include the following details:

- the name of the referendum entity
- the dates on which donations were made
- the value of the donation or donations made in the referendum expenditure period to a referendum entity.



Section [109G\(3\)](#) of the Referendum Act sets out the information that must be included in a referendum donor return.



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

- [Referendum disclosure: donations](#)

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:

- donations that are not made to a referendum entity
- donations totalling less than the disclosure threshold to a referendum entity
- donations outside of the referendum expenditure period
- donations not intended to be used for the dominant purpose of incurring referendum expenditure or for the dominant purpose of creating or communicating referendum matter
- commercial discounts provided in the normal course of business
- volunteer labour, such as persons assisting in campaigning.

Incomplete returns

Where a donor 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 donor 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 donor 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 donor 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

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

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

Donors should have adequate financial recording systems and procedures to enable the donor return, which will be publicly available, to be properly completed.

The Referendum Act makes the donor 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

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 donors 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

The AEC may conduct compliance reviews of referendum returns lodged by donors 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 donor'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

AEC	Australian Electoral Commission
Disclosure threshold	<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>
Donation / gift	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.
Foreign donation	A donation or gift to a referendum entity from a foreign donor.
Foreign donor	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.
Gift-in-kind	<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"> ■ the donation of legal advice by a solicitor ■ the donation of the use of premises to conduct campaign activities.
Penalties	The Referendum Act imposes civil penalties and, in some cases, criminal penalties if a person or entity contravenes the requirements of the Referendum Act.
Publication	<p>Disclosure returns are published on the Transparency Register.</p> <p>Referendum returns are made available 24 weeks after polling day.</p>
Referendum Act	<i>Referendum (Machinery Provisions) Act 1984</i>

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