

Referendum matter and expenditure

Who is impacted?

This information about referendum matter and referendum expenditure relates to **referendum entities**.

What is referendum matter?

Referendum matter is defined in the *Referendum (Machinery Provisions) Act 1984* (Referendum Act) as matter communicated or intended to be communicated for the dominant purpose of influencing voters in a referendum.

If the matter expressly promotes or opposes a proposed law for the alteration of the Constitution related to a referendum, the dominant purpose of a communication is presumed to be referendum matter (unless the contrary is proved).

The following must be considered in determining the dominant purpose of the communication or intended communication of matter:

- **accessibility:** whether the matter would be communicated to the public or a section of the public
- **content:** whether the matter contains an express or implicit comment on a proposed law for the alteration of the Constitution
- **audience:** whether the matter would be received by voters near a polling place
- **timing:** how soon a referendum is to be held after the creation or communication of the matter
- **consent:** whether the matter would be unsolicited.

There can only be one dominant purpose for any given communication.

What is not referendum matter?

A matter is *not* referendum matter if the communication or intended communication of the matter is any of the following:

- forms part of the reporting of news, the presenting of current affairs or any genuine editorial content in news media
- is for a dominant purpose that is satirical, academic, educative, or artistic
- is a private communication by a person to another person who is known to the first person
- is by or to a person who is a Commonwealth public official in that person's capacity as an official (including members of the House of Representatives and senators)
- is a private communication to a political entity (who is not a Commonwealth public official) in relation to public policy or public administration
- occurs in the House of Representatives or the Senate, or to a parliamentary committee.

What is referendum expenditure?

Referendum expenditure is expenditure incurred for the dominant purpose of creating or communicating referendum matter. Where expenditure is incurred to create or communicate referendum matter, in addition to other purposes, the dominant purpose of the expenditure must be considered to determine whether it is referendum expenditure.

What is not referendum expenditure?

Expenditure is *not* referendum expenditure if it relates to a **service provider** incurring the expenditure:

- in providing a communication service or communication platform that is used to create or communicate referendum matter
- in providing a service for another person or entity that engaged the service provider, on a commercial basis, to create or communicate referendum matter.



While expenditure by a service provider as described above is not referendum expenditure, each creation or communication of matter is treated as separate matter. Expenditure incurred by another person who communicates the same matter may be referendum expenditure.

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.

Examples

Referendum timeframe used in Example 1 (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

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

The Association decides to campaign in support of one campaign in relation to a proposed constitutional alteration. The Association seeks donations to fund its referendum campaign activities, and receives donations from ten citizens, who donated \$500 each (a total of \$5,000), on 10 September.

The Quokka Party of Australia Inc. - NSW (Quokka Party), a registered political party, is also interested in supporting the Association's referendum campaigning. It donates \$17,000 to the Association for this purpose on 12 September.

The Association decides it will design and distribute a flyer encouraging other voters to support their campaign. The Association hires a graphic designer to design the flyer at a cost of \$2,000 on 20 September.

The Association orders printed copies of the flyer to carry out a letterbox drop of the local area at a total cost of \$14,000 on 1 October.

As a result, the Association has become a **referendum entity** as it has incurred referendum expenditure during a referendum expenditure period that exceeds the **disclosure threshold**. (This example uses the current disclosure threshold: \$15,200) The Association also takes out an advertisement in the local newspaper at a cost of \$3,000 on 20 October. (Both these communications include appropriate authorisation particulars for the purposes of Part IX of the Referendum Act).

Example 1 (continued)

Total referendum expenditure incurred during the referendum expenditure period: \$19,000

Following voting day on 29 October, the Association totals the referendum expenditure it has spent over the referendum expenditure period (six months before the issue of the writ for the referendum).

This is:

- \$2,000 (graphic design services)
- \$14,000 (printing of flyers)
- \$3,000 (advertising)

The Association provides the AEC with a referendum entity return disclosing \$19,000 referendum expenditure within 15 weeks after 29 October.

Although the referendum campaign is a short-term activity and the Association has a wider purpose, the dominant purpose of these campaign-related expenses make this expenditure **referendum expenditure**.



It is assumed for all examples that referendum expenditure was incurred during a referendum expenditure period.

The following examples illustrate some aspects of **referendum matter**.

Example 2 – editorial content

Alex is the editor of a weekly regional newspaper. Alex writes an editorial about a referendum, negatively discussing one campaign and urging voters to support a second campaign.

The next week, Jordan, a local businessperson, pays for an advertorial column to recommend voters support one campaign.

The editorial written by Alex is genuine editorial content and therefore is not considered referendum matter. The advertorial written by Jordan may look like editorial content but is considered referendum matter as it is not genuine editorial content.

Example 3 – predominantly satirical purposes

Example 3a

It has become a tradition at a university for the law students to satirise an issue in contemporary culture. One year, the students choose to create a video satirising a campaign of an upcoming referendum. The students publish the video on a popular video streaming service. As the law students' dominant purpose in creating and publishing the video is satirical, the video is not considered referendum matter.

Example 3b

A referendum entity embeds the students' video on their website. Taking into account the dominant purpose of other communications of the referendum entity, it is reasonable to conclude the entity's dominant purpose in communicating the video is more likely to be to influence voters rather than for satirical purposes. Therefore, the recommunication of the video is considered referendum matter. The students' dominant purpose in creating and communicating the video is not relevant in determining the entity's dominant purpose in communicating the video by embedding it on its website.

Example 4 - predominantly academic purposes

A university professor publishes a journal article on campaign techniques employed by a referendum entity in a referendum. As this is an easily recognisable form of academic work by a member of an academic profession, it is reasonable to conclude their dominant purpose in communicating the article is academic, rather than to influence voters. The journal article is therefore not considered to be referendum matter.

Example 5 - predominantly educative purposes

Example 5a

In the lead up to a referendum, a high school teacher designs and delivers lesson plans requiring students to evaluate the positions of major yes and no entities campaigning in the referendum. Taking into account the dominant purpose of the teacher's other communications and the context in which the lessons are delivered (that is, the classroom), it is reasonable to conclude the dominant purpose is educative, rather than to influence the referendum. The lessons are therefore not considered to be referendum matter.

Example 5b

A sporting peak body releases a video online supporting one campaign for an upcoming referendum through the framework of sporting stories and analogies. Given the dominant purpose of the peak body's other communications, it is reasonable to conclude the peak body's dominant purpose is to influence voters in a referendum, rather than educative. The video is considered to be referendum matter.

Example 5 - predominantly educative purposes (continued)

Example 5c

A business association organises a referendum information session. The association hires a venue and provides a facilitated panel of experts on the referendum topic. Advertising promotes both the educative purposes of the event as well as the opportunity to register support for one referendum campaign.

Given the inclusion of the opportunity to register support for a campaign, it is reasonable to conclude the association's dominant purpose in organising the event is to influence voters in a referendum and the event advertising is considered to be referendum matter.

Example 6 - predominantly artistic purposes

Example 6a

Autumn, a contemporary playwright, receives a grant from a state arts funding agency to develop a modern Australian play. Autumn's play is a commentary on a current referendum debate in Australia. Both the yes and no campaign approaches are featured in the play. The play is produced and performed by a theatre company that regularly presents theatrical work to the public. Given the dominant purpose of Autumn and the theatre company's other communications, it is more likely their dominant purposes are artistic. Autumn's creation of the play and the theatre company's performance are therefore not considered to be referendum matter.

Example 6b

Stevie, a prominent Australian actor, appears in a video published online that asks for viewers' support of a particular campaign by a referendum entity for an upcoming referendum. Despite the dominant purpose of Stevie's other communications being mostly artistic or commercial, it is not reasonable to conclude Stevie's dominant purpose in the video is artistic as it expressly promotes a referendum entity in a referendum. Therefore, the video is considered referendum matter.

Communications by a Commonwealth public official

Communication of matter by a Commonwealth public official (when that person is acting in their official capacity) is not considered to be referendum matter.

Example 7 - private communications

Example 7a

Ketut works with a referendum entity on one of the campaigns in an upcoming referendum. As part of the campaign, Ketut hosts a 'referendum discussion' dinner party with 50 friends including a mixture of people from work, a sports team and an old university residence. Discussions at Ketut's dinner party are not considered referendum matter as it involves private communication to people they know.

Example 7b

Ketut holds a 'referendum discussion' street party for all the neighbours, to try to convince them to vote in the way that Ketut's campaign advocates. 50 neighbours attend. Ketut only knew five of them beforehand but gets to know the rest at the event. Ketut's communications at the event are considered referendum matter as these are not exclusively private communications to people Ketut knows.

Example 7c

Ketut and Charlie are next door neighbours and know each other well. Charlie is the conductor of a local choir and writes down phone numbers for 50 choristers so that Ketut can call them to tell them about the campaign. Even though Ketut tells each person on the phone list that Charlie is a mutual friend, the communication is considered referendum matter as Ketut had no prior relationship with these individuals.



The following examples illustrate some aspects of **referendum expenditure**.

Example 8 – the dominant purpose of expenditure

Example 8a

An association has a number of full-time employees who work two days each week on referendum campaigning over an eight-month period. These staff were not employed to work on referendum campaigning and continue other duties throughout this period and after the referendum. The dominant purpose of employment for each employee was not the referendum campaign. The wages of these employees, or a portion of the wages, is not referendum expenditure.

Example 8 – the dominant purpose of expenditure (continued)

Example 8b

Pen is the Chief Executive Officer of a not-for-profit organisation that encourages diversity. The organisation occasionally issues material to influence voters in referendums, but Pen's primary role involves organising the delivery of diversity programming in schools and workplaces. As the dominant purpose of employing Pen is not to create or communicate referendum matter, Pen's salary is not referendum expenditure.

Example 8c

A community group decides to support one of the campaigns of a referendum. The group contracts a temporary employment agency to provide 80 people to doorknock in their area. A script is given to assist the temporary employees in talking to residents. The script has a dominant purpose that makes it referendum matter, even though it contains some content relevant to the usual business of the community group. As the community group's dominant purpose in signing the contract to engage the temporary staff is to communicate referendum matter, the money the agency charges the community group is referendum expenditure incurred by the community group.

Example 8d

A local progress association, formed by a group of local businesses, chooses to champion one of the campaigns in a referendum. They hire a campaign manager, open a campaign shop front, coordinate volunteers, rent phone lines, and issue a voting guide. Although the referendum campaign is a short-term activity and the association has wider purposes, the dominant purpose of these campaign-related expenses to create and communicate referendum matter makes the expenses referendum expenditure. The dominant purpose of the association does not determine the dominant purpose of the expenditure.

Example 8e

Aisha owns an office block and leases the space to a range of corporate clients. One of Aisha's tenants is a referendum entity, who uses the office space for a call centre that communicates referendum matter. Any expenditure Aisha incurs in relation to the tenants, including from the referendum entity, is not referendum expenditure because Aisha's dominant purpose is commercial (profiting from the investment in the office block). However, the rent paid by the referendum entity is referendum expenditure incurred by the referendum entity.

Example 8 – the dominant purpose of expenditure (continued)

Example 8f

A referendum entity prepares a television advertisement and tests it with a focus group. The advertisement is never shown, as it tests poorly with the focus group. Test advertisements help the entity develop and select the best advertisements for dissemination. As the advertisement was prepared by a referendum entity and the advertisement was intended to be shown to the public, it is likely to be referendum matter. This is the case even if the advertisement is not shown. The dominant purpose of creating the series of advertisements was to influence voting at a referendum, so the advertisements are referendum matter and any expenditure incurred in creating the advertisements is referendum expenditure.

Example 9 – Service provider exemption

Example 9a

A referendum entity engages an advertising agency to develop a campaign containing referendum matter. The advertising agency subcontracts the production work associated with the campaign to a number of other firms. The expenditure incurred by the advertising agency in subcontracting the production of referendum matter is not referendum expenditure because the agency was engaged on a commercial basis to create the referendum matter. However, the cost of engaging the advertising agency is referendum expenditure incurred by the referendum entity.

Example 9b

On being approached by the referendum entity, the advertising agency decides to waive its normal fees and develop the campaign containing referendum matter on a pro bono basis. As the advertising agency has not been engaged on a commercial basis, the service provider exemption does not apply.

The value of the fees not charged under the pro bono arrangement constitute a gift for the purposes of Part VIIIA of the Referendum Act, and disclosure obligations may apply, subject to the value of the gift and other relevant factors.

Example 9c

A social media company's business model is to allow users to communicate without expense in an online public forum. The company collects revenue from advertisers. During referendum engagement periods, the public forum is used extensively to communicate referendum matter. However, at other times users comment instead on other unrelated topics ranging from local events to entertainment news. The social media company does not use the platform to push a referendum agenda of its own and runs the venture as a profit-making activity. As the social media company is merely providing a communication platform to create or communicate referendum matter, the service provider exemption applies to any expenditure incurred by the social media company.

Legislation relating to referendum matter and expenditure

The *Referendum (Machinery Provisions) Act 1984* (Referendum Act) regulates referendum matters that are communicated or intended to be communicated. 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.