

Questions taken at the 2024 party candidate briefing

Q: If I go to an event that costs \$x – but I’m receiving a meal, shirt, does that qualify as a donation if I’m expecting something in return?

A: A gift or gift-in-kind is defined as “a disposition of property made by a person to another person without consideration in money or money’s worth or with inadequate consideration” (Electoral Act s198AA).

To answer this question, I will use the example of a candidate attending a ticketed event, that includes a dinner.

- If the candidate has paid the full price to attend the event (is not given any discount), and the dinner is included as part of the cost for the event, then the dinner would **not** be considered a gift-in-kind.
- If the candidate is given free entry, or entry at a discount, because they are a candidate – whether the associated dinner is a gift or not depends on whether ‘**consideration**’ is given for the free entry.
- If the candidate is given free or discounted entry, and is *not* a speaker or providing any official service at the event, it is arguable that the associated complimentary dinner or shirt would constitute a gift.
- If the candidate is given free or discounted entry, and is also providing an official service at the event (such as being a speaker), it is arguable that the service provided is appropriate consideration for the free or discounted attendance.

With the above in mind, Elections ACT suggests that if there is any doubt, it would be prudent to declare free dinners or other complimentary items as gifts-in-kind.

Q: Where an ad includes a reference to another published source that may be misleading, will the advertiser be responsible for including that information in their ad?

A: This is a difficult question to address without specific examples. The answer will depend if the advertisement in question is simply linking to the misleading advertisement or repeats the offending claim. However, to assist, it may be useful to review the following legislative information:

297A Misleading electoral advertising

(1) A person commits an offence if—

- (a) the person disseminates, or authorises the dissemination of, an advertisement containing electoral matter; and
- (b) the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.

disseminate electoral matter (whether in printed or electronic form) means print, publish, distribute, produce or broadcast the electoral matter.

While it is arguable whether including a reference to another published source that is found to be misleading is considered *disseminating* the misleading electoral matter, section 297A(2) states:

- (2) It is a defence to a prosecution for an offence against subsection (1) if it is proved by the defendant that the defendant—
- (a) took no part in deciding the content of the advertisement; and
 - (b) could not reasonably be expected to have known that the statement was inaccurate and misleading.

Q: Does the blackout period apply to all ad platforms?

A: The “blackout” period is relevant to electoral matter broadcast on the TV and on radio, and is regulated under the *Commonwealth Broadcasting Services Act 1992 (Cth)* by the Australian Communications and Media Authority (ACMA). Therefore, the “blackout” provisions apply to:

- commercial television broadcasting licensees
- commercial radio broadcasting licensees
- community broadcasting licensees
- subscription television broadcasting licensees
- persons providing broadcasting services under class licences.