



New South Wales

Election Funding and Disclosures Amendment (Property Developers Prohibition) Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to prohibit political donations by property developers. The Bill provides that:

- (a) it is unlawful for a person to make a political donation if the person is a property developer or makes the donation on behalf of a property developer, and
- (b) it is unlawful for a person to accept a political donation that was made by or on behalf of a property developer, and
- (c) it is unlawful for a property developer or a person on behalf of a property developer to solicit another person to make a political donation.

The Bill includes close associates of property developers as property developers for the purposes of these restrictions.

The Bill includes loans as political donations (other than loans from financial institutions).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Election Funding and Disclosures Act 1981 No 78

Prohibition of property developer donations

Schedule 1 [1] inserts Division 4A into Part 6 of the *Election Funding and Disclosures Act 1981* (the *principal Act*) which prohibits property developer donations.

Proposed Division 4A provides that:

- (a) it is unlawful for a property developer or a person on behalf of a property developer to make a political donation, and
- (b) it is unlawful for a person to accept a political donation that was made (wholly or partly) by a property developer or on behalf of a property developer, and
- (c) it is unlawful for a property developer or a person on behalf of a property developer to solicit another person to make a political donation.

Meaning of “property developer”

The Bill defines a *property developer* to be:

- (a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit, or
- (b) close associates of such a corporation.

Any activity engaged in by a corporation for the dominant purpose of providing commercial premises at which the corporation or a related body corporate will carry on business is to be disregarded for the purpose of determining whether the corporation is a property developer.

A *close associate* of a corporation includes:

- (a) directors and officers of the corporation and their spouses, and
- (b) a related body corporate of the corporation (within the meaning of the *Corporations Act 2001* of the Commonwealth), and
- (c) persons whose voting power in the corporation or a related body corporate is greater than 20% and their spouses.

A **relevant planning application** has the same meaning as in section 147 (Disclosure of political donations and gifts) of the *Environmental Planning and Assessment Act 1979* (the **EP&A Act**) and includes:

- (a) a formal request to the Minister for Planning (the **Minister**), a council or the Director-General of the Department of Planning (the **Director-General**) to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site, and
- (b) a formal request to the Minister or the Director-General for development on a particular site to be made State significant development or declared a project to which Part 3A of the EP&A Act applies, and
- (c) an application for approval of a concept plan or project under Part 3A of the EP&A Act, and
- (d) an application for development consent under Part 4 of the EP&A Act.

Offences and recovery of unlawful donations

Schedule 1 [2] makes it an offence for a person to do any of the acts set out above if the person knows that the act is unlawful. The maximum penalty will be the same as for other offences relating to political donations, that is, 200 penalty units for a party (currently, \$22,000) and 100 penalty units in any other case (currently, \$11,000).

As is the case for other political donations that are unlawful under the principal Act, the Election Funding Authority of New South Wales (the **Authority**) may recover the amount of any political donation that is unlawful under proposed Division 4A from the person who made the donation as a debt due to the State.

Inclusion of loans as political donations

Proposed Division 4A provides that a loan is to be regarded as a political donation if it would as a gift be a political donation. Loans from financial institutions are not included as political donations.

Exceptions for membership contributions

Proposed Division 4A includes an exception for membership contributions that would otherwise be considered political donations under the principal Act.

An annual or other subscription paid to a party by an individual for membership of the party or for the individual's affiliation with the party will not be a political donation for the purposes of proposed Division 4A unless it is a reportable political donation. Under the principal Act, a reportable political donation means a political donation of \$1,000 or more.

Determination by Authority that person is not a property developer

Under proposed Division 4A, a person may apply to the Authority for a determination by the Authority that the person (or another person) is not a property developer for the purposes of the Division. The Authority is to make its

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determination solely on the basis of information provided by the applicant and may make such a determination if it is satisfied that it is more likely than not that the person is not a property developer. The Authority is to maintain a public register of any determinations and the register is to be published on the Authority's website. A determination by the Authority is conclusively presumed to be correct in favour of any person for the purposes of a political donation that the person makes or accepts while the determination is in force (even if the determination is subsequently found to be incorrect). The presumption does not apply in favour of a person who knew that information provided to the Authority in connection with the making of the determination was false or misleading in a material particular.

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No. , 2009

A Bill for

An Act to amend the *Election Funding and Disclosures Act 1981* to prohibit political donations by property developers.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Election Funding and Disclosures Act 1981 No 78	1
		2
[1] Part 6, Division 4A		3
Insert after Division 4:		4
	Division 4A Prohibition of property developer donations	5
96GA	Political donations by property developers unlawful	6
(1)	It is unlawful for a property developer to make a political donation.	7
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(2)	It is unlawful for a person to make a political donation on behalf of a property developer.	9
		10
(3)	It is unlawful for a person to accept a political donation that was made (wholly or partly) by a property developer or by a person on behalf of a property developer.	11
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(4)	It is unlawful for a property developer to solicit another person to make a political donation.	14
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(5)	It is unlawful for a person to solicit another person on behalf of a property developer to make a political donation.	16
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	Note. Section 96I makes it an offence to do any act knowing that it is unlawful under this Division. Section 96J also provides for the recovery by the Authority of unlawful political donations.	18
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96GB	Meaning of “property developer”	21
(1)	Each of the following persons is a <i>property developer</i> for the purposes of this Division:	22
		23
(a)	a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit,	24
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(b)	a person who is a close associate of a corporation referred to in paragraph (a).	29
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(2)	Any activity engaged in by a corporation for the dominant purpose of providing commercial premises at which the corporation or a related body corporate of the corporation will carry on business is to be disregarded for the purpose of determining whether the corporation is a property developer unless that business involves the sale or leasing of a substantial part of the premises.	31
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(3)	In this section:	1
	<i>close associate</i> of a corporation means each of the following:	2
(a)	a director or officer of the corporation or the spouse of such a director or officer,	3
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(b)	a related body corporate of the corporation,	5
(c)	a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person,	6
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(d)	if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to that stapled security,	9
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(e)	if the corporation is a trustee, manager or responsible entity in relation to a trust—a person who holds more than 20% of the units in the trust (in the case of a unit trust) or is a beneficiary of the trust (in the case of a discretionary trust).	13
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	<i>officer</i> has the same meaning as in the <i>Corporations Act 2001</i> of the Commonwealth.	18
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	<i>related body corporate</i> has the same meaning as in the <i>Corporations Act 2001</i> of the Commonwealth.	20
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	<i>relevant planning application</i> has the same meaning as in section 147 (Disclosure of political donations and gifts) of the <i>Environmental Planning and Assessment Act 1979</i> .	22
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	<i>spouse</i> of a person includes a person who is in a de facto relationship (within the meaning of the <i>Property (Relationships) Act 1984</i>) with the person.	25
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	<i>stapled entity</i> means an entity the interests in which are traded along with the interests in another entity as stapled securities and (in the case of a stapled entity that is a trust) includes any trustee, manager or responsible entity in relation to the trust.	28
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	<i>voting power</i> has the same meaning as in the <i>Corporations Act 2001</i> of the Commonwealth.	32
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96GC	Loans included as political donations	34
(1)	A loan that, if it had been a gift, would be a political donation is to be regarded as a political donation for the purposes of this Division unless the loan is from a financial institution.	35
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(2)	In this section:	1
	<i>financial institution</i> means an entity whose principal business is the provision of financial services or financial products, and includes a bank, credit union, building society or other entity prescribed by the regulations.	2 3 4 5
	<i>loan</i> means an advance of money, the provision of credit or any other transaction that in substance effects a loan of money.	6 7
96GD	Exception for membership contributions	8
	An annual or other subscription paid to a party by an individual as a member of the party or for the individual's affiliation with the party is not a political donation for the purposes of this Division unless it is a reportable political donation.	9 10 11 12
	Note. A political donation of \$1,000 or more is a reportable political donation—see section 86.	13 14
96GE	Determination by Authority that person not a property developer	15
(1)	A person (<i>the applicant</i>) may apply to the Authority for a determination by the Authority that the applicant or another person is not a property developer for the purposes of this Division.	16 17 18 19
(2)	The Authority is authorised to make such a determination if the Authority is satisfied that it is more likely than not that the person is not a property developer. The Authority is to make its determination solely on the basis of information provided by the applicant.	20 21 22 23 24
(3)	The Authority's determination remains in force for 12 months after it is made but can be revoked by the Authority at any time by notice in writing to the applicant.	25 26 27
(4)	The Authority's determination is conclusively presumed to be correct in favour of any person for the purposes of a political donation that the person makes or accepts while the determination is in force (even if the determination is subsequently found to be incorrect).	28 29 30 31 32
(5)	The Authority's determination is not presumed to be correct in favour of any person who makes or accepts a political donation knowing that information provided to the Authority in connection with the making of the determination was false or misleading in a material particular.	33 34 35 36 37
(6)	The Authority is to maintain a public register of the determinations made under this section and is to publish the register on a website maintained by the Authority.	38 39 40

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Schedule 1 Amendment of Election Funding and Disclosures Act 1981 No 78

(7)	A person who provides information to the Authority in connection with an application for a determination by the Authority under this section knowing that the information is false or misleading in a material particular is guilty of an offence.	1
	Maximum penalty: 200 penalty units or imprisonment for 12 months, or both.	2
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(8)	The Authority may establish and publicise policies as to how the Authority will deal with applications for determinations under this section.	5
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[2]	Section 96I Other offences	10
	Omit “Division 3 or 4” from section 96I (1).	11
	Insert instead “Division 3, 4 or 4A”.	12