

Passed by both Houses



New South Wales

Local Government and Planning Legislation Amendment (Political Donations) Bill 2008

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2008

Clerk of the Parliaments



New South Wales

Local Government and Planning Legislation Amendment (Political Donations) Bill 2008

Act No , 2008

*An Act to amend the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979* in relation to political donations.*

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government and Planning Legislation Amendment (Political Donations) Act 2008*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedule 1.

**4 Amendment of Environmental Planning and Assessment Act 1979
No 203**

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Local Government Act 1993

(Section 3)

[1] Section 12 What information is publicly available?

Omit the matter relating to returns as to candidates' campaign donations from section 12 (1).

Insert after the matter relating to minutes of council and committee meetings:

- the register of current declarations of disclosures of political donations to councillors kept in accordance with section 328A
- the register of councillor voting on planning matters kept in accordance with section 375A

[2] Chapter 10, Part 8A

Insert after Part 8 of Chapter 10:

Part 8A Political donations

328A General manager to keep register of political donation disclosures

- (1) The general manager is required to keep a register of copies of current declarations of disclosures of political donations lodged with the Election Funding Authority by or on behalf of councillors of the council concerned (including in their capacity as candidates for election as councillors).
- (2) For the purposes of this section, current declarations of disclosures of political donations are declarations lodged under Part 6 of the *Election Funding and Disclosures Act 1981* in respect of the relevant disclosure period that includes the date of the last election (other than a by-election) and all subsequent relevant disclosure periods.

Note. Part 6 of the *Election Funding and Disclosures Act 1981* makes provision for disclosure by councillors and candidates for civic office (and parties registered in connection with local government elections) of political donations and electoral expenditure.

328B Reference by general manager to Director-General of political donation matters

- (1) If the general manager reasonably suspects that a councillor has not complied with the provisions of the code of conduct under section 440 relating to the disclosure of political donations or the

manner of dealing with any perceived conflict of interest in relation to political donations, the general manager is to refer the matter to the Director-General.

- (2) Any such matter may be referred by the Director-General to the Pecuniary Interest and Disciplinary Tribunal.
- (3) Any such matter is taken (for the purposes of this Act) to be referred to the Tribunal under section 440N (but a referral under this section may be made without the councillor concerned having previously been suspended for misbehaviour).

[3] Section 375A

Insert after section 375:

375A Recording of voting on planning matters

- (1) In this section, *planning decision* means a decision made in the exercise of a function of a council under the *Environmental Planning and Assessment Act 1979*:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

(Section 4)

Section 147

Insert before section 148:

147 Disclosure of political donations and gifts

- (1) The object of this section is to require the disclosure of relevant political donations or gifts when planning applications are made to minimise any perception of undue influence by:
 - (a) requiring public disclosure of the political donations or gifts at the time planning applications (or public submissions relating to them) are made, and
 - (b) providing the opportunity for appropriate decisions to be made about the persons who will determine or advise on the determination of the planning applications.

Political donations or gifts are not relevant to the determination of any such planning application, and the making of political donations or gifts does not provide grounds for challenging the determination of any such planning application.

Note. This Act makes provision for planning applications to be referred to various bodies for advice or determination. Section 124A makes special provision where development consent is tainted by corruption. The *Local Government Act 1993* makes provision with respect to voting by local councillors with a conflict of interest in any matter before the council.

- (2) In this section:

gift means a gift within the meaning of Part 6 of the *Election Funding and Disclosures Act 1981*.

Note. A gift includes a gift of money or the provision of any other valuable thing or service for no consideration or inadequate consideration.

local councillor means a councillor (including the mayor) of the council of a local government area.

relevant planning application means:

- (a) a formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site, or

- (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 applies, or
- (c) an application for approval of a concept plan or project under Part 3A (or for the modification of a concept plan or of the approval for a project), or
- (d) an application for development consent under Part 4 (or for the modification of a development consent), or
- (e) any other application or request under or for the purposes of this Act that is prescribed by the regulations as a relevant planning application,

but does not include:

- (f) an application for (or for the modification of) a complying development certificate, or
- (g) an application or request made by a public authority on its own behalf or made on behalf of a public authority, or
- (h) any other application or request that is excluded from this definition by the regulations.

relevant public submission means a written submission made by a person objecting to or supporting a relevant planning application or any development that would be authorised by the granting of the application.

reportable political donation means a reportable political donation within the meaning of Part 6 of the *Election Funding and Disclosures Act 1981* that is required to be disclosed under that Part.

Note. Reportable political donations include those of or above \$1,000.

- (3) A person:
 - (a) who makes a relevant planning application to the Minister or the Director-General is required to disclose all reportable political donations (if any) made within the relevant period to anyone by any person with a financial interest in the application, or
 - (b) who makes a relevant public submission to the Minister or the Director-General in relation to the application is required to disclose all reportable political donations (if any) made within the relevant period to anyone by the person making the submission or any associate of that person.

The relevant period is the period commencing 2 years before the application or submission is made and ending when the application is determined.

- (4) A person who makes a relevant planning application to a council is required to disclose the following reportable political donations and gifts (if any) made by any person with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined:
- (a) all reportable political donations made to any local councillor of that council,
 - (b) all gifts made to any local councillor or employee of that council.

A reference in this subsection to a reportable political donation made to a local councillor includes a reference to a donation made at the time the person was a candidate for election to the council.

- (5) A person who makes a relevant public submission to a council in relation to a relevant planning application made to the council is required to disclose the following reportable political donations and gifts (if any) made by the person making the submission or any associate of that person within the period commencing 2 years before the submission is made and ending when the application is determined:
- (a) all reportable political donations made to any local councillor of that council,
 - (b) all gifts made to any local councillor or employee of that council.

A reference in this subsection to a reportable political donation made to a local councillor includes a reference to a donation made at the time the person was a candidate for election to the council.

- (6) The disclosure of a reportable political donation or gift under this section is to be made:
- (a) in, or in a statement accompanying, the relevant planning application or submission if the donation or gift is made before the application or submission is made, or
 - (b) if the donation or gift is made afterwards, in a statement of the person to whom the relevant planning application or submission was made within 7 days after the donation or gift is made.

- (7) For the purposes of this section, a person has a financial interest in a relevant planning application if:
- (a) the person is the applicant or the person on whose behalf the application is made, or
 - (b) the person is an owner of the site to which the application relates or has entered into an agreement to acquire the site or any part of it, or
 - (c) the person is associated with a person referred to in paragraph (a) or (b) and is likely to obtain a financial gain if development that would be authorised by the application is authorised or carried out (other than a gain merely as a shareholder in a company listed on a stock exchange), or
 - (d) the person has any other interest relating to the application, the site or the owner of the site that is prescribed by the regulations.
- (8) For the purposes of this section, persons are associated with each other if:
- (a) they carry on a business together in connection with the relevant planning application (in the case of the making of any such application) or they carry on a business together that may be affected by the granting of the application (in the case of a relevant planning submission), or
 - (b) they are related bodies corporate under the *Corporations Act 2001* of the Commonwealth, or
 - (c) one is a director of a corporation and the other is any such related corporation or a director of any such related corporation, or
 - (d) they have any other relationship prescribed by the regulations.
- (9) The disclosure of reportable political donations under this section is to include disclosure of the following details of each such donation made during the relevant disclosure period:
- (a) the name of the party or person for whose benefit the donation was made,
 - (b) the date on which the donation was made,
 - (c) the name of the donor,
 - (d) the residential address of the donor (in the case of an individual) or the address of the registered or other official office of the donor (in the case of an entity),

- (e) the amount (or value) of the donation,
- (f) in the case of a donor that is an entity and not an individual—the Australian Business Number of the entity.

Note. The above details are the details required to be disclosed of political donations under Part 6 of the *Election Funding and Disclosures Act 1981*.

- (10) The disclosure of gifts under this section is to include disclosure of the following details of each such gift made during the relevant disclosure period:
 - (a) the name of the person to whom the gift was made,
 - (b) the date on which the gift was made,
 - (c) the name of the person who made the gift,
 - (d) the residential address of the person who made the gift (in the case of an individual) or the address of the registered or other official office of the person who made the gift (in the case of an entity),
 - (e) the amount (or value) of the gift.
- (11) A person is guilty of an offence under section 125 in connection with the obligations under this section only if the person fails to make a disclosure of a political donation or gift in accordance with this section that the person knows, or ought reasonably to know, was made and is required to be disclosed under this section. The maximum penalty for any such offence is the maximum penalty under Part 6 of the *Election Funding and Disclosures Act 1981* for making a false statement in a declaration of disclosures lodged under that Part.
- (12) Disclosures of reportable political donations and gifts under this section are to be made available to the public on, or in accordance with arrangements notified on:
 - (a) a website maintained by the Department (in the case of planning applications or submissions made to the Minister or the Director-General), or
 - (b) a website maintained by the council (in the case of planning applications or submissions made to that council).

The disclosures are to be made so available within 14 days after the disclosures are made under this section.

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Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

- (13) This section applies to relevant planning applications or submissions made after the commencement of this section and, in relation to any such application or submission, extends to political donations or gifts made before that commencement.