



New South Wales

# Developer Donations (Anti-Corruption) Bill 2003

## Explanatory note

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

### Overview of Bill

The object of this Bill is to amend the *Election Funding Act 1981*:

- (a) to prohibit major developers and persons found guilty of offences involving bribery or corruption from making political contributions, and
- (b) to enhance the current provisions of that Act relating to the disclosure of political contributions by establishing ongoing requirements for parties, candidates, groups of candidates, independent members of Parliament and persons acting on behalf of them to receive and lodge donors forms when accepting certain political contributions, and
- (c) to enhance the current provisions relating to the disclosure of political contributions by candidates for election which operate in connection with certain periods that end after the return of the writs for an election by requiring certain disclosures to be made and published before the polling day for an election.

The Bill also makes a consequential amendment to the *Local Government Act 1993* to make it clear that the new provisions, as appropriately applied and adapted by Part 8 of Chapter 10 of that Act, will apply to local government elections.

The Bill also amends the *Environmental Planning and Assessment Act 1979* to provide that:

- (a) a notice published in the Gazette by the Minister administering that Act declaring that certain development is State significant development is subject to disallowance by either House of Parliament, and
- (b) a direction of that Minister that a particular development application is to be referred to the Minister for determination is to be published in the Gazette and is subject to disallowance by either House of Parliament.

## 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.

**Clause 3** is a formal provision that gives effect to the amendments to the Acts set out in Schedule 1.

## Schedule 1 Amendment of Acts

### Schedule 1.1 Amendment of Election Funding Act 1981

#### Prohibited political contributions

**Schedule 1.1 [11]** inserts proposed Division 3 (section 89B) into Part 6 of the *Election Funding Act 1981* to provide that major developers and persons who have been found guilty of an offence involving bribery or corruption must not, directly or indirectly, make political contributions. Contravention of this provision is an offence attracting a maximum penalty of 20 penalty units (currently \$2,200). A *major developer* is defined in proposed section 82B (to be inserted by **Schedule 1.1 [1]**) as, subject to certain exceptions, a person who has, in any 5-year period, lodged a development application or applications relating to the carrying out of development the estimated cost of which totals \$5,000,000 or more. If a corporation is a major developer, every director of the corporation is taken to be a major developer.

### **Continuous disclosure of political contributions**

**Schedule 1.1 [11]** also inserts proposed Division 4 (sections 89C–89E) into Part 6 of the *Election Funding Act 1981* to provide for continuous disclosure of political contributions to certain persons connected with elections. Proposed section 89C makes it an offence for a party, group of candidates, independent member of Parliament, candidate or a person acting on behalf of any of them to accept a political contribution from any person or organisation that exceeds an amount of \$1,000 or, when added to other political contributions received from that person or organisation in the immediately preceding 12-month period exceeds an amount of \$1,000, unless the political contribution is accompanied by a donors form. The maximum penalty for contravention of this provision is 20 penalty units (currently \$2,200). Proposed sections 89D and 89E make further provision in relation to the donors forms, including requiring the Election Funding Authority to publish each donors form lodged with it in a public register and on the Internet within 14 days of its receipt.

### **Disclosure before election of political contributions to candidates**

**Schedule 1.1 [2]** replaces section 85 of the *Election Funding Act 1981* (Obligation of candidates to make disclosure). Section 85 currently requires registered official agents for candidates for election to lodge a declaration concerning political contributions received and electoral expenditure incurred during the period commencing 31 days after the polling day for the previous general election or by-election (if the candidate was a candidate at such an election) or 12 months before nomination at the current election (in any other case) and ending on the 30th day after the polling day for the current election. The declaration is to be lodged within 120 days after the day for the return of the writs for the election concerned (that is, after the election concerned).

The proposed section 85 instead provides that the registered official agent for a candidate for election must lodge within 14 days of nomination (that is, before the election) a declaration concerning political contributions received during the period commencing 31 days after the polling day for the previous general election or by-election (if the candidate was a candidate at such an election) or 12 months before nomination at the current election (in any other case) and ending on the day on which the candidate was nominated for the current election. (It is to be noted that proposed Division 4 (Continuous disclosure of political contributions) of Part 6 (see above) would apply to a candidate once nominated.) The registered official agent would still be required, within 120 days after the day for the return of the writs, to lodge a declaration relating to political contributions received during the remainder of the election period (post-nomination until the 30th day after the polling day for the election) and relating to electoral expenditure incurred during the whole election period (see proposed section 85 (2) and (3)).

### **Miscellaneous consequential amendments**

**Schedule 1.1 [1], [3]–[10] and [12]–[14]** make a number of consequential amendments to Part 6 of the *Election Funding Act 1981*. The proposed amendments include inserting provisions that define *major developer* and other terms used in that Part.

### **Schedule 1.2 Amendment of Environmental Planning and Assessment Act 1979**

#### **Certain decisions of Minister disallowable**

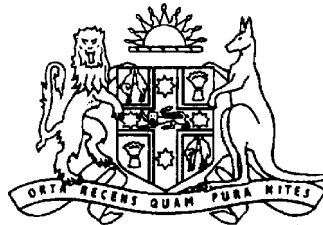
**Schedule 1.2** amends sections 76A, 88A and 89 of the *Environmental Planning and Assessment Act 1979* to provide that the following notices and directions are subject to disallowance by either House of Parliament under section 41 of the *Interpretation Act 1987*:

- (a) a notice under section 76A (7) published in the Gazette by the Minister administering that Act declaring that certain development is State significant development,
- (b) a direction under section 88A (1) or 89 (1) by that Minister that a particular development application is to be referred to the Minister for determination.

### **Schedule 1.3 Amendment of Local Government Act 1993**

#### **Consequential amendment**

**Schedule 1.3** amends the heading to Part 8 of Chapter 10 of the *Local Government Act 1993* to make it clear that Part 6 of the *Election Funding Act 1981*, as amended by the proposed Act and as appropriately applied and adapted by Part 8 of Chapter 10, will apply to local government elections.



New South Wales

# Developer Donations (Anti-Corruption) Bill 2003

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New South Wales

# Developer Donations (Anti-Corruption) Bill 2003

No. , 2003

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## A Bill for

An Act to amend the *Election Funding Act 1981* and the *Local Government Act 1993* so as to provide for disclosure of donations; to make other provisions aimed at preventing corruption; and for other purposes.

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|---|--------|
| <b>The Legislature of New South Wales enacts:</b>                         | 1      |
| <b>1 Name of Act</b>  | 2      |
| This Act is the <i>Developer Donations (Anti-Corruption) Act 2003</i> .   | 3<br>4 |
| <b>2 Commencement</b>   | 5      |
| This Act commences on the date of assent to this Act.                     | 6      |
| <b>3 Amendment of Acts</b>  | 7      |
| The Acts specified in Schedule 1 are amended as set out in that Schedule. | 8<br>9 |



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## Schedule 1 Amendment of Acts

(Section 3)

### 1.1 Election Funding Act 1981 No 78

#### [1] Part 6 Political contributions and electoral expenditure

Insert after the heading to Part 6:

#### Division 1 Interpretation

##### 82A Interpretation

(1) In this Part:

*donors form* means a form in or to the effect of the form approved under section 89D.

*independent member of Parliament* means a member of the Legislative Assembly or Legislative Council who is not a member of a party.

*political contribution* means a gift:

- (a) to a party, independent member of Parliament, group or candidate, or
  - (b) to a person (other than a party, independent member of Parliament, member of a group or candidate) who incurs electoral expenditure, but only if the whole or part of the gift is used by the person to enable the person to incur electoral expenditure or to reimburse the person for incurring that expenditure.
- (2) For the purposes of this Part, 2 or more gifts made by the same person, body or organisation are taken to be one gift.
  - (3) Corporations that are taken to be related to each other for the purposes of the *Corporations Act 2001* of the Commonwealth are to be regarded as a single corporation for the purposes of this Part.
  - (4) An amount paid by a person as a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fund-raising venture or function is a gift for the purposes of this Part.
  - (5) A gift to an independent member of Parliament or candidate is not a political contribution if the gift was made in a private capacity to the member or candidate for his or her personal

use and the member or candidate has not used, and will not use, the gift solely or substantially for a purpose related to an election.

- (6) For the purposes of this Part:
  - (a) a payment under this Act, and
  - (b) an annual subscription paid to a party by a member of the party,are not political contributions.

**82B Meaning of “major developer”**

- (1) In this Part, *major developer* means a person who has, in any 5-year period, lodged a development application or applications relating to the carrying out of development on any one or more parcels of land if the estimated cost of carrying out the development (as specified in the development application or applications) totals \$5,000,000 or more.
- (2) Subsection (1) does not apply to the carrying out of development on a parcel of land if it is intended that at least 75 per cent of the total floor area of any buildings on the land after the development has been carried out will initially be occupied by the person carrying out the development for a period of at least 12 months.
- (3) For the purposes of subsection (2), an intention to occupy land must be evidenced by a letter or other document stating that intention submitted to the consent authority in connection with the relevant development application or by a statutory declaration.
- (4) Despite subsection (1), a person is not a major developer on any particular day if, in the period of 5 years immediately preceding that day, no development application has been lodged by the person that would have contributed to the person being a person to whom subsection (1) applies.
- (5) If a corporation is a major developer, every director of the corporation is taken to be a major developer.
- (6) In this clause, *development* and *development application* have the same meanings as in the *Environmental Planning and Assessment Act 1979*.

**Division 2 Declarations of political contributions and electoral expenditure**

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| <b>[2] Section 85</b>  | 1  |
| Omit the section. Insert instead:  | 2  |
| <b>85 Obligation of candidates to make declarations</b>  | 3  |
| (1) Within 14 days after a person becomes a candidate, the registered official agent of the candidate must lodge with the Authority a declaration of political contributions received by the candidate during the period:  | 4  |
| (a) commencing on:   | 8  |
| (i) where the candidate was registered at any time in the Register of Candidates for the previous general election—the 31st day after the polling day for that previous general election, or   | 9  |
| (ii) where the candidate was registered at any time in the Register of Candidates for a by-election (not being the current election) following the previous general election—the 31st day after the polling day for that by-election, or   | 10 |
| (iii) the day that is 12 months before the day on which the candidate was nominated for election at the current election,  | 11 |
| whichever first occurs, and  | 12 |
| (b) ending on the day on which the candidate was nominated for election at the current election.   | 13 |
| (2) Within 120 days after the day for the return of the writs for a general election or by-election ( <i>the current election</i> ), the registered official agent of each candidate nominated for election at the election must lodge with the Authority a declaration of political contributions received during the period commencing on the day on which the candidate was nominated for election at the current election and ending on the 30th day after the polling day for the current election. | 14 |
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| (3)        | Within 120 days after the day for the return of the writs for a general election or by-election, the registered official agent of each candidate nominated for election at the election must lodge with the Authority a declaration of electoral expenditure incurred during the period: | 1  |
|            |  | 2  |
|            |  | 3  |
|            |  | 4  |
|            |  | 5  |
| (a)        | commencing on:   | 6  |
| (i)        | where the candidate was registered at any time in the Register of Candidates for the previous general election—the 31st day after the polling day for that previous general election, or   | 7  |
|            |  | 8  |
|            |  | 9  |
|            |  | 10 |
| (ii)       | where the candidate was registered at any time in the Register of Candidates for a by-election (not being the current election) following the previous general election—the 31st day after the polling day for that by-election, or  | 11 |
|            |  | 12 |
|            |  | 13 |
|            |  | 14 |
|            |  | 15 |
| (iii)      | the day that is 12 months before the day on which the candidate was nominated for election at the current election,  | 16 |
|            |  | 17 |
|            |  | 18 |
|            | whichever first occurs, and  | 19 |
| (b)        | ending on the 30th day after the polling day for the current election.   | 20 |
|            |  | 21 |
| <b>[3]</b> | <b>Section 85A Obligation of persons (other than parties etc) to make disclosure</b>   | 22 |
|            |  | 23 |
|            | Omit section 85A (3) and (4).  | 24 |
| <b>[4]</b> | <b>Section 86 Form and manner of disclosure</b>  | 25 |
|            | Omit “under this Part” wherever occurring.   | 26 |
|            | Insert instead “under this Division”.  | 27 |
| <b>[5]</b> | <b>Section 87 Political contributions that are required to be disclosed</b>  | 28 |
|            | Omit “under this Part” wherever occurring from section 87 (1) and (1A).  | 29 |
|            | Insert instead “under this Division”.  | 30 |
| <b>[6]</b> | <b>Section 87 (1AA), (2), (6) and (7)</b>  | 31 |
|            | Omit the subsections.  | 32 |

|   |                      |
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| <b>[7] Section 87A Prohibition on receiving gifts of unknown source</b>   | 1                    |
| Renumber the section as section 89A and move to Division 3 of Part 6 (as inserted by item [11]).  | 2<br>3               |
| <b>[8] Section 89 Additional matters to be included in declaration</b>  | 4                    |
| Omit “Subject to section 87 (2), there shall be included in a declaration made under this Part”.  | 5<br>6               |
| Insert instead “Subject to section 82A (5), a declaration under this Division is to include”.   | 7<br>8               |
| <b>[9] Section 89 (b)</b>   | 9                    |
| Omit “section 87 (7) (b)”. Insert instead “section 82A (6) (b)”.  | 10                   |
| <b>[10] Section 89 (c)</b>  | 11                   |
| Omit “section 87 (1AA)”. Insert instead “section 82A (4)”.  | 12                   |
| <b>[11] Part 6, Divisions 3 and 4</b>   | 13                   |
| Insert after section 89:  | 14                   |
| <b>Division 3 Prohibited political contributions</b>  | 15                   |
| <b>89B Prohibited political contributions</b>   | 16                   |
| (1) This section applies to the following persons:  | 17                   |
| (a) a major developer,  | 18                   |
| (b) a person who has been found guilty of an offence involving bribery or corruption.   | 19<br>20             |
| (2) A person to whom this section applies must not, directly or indirectly, make a political contribution.  | 21<br>22             |
| Maximum penalty (subsection (2)): 20 penalty units.   | 23                   |
| <b>Division 4 Continuous disclosure of political contributions</b>  | 24<br>25             |
| <b>89C Political contributions not to be accepted without donors form</b>   | 26                   |
| (1) The following must not accept a political contribution from any person or organisation that exceeds an amount of \$1,000 or, when added to other political contributions received from that person or organisation in the immediately preceding | 27<br>28<br>29<br>30 |

12-month period exceeds an amount of \$1,000, unless the political contribution is accompanied by a donors form completed by the person or organisation that made the political contribution:

- (a) a party,
- (b) a person acting on behalf of a party,
- (c) a group,
- (d) a person acting on behalf of a group,
- (e) an independent member of Parliament,
- (f) a person acting on behalf of an independent member of Parliament,
- (g) a candidate,
- (h) a person acting on behalf of a candidate.

Maximum penalty: 20 penalty units.

- (2) A party, person or group referred to in subsection (1) (a)–(h) must, within 21 days of receiving a donors form, lodge the donors form with the Authority.

Maximum penalty: 20 penalty units.

- (3) For the purposes of this section, a party, person or group referred to in subsection (1) (a)–(h) does not accept a political contribution in the form of a cheque until the cheque is deposited in an account in an authorised deposit-taking institution.

**89D Donors form**

- (1) The Authority may approve a donors form for the purposes of this Division.
- (2) The donors form must require the person or organisation completing the form to state:
- (a) the amount (if a gift of money) or an estimated value (if a gift in kind) of the political contribution made by the person or organisation (the *donor*) to the party, person or group concerned, and
  - (b) details of all political contributions made by the donor to the party, person or group concerned in the 12-month period immediately preceding the donor's latest political contribution to that party, person or group, and

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| (c) the donor’s postal address, and  | 1                  |
| (d) the donor’s residential address (in the case of a natural person) or head office address (in the case of a corporation), and   | 2<br>3<br>4        |
| (e) that the donor is not a major developer, and   | 5                  |
| (f) that the donor has not been convicted of an offence involving bribery or corruption, and   | 6<br>7             |
| (g) that the donor is not making the political contribution concerned on behalf of a major developer or a person who has been convicted of an offence involving bribery or corruption, and | 8<br>9<br>10<br>11 |
| (h) whether the donor is making the political contribution on behalf of an unincorporated association and, if so, details regarding that association, and                                  | 12<br>13<br>14     |
| (i) if the donor is a corporation, details of the corporation including the names of all directors of the corporation and a description of the corporation’s main activities.              | 15<br>16<br>17     |
| <b>89E Publication of donors forms</b>   | 18                 |
| (1) The Authority must publish each donors form lodged with it in a public register and on the Internet within 14 days of its receipt.   | 19<br>20<br>21     |
| (2) The public register must be kept available for public inspection at the offices of the Authority at all reasonable times and for a reasonable fee as determined by the Authority.      | 22<br>23<br>24     |
| <b>[12] Section 89A (5) (b) and (c) (as renumbered by item [7])</b>  | 25                 |
| Omit the paragraphs.   | 26                 |
| <b>[13] Part 6, Division 5, heading</b>  | 27                 |
| Insert before section 90:  | 28                 |
| <b>Division 5      Miscellaneous</b>   | 29                 |
| <b>[14] Section 97 False statements</b>  | 30                 |
| Insert “or donors form” after “declaration” in section 97 (1).   | 31                 |

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| <b>1.2 Environmental Planning and Assessment Act 1979<br/>No 203</b>   | 1<br>2               |
| <b>[1] Section 76A Development that needs consent</b>  | 3                    |
| Insert after section 76A (7):  | 4                    |
| (7A) Sections 40 (Notice of statutory rules to be tabled) and 41<br>(Disallowance of statutory rules) of the <i>Interpretation Act<br/>              1987</i> apply to a notice under subsection (7) (b) in the same<br>way as those sections apply to a statutory rule. | 5<br>6<br>7<br>8     |
| <b>[2] Section 88A Development applications directed to be referred to<br/>the Minister for determination</b>  | 9<br>10              |
| Insert “in writing” after “direct” in section 88A (1).   | 11                   |
| <b>[3] Section 88A (1A) and (1B)</b>   | 12                   |
| Insert after section 88A (1):  | 13                   |
| (1A) The Minister must publish any direction made under<br>subsection (1) in the Gazette.  | 14<br>15             |
| (1B) Sections 40 (Notice of statutory rules to be tabled) and 41<br>(Disallowance of statutory rules) of the <i>Interpretation Act<br/>              1987</i> apply to a direction under subsection (1) in the same<br>way as those sections apply to a statutory rule.  | 16<br>17<br>18<br>19 |
| <b>[4] Section 88A (2)</b>   | 20                   |
| Omit “On giving the direction”.  | 21                   |
| Insert instead “On the expiry of the period during which either House of<br>Parliament may under section 41 of the <i>Interpretation Act 1987</i> disallow<br>the direction”.  | 22<br>23<br>24       |
| <b>[5] Section 89 Carrying out of prohibited development</b>   | 25                   |
| Insert after section 89 (1):   | 26                   |
| (1A) The Minister must publish any direction made under<br>subsection (1) in the Gazette.  | 27<br>28             |
| (1B) Sections 40 (Notice of statutory rules to be tabled) and 41<br>(Disallowance of statutory rules) of the <i>Interpretation Act<br/>              1987</i> apply to a direction under subsection (1) in the same<br>way as those sections apply to a statutory rule.  | 29<br>30<br>31<br>32 |



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| <b>[6] Section 89 (2)</b>   | 1           |
| Omit “On giving the direction”.   | 2           |
| Insert instead “On the expiry of the period during which either House of Parliament may under section 41 of the <i>Interpretation Act 1987</i> disallow the direction”. | 3<br>4<br>5 |
| <b>1.3 Local Government Act 1993 No 30</b>  | 6           |
| <b>Chapter 10, Part 8, heading</b>  | 7           |
| Omit the heading. Insert instead:   | 8           |
| <b>Part 8      Disclosure of election funding and expenditure</b>   | 9<br>10     |