

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 (postnomination 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.