

Agreement in Principle

Mr NATHAN REES (Toongabbie—Premier, Minister for the Arts, and Minister for the Central Coast) [3.36 p.m.]:
I move:

That this bill be now agreed to in principle.

New South Wales has long been at the forefront when it comes to mandating transparency around political donations. In 2008 this Government undertook the most significant reform of the Election Funding Act since its enactment. Those reforms have given New South Wales, in the words of the Election Funding Authority:

The most transparent and comprehensive disclosure provisions of all Australian jurisdictions.

For many years the Government has called for national laws which go beyond disclosure, laws which will eliminate large donations and the shadow they cast over Government decision making once and for all. As I have said previously, consistent national reform is the ideal way forward. That approach is the most practical way to minimise loopholes arising from our Federal system of government and the national structure of political parties in Australia. I continue to support a national approach. The Commonwealth Government's Electoral Reform Green Paper presents all jurisdictions with the opportunity to achieve national reform of political funding as part of a broader harmonisation of Australian electoral systems.

I recognise, however, that consistent national reform will take time. In the interim New South Wales will continue to lead on this issue and continue to strengthen its own rules governing political donations and expenditure. On 14 November I announced that the Government would press ahead with reforms to remove a culture of donations from this State's political landscape. As a first step, the Government is committed to banning corporate donations by property developers in New South Wales. The Election Funding and Disclosures Amendment (Property Developers Prohibition) Bill gives effect to this commitment. It will continue New South Wales' history of leadership in this complex but important area.

The bill will amend the Election Funding and Disclosures Act 1981 to prohibit political donations made by or on behalf of property developers. In particular, the bill will make it unlawful for a property developer to make a political donation. It will make it unlawful for a person to make a political donation on behalf of a property developer. In order to minimise opportunities for avoidance, the bill makes it unlawful for a property developer to solicit another person to make that political donation. It will also make it unlawful for a person to knowingly accept a political donation made by a property developer, or made by a person on behalf of a property developer.

Any political party that breaches the new rules will be subject to a maximum penalty of \$22,000. In the case of any other person, the penalty will be \$11,000. These penalties apply in addition to the power of the Election Funding Authority to recoup unlawful donations. It is well established that determining exactly who is a property developer for the purposes of a ban on donations is a difficult exercise. No single definition of "property developer" will ever be perfect. There will always be different views on what should be included or excluded. The bill contains a detailed definition of "property developer" to ensure certainty and to minimise loopholes in relation to corporate donations.

It consists of four key elements: A corporation engaged in a business that regularly involves the making of relevant planning applications in connection with the residential or commercial development of land with the ultimate purpose of the sale or lease of the land for profit. The definition makes sure that "close associates" of such corporations are also captured and banned from making donations. Close associates include: A director or officer of the corporation, and their spouse; and any person whose voting power in the corporation or a related body corporate is greater than 20 per cent, and their spouse. Related bodies corporate and stapled entities are also deemed to be close associates for the purposes of the ban. Further, if the corporation is a trustee, manager or responsible entity in relation to a trust, a person who holds more than 20 per cent 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, is deemed to be a close associate.

Inevitably, any definition of property developers and their close associates will involve some grey areas at the margins. For those falling on either side of this definition, the demarcation may appear somewhat arbitrary. For example, spouses of certain persons are included in the definition of "close associate", but not other family members. Officers and directors of a corporation that is a property developer are covered, but not regular employees. The definitions in the bill have been carefully crafted so as not to encroach on an individual's right to freedom of political communication, but still ensure that the ban is meaningful and reasonably adapted to address the public's concern about corporate donations from property developers.

Importantly, the bill clarifies that corporations such as supermarkets and other retail businesses that make planning applications from time to time in relation to properties from which they conduct their usual business,

such as selling groceries, are not covered by the ban. The ban on donations does not apply to home owners or individuals renovating investment properties. The Government does not believe that ordinary citizens should be deprived of their right to make a political donation simply because they have at some stage required development approval in relation to their home or another property owned by them. The Government acknowledges that for some corporations, the question of whether they are a "property developer" will be finely balanced.

The bill aims to provide certainty for potential donors, candidates and political parties, which will in turn improve compliance. It enables a person to seek a determination from the Election Funding Authority confirming that they are not a professional property developer for the purposes of the ban. All determinations made by the authority will be published on a register on its website. Anyone who gives false information to the Election Funding Authority in connection with a request for a determination will be guilty of an offence, punishable by a maximum penalty of 200 penalty units or imprisonment for 12 months, or both. As I have said, no attempt to ban donations from a particular sector will be perfect. Those who wish to circumvent the system will always try to find loopholes.

But let me be clear about this: the ban on developer donations is a first step. A ban on donations from one sector of the business community inevitably raises the issue of corporate donations more generally. That is why I have announced that—one way or another—the next State election will be conducted under a public funding model in conjunction with bans and caps on private donations. Legal advice indicates that any wholesale ban or significant cap on donations may impact upon the right to freedom of political communication. This in turn gives rise to constitutional issues, which could render any ban or cap invalid. Public funding of election campaigns is therefore essential if we are to progress further serious donations reform in New South Wales.

Devising a public funding model is not an easy task. It is important that any such model has the full support of all parties. For this reason, the Government has referred the specific issue of a public funding model to the Joint Standing Committee on Electoral Matters for inquiry and report. I have specifically asked the committee to build on the work undertaken by the Select Committee on Electoral and Political Party Funding in 2008. I note that 19 of the recommendations made by the select committee in 2008 have already been implemented by the Government. In its report, the select committee acknowledged that measures such as bans and caps would necessitate an increase in public funding. The new inquiry will provide a forum for consideration of a public funding model to be undertaken in a manner that ensures that the views of all parties, candidates and the community are taken into account.

The bill combined with my Government's longer-term commitment to the wholesale reform of campaign finance laws sends a clear message to the public that the era of big donations in New South Wales is rapidly coming to a close. I commend the bill to the House.