



Australian Capital Territory

# Electoral Amendment Act 2020

A2020-51

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Australian Capital Territory

# Electoral Amendment Act 2020

A2020-51

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An Act to amend the *Electoral Act 1992*

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

**1 Name of Act**

This Act is the *Electoral Amendment Act 2020*.

**2 Commencement**

This Act commences on 1 July 2021.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

**3 Legislation amended**

This Act amends the *Electoral Act 1992*.

**4 Offences against Act—application of Criminal Code etc  
Section 3A, note 1**

*insert*

- s 222G (Ban on gifts from property developers etc—\$250 or more)
- s 222I (Ban on acceptance of gifts from property developers etc—\$250 or more)
- s 297A (Misleading electoral advertising)

**5 New section 3B***insert***3B Objects of Act**

The main objects of this Act include the following:

- (a) to recognise, promote and protect the right and opportunity of every elector to—
  - (i) take part in the conduct of public affairs, directly or through freely chosen representatives; and
  - (ii) vote, and be elected, at periodic elections that guarantee the free expression of the will of the electors; and
  - (iii) have access, on general terms of equality, for appointment to public office;
- (b) to promote public awareness of the electoral system and its role in supporting participation in the political process;
- (c) to enhance equality of opportunity for participation in the political process;
- (d) to establish, and promote compliance with, a fair and transparent electoral funding, expenditure and financial disclosure scheme;
- (e) to help prevent corruption and undue influence in institutions of government and public administration in the Territory;
- (f) to provide for the effective administration of public funding of elections, recognising the importance of the appropriate use of public revenue for that purpose;
- (g) to establish an independent electoral commission, made up of independent officers of the Legislative Assembly, with functions that include—
  - (i) promoting the objects of this Act; and

- (ii) administering this Act; and
- (iii) conducting elections.

**6**      **Meaning of *gift*—pt 14**  
**Section 198AA (2)**

*substitute*

- (2) For this part, if an annual subscription paid to a party by a person for the person's membership of the party is more than \$250—the amount of the subscription that is more than \$250 is a gift.

**7**      **Section 198AA (3) (d) and (e)**

*omit*

**8**      **Section 198AA (4), definitions of *fundraising contribution***  
**and *fundraising event***

*omit*

**9**      **Records and regular disclosure of gifts**  
**Section 216A (3) (b)**

*omit*

—if the total amount of the additional gifts received from the person in the relevant period is \$1 000 or more

**10 Section 216A (4) and notes**

*substitute*

- (4) The financial representative of the receiver must give the return to the commissioner not later than—
- (a) if the total amount of the gifts received from the person reaches \$1 000—
    - (i) in the period starting on the first day of the election period and ending 30 days after the election period ends (the *defined period*)—7 days after the day the total amount received from the person reaches \$1 000; or
    - (ii) outside the defined period—7 days after the end of the month in which the total amount received from the person reaches \$1 000; and
  - (b) if the financial representative is required to give the commissioner a return under subsection (3) (a) in relation to a person and the person makes an additional gift—
    - (i) in the defined period—7 days after the day the additional gift is received from the person; or
    - (ii) outside the defined period—7 days after the end of the month in which the additional gift is received from the person.

**11 New division 14.4A**

*insert*

**Division 14.4A Gifts from property developers**

**222A Application—div 14.4A**

- (1) This division does not apply to the following:
  - (a) a gift that is returned to the giver within 30 days after its receipt;
  - (b) a gift given by a close associate if, at the time the gift is given, the close associate is a candidate in an election.
- (2) To remove any doubt, section 215H applies to a gift mentioned in subsection (1) (a).

*Note* Section 215H states that if a gift is returned to the giver within 30 days after its receipt, any return under div 14.4 that includes the amount or value of the gift must also include a statement that the gift was returned to the giver.

**222B Definitions—div 14.4A**

In this division:

***decided***—a relevant planning application is ***decided*** if—

- (a) for an application to make a variation to the [territory plan](#)—
  - (i) for a draft special variation—the planning and land authority has prepared a draft special variation under the [Planning and Development Act 2007](#), section 85B; and
  - (ii) for a technical amendment—the plan variation is notified under the under the [Planning and Development Act 2007](#), section 89; and



- (iii) in any other case—the planning and land authority has prepared a draft plan variation under the *Planning and Development Act 2007*, section 60; and
- (b) for any other case—it is decided in accordance with the *Planning and Development Act 2007*.

**gift** includes a loan, other than a loan given by a financial institution on a commercial basis.

*Note* The definition of **gift** in s 198AA also applies to this division.

**make**, a relevant planning application, means make, or cause another person to make the application.

**political entity** means—

- (a) an MLA; or
- (b) a party grouping; or
- (c) a non-party candidate; or
- (d) an associated entity.

## **222C Meaning of *property developer*—div 14.4A**

- (1) In this division:

**property developer**—

- (a) means a corporation that carries on a business involving the residential or commercial development of land to sell or lease for profit; but
- (b) does not include the following:
  - (i) an incorporated association under the *Associations Incorporation Act 1991*;
  - (ii) a corporation operated on a not-for-profit basis;
  - (iii) a corporation declared under section 222K;

(iv) any other corporation prescribed by regulation.

**Examples—subpar (ii)**

- 1 a company under the [Corporations Act](#) limited by guarantee that is prevented by its governing documents from distributing the company's profits or assets to its shareholders
- 2 a corporation registered with the Australian Charities and Not-for-profits Commission

*Note* Power to make a regulation includes power to make different provision in relation to different matters or different classes of matters, and to make a regulation that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

(2) In this section:

*development*, in relation to land—see the [Planning and Development Act 2007](#), section 7.

**222D Meaning of *close associate*—div 14.4A**

(1) In this division:

*close associate*, of a property developer, means any of the following:

- (a) a related body corporate;
- (b) an officer of the corporation or a related body corporate;
- (c) a person whose voting power in the corporation or a related body corporate is more than 20%;
- (d) any domestic partner of a person mentioned in paragraph (b) or (c);
- (e) if the corporation or a related body corporate is a stapled entity in relation to a stapled security—the other stapled entity in relation to the stapled security;

- 
- (f) if the corporation is a trustee, manager or responsible entity in relation to a trust—
    - (i) for a unit trust—a person who holds more than 20% of the units in the trust; or
    - (ii) for a discretionary trust—a person who is a beneficiary of the trust;
  - (g) any other person or body prescribed by regulation.

*Note* Power to make a regulation includes power to make different provision in relation to different matters or different classes of matters, and to make a regulation that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (2) In this section:

*officer*—see the [Corporations Act](#), section 9.

*stapled entity*—

- (a) means an entity the interests in which are traded along with the interests of another entity as a stapled security; and
- (b) for a stapled entity that is a trust—includes any trustee, manager or responsible entity for the trust.

*voting power*—see the [Corporations Act](#), section 9.

## **222E Meaning of *relevant planning application*—div 14.4A**

- (1) In this division:

*relevant planning application* means any of the following:

- (a) a request, in any form, to a Minister or the planning and land authority to make a variation, special variation or technical amendment to the [territory plan](#) under the [Planning and Development Act 2007](#);

- (b) a development application for a development proposal in the merit track or impact track under the *Planning and Development Act 2007*;
  - (c) a request or application under the *Planning and Development Act 2007*, division 7.3.1 (Pre-application matters) in relation to a development proposal in the merit track or impact track;
  - (d) an EIS exemption application under the *Planning and Development Act 2007*, part 8.2 (Environmental impact statements);
  - (e) any other application, request or other action under the *Planning and Development Act 2007* prescribed by regulation.
- (2) However, a **relevant planning application** does not include a development application if the dominant purpose of the application is to provide—
- (a) residential premises to be occupied by the applicant; or
  - (b) commercial premises to be occupied by the applicant to carry on business, and no substantial part of the premises are sold or leased to another person.
- (3) For subsection (2), if the property developer is the applicant, a reference to the applicant includes a close associate of the property developer.

**222F Ban on gifts from property developers etc—less than \$250**

- (1) This section applies if—
- (a) a property developer, a close associate of a property developer or a person on behalf of a property developer or close associate, gives a gift to a political entity; and
  - (b) the gift, together with any other gift made by the person in the financial year, is less than \$250; and

- (c) either—
  - (i) at the time a gift is given, the property developer, or a close associate of the property developer, has made 1 or more relevant planning applications that have not been decided; or
  - (ii) in the 7-year period before a gift is given, the property developer, or a close associate of the property developer, has made 3 or more relevant planning applications.
- (2) The giver of the gift must pay to the Territory an amount equal to the amount of the gift.
- (3) The amount payable under subsection (2) is a debt payable to the Territory by the giver of the gift and may be recovered by a proceeding in a court of competent jurisdiction.

**222G Ban on gifts from property developers etc—\$250 or more**

- (1) A property developer commits an offence if—
  - (a) the property developer gives a gift to a political entity; and
  - (b) the gift, together with any other gift made by the property developer in the financial year, is \$250 or more; and
  - (c) either—
    - (i) at the time the gift is given, the property developer, or a close associate of the property developer, has made 1 or more relevant planning applications that have not been decided; or
    - (ii) in the 7-year period before the gift is given, the property developer, or a close associate of the property developer, has made 3 or more relevant planning applications.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A close associate of a property developer commits an offence if—
- (a) the close associate gives a gift to a political entity; and
  - (b) the gift, together with any other gift made by the close associate in the financial year, is \$250 or more; and
  - (c) either—
    - (i) at the time the gift is given, the property developer, or a close associate of the property developer, has made 1 or more relevant planning applications that have not been decided; or
    - (ii) in the 7-year period before the gift is given, the property developer, or a close associate of the property developer, has made 3 or more relevant planning applications.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) A person commits an offence if—
- (a) the person gives a gift to a political entity; and
  - (b) the gift is given on behalf of a property developer or a close associate of a property developer; and
  - (c) the gift, together with any other gift made by the person on behalf of the property developer or close associate in the financial year, is \$250 or more; and
  - (d) either—
    - (i) at the time the gift is given, the property developer, or a close associate of the property developer, has made 1 or more relevant planning applications that have not been decided; or

- (ii) in the 7-year period before the gift is given, the property developer, or a close associate of the property developer, has made 3 or more relevant planning applications.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) A person commits an offence if—
  - (a) the person asks another person to give a gift to a political entity on behalf of a property developer or a close associate of a property developer; and
  - (b) either—
    - (i) at the time the gift is given, the property developer, or a close associate of the property developer, has made 1 or more relevant planning applications that have not been decided; or
    - (ii) in the 7-year period before the gift is given, the property developer, or a close associate of the property developer, has made 3 or more relevant planning applications.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (5) In this section:  
*asks* includes cause, induce or solicit.

**222H Ban on acceptance of gifts from property developers etc—less than \$250**

- (1) This section applies if—
  - (a) a political entity accepts a gift made by, or on behalf of, a property developer or a close associate of a property developer; and

- (b) the gift, together with any other gift made by the person in the financial year, is less than \$250; and
- (c) either—
  - (i) at the time the gift is given, the property developer, or a close associate of the property developer, has made 1 or more relevant planning applications that have not been decided; or
  - (ii) in the 7-year period before the gift is given, the property developer, or a close associate of the property developer, has made 3 or more relevant planning applications; and
- (d) the political entity has not taken reasonable steps to ensure that—
  - (i) the person giving the gift, or the person on behalf of whom the gift is given, is not a property developer or a close associate of a property developer; or
  - (ii) neither of the circumstances mentioned in paragraph (c) apply to the property developer or close associate.

**Example—reasonable steps**

- 1 giving potential donors written notice that donations from property developers or close associates of property developers are prohibited
  - 2 asking the person who gives the gift about whether the person is a property developer or a close associate of a property developer
- (2) The financial representative of the entity must pay to the Territory an amount equal to the amount of the gift.
  - (3) The amount payable under subsection (2) is a debt payable to the Territory by the financial representative for the political entity and may be recovered by a proceeding in a court of competent jurisdiction.



**222I Ban on acceptance of gifts from property developers etc—\$250 or more**

- (1) A political entity commits an offence if—
- (a) the entity accepts a gift made by, or on behalf of, a property developer or a close associate of a property developer; and
  - (b) the gift, together with any other gift made by the person in the financial year, is \$250 or more; and
  - (c) either—
    - (i) at the time the gift is given, the property developer, or a close associate of the property developer, has made 1 or more relevant planning applications that have not been decided; or
    - (ii) in the 7-year period before the gift is given, the property developer, or a close associate of the property developer, has made 3 or more relevant planning applications.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply if the political entity takes reasonable steps to ensure that—
- (a) the person giving the gift, or the person on behalf of whom the gift is given, is not a property developer or a close associate of a property developer; or
  - (b) neither of the circumstances mentioned in subsection (1) (c) apply to the property developer or close associate.

**Examples—reasonable steps**

- 1 obtaining a written declaration from the person who gives the gift about whether the person is a property developer or a close associate of a property developer

- 2 obtaining a written declaration from the person who gives the gift about whether the circumstances mentioned in s (1) (c) apply in relation to the gift
- 3 asking the person who gives the gift whether the person is a property developer or a close associate of a property developer
- 4 for a fundraising event intended to collect gifts from a large number of potential donors, providing clear written notice to potential donors that property developers, and close associates of property developers, are prohibited from giving gifts to a political entity

*Note 1* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

*Note 2* For recording and disclosure requirements in relation to the receipt of gifts by political entities—see s 216A.

- (3) In deciding whether a political entity takes reasonable steps under subsection (2), a court must have regard to the amount of the gift accepted by the political entity.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) If the political entity contravenes subsection (1), the financial representative of the entity must pay to the Territory an amount equal to the amount of the gift.
- (6) The amount payable under subsection (5) is a debt payable to the Territory by the financial representative for the political entity and may be recovered by a proceeding in a court of competent jurisdiction.

## **222J Gifts from people that become property developers etc**

- (1) This section applies if—
  - (a) a political entity accepts a gift made by, or on behalf of, a person;  
and

- (b) at the time the gift is given, the person is not a property developer or a close associate of a property developer; and
- (c) within 12 months after the gift is given—
  - (i) the person becomes a property developer or a close associate of a property developer; and
  - (ii) a relevant planning application is made by the property developer or close associate.
- (2) The giver of the gift must pay to the Territory an amount equal to the amount of the gift.
- (3) The amount payable under subsection (2) is a debt payable to the Territory by the giver of the gift and may be recovered by a proceeding in a court of competent jurisdiction.

**222K Declaration that corporation not a property developer**

- (1) A person may apply to the electoral commission in relation to a corporation for a declaration that the corporation is not a property developer.
- (2) The electoral commission may make a declaration if satisfied that it is more likely than not that the corporation is not a property developer.
- (3) The electoral commission must make its decision under subsection (2) based solely on information provided by the applicant.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

- (4) A declaration is in force for 12 months.

- (5) A declaration—
- (a) is conclusively presumed to be correct in favour of any person for the purposes of a gift that the person makes or accepts while the declaration is in force (even if the declaration is subsequently found to be incorrect); and
  - (b) is not presumed to be correct in favour of any person who makes or accepts a gift knowing that information given to the electoral commission, on which the declaration is based, was false or misleading in a material particular.
- (6) If the electoral commission repeals a declaration it must give the applicant 7 days written notice before the repeal.
- (7) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act 2001](#).

## **12 Section 297 heading**

*substitute*

## **297 Misleading electoral matter affecting casting of vote**

## **13 New section 297A**

*insert*

## **297A Misleading electoral advertising**

- (1) A person commits an offence if—
- (a) the person disseminates, or authorises the dissemination of, an advertisement containing electoral matter; and
  - (b) the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if it is proved by the defendant that the defendant—
- (a) took no part in deciding the content of the advertisement; and
  - (b) could not reasonably be expected to have known that the statement was inaccurate and misleading.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) If the commissioner is satisfied that subsection (1) (a) and (b) apply, the commissioner may ask the person, in writing, to do 1 or more of the following:
- (a) not disseminate the advertisement again;
  - (b) publish a retraction in stated terms and in a stated way.
- (4) If a person is found guilty of an offence against this section, the court must take the person's response to any request under subsection (3) into account in deciding the penalty for the offence.
- (5) On application by the commissioner, the Supreme Court may, if satisfied that subsection (1) (a) and (b) apply, order the person to do 1 or more of the following:
- (a) not disseminate the advertisement again;
  - (b) publish a retraction in stated terms and in a stated way.

**14**      **New part 33**

*insert*

**Part 33**                      **Transitional—Electoral  
Amendment Act 2020**

**517**      **Transitional—gifts from property developers in  
pre-commencement period**

- (1) This section applies if—
  - (a) after the day the election, due to be held in October 2020, happens and before 1 July 2021, a political entity accepts a gift made by, or on behalf of, a property developer or a close associate of a property developer; and
  - (b) the gift is not returned to the giver within 30 days after its receipt; and
  - (c) either—
    - (i) at the time the gift is given, the property developer, or a close associate of the property developer, has made 1 or more relevant planning applications that have not been decided; or
    - (ii) in the 7-year period before the gift is given, the property developer, or a close associate of the property developer, has made 3 or more relevant planning applications.
- (2) The financial representative of the political entity must pay to the Territory an amount equal to the amount of the gift.

- (3) The amount payable under subsection (2) is a debt payable to the Territory by the financial representative for the political entity and may be recovered by a proceeding in a court of competent jurisdiction.
- (4) In this section:
- close associate*, of a property developer—see section 222D.
  - decided*—see section 222B.
  - gift*—see section 222B.
  - financial representative*—see section 198.
  - make*, a relevant planning application—see section 222B.
  - political entity*—see section 222B.
  - property developer*—see section 222C.
  - relevant planning application*—see section 222E.

## **518 Transitional regulations**

A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Electoral Amendment Act 2020*.

## **519 Expiry—pt 33**

This part expires 3 months after the day it commences.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

## 15 Dictionary, note 2

*insert*

- corporation
- Corporations Act
- domestic partner (see s 169 (1))
- Legislative Assembly
- Minister (see s 162)
- planning and land authority
- territory law
- territory plan
- the Territory

## 16 Dictionary, new definitions of *close associate* and *decided*

*insert*

*close associate*, of a property developer, for division 14.4A (Gifts from property developers)—see section 222D.

*decided*, for division 14.4A (Gifts from property developers)—see section 222B.

## 17 Dictionary, definition of *gift*

*substitute*

*gift*—

- (a) for part 14 (Election funding, expenditure and financial disclosure)—see section 198AA; and
- (b) for division 14.4A (Gifts from property developers)—see section 222B.



**18 Dictionary, new definitions**

*insert*

*make*, a relevant planning application, for division 14.4A (Gifts from property developers)—see section 222B.

*political entity*, for division 14.4A (Gifts from property developers)—see section 222B.

*property developer*, for division 14.4A (Gifts from property developers)—see section 222C.

*relevant planning application*, for division 14.4A (Gifts from property developers)—see section 222E.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 29 November 2018.

**2 Notification**

Notified under the [Legislation Act](#) on 4 September 2020.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Electoral Amendment Bill 2020, which originated in the Legislative Assembly as the Electoral Amendment Bill 2018 and was passed by the Assembly on 27 August 2020.

Clerk of the Legislative Assembly

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