

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Electoral Amendment Bill 2018

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Electoral Amendment Bill 2018

A Bill for

An Act to amend the *Electoral Act 1992*

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

1 **1 Name of Act**

2 This Act is the *Electoral Amendment Act 2018*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written notice.

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

7 *Note 2* A single day or time may be fixed, or different days or times may be
8 fixed, for the commencement of different provisions (see [Legislation Act](#),
9 s 77 (1)).

10 *Note 3* If a provision has not commenced within 6 months beginning on the
11 notification day, it automatically commences on the first day after that
12 period (see [Legislation Act](#), s 79).

13 **3 Legislation amended**

14 This Act amends the *Electoral Act 1992*.

15 **4 Offences against Act—application of Criminal Code etc**
16 **Section 3A, note 1**

17 *insert*

- 18 • s 222E (Ban on gifts from property developers etc)
19 • s 222F (Ban on acceptance of gifts from property developers etc)

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

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

3 **6 Meaning of gift—pt 14**
4 **Section 198AA (2)**

5 *substitute*

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

9 **7 Section 198AA (3) (d) and (e)**

10 *omit*

11 **8 Section 198AA (4), definitions of fundraising contribution**
12 **and fundraising event**

13 *omit*

14 **9 Records and regular disclosure of gifts**
15 **Section 216A (3) (b)**

16 *omit*

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

19 **10 Section 216A (4) and notes**

20 *substitute*

- 21 (4) The financial representative of the receiver must give the return to the
22 commissioner not later than—

- 23 (a) for a gift mentioned in subsection (3) (a)—7 days after the day
24 the total amount received from the person reaches \$1 000; and

- (b) for an additional gift mentioned in subsection (3) (b)—7 days after the day 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

1 (iii) in any other case—the planning and land authority has
2 prepared a draft plan variation under the *Planning and*
3 *Development Act 2007*, section 60; and

4 (b) for any other case—it is decided in accordance with the
5 *Planning and Development Act 2007*.

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

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

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

11 **political entity** means—

12 (a) an MLA; or

13 (b) a party grouping; or

14 (c) a non-party candidate; or

15 (d) an associated entity.

16 **222C Meaning of *property developer*—div 14.4A**

17 (1) In this division:

18 ***property developer***—

19 (a) means a corporation that carries on a business involving the
20 residential or commercial development of land to sell or lease
21 for profit; but

22 (b) does not include the following:

23 (i) an incorporated association under the *Associations*
24 *Incorporation Act 1991*;

25 (ii) a corporation operated on a not-for-profit basis;

26 (iii) a corporation declared under section 222I;

1 (iv) any other corporation prescribed by regulation.

2 **Examples—subpar (ii)**

3 1 a company under the [Corporations Act](#) limited by guarantee that is
4 prevented by its governing documents from distributing the company's
5 profits or assets to its shareholders

6 2 a corporation registered with the Australian Charities and
7 Not-for-profits Commission

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

12 (2) In this section:

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

15 **222D Meaning of *close associate*—div 14.4A**

16 (1) In this division:

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

18 (a) a related body corporate;

19 (b) an officer of the corporation or a related body corporate;

20 (c) a person whose voting power in the corporation or a related body
21 corporate is more than 20%;

22 (d) any domestic partner of a person mentioned in paragraph (b)
23 or (c);

24 (e) if the corporation or a related body corporate is a stapled entity
25 in relation to a stapled security—the other stapled entity in
26 relation to the stapled security;

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

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

12 (2) In this section:

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

14 *stapled entity*—

15 (a) means an entity the interests in which are traded along with the
16 interests of another entity as a stapled security; and

17 (b) for a stapled entity that is a trust—includes any trustee, manager
18 or responsible entity for the trust.

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

20 **222E Meaning of relevant planning application—div 14.4A**

21 (1) In this division:

22 *relevant planning application* means any of the following:

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

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

22 **222F Ban on gifts from property developers etc**

- 23 (1) A property developer commits an offence if—
- 24 (a) the property developer gives a gift to a political entity; and
- 25 (b) either—
- 26 (i) at the time the gift is given, the property developer, or a
27 close associate of the property developer, has made 1 or
28 more relevant planning applications that have not been
29 decided; or

- 1 (ii) in the 7-year period before the gift is given, the property
2 developer, or a close associate of the property developer,
3 has made 3 or more relevant planning applications.
- 4 Maximum penalty: 50 penalty units, imprisonment for 6 months or
5 both.
- 6 (2) A close associate of a property developer commits an offence if—
- 7 (a) the close associate gives a gift to a political entity; and
- 8 (b) either—
- 9 (i) at the time the gift is given, the property developer, or a
10 close associate of the property developer, has made 1 or
11 more relevant planning applications that have not been
12 decided; or
- 13 (ii) in the 7-year period before the gift is given, the property
14 developer, or a close associate of the property developer,
15 has made 3 or more relevant planning applications.
- 16 Maximum penalty: 50 penalty units, imprisonment for 6 months or
17 both.
- 18 (3) A person commits an offence if—
- 19 (a) the person gives a gift to a political entity; and
- 20 (b) the gift is given on behalf of a property developer; and
- 21 (c) either—
- 22 (i) at the time the gift is given, the property developer, or a
23 close associate of the property developer, has made 1 or
24 more relevant planning applications that have not been
25 decided; or

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

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

6 (4) A person commits an offence if—

7 (a) the person asks another person to give a gift to a political entity
8 on behalf of a property developer; and

9 (b) either—

10 (i) at the time the gift is given, the property developer, or a
11 close associate of the property developer, has made 1 or
12 more relevant planning applications that have not been
13 decided; or

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

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

19 (5) In this section:

20 *asks* includes cause, induce or solicit.

- 1 **222G Ban on acceptance of gifts from property developers etc**
- 2 (1) A political entity commits an offence if—
- 3 (a) the entity accepts a gift made by, or on behalf of, a property
- 4 developer or a close associate of a property developer; and
- 5 (b) either—
- 6 (i) at the time the gift is given, the property developer, or a
- 7 close associate of the property developer, has made 1 or
- 8 more relevant planning applications that have not been
- 9 decided; or
- 10 (ii) in the 7-year period before the gift is given, the property
- 11 developer, or a close associate of the property developer,
- 12 has made 3 or more relevant planning applications.
- 13 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 14 both.
- 15 (2) Subsection (1) does not apply if the political entity takes reasonable
- 16 steps to ensure that—
- 17 (a) the person giving the gift, or the person on behalf of whom the
- 18 gift is given, is not a property developer or a close associate of
- 19 a property developer; or
- 20 (b) neither of the circumstances mentioned in subsection (1) (b)
- 21 apply to the property developer or close associate.
- 22 **Examples—reasonable steps**
- 23 1 obtaining a statutory declaration from the person who gives the gift about
- 24 whether the person is a property developer or a close associate of a property
- 25 developer
- 26 2 obtaining a statutory declaration from the person who gives the gift about
- 27 whether the circumstances mentioned in s (1) (b) apply in relation to the gift
- 28 *Note* The defendant has an evidential burden in relation to the matters
- 29 mentioned in s (2) (see [Criminal Code](#), s 58).

1 (3) If the political entity contravenes subsection (1), the financial
2 representative of the entity must pay to the Territory an amount equal
3 to the amount of the gift.

4 (4) The amount payable under subsection (3) is a debt payable to the
5 Territory by the financial representative for the political entity and
6 may be recovered by a proceeding in a court of competent
7 jurisdiction.

8 **222H Repayment of other gifts from property developers etc**

9 (1) This section applies if—

10 (a) a political entity accepts a gift made by, or on behalf of, a person;
11 and

12 (b) at the time the gift is given, the person is not a property
13 developer or a close associate of a property developer; and

14 (c) within 12 months after the gift is given—

15 (i) the person becomes a property developer or a close
16 associate of a property developer; and

17 (ii) a relevant planning application is made by the property
18 developer or close associate.

19 (2) The giver of the gift must pay to the Territory an amount equal to the
20 amount of the gift.

21 (3) The amount payable under subsection (2) is a debt payable to the
22 Territory by the giver of the gift and may be recovered by a
23 proceeding in a court of competent jurisdiction.

- 1 **222I Declaration that corporation not a property developer**
- 2 (1) A person may apply to the electoral commission in relation to a
- 3 corporation for a declaration that the corporation is not a property
- 4 developer.
- 5 (2) The electoral commission may make a declaration if satisfied that it
- 6 is more likely than not that the corporation is not a property
- 7 developer.
- 8 (3) The electoral commission must make its decision under
- 9 subsection (2) based solely on information provided by the applicant.
- 10 *Note* It is an offence to make a false or misleading statement, give false or
- 11 misleading information or produce a false or misleading document (see
- 12 [Criminal Code](#), pt 3.4).
- 13 (4) A declaration is in force for 12 months.
- 14 (5) A declaration—
- 15 (a) is conclusively presumed to be correct in favour of any person
- 16 for the purposes of a gift that the person makes or accepts while
- 17 the declaration is in force (even if the declaration is subsequently
- 18 found to be incorrect); and
- 19 (b) is not presumed to be correct in favour of any person who makes
- 20 or accepts a gift knowing that information given to the electoral
- 21 commission, on which the declaration is based, was false or
- 22 misleading in a material particular.
- 23 (6) If the electoral commission repeals a declaration it must give the
- 24 applicant 7 days written notice before the repeal.
- 25 (7) A declaration is a notifiable instrument.
- 26 *Note* A notifiable instrument must be notified under the [Legislation Act 2001](#).

12 New part 33

insert

**Part 33 Transitional—Electoral
Amendment Act 2018**

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

- (1) This section applies if, after the day the bill for this Act was presented to the Legislative Assembly and before the commencement of this Act, a political entity—
- (a) accepts a gift made by, or on behalf of, a property developer or close associate of the 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.
- (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.

- 1 (4) In this section:
2 *close associate*, of a property developer—see section 222D.
3 *decided*—see section 222B.
4 *gift*—see section 222B.
5 *financial representative*—see section 198.
6 *make*, a relevant planning application—see section 222B.
7 *political entity*—see section 222B.
8 *property developer*—see section 222C.
9 *relevant planning application*—see section 222E.

10 **518 Transitional regulations**

- 11 (1) A regulation may prescribe transitional matters necessary or
12 convenient to be prescribed because of the enactment of the *Electoral*
13 *Amendment Act 2018*.
14 (2) A regulation may modify this part (including in relation to another
15 territory law) to make provision in relation to anything that, in the
16 Executive’s opinion, is not, or is not adequately or appropriately,
17 dealt with in this part.
18 (3) A regulation under subsection (2) has effect despite anything
19 elsewhere in this Act or another territory law.

20 **519 Expiry—pt 33**

21 This part expires 3 months after the day it commences.

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

13 Dictionary, note 2

insert

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

14 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.

15 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.

- 1 **16 Dictionary, new definitions**
- 2 *insert*
- 3 *make*, a relevant planning application, for division 14.4A (Gifts from
4 property developers)—see section 222B.
- 5 *political entity*, for division 14.4A (Gifts from property
6 developers)—see section 222B.
- 7 *property developer*, for division 14.4A (Gifts from property
8 developers)—see section 222C.
- 9 *relevant planning application*, for division 14.4A (Gifts from
10 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 2018.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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