



New South Wales

Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009 No 113

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Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009 No 113

Act No 113, 2009

An Act to amend the *Election Funding and Disclosures Act 1981* to prohibit political donations by property developers. [Assented to 14 December 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Election Funding and Disclosures Act 1981 No 78

[1] Part 6, Division 4A

Insert after Division 4:

Division 4A Prohibition of property developer donations

96GA Political donations by property developers unlawful

- (1) It is unlawful for a property developer to make a political donation.
- (2) It is unlawful for a person to make a political donation on behalf of a property developer.
- (3) It is unlawful for a person to accept a political donation that was made (wholly or partly) by a property developer or by a person on behalf of a property developer.
- (4) It is unlawful for a property developer to solicit another person to make a political donation.
- (5) It is unlawful for a person to solicit another person on behalf of a property developer to make a political donation.

Note. Section 96I makes it an offence to do any act knowing that it is unlawful under this Division. Section 96J also provides for the recovery by the Authority of unlawful political donations.

96GB Meaning of “property developer”

- (1) Each of the following persons is a *property developer* for the purposes of this Division:
 - (a) a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit,
 - (b) a person who is a close associate of a corporation referred to in paragraph (a).
- (2) Any activity engaged in by a corporation for the dominant purpose of providing commercial premises at which the corporation or a related body corporate of the corporation will carry on business is to be disregarded for the purpose of determining whether the corporation is a property developer unless that business involves the sale or leasing of a substantial part of the premises.

- (3) In this section:
- close associate** of a corporation means each of the following:
- (a) a director or officer of the corporation or the spouse of such a director or officer,
 - (b) a related body corporate of the corporation,
 - (c) a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20% or the spouse of such a person,
 - (d) if the corporation or a related body corporate of the corporation is a stapled entity in relation to a stapled security—the other stapled entity in relation to that stapled security,
 - (e) if the corporation is a trustee, manager or responsible entity in relation to a trust—a person who holds more than 20% 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).

officer has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

relevant planning application has the same meaning as in section 147 (Disclosure of political donations and gifts) of the *Environmental Planning and Assessment Act 1979*.

spouse of a person includes a person who is in a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) with the person.

stapled entity means an entity the interests in which are traded along with the interests in another entity as stapled securities and (in the case of a stapled entity that is a trust) includes any trustee, manager or responsible entity in relation to the trust.

voting power has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

96GC Loans included as political donations

- (1) A loan that, if it had been a gift, would be a political donation is to be regarded as a political donation for the purposes of this Division unless the loan is from a financial institution.

- (2) In this section:

financial institution means an entity whose principal business is the provision of financial services or financial products, and includes a bank, credit union, building society or other entity prescribed by the regulations.

loan means an advance of money, the provision of credit or any other transaction that in substance effects a loan of money.

96GD Exception for membership contributions

An annual or other subscription paid to a party by an individual as a member of the party or for the individual's affiliation with the party is not a political donation for the purposes of this Division unless it is a reportable political donation.

Note. A political donation of \$1,000 or more is a reportable political donation—see section 86.

96GE Determination by Authority that person not a property developer

- (1) A person (***the applicant***) may apply to the Authority for a determination by the Authority that the applicant or another person is not a property developer for the purposes of this Division.
- (2) The Authority is authorised to make such a determination if the Authority is satisfied that it is more likely than not that the person is not a property developer. The Authority is to make its determination solely on the basis of information provided by the applicant.
- (3) The Authority's determination remains in force for 12 months after it is made but can be revoked by the Authority at any time by notice in writing to the applicant.
- (4) The Authority's determination is conclusively presumed to be correct in favour of any person for the purposes of a political donation that the person makes or accepts while the determination is in force (even if the determination is subsequently found to be incorrect).
- (5) The Authority's determination is not presumed to be correct in favour of any person who makes or accepts a political donation knowing that information provided to the Authority in connection with the making of the determination was false or misleading in a material particular.
- (6) The Authority is to maintain a public register of the determinations made under this section and is to publish the register on a website maintained by the Authority.

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- (7) A person who provides information to the Authority in connection with an application for a determination by the Authority under this section knowing that the information is false or misleading in a material particular is guilty of an offence.
Maximum penalty: 200 penalty units or imprisonment for 12 months, or both.
- (8) The Authority may establish and publicise policies as to how the Authority will deal with applications for determinations under this section.

[2] Section 96I Other offences

Omit “Division 3 or 4” from section 96I (1).

Insert instead “Division 3, 4 or 4A”.

[Agreement in principle speech made in Legislative Assembly on 25 November 2009
Second reading speech made in Legislative Council on 3 December 2009]

BY AUTHORITY