

## Ban on gifts from property developers

The *Electoral Act 1992* was amended in 2020 to give effect to a prohibition on the giving of political donations by property developers, the close associates of property developers or a person acting on their behalf to ACT political entities. The prohibition also extends to the acceptance of such gifts by political entities. The amendments take effect from 1 July 2021.

While this factsheet provides an overview of the ban on prohibited donor donations, it should not be regarded as a substitute for the law on any of the topics addressed. You are advised to obtain a copy of the *Electoral Act 1992* from [www.legislation.act.gov.au/a/1992-71/](http://www.legislation.act.gov.au/a/1992-71/) and seek your own legal advice if necessary.

### Definition of property developer

Property developer means:

- (a) 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:
  - (i) an incorporated association under the **Associations Incorporation Act 1991**;
  - (ii) a corporation operated on a not-for-profit basis;
  - (iii) a corporation declared by the Electoral Commission as not being a property developer;
  - (iv) any other corporation prescribed by regulation.

Examples related to (ii):

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

### Definition of close associate

A close associate of a property developer is 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.

## Ban on the provision of gifts by prohibited donors

If a property developer, a close associate of a property developer, a person acting on behalf of a property developer or close associate (collectively referred to as 'prohibited donors') gives a gift to a political entity, and either:

- (i) at the time a gift is given, the property developer or a close associate of a property developer has made one 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 a property developer has made three or more relevant planning applications,

then the prohibited donor is subject to a penalty or has committed a criminal offence, depending on the value of the gift.

### Penalties

#### *Value less than \$250*

If the value of the gift, or a collection of gifts by the same individual or organisation, in a financial year is less than \$250, then the giver of the gift must pay to the Territory an amount equal to the amount of the gift.

#### *Value of \$250 or more*

If the amount of the gift, or a collection of gifts by the same individual or organisation, in a financial year is \$250 or more, then the giver of the gift has committed a criminal offence. The maximum penalty for this offence is 50 penalty units (currently \$8,000 for an individual and \$40,500 for a corporation) or 6 months imprisonment, or both.

## Ban on the acceptance of gifts from prohibited donors

If a political entity accepts a gift made by a prohibited donor and either:

- (i) at the time a gift is given, the property developer or a close associate of a property developer has made one 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 a property developer has made three or more relevant planning applications,

and the political entity has not taken reasonable steps to ensure that the person giving the gift, or the person on behalf of whom the gift is given, is not a prohibited donor, then the political entity is subject to a penalty or has committed a criminal offence depending on the value of the gift.

## Penalties

### *Value less than \$250*

If the value of the gift, or a collection of gifts by the same individual or organisation, in a financial year is less than \$250, then the financial representative of the political entity must pay to the Territory an amount equal to the amount of the gift.

### *Value of \$250 or more*

If the amount of the gift, or a collection of gifts by the same individual or organisation, in a financial year is \$250 or more, then the political entity has committed a criminal offence. The maximum penalty for this offence is 50 penalty units (currently \$8,000 for an individual and \$40,500 for a corporation) or 6 months imprisonment, or both. In addition, the financial representative of the political entity must pay to the Territory an amount equal to the amount of the gift.

### *Examples of reasonable steps:*

Where the amount of the gift(s) is less than \$250, reasonable steps may be:

- giving potential donors written notice that donations from property developers or close associates of property developers are prohibited;
- asking the person who gives the gift about whether the person is a property developer or a close associate of a property developer.

Where the amount of the gifts is \$250 or more, reasonable steps may be:

- 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;
- obtaining a written declaration from the person who gives the gift about whether the circumstances mentioned in (i) or (ii) above apply in relation to the gift;
- asking the person who gives the gift whether the person is a property developer or a close associate of a property developer; or
- 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.

A suggested form for the purpose of taking reasonable steps is appended to this factsheet.

## Gifts from people who later become property developers

If a political entity accepts a gift made by, or on behalf of, a person; and

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

then the giver of the gift must pay to the Territory an amount equal to the amount of the gift.

## Transitional provision

The full law comes into effect on 1 July 2021. However, a transitional provision exists banning such gifts during the period from 18 October 2020 (the day following the most recent ACT election) until 30 June 2021 (the day before the full law comes into effect), inclusive.

If any prohibited donor gifts are accepted by a political entity during this period and were not returned within 30 days of receipt, and either:

- (i) at the time the gift is given, the property developer, or a close associate of the property developer, has made one 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 three or more relevant planning applications;

the gift amount must be paid to the Territory.

## Declaration that a corporation is not a property developer

A person may apply to the Electoral Commission in relation to a corporation seeking a declaration that the corporation is not a property developer.

The Electoral Commission may make a declaration if satisfied that it is more likely than not that the corporation is not a property developer. If the commission is not satisfied, it will not make any determination - that is, if the commission is not satisfied that the corporation is not a property developer, it is not, by its denial, determining that the corporation is a property developer.

The electoral commission must make its decision based solely on information provided by the applicant.

A declaration by the Commission is in force for 12 months.

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.

## Impact of commonwealth legislation on ACT law

Amendments to the Commonwealth Electoral Act 1918, that commenced on 1 December 2020, have had an effect of limiting the operation of the ACT's funding and disclosure scheme, as legislated by the ACT Legislative Assembly. The effect of the amendments mean that the ban on donations by prohibited donors do not apply under the ACT's Electoral Act 1992 if:

- the donor expressly gives the donation for a federal purpose; or
- the political party or associated entity of a political party in receipt of the gift deposits the gift of money, in a specifically designated federal account or, if the gift is not money, keeps the gift for federal purposes and uses it only for federal purposes; and

the associated political party has registration at both the ACT and federal levels.

Note that for political parties that only have registration at the ACT level, the full ACT funding and disclosure scheme applies unimpacted by the Commonwealth Electoral Act.

**OTHER DEFINITIONS** relevant to the ban on property developers and their close associates

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

### Gift

In addition to the existing definition below, for gifts from property developers, their close associates and persons on their behalf, gift also includes a **loan**, other than a loan given by a financial institution on a commercial basis.

The existing definition of gift: Gift means each of the following:

- a disposition of property made by a person or organisation to someone else, without consideration in money or money's worth or with inadequate consideration;
- the provision of a service, other than volunteer labour, for no consideration or inadequate consideration;
- the part of an annual subscription paid to a party for membership of the party that is more than \$250; and
- gifts given to MLAs in their capacity as a Minister.

A gift does **not** include:

- a disposition of property under a will;

- an annual subscription paid to a party for membership of the party that is \$250 or less;
- a gift that is given to an individual in a private capacity for the individual's private use and the individual does not use the gift solely or substantially for a purpose related to an election;
- administrative expenditure funding paid by the ACT Electoral Commission; or
- election funding paid by an electoral commission.

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

**Officer** see the Corporations Act, section 9.

**Political entity** means:

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

### **Relevant planning application**

1. **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 (2) above, if the property developer is the applicant, a reference to the applicant includes a close associate of the property developer.

### **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 at [www.legislation.gov.au](http://www.legislation.gov.au)

## Appendix – Suggested 'reasonable steps' form

### Declaration by donor that they are not a property developer or close associate of a property developer

To   
NAME OF POLITICAL PARTY OR ASSOCIATED ENTITY TO WHOM THE GIFT IS BEING GIVEN

I, , declare that I am giving  
FULL NAME

a gift of money to the value of \$   
VALUE

**OR** (tick one)

a gift in-kind being  to the value of \$   
DESCRIPTION OF THE GIFT VALUE

to   
NAME OF POLITICAL PARTY OR ASSOCIATED ENTITY TO WHOM THE GIFT IS BEING GIVEN

On behalf of    
NAME OF ORGANISATION RELATIONSHIP (e.g. DIRECTOR)

**OR** (tick one)

On my own behalf.

I declare that I am not a property developer, a close associate of a property developer, nor a person giving a gift on behalf of a property developer or a close associate of a property developer as defined under the *Electoral Act 1992* (ACT).

I also declare that I, or the person on whose behalf I am acting, do not currently have one or more planning applications that are yet to have been decided; or in the 7 years prior to the giving of this donation, have not made three or more planning applications.

SIGNATURE OF PERSON GIVING GIFT

/  /   
DATE