

EXTRACT FROM

Environmental Planning and Assessment Act 1979

147 Disclosure of political donations and gifts

- (1) The object of this section is to require the disclosure of relevant political donations or gifts when planning applications are made to minimise any perception of undue influence by:
- (a) requiring public disclosure of the political donations or gifts at the time planning applications (or public submissions relating to them) are made, and
 - (b) providing the opportunity for appropriate decisions to be made about the persons who will determine or advise on the determination of the planning applications.

Political donations or gifts are not relevant to the determination of any such planning application, and the making of political donations or gifts does not provide grounds for challenging the determination of any such planning application.

Note. This Act makes provision for planning applications to be referred to various bodies for advice or determination. Section 124A makes special provision where development consent is tainted by corruption. The Local Government Act 1993 makes provision with respect to voting by local councillors with a conflict of interest in any matter before the council.

- (2) In this section:

gift means a gift within the meaning of Part 6 of the Election Funding and Disclosures Act 1981.

Note. A gift includes a gift of money or the provision of any other valuable thing or service for no consideration or inadequate consideration.

local councillor means a councillor (including the mayor) of the council of a local government area.

relevant planning application means:

- (a) a formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site, or
- (b) a formal request to the Minister or the Director-General for development on a particular site to be made State significant development or State significant infrastructure or declared a project to which Part 3A applies, or
- (b1) an application for approval of State significant infrastructure (or for the modification of the approval for any such infrastructure), or
- (c) an application for approval of a concept plan or project under Part 3A (or for the modification of a concept plan or of the approval for a project), or

- (d) an application for development consent under Part 4 (or for the modification of a development consent), or
 - (e) any other application or request under or for the purposes of this Act that is prescribed by the regulations as a relevant planning application,
- but does not include:
- (f) an application for (or for the modification of) a complying development certificate, or
 - (g) an application or request made by a public authority on its own behalf or made on behalf of a public authority, or
 - (h) any other application or request that is excluded from this definition by the regulations.

relevant public submission means a written submission made by a person objecting to or supporting a relevant planning application or any development that would be authorised by the granting of the application.

reportable political donation means a reportable political donation within the meaning of Part 6 of the *Election Funding and Disclosures Act 1981* that is required to be disclosed under that Part.

Note. Reportable political donations include those of or above \$1,000.

- (3) A person:
 - (a) who makes a relevant planning application to the Minister or the Director-General is required to disclose all reportable political donations (if any) made within the relevant period to anyone by any person with a financial interest in the application, or
 - (b) who makes a relevant public submission to the Minister or the Director-General in relation to the application is required to disclose all reportable political donations (if any) made within the relevant period to anyone by the person making the submission or any associate of that person.

The relevant period is the period commencing 2 years before the application or submission is made and ending when the application is determined.

- (4) A person who makes a relevant planning application to a council is required to disclose the following reportable political donations and gifts (if any) made by any person with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined:
 - (a) all reportable political donations made to any local councillor of that council,
 - (b) all gifts made to any local councillor or employee of that council.

A reference in this subsection to a reportable political donation made to a local councillor includes a reference to a donation made at the time the person was a candidate for election to the council.

- (5) A person who makes a relevant public submission to a council in relation to a relevant planning application made to the council is required to disclose the following reportable political donations and gifts (if any) made by the person making the submission or any associate of that person within the period commencing 2 years before the submission is made and ending when the application is determined:

- (a) all reportable political donations made to any local councillor of that council,
- (b) all gifts made to any local councillor or employee of that council.

A reference in this subsection to a reportable political donation made to a local councillor includes a reference to a donation made at the time the person was a candidate for election to the council.

- (6) The disclosure of a reportable political donation or gift under this section is to be made:
 - (a) in, or in a statement accompanying, the relevant planning application or submission if the donation or gift is made before the application or submission is made, or
 - (b) if the donation or gift is made afterwards, in a statement to the person to whom the relevant planning application or submission was made within 7 days after the donation or gift is made.
- (7) For the purposes of this section, a person has a financial interest in a relevant planning application if:
 - (a) the person is the applicant or the person on whose behalf the application is made, or
 - (b) the person is an owner of the site to which the application relates or has entered into an agreement to acquire the site or any part of it, or
 - (c) the person is associated with a person referred to in paragraph (a) or (b) and is likely to obtain a financial gain if development that would be authorised by the application is authorised or carried out (other than a gain merely as a shareholder in a company listed on a stock exchange), or
 - (d) the person has any other interest relating to the application, the site or the owner of the site that is prescribed by the regulations.
- (8) For the purposes of this section, persons are associated with each other if:
 - (a) they carry on a business together in connection with the relevant planning application (in the case of the making of any such application) or they carry on a business together that may be affected by the granting of the application (in the case of a relevant planning submission), or
 - (b) they are related bodies corporate under the Corporations Act 2001 of the Commonwealth, or
 - (c) one is a director of a corporation and the other is any such related corporation or a director of any such related corporation, or
 - (d) they have any other relationship prescribed by the regulations.
- (9) The disclosure of reportable political donations under this section is to include disclosure of the following details of each such donation made during the relevant disclosure period:
 - (a) the name of the party or person for whose benefit the donation was made,
 - (b) the date on which the donation was made,
 - (c) the name of the donor,

- (d) the residential address of the donor (in the case of an individual) or the address of the registered or other official office of the donor (in the case of an entity),
- (e) the amount (or value) of the donation,
- (f) in the case of a donor that is an entity and not an individual—the Australian Business Number of the entity.

Note. The above details are the details required to be disclosed of political donations under Part 6 of the *Election Funding and Disclosures Act 1981*.

- (10) The disclosure of gifts under this section is to include disclosure of the following details of each such gift made during the relevant disclosure period:
 - (a) the name of the person to whom the gift was made,
 - (b) the date on which the gift was made,
 - (c) the name of the person who made the gift,
 - (d) the residential address of the person who made the gift (in the case of an individual) or the address of the registered or other official office of the person who made the gift (in the case of an entity),
 - (e) the amount (or value) of the gift.
- (11) A person is guilty of an offence under section 125 in connection with the obligations under this section only if the person fails to make a disclosure of a political donation or gift in accordance with this section that the person knows, or ought reasonably to know, was made and is required to be disclosed under this section. The maximum penalty for any such offence is the maximum penalty under Part 6 of the *Election Funding and Disclosures Act 1981* for making a false statement in a declaration of disclosures lodged under that Part.
- (12) Disclosures of reportable political donations and gifts under this section are to be made available to the public on, or in accordance with arrangements notified on:
 - (a) a website maintained by the Department (in the case of planning applications or submissions made to the Minister or the Director-General), or
 - (b) a website maintained by the council (in the case of planning applications or submissions made to that council).

The disclosures are to be made so available within 14 days after the disclosures are made under this section.

- (13) This section applies to relevant planning applications or submissions made after the commencement of this section and, in relation to any such application or submission, extends to political donations or gifts made before that commencement.