

LEGISLATIVE COUNCIL

LOCAL GOVERNMENT LEGISLATION AMENDMENT (RATING AND OTHER MATTERS) BILL 2022

(Amendments and New Clauses to be proposed in Committee by Dr RATNAM)

1. Page 22, after line 16 insert the following heading—

"Division 4—Gifts from prohibited donors".

NEW CLAUSES

2. Insert the following New Clauses to follow clause 41 and the heading proposed by amendment number 1—

'41A Definitions

In section 3(1) of the **Local Government Act 2020** insert the following definitions—

"gambling industry business entity has the meaning given by section 305C;

prohibited donor has the meaning given by section 305A;

property developer has the meaning given by section 305B;"

41B New sections 305A, 305B and 305C inserted

Before section 306 of the **Local Government Act 2020** insert—

"305A Meaning of *prohibited donor*

For the purposes of this Division, ***prohibited donor*** means—

- (a) a property developer; or
- (b) a gambling industry business entity—

and includes any industry representative organisation if the majority of its members are prohibited donors and does not include a person or entity in respect of whom a determination under section 309C is in effect.

305B Meaning of *property developer*

(1) For the purposes of this Division, ***property developer*** means—

- (a) a natural person or a corporation if—
 - (i) the natural person or corporation carries on a business mainly concerned with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit; and
 - (ii) in the course of the business—

- (A) one relevant planning application has been made by or on behalf of the natural person or corporation and is pending; or
 - (B) 3 or more relevant planning applications made by or on behalf of the natural person or corporation have been determined within the preceding 7 years; or
 - (b) a person who is a close associate of a natural person or a close associate of a corporation referred to in paragraph (a).
- (2) Any activity engaged in by a natural person or corporation for the dominant purpose of providing commercial premises at which the natural person or corporation, or a related body corporate of the corporation, will carry on business is to be disregarded for the purpose of determining whether the natural person or corporation is a property developer unless that business involves the sale or leasing of a substantial part of the premises.
- (3) In this section and section 305C—

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);
- (f) in relation to a corporation that is a property developer, a person in a joint venture or partnership with the property developer in connection with a relevant planning application made by or on behalf of the property developer who is likely to obtain a financial gain if development that would be or is authorised by the application is authorised or carried out;

close associate of a natural person means each of the following—

- (a) the spouse of person;
- (b) in relation to a natural person who is a property developer, a person in a joint venture or partnership with the property

developer in connection with a relevant planning application made by or on behalf of the property developer who is likely to obtain a financial gain if development that would be or is authorised by the application is authorised or carried out;

officer has the same meaning as it has in the Corporations Act;

related body corporate has the same meaning as it has in the Corporations Act;

relevant planning application means any of the following—

- (a) a request to a planning authority to make or amend a planning scheme under the **Planning and Environment Act 1987**;
- (b) a request to a responsible authority for a permit or an amendment to a permit under the **Planning and Environment Act 1987**;
- (c) an application or request that is prescribed by the regulations to be a relevant planning application;

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.

305C Meaning of *gambling industry business entity*

For the purpose of this Division, *gambling industry business entity* means—

- (a) a corporation engaged in a business undertaking that is mainly concerned with wagering, betting or other gambling (including the manufacture of machines used primarily for that purpose) but only if it is for the ultimate purpose of making a profit; or
- (b) a person who is a close associate of a corporation referred to in paragraph (a)."

41C Certain gifts not to be accepted

In section 309(1) of the **Local Government Act 2020**, for "It" substitute "Subject to section 309A, it".

41D New sections 309A, 309B, 309C, 309D and 309E inserted

After section 309 of the **Local Government Act 2020** insert—

"309A Gifts from prohibited donors unlawful

- (1) It is unlawful for a prohibited donor to make a gift—
 - (a) during the donation period, to a candidate or for the benefit of a candidate; or

- (b) to a Councillor.
- (2) It is unlawful for a person to make a gift on behalf of a prohibited donor—
 - (a) during the donation period, to a candidate or for the benefit of a candidate; or
 - (b) to a Councillor.
- (3) It is unlawful for a candidate or a person acting on behalf of a candidate to accept a gift during the donation period that was made (wholly or partly) by a prohibited donor or a person on behalf of a prohibited donor.
- (4) It is unlawful for a Councillor or a person acting on behalf of a Councillor to accept a gift that was made (wholly or partly) by a prohibited donor or a person on behalf of a prohibited donor.
- (5) It is unlawful for a prohibited donor to solicit another person to make a gift—
 - (a) during the donation period, to a candidate or for the benefit of a candidate; or
 - (b) to a Councillor.
- (6) It is unlawful for a person to solicit another person on behalf of a prohibited donor to make a gift—
 - (a) during the donation period, to a candidate or for the benefit of a candidate; or
 - (b) to a Councillor.
- (7) In this section—

gift means a gift the amount or value of which is equal to or exceeds the gift disclosure threshold.

309B Offence relating to gift from prohibited donor

A person who does any act that is unlawful under section 309A is guilty of an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful.

Penalty: 400 penalty units or imprisonment for 2 years.

309C Making of determination that person is not a prohibited donor

- (1) A person may apply to the VEC for a determination that the person, or another entity, is not a person or entity specified in section 305A(a) or (b).
- (2) The application must be written and supported by enough information to enable the VEC to decide the application.
- (3) If the VEC is satisfied the person or entity to whom the application relates is not a person or entity specified in section 305A(a) or (b), the VEC must make the determination sought by the applicant.

- (4) If the VEC is not satisfied the person or entity to whom the application relates is not a person or entity specified in section 305A(a) or (b), the VEC must—
 - (a) decide not to make the determination; and
 - (b) give the applicant an information notice about the decision.
- (5) A determination made under this section has effect for 1 year unless it is earlier revoked.

309D Revocation of determination

- (1) If, at any time, the VEC ceases to be satisfied that the person or entity in respect of whom a determination under section 309C relates is not a person or entity specified in section 305A(a) or (b), the VEC may revoke the determination by giving a written notice of revocation to the person or entity and, if the person or entity was not the applicant for the determination, the applicant.
- (2) The notice of revocation given to the person or entity must include, or be accompanied by, an information notice about the decision to revoke the determination.

309E Register of determinations

- (1) The VEC must keep a register of determinations made under section 309C.
- (2) The register must include any revocations made under section 309D.
- (3) The VEC must make the register available for public inspection without fee."

41E Certain amounts forfeited to State

In section 310(1) of the **Local Government Act 2020**, after "309" insert "or 309A".

41F New section 310A inserted

After section 310 of the **Local Government Act 2020** insert—

"310A Exception for membership subscriptions

An annual or other subscription paid to a party by a natural person as a member of the party or for the person's affiliation with the party is not a gift for the purposes of this Division unless it is above the gift disclosure threshold.".