

LEGISLATIVE COUNCIL

LOCAL GOVERNMENT AMENDMENT (GOVERNANCE AND INTEGRITY) BILL
2024

(Amendments and New Clauses to be proposed in Committee by SARAH MANSFIELD)

1. Clause 1, page 2, lines 4 to 7, omit all words and expressions on these lines.
2. Clause 1, page 2, line 13, omit "changes;" and insert "changes."
3. Clause 1, page 2, lines 14 to 17, omit all words and expressions on these lines.
4. Clause 2, lines 19 to 20, omit "and Part 4".
5. Clause 2, line 22, omit "and Part 4 come" and insert "comes".
6. Clause 4, after line 20 insert—

'(2A) In section 3(1) of the Principal Act **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;"'.
7. Clause 6, lines 11 to 14, omit all words and expressions on these lines and insert—

"(2) Section 34(2)(i) of the Principal Act is **repealed**."
8. Clause 6, line 17, after "years" insert "and the period during which the person may apply under section 170 to VCAT for a review of those findings has expired".
9. Clause 6, lines 24 to 28, omit all words and expressions on these lines and insert—

'adverse decision means a finding of serious misconduct under section 167.'"'
10. Clause 7, omit this clause.
11. Clause 12, omit this clause.
12. Clause 14, omit this clause.
13. Clause 15, omit this clause.
14. Clause 19, page 13, lines 10 to 34 and page 14, lines 1 to 7, omit all words and expressions on these lines.
15. Clause 26, line 17, omit "functions." and insert 'functions.'"'

16. Clause 26, lines 18 to 31 and page 21, lines 1 to 5, omit all words and expressions on these lines.
17. Clause 31, omit this clause.

NEW CLAUSE

18. Insert the following New Clause to follow clause 32—

'32A New sections 305A to 305E inserted

Before section 306 of the Principal Act **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) three 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 the 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 purposes 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).

305D General cap on gifts

- (1) It is unlawful for a person or body to make a gift to or for the benefit of a Councillor or candidate if the gift exceeds the general cap for the election period.
- (2) It is unlawful for a Councillor or candidate to accept a gift from a person or body if, by itself or due to aggregation under subsection (6), the gift exceeds the general cap for the election period.
- (3) Despite subsection (2), a Councillor or candidate may accept a gift that, due to aggregation under subsection (6), exceeds the general cap for the election period if the Councillor or candidate does not know, and could not reasonably have known, of the other gifts included in the aggregation.
- (4) If a Councillor or candidate accepts a gift in accordance with subsection (3), the Councillor or candidate must return to the donor or forfeit to the State the amount by which the gift exceeds the general cap for the election period.
- (5) In determining whether the general cap is exceeded for the election period, the following must be disregarded—
 - (a) a contribution made by the Councillor or candidate to their own election campaign;
 - (b) a minor gift made to or for the benefit of the Councillor or candidate.
- (6) For the purposes of this section, a gift the value of which is equal to or less than the general cap must be treated as a gift that exceeds the general cap if the aggregate of the gift and all other gifts (excluding minor gifts) made by the same person or body to the same

Councillor or candidate within the election period exceeds the general cap.

- (7) A person who knowingly makes or accepts a gift that it is unlawful for the person to make or accept under this section is guilty of an offence.

Penalty: 300 penalty units or 2 years imprisonment or both.

- (8) In this section—

general cap means the amount determined under section 305E;

minor gift means a gift the value of which is equal to or less than \$50.

305E Amount of general cap

- (1) The general cap, in respect of a Councillor or candidate, is—

- (a) for an election period that starts before 1 July 2025, the amount of \$4000; or
- (b) for an election period that starts on or after 1 July 2025, the amount determined under subsection (2).

- (2) For the purposes of subsection (1)(b), the amount specified in subsection (1)(a) must be varied, for the financial year beginning 1 July 2025 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount specified in subsection (1)(a) or, if that amount has been varied in accordance with this section, that amount as last so varied;

B is the all groups consumer price index for Melbourne in original terms for the most recent reference period in the preceding calendar year most recently published by the Australian Bureau of Statistics as at 15 June immediately preceding the day on which the variation is made;

C is the all groups consumer price index for Melbourne in original terms for the corresponding reference period one year before the reference period referred to in **B** published by the Australian Bureau of Statistics as at 15 June immediately preceding the day on which the variation is made.

- (3) Where it is necessary for the purposes of this section to calculate an amount, the amount is taken to have been calculated in accordance with this section if the calculation is made to the nearest whole \$10.

305F Interim return by candidate

- (1) No later than 14 days before election day, a person who is a candidate in the election must give an interim election campaign donation return to the Chief Executive Officer.
- Penalty: 60 penalty units.
- (2) An interim election campaign donation return must—
- (a) be in the prescribed form; and
 - (b) contain the prescribed details in respect of any gifts received since the beginning of the donation period by or on behalf of the candidate, to be used for or in connection with the election campaign, the amount or value of which is equal to or exceeds the gift disclosure threshold.
- (3) Despite subsection (2), a candidate is not required to specify the prescribed details of an amount in an interim return if—
- (a) the amount was a gift made in a private capacity to the candidate for the candidate's personal use; and
 - (b) the candidate has not used, and will not use, the gift solely or substantially for a purpose related to the election.
- (4) A reference in subsection (2) to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.
- (5) For the purposes of this section, 2 or more gifts made by the same person to or for the benefit of a candidate are to be taken to be one donation.
- (6) A person who—
- (a) gives an interim return that contains particulars that the person knows are false or misleading in a material particular; or
 - (b) provides information that the person knows is false or misleading in a material particular to a person required to give an interim return under this section—
- is guilty of an offence and liable to a fine not exceeding 60 penalty units.
- (7) If a person is found guilty or convicted of an offence under subsection (6), a court may make an order that the offender give an interim return under subsection (1) that is not false or misleading in a material particular.
- (8) If no details are required to be included in an interim return under this section in respect of a candidate, the interim return—
- (a) must be given; and
 - (b) must include a statement to the effect that no gifts of a kind required to be disclosed were received."!

NEW CLAUSES

19. Insert the following New Clauses to follow clause 33—

'33A Responsibilities of Chief Executive Officer

Before section 307(1) of the Principal Act **insert**—

"(1AA) The Chief Executive Officer must ensure that, no later than 7 days before election day, a summary of each interim election campaign donation return given to the Chief Executive Officer under section 305F is made available on the Council's Internet site."

33B Other matters relating to summaries of returns

(1) In section 308(3) of the Principal Act, for "given under section 306" **substitute** "received by the Chief Executive Officer".

(2) After section 308(3) of the Principal Act **insert**—

"(4) In this section—

election campaign donation return includes an interim election campaign donation return."

33C Certain gifts not to be accepted

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

33D New sections 309A to 309E inserted

After section 309 of the Principal Act **insert**—

"309A Gifts from prohibited donors unlawful

(1) It is unlawful for a prohibited donor to make a gift the amount or value of which is equal to or exceeds the gift disclosure threshold—

(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 the amount or value of which is equal to or exceeds the gift disclosure threshold 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 the amount or value of which is equal to or exceeds the gift disclosure threshold 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 the amount or value of which is equal to or exceeds the gift disclosure threshold 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 the amount or value of which is equal to or exceeds the gift disclosure threshold—
 - (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 the amount or value of which is equal to or exceeds the gift disclosure threshold—
 - (a) during the donation period, to a candidate or for the benefit of a candidate; or
 - (b) to a Councillor.

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."

33E Certain amounts forfeited to State

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

33F New section 310A inserted

After section 310 of the Principal Act **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.".

20. Clause 45, omit this clause.
21. Clause 46, omit this clause.
22. Clause 58, lines 32 to 34 and page 43, lines 1 to 15, omit all words and expressions on these lines and insert—

'For section 149(3) of the Principal Act **substitute**—

- "(3) Without limiting subsection (2), the Principal Councillor Conduct Registrar may do any of the following—
- (a) request information from a Council that the Principal Councillor Conduct Registrar considers necessary to make a determination under section 144(1)(c) or 155(1)(c);
- (b) request information from a Council or another person or body that the Principal Councillor Conduct Registrar considers necessary to make a determination under section 144(1B) or 155(2);
- (c) disclose information in an application made under section 143 or 154 to a person or body that the Principal Councillor Conduct Registrar is satisfied under section 144(1B) or 155(2) is dealing with or would more appropriately deal with the matter the subject of the application.".

23. Clause 66, omit this clause.

24. Clause 69, page 48, lines 17 to 18, omit all words and expressions on these lines.
25. Clause 70, omit this clause.
26. Clause 72, omit this clause.
27. Part heading preceding clause 74, omit this heading.
28. Clause 74, omit this clause.
29. Clause 75, omit this clause.

AMENDMENT OF LONG TITLE

30. Long title, omit ", to make consequential amendments to the **Victorian Civil and Administrative Tribunal Act 1998**".