

Local government election campaigns and donations from property developers

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With local government elections looming, there are again calls for Western Australia (**WA**) to follow New South Wales (**NSW**) and Queensland (**QLD**) laws prohibiting donations from property developers.

In WA, Part 5 Division 6 of the Local Government Act 1995 (WA) (**LG Act**) imposes obligations on local government council members, local government employees including those with delegated powers, and local government CEOs to disclose financial interests and gifts received. This would include gifts and/or donations received for political or electoral purposes. However, these provisions do not extend to candidates in local government elections as these obligations are only triggered once a candidate has been successfully elected.

Any employee of a local government who nominates to be a candidate for election is taken to be on leave from the day of nomination until the election is determined (see s.5.51 LGA) and as an employee they will be required to comply with the Local Government (Model Code of Conduct) Regulations 2021, any adopted Rules of Conduct and the disclosure obligations contained in the Local Government Act 1995. Incumbent councillors will also be required to comply with the above provisions, although they will still be performing their duties throughout the election campaign period.

As a result there is little in the LG Act regulating the conduct of candidates who are not local government employees or current councillors with respect to the declaration of donations or gifts.

This position is in stark contrast to our eastern states counterparts.

For example, the Electoral Act 1992 (Qld) and the Local Government Electoral Act 2001 (Qld) contain mirror provisions prohibiting political donations from property developers in state and local elections. The Local Government Electoral Act 2001 (Qld) expressly applies to candidates or a groups of candidates in local government elections.

Pursuant to the Queensland legislation, a prohibited donor means a property developer which includes organisations where the majority of members are property developers.

As to who may be considered a 'property developer' the eastern states legislation has cast the net wide, capturing the activities of those engaged in the making of regular planning applications in connection with residential or commercial development of land, with the ultimate purpose of the sale or lease of that land for profit, including:

- corporations;
- related body corporates;
- directors;
- spouses;
- trustees;
- managers; or
- persons responsible and those with more than a 20% voting capacity in a corporation.

In WA, the eastern states model is criticised for unfairly focusing on property developers. While the

criticism is warranted, it is undoubtedly the big end of town that have the cash to splash and have the ability to influence and encourage candidates to view their development applications favourably in the future.

If the eastern states model were to be adopted in WA it would mean that all candidates would need a thorough understanding about who is making the donation, ensure that the donor is not engaged in the business of making regular planning applications and ensure that any gifts or donations accepted are not used for an electoral purpose, that is, incurring expenditure for the purposes of an election campaign.

This is a significant imposition on candidates standing for election for the first time who may not be appropriately resourced to make these enquiries, may not have received appropriate or adequate training and who may not fully appreciate the potential ramifications surrounding campaign funding. It also fails to consider the statutory requirement for councillors to act properly by declaring interests and refraining from voting where relevant. The mandatory training requirements should provide enough protection for the comfort of the community and one wonders whether this latest push for reform is because there is not majority compliance or because elections loom and it is an attention grabbing subject given recent ICAC developments in the east.

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