



Attorney-General
Minister for the Arts and Cultural Events
Minister for Building Quality Improvement
Minister for Business and Regulatory Services
Minister for Seniors and Veterans
Member for Ginninderra

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
CANBERRA ACT 2601

Dear Mrs Jones

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in its Scrutiny Report 26 published on 5 February 2019 in relation to the Electoral Amendment Bill 2018 (the Bill). I thank the Committee for its comments on the Bill, and I offer the following responses:

Section 222H

The Committee drew attention to new section 222H of the Bill, and requested further information on the intended operation and its impact on protected rights under the *Human Rights Act 2004*. New section 222H would require givers of political donations to pay an equal amount to the Territory if, within 12 months after giving a donation, that person or entity becomes a property developer.

Section 222H was drafted based section 58 of the New South Wales *Electoral Funding Act 2018*. That Act, as with section 222H, focuses on the obligations of the person who becomes a property developer after making a donation. The repayment provisions provide a financial deterrent by imposing a cost on individuals or entities who make a donation and later become property developers. That deterrent is proportionate, and it reflects the unique situation that is addressed by the legislation. That situation is where someone is not currently in the property development business but enters it after making a political donation.

The obligation to repay is properly on the giver of a donation, and the cost disincentive is proportionate to the limited circumstances this amendment will address. Recipients of gifts will not often, if ever, be in a position to know whether a giver has changed their business 12 months after the fact. Also, the giver of the gift is uniquely positioned to know whether there is a possibility they will become a property developer in the future.

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The obligation to pay an equivalent amount to the Territory represents a cost disincentive to make donations and then enter the property development business. Going further than this could unfairly affect both givers and receivers of gifts in circumstances where neither could have had any foreknowledge about the change in circumstances that would make future gifts prohibited.

Proposed section 517 - transitional provisions

The Committee notes that this provision would discourage the use by political entities of lawful gifts. The intention of the Bill is to prohibit donations by property developers to ensure public confidence in the integrity and transparency of Government decisions about land. Section 517 was included to prevent donations in advance of a ban from undermining that public confidence, and advantaging donations made between the announcement of the intended ban and its passage. The same human rights analysis that supports of the ban on political donations by property developers applies to this measure.

Proposed section 518 - Henry VIII clause

The Standing Committee has commented that it considers the transitional provisions in section 518 of the Bill to inappropriately delegated legislative powers. Transitional provisions have been included in the Bill to resolve any unforeseen issues to support the commencement or operation of the amendments in the Bill.

The power to make transitional regulations only allows the Executive to respond in a temporary way to matters of a transitional nature which may come up within three months after commencement, particularly to ensure a smooth transition period, to the new legislative scheme. The 'amendments' in a transitional regulation do not actually amend the words of the law they 'amend', but rather operate to modify their effect temporarily. The regulation itself is disallowable.

As the power to make transitional regulations is limited in its scope to transitional matters, it does not represent an inappropriate delegation of Territory powers and the power is not beyond the law-making power of the Legislative Assembly.

I thank the Committee again for its scrutiny of and comments on the Electoral Bill 2018. I trust that this response addresses the Committee's comments on the Bill.

Yours sincerely

Gordon Ramsay MLA
Attorney-General