

NSW Electoral Commission response to questions on notice

Budget Estimates 2024-2025

Portfolio Committee No. 1 – Premier and Finance

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Question 1

From the Hon. Chris Rath MLC

I want to start with the Electoral Funding Act and the definition of “property developer”. I wonder if there is ever ambiguity or concerns from the Electoral Commission regarding certain entities about whether they meet that criteria and whether their principal business regards development – one relevant planning application that's currently pending or three in the past seven years. Is it difficult at times, when it comes to donors, to determine whether they meet that threshold of being a property developer?

NSW Electoral Commission response

The definition of “property developer” in the former *Election Funding, Expenditure and Disclosure Act 1981* required that a corporation be engaged in a business that “regularly” involves the making of planning applications.

The NSW Electoral Commission (Electoral Commission) considers the current definition in the *Electoral Funding Act 2018* (EF Act) to be easier to apply because it specifies the number of planning applications and the applicable timeframe. This increased level of detail has assisted the Electoral Commission to respond to alleged breaches of the EF Act, supporting consistency in compliance action, as well as providing clearer guidance to election participants and potential donors about their statutory obligations.

Question 2

From the Hon. Chris Rath MLC

Again, you might need to take this on notice, but with regard to the definition of "property developer", if there is a State-based entity but it's linked to a Federal entity that might be a property developer, does that mean then that the State-based entity is also a developer as part of the "close associate" definition?

NSW Electoral Commission response

If the Federal entity is a property developer within the meaning of section 53 of the EF Act, whether the State-based entity is a close associate will depend on the type of entities and the nature of the relationship between them.

The definition of a close associate is found at section 53(5) of the EF Act. A close associate of a corporation means each of the following:

- a director or officer of the corporation or the spouse of such a director or officer,
- a related body corporate of the corporation (within the meaning of the *Commonwealth Corporations Act*),
- a person whose voting power in the corporation or a related body corporate of the corporation is greater than 20 per cent or the spouse of such a person,
- 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,

- if the corporation is a trustee, manager or responsible entity in relation to a trust—a person who holds more than 20 per cent 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),
- 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.

As to the meaning of “related body corporate”, section 50 of the Commonwealth *Corporations Act* provides that, where a body corporate is a holding company of another body corporate, a subsidiary of another body corporate, or a subsidiary of a holding company of another body corporate, the first body and the other body are related to each other.

Question 3

From the Hon. Chris Rath MLC

The other one as well that you probably need to take on notice, unless anyone else can help, is about if the property development is interstate—so they don't or haven't had any active DAs in New South Wales *per se*, but they're an entity or linked to an entity that have had DAs or have been engaged in property development interstate. Does that then make them a property developer by that definition in New South Wales as well?

NSW Electoral Commission response

The phrase “relevant planning application” in the definition of “property developer” in section 53 of the EF Act has the same meaning as in section 10.4 (Disclosure of political donations and gifts) of the [Environmental Planning and Assessment Act 1979 \(NSW\)](#). It is concerned with applications made in NSW. Planning applications made under legislation in other states or territories will not count towards the number of planning applications required to meet the definition of a “property developer”.