



Joint Standing Committee on Electoral Matters

Report 4/56 – October 2018

Inquiry into the impact of expenditure caps for local government election
campaigns



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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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Membership

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Chair's Foreword

I am pleased to present the Joint Standing Committee on Electoral Matters' fourth report of the 56th Parliament, and my second as Chair of the Committee. This report contains the Committee's comments and recommendations for the Inquiry into the impact of expenditure caps for local government elections campaigns. In particular, the Committee closely considered the adequacy of the expenditure caps for candidates of local government elections introduced in the *Electoral Funding Act 2018*.

Candidates can be expected to incur expenditure in order to run an election campaign. The introduction of expenditure caps for local government election campaigns was an important development – it aligned local government with other levels of government and helps to promote fairness between candidates. Electoral contest should be a battle of competing visions and ideas, not competing bank balances.

The Committee found, however, that the current model for calculating expenditure caps for candidates in local government election campaigns is inadequate. The caps invariably lead to large discrepancies in local government areas across the State. In particular, there are large differences for those candidates standing in especially small or large electorates. These differences are more prominent when the caps are considered in terms of how much a candidate can spend per voter in their electorate.

As such, the Committee has recommended that section 31 of the *Electoral Funding Act 2018* be substantially amended to introduce a new model which is more closely linked to the number of enrolled voters in an electorate.

In our recommended model, expenditure caps are allocated to different 'bands' depending on how many voters are in an electorate. The caps increase in line with the number of voters. The model is premised on the notion that there is a base fixed cost for running in any campaign, plus an additional amount required based on the number of voters in a particular constituency. This additional amount is not strictly linear, as there are undeniable economies of scale which can be obtained in larger campaigns – thus the 'per voter' quantum declines with each succeeding band. The Committee believes that this will create a fairer system, where candidates running in wards or local government areas with similar numbers of electors will be allowed to spend the same amount.

We have also recommended that this model applies equally to all candidates, or groups of candidates, regardless of whether they are endorsed by a party or independent. This will create a simpler system and ensure that candidates are able to easily work out how much they are entitled to spend. Where candidates are endorsed by a party, any expenditure undertaken by a party on behalf of a candidate will be apportioned to that candidate's or group's cap.

The Committee has allowed for some additional spending for mayoral candidates in recognition of the additional expenses that they incur reaching a greater numbers of voters. Expenditure caps for mayoral candidates should also be based on the recommended model for councillor candidates.

The Committee has also recommended that expenditure caps for third-party campaigners be linked to those of candidates. The existing 'flat rate' amount bore no relation to the actual costs

of communicating to constituencies of varying size. In some cases, the new system will lead to a higher cap than is currently allowed for, but the Committee considers that this is appropriate, provided that expenditure by third-party campaigners remains significantly lower than that of candidates.

This was an important inquiry to undertake given that the next general local government elections are scheduled for 2020. It is important that legislation is passed by Parliament as soon as practicable and the Committee hopes that the recommendations will be adopted by the Government.

On behalf of the Committee, I would like to thank each of the individuals and organisations that made submissions to this inquiry and gave evidence at the Committee's public hearing. Their contribution has been useful to the Committee in furthering its understanding of the matters of concern, and formulating our comments and final recommendations.

I would also like to thank my committee colleagues, The Hon. Robert Borsak MLC, Ms Steph Cooke MP, Mr Adam Crouch MP, The Hon. Ben Franklin MLC, Mr Andrew Fraser MP, The Hon. Courtney Houssos MLC, The Hon. Peter Primrose MLC, Mr Jai Rowell MP, Mr Mark Taylor MP, and Mr Paul Scully MP, for their diligence, insight and collegial cooperation throughout this inquiry.

Unfortunately, this report does not have the unanimous support of the members of the Committee. While the Labor members of the Committee supported each of the policy principles which undergird this report, the specific quantum of expenditure for each band and the amount able to be spent by third-parties, as suggested by Labor, was not reconcilable with the majority position of the Committee. Nevertheless, I appreciate the effort and thought which Labor members put into this process and into their own policy recommendations. Although they were not members of the Committee, I also wish to thank the NSW Greens for their input into the consideration of these matters.

Finally, I would like to thank the Committee staff, Clara Hawker, Leon Last, Caroline Hopley, Derya Sekmen, and Jennifer Gallagher, for their work in assisting and organising throughout the inquiry, and in the preparation of this report.

The Hon Dr Peter Phelps MLC
Chair

Findings and Recommendations

Recommendation 1 _____ 8

The Committee recommends that the Government substantially amend the expenditure caps outlined in sections 31(3) – 31(9) in the *Electoral Funding Act 2018*.

Recommendation 2 _____ 11

The Committee recommends that the following expenditure caps be introduced:

For a local government general election, the applicable cap for an ungrouped candidate or for a group of candidates is:

- \$6,000 where the number of enrolled electors for the local government area or ward is smaller than 5,001
- \$10,000 where the number of enrolled electors for the local government area or ward is larger than 5,000 and smaller than 10,001
- \$18,000 where the number of enrolled electors for the local government area or ward is larger than 10,000 and smaller than 20,001
- \$25,000 where the number of enrolled electors for the local government area or ward is larger than 20,000 and smaller than 30,001
- \$36,000 where the number of enrolled electors for the local government area or ward is larger than 30,000 and smaller than 50,001
- \$46,000 where the number of enrolled electors for the local government area or ward is larger than 50,000 and smaller than 75,001
- \$63,500 where the number of enrolled electors for the local government area or ward is larger than 75,000 and smaller than 125,001
- \$72,000 where the number of enrolled electors for the local government area or ward is larger than 125,000

Recommendation 3 _____ 11

The Committee recommends that the model for expenditure caps outlined in Recommendation 2 applies equally to candidates, or groups of candidates, whether they are endorsed by a party or are independent.

Recommendation 4 _____ 12

The Committee recommends that when a political party incurs electoral expenditure for the purposes of the election in a particular local government area or ward, that expenditure be apportioned to any candidates endorsed by that party running in that local government area or ward.

Recommendation 5 _____ 14

The Committee recommends that the population figure of enrolled electors on which to calculate expenditure caps is taken to be the number of enrolled electors in a ward or undivided local government area twelve months prior to the election.

Recommendation 6 _____ 14

The Committee recommends that the NSW Electoral Commission provide candidates with the number of enrolled electors in their electorate and the relevant expenditure cap that they will be subject to. This information should also be published on the NSW Electoral Commission website.

Recommendation 7 _____ 18

The Committee recommends that expenditure caps for directly elected mayoral candidates, or groups containing a candidate for directly elected mayor, be set at:

- In multi-ward local government areas:
 - Where the mayoral candidate is also running for councillor, 100 per cent of the cap for the ward in which they are running, plus the sum of 25 per cent of each additional ward in that local government area.
 - Where the mayoral candidate is not running for councillor, 100 per cent of the cap for the largest ward in the local government area, plus the sum of 25 per cent of each additional ward in that local government area.
- In undivided local government areas:
 - 100 per cent of the cap for councillors in that local government area, plus an additional 25 per cent of that cap.

Recommendation 8 _____ 21

The Committee recommends that expenditure caps for third-party campaigners be set at one-third of the relevant cap that applies to a candidate running in the ward or undivided local government area in which the expenditure occurs.

Recommendation 9 _____ 22

The Committee recommends that non-residential voters are not counted when calculating the number of electors in a ward or undivided local government area, except where voting by non-residential electors is mandatory.

Chapter One – A New Model for Calculating Expenditure Caps

The current model for expenditure caps in local government election campaigns

- 1.1 In May 2018, the *Electoral Funding Bill 2018* was passed by Parliament and assented to. The *Electoral Funding Act 2018* (the Act) provides caps on the amounts candidates are permitted to spend on electoral expenditure for local government election campaigns.
- 1.2 There are several different caps depending on the circumstances of the candidate. Each cap has a different value depending on whether there were more or fewer than 200,000 enrolled electors at the previous election for the local government area or ward in which the candidate is standing.
- 1.3 The relevant caps for electoral expenditure in local government elections are:
 - For a candidate who is endorsed by a party and not a member of a group:
 - \$20,000 – where the number of enrolled electors at the previous general election for the local government area or ward concerned was 200,000 or fewer; and
 - \$30,000 – where the number of enrolled electors at the previous general election for the local government area or ward concerned was more than 200,000.
 - For a candidate who is not endorsed by a party and not a member of a group:
 - \$25,000 – where the number of enrolled electors at the previous general election for the local government area or ward concerned was 200,000 or fewer; and
 - \$35,000 – where the number of enrolled electors at the previous general election for the local government area or ward concerned was more than 200,000.
 - For a group of candidates who are endorsed by a party:
 - \$30,000 – where the number of enrolled electors at the previous general election for the local government area or ward concerned was 200,000 or fewer; and
 - \$40,000 – where the number of enrolled electors at the previous general election for the local government area or ward concerned was more than 200,000.

- For a group of candidates who are not endorsed by a party:
 - \$35,000 – where the number of enrolled electors at the previous general election for the local government area or ward concerned was 200,000 or fewer; and
 - \$45,000 – where the number of enrolled electors at the previous general election for the local government area or ward concerned was more than 200,000.¹

1.4 The Act provides the following expenditure cap for parties that endorse candidates for election:

- The sum of:
 - \$5,000 multiplied by the number of wards in which the party has endorsed candidates; and
 - \$5,000 multiplied by the number of local government areas not divided into wards in which the party has endorsed candidates.²

1.5 In addition, a party must not spend more than \$5,000 substantially for the purposes of the election in any particular local government area or ward.³

1.6 The Act also sets out expenditure caps for mayoral candidates, third-party campaigners and during by-elections.⁴ The expenditure caps for mayoral candidates and third-party campaigners will be discussed in Chapter 2.

1.7 This is the first time that expenditure caps have been introduced for local government election campaigns. The Committee heard that the concept of expenditure caps was largely welcomed by stakeholders. Cr Linda Scott, President, Local Government NSW told the Committee that:

... we have put the view that there should be caps. That has been a consultation and discussion with councils, as well. We have received consistent feedback that that is a united view within the sector. That is quite an achievement, given the 128 councils in the sector. So there is support for that proposition...⁵

Concerns raised about the current model

1.8 While there was general support for introducing expenditure caps for local government election campaigns, concerns were raised about the particular figures used in calculating the cap amounts.

¹ *Electoral Funding Act 2018*, ss31(3) – (6)

² *Electoral Funding Act 2018*, s31(2)

³ *Electoral Funding Act 2018*, s31(12)(a)

⁴ *Electoral Funding Act 2018*, ss31(7) - (10)

⁵ Cr Linda Scott, President, Local Government NSW, Transcript of evidence, 24 September 2018, p16

Differences caused by number of voters in an electorate

- 1.9 The main issue was the fact that the expenditure cap only changes when there are more than 200,000 enrolled electors in a local government area or ward. Most submissions argued that this caused large discrepancies in the amount that candidates were able to spend when the cap was considered on a per elector basis.
- 1.10 There can be large differences in the number of enrolled electors in local government areas (LGAs). Local Government NSW noted that the different sized electorates for local governments across the state made it difficult to design universal expenditure caps:
- 28 LGAs have fewer than 5000 enrolled electors, while 34 LGAs have more than 50,000 and 18 have more than 100,000 enrolled electors. This extreme variation in enrolled elector numbers for LGAs across NSW presents challenges in legislating for fair and equitable electoral expenditure caps.⁶
- 1.11 As an example, according to data published by the NSW Electoral Commission, as of August 2018, Brewarrina Shire Council had an enrolment of 925 voters, while the City of Sydney Council had an enrolment of 119,722 voters.⁷
- 1.12 Since both of these LGAs have fewer than 200,000 electors, a candidate standing for election in either of these areas would be subject to the same expenditure cap. If the expenditure cap is considered in terms of how much can be spent per elector, the figures are as follows:
- For a party-endorsed candidate
 - Brewarrina Shire Council - \$20,000 = \$21.62 per voter
 - City of Sydney Council - \$20,000 = \$0.17 per voter
 - For a party-endorsed group
 - Brewarrina Shire Council - \$30,000 = \$32.43 per voter
 - City of Sydney Council - \$30,000 = \$0.25 per voter
- 1.13 The cap for parties that want to incur electoral expenditure on behalf of a candidate or group in these electorates would also have similar discrepancies if their funding was considered on a per elector basis. The figures are:
- Brewarrina Shire Council - \$5,000 = \$5.40 per voter
 - City of Sydney Council - \$5,000 = \$0.04 per voter
- 1.14 Local Government NSW emphasised that the number of electors will affect the amount a candidate will need to spend and the current model causes discrepancies between larger and smaller LGAs:

⁶ Local Government NSW, Submission 3, p5

⁷ NSW Electoral Commission, Council Area Statistics, [Council Area Statistics](#) accessed 2 October 2018

There is clearly a link between the number of electors in an LGA and the amount of funding required to support advertising and to effectively campaign in that LGA. Yet the Electoral Funding Act creates a situation where the electoral expenditure permitted per-elector is substantially higher in a number of smaller LGAs than in more populous LGAs...⁸

Councils divided into wards

- 1.15 The discrepancies in the amount that candidates are able to spend when the cap is considered on a per elector basis can become more pronounced in councils which are divided into wards. LGAs in NSW are either divided into wards which operate as separate electoral divisions for the purposes of electing councillors, or they are undivided and operate as a single electoral division for that LGA.
- 1.16 Out of 128 LGAs in NSW, 49 are currently divided into either two, three, four or five wards. In addition, Shellharbour City Council will be divided into wards for the 2020 local government elections, following a referendum decision at the 2017 local government elections.
- 1.17 The decision of whether to divide into wards, the number of wards and the ward boundaries is made by a council itself. However, a council must not divide into wards or abolish a ward structure unless it has obtained approval through a referendum held in its local government area.⁹
- 1.18 Within an LGA, there must not be a variation of more than 10 per cent between the number of electors in each ward.¹⁰ Other than that, there are no restrictions on whether a council can divide into wards provided a referendum is successful.
- 1.19 This means that there are councils of various sizes which are and are not divided into wards. Local Government NSW highlighted the fact that:
- ... The Hills Shire Council with approximately 112,000 enrolled electors is divided into four wards, whereas Campbelltown City Council with around 108,000 is undivided. Similarly, Warren Shire with 2000 electors is divided into four wards, while Bourke Shire with 1800 electors is undivided.¹¹
- 1.20 Again, given that all these undivided LGAs or wards have fewer than 200,000 electors, candidates will be subject to the same expenditure cap. For an independent candidate with an overall expenditure cap of \$25,000, the differences depending on where they are standing are shown in the table below:

⁸ Local Government NSW, Submission 3, p21

⁹ *Local Government Act 1990*, s210(5)

¹⁰ *Local Government Act 1990*, s210(7)

¹¹ Local Government NSW, Submission 3, p7

LGA	Total number of electors	Number of wards	Average number of electors in ward	Cap represented as \$ per enrolled elector
Hills Shire Council	112,135	Four	28,034	\$0.89
Campbelltown City Council	107,563	Undivided	N/A	\$0.23
Warren Shire Council	1,974	Four	494	\$50.61
Bourke Shire Council	1,805	Undivided	N/A	\$13.85

- 1.21 Within LGAs of similar overall populations, whether or not they are divided into wards can lead to significant differences in the amount a candidate can spend per enrolled voter. Local Government NSW commented:

Evidently, the formulation of the caps results in inequitable outcomes even for LGAs with similar characteristics, including those with similar numbers of enrolled electors.¹²

- 1.22 Local Government NSW also argued that since expenditure caps for parties which are linked to whether an LGA has wards, there is the opportunity for a party to spend more across a council divided into wards than in an undivided LGA. They provided the following example:¹³

LGA division structure	Total party electoral expenditure cap for the LGA (s31(2))
Undivided LGA	\$5,000
2 wards	\$10,000
3 wards	\$15,000
4 wards	\$20,000
5 wards	\$25,000

Adequacy of the cap

- 1.23 As has been discussed, the more people that are in an electorate, the less money a candidate is allowed to spend when considered on a per voter basis (provided there are fewer than 200,000 electors). Some stakeholders indicated that, in their experience, the new expenditure caps would not be sufficient.
- 1.24 The City of Sydney is one of the larger undivided LGAs in NSW but there are fewer than 200,000 people so candidates will not be subject to the higher expenditure caps. The City of Sydney claimed that communicating with all voters was difficult due to the population of their LGA, the diversity of that population and the number of multi-unit dwellings. They noted that:

¹² Local Government NSW, Submission 3, p8

¹³ Local Government NSW, Submission 3, p7

The cost of sending a single communication by post would be greater than the per capita expenditure proposed under the current legislation. Postage costs are also increasing over time....

[This shows] the inadequacy of the proposed caps in enabling candidates to communicate with registered voters, both residents and non-residents, prior to an election, which limits the ability of voters to make informed decisions.¹⁴

1.25 This was echoed by the Clover Moore Independent Team who observed:

For the City of Sydney, the current cap would be expended by one campaign flier to all enrolled voters at the Australia Post cheap unaddressed mail rates. An effective campaign faces many unavoidable costs—other printed material, how-to-votes, posters, t-shirts, campaign office rent and on-line/traditional media. Most of these are not fixed costs and increase based on the number of voters and the size and complexity of the local area.

The current caps will prohibit even the most basic election campaign.¹⁵

1.26 Cr Khal Asfour, Mayor of the City of Canterbury Bankstown raised concerns that the current expenditure cap would be insufficient for the group in which he was standing to fund a mail-out to each household. Cr Asfour highlighted the challenges of reaching a population with diverse backgrounds. He reported:

... in the last general local government election, I placed advertisements in over 10 ethnic newspapers and radio stations. On top of this, I incurred additional expenditure having ads for radio translated into other commonly spoken languages in Bankstown.¹⁶

1.27 However, it should also be noted that, historically, most candidates have not exceeded the new expenditure caps in previous local government elections. Mr Hugo Bergeron, Acting Executive Director, Funding Disclosures and Compliance, NSW Electoral Commission reported:

What I can say is that of all the disclosures we received at the 2016 election for group candidates and their group, less than 3 per cent had expenditure in excess of \$30,000, which is one of the lower limits. I would expect the vast majority not to be concerned about the expenditure cap.¹⁷

1.28 In addition to less than three per cent of group candidates, Mr Bergeron added that less than one per cent of independent candidates would have spent more than the cap.¹⁸

The suitability of 200,000 enrolled electors

1.29 The Act provides a two-tiered formula for calculating expenditure caps for candidates in local government elections. As mentioned earlier, there is one cap

¹⁴ City of Sydney, Submission 9, p2

¹⁵ Clover Moore Independent Team, Submission 10, p1

¹⁶ Cr Khal Asfour, Submission 4, p2

¹⁷ Mr Hugo Bergeron, Acting Executive Director, Funding Disclosures and Compliance, NSW Electoral Commission, Transcript of evidence, 24 September 2018, p3

¹⁸ Mr Hugo Bergeron, NSW Electoral Commission, Transcript of evidence, p4

for LGAs or wards that have fewer than 200,000 enrolled electors and a higher cap for those that have more than 200,000 enrolled electors.

1.30 Of the 128 LGAs in NSW, only three have more than 200,000 enrolled electors:

- Blacktown City Council
- City of Canterbury Bankstown Council
- Central Coast Council

1.31 However, each of these three councils are divided into five wards, so candidates for general elections will not be subject to the higher cap.

1.32 There are similar tiered expenditure caps for directly elected mayors. None of the 34 LGAs that directly elect their mayor in 2020 have more than 200,000 enrolled electors, so no mayoral candidates will be subject to the higher cap.

1.33 During the public hearing, the Committee asked why this number of electors was chosen as the upper limit but witnesses said that they did not know the reason.¹⁹

1.34 Local Government NSW argued that this large number, which only covers very few councils, is inappropriate and does not properly consider the situation of councils in NSW. They stated that:

... although the Electoral Funding Act purports to differentiate local government electoral expenditure caps based on a threshold of 200,000 enrolled electors, in reality this threshold is almost meaningless as there are no wards, and no undivided LGAs, with more than 200,000 electors. As such, all wards and all LGAs in NSW sit within the same, lower tier of local government electoral expenditure – regardless of their variance in size and structure.²⁰

1.35 The overall problems of the current model outlined in the Act were summarised by McCullough Robertson Lawyers who provided legal advice to Local Government NSW. They argued that:

If the Local Government elections proceed under the provisions of the current Act, in some electorates, candidates, campaigners and parties will be severely hindered in their campaign activity and may not be able to adequately and effectively present their position on factors which impact their constituents. Conversely, in smaller electorates where the provisions of the Act operate to provide high levels of electoral expenditure, those elections will run at an increased risk of precluding certain independent candidates from fairly competing and participating in the electoral process.²¹

¹⁹ Mr Hugo Bergeron, Acting Executive Director, Funding Disclosures and Compliance, NSW Electoral Commission, Transcript of evidence, 24 September 2018, p8 and Cr Linda Scott, President, Local Government NSW, Transcript of evidence, 24 September 2018, p15

²⁰ Local Government NSW, Submission 3, p23

²¹ McCullough Robertson Lawyers, Local Government NSW, Submission 3, Appendix B, p47

Committee comment

- 1.36 The Committee recognises that the current model for expenditure caps does not properly account for the differences in populations in the various LGAs and wards across NSW. This has created the situation where the caps will impact candidates standing in different areas to different degrees.
- 1.37 The two-tier model – using 200,000 enrolled voters as the point at which candidates have a larger or smaller expenditure cap – is not appropriate given the lack of LGAs or wards in which the larger cap will be used. The Committee understands the concerns of stakeholders that candidates standing in larger LGAs may have difficulties in running effective campaigns under the current expenditure caps.
- 1.38 The Committee is of the view that the current model for expenditure caps is not fair for all candidates, does not properly take into account the differences between divided and undivided LGAs, and will hamper candidates in upcoming local government elections.

Recommendation 1

The Committee recommends that the Government substantially amend the expenditure caps outlined in sections 31(3) – 31(9) in the *Electoral Funding Act 2018*.

A new model for calculating expenditure caps

Expenditure caps based on bands

- 1.39 An alternative to the current model of calculating expenditure caps based on whether wards or LGAs have more or less than 200,000 electors is to use more divisions based on the number of electors. Under this model, all wards or undivided LGAs would sit within different 'bands' based on upper and lower numbers of electors. Different expenditure caps would then apply to each of these bands.
- 1.40 This approach would reduce the discrepancies between how much a candidate is allowed to spend on a per capita basis. By categorising wards or LGAs according to their size and then allocating a different expenditure cap to each category, candidates who are running in electorates with a similar number of electors will be subject to the same expenditure cap.
- 1.41 For example, all electorates that have between 10,000 and 20,000 electors may be grouped into one band with a specific expenditure cap. Similarly, all electorates that have between 75,000 and 125,000 electors will be grouped into another band that will have a slightly higher cap.
- 1.42 This model also allows for expenditure cap floors and ceilings. While this model will allow for proportionally larger expenditure caps for candidates running in larger electorates, an expenditure cap 'floor' will apply to candidates regardless of how small their electorate is. On the other hand, an expenditure cap 'ceiling' will apply regardless of how large an electorate may be. This 'floor' and 'ceiling' will represent the minimum and maximum expenditure caps across the state.

- 1.43 This creates a much fairer model when expenditure caps are considered on a per capita basis.
- 1.44 This model was recognised as more equitable by Local Government NSW. When asked at the hearing about a model using expenditure caps based on bands of electors, Cr Linda Scott acknowledged 'that proposal does seem to offer a fairer system.'²²
- 1.45 Local Government NSW provided further evidence supporting this 'bands' model after they sought feedback from individual councils. Local Government NSW advised that 'a clear majority of respondents support a model based on per elector expenditure caps'.²³ This means that a new model should be chosen which has caps that are more closely linked to the number of electors in an electorate than the current model.
- 1.46 For this new model, respondents were also asked to choose between one based on bands or a model which calculates an expenditure cap based on the precise number of electors in each individual ward or undivided LGA.
- 1.47 From these surveys, 51 per cent of respondents preferred a model based on bands, while 38 per cent preferred a 'per elector' model.²⁴
- 1.48 The NSW Electoral Commission also indicated that a model using bands of electors would be more straightforward to implement. They noted that, for them, 'It is administratively easier to have bands'.²⁵

Applying caps equally to all candidates

- 1.49 Expenditure caps for local government elections are calculated using this 'bands' model in New Zealand.²⁶ In the New Zealand system, all candidates are subject to the same cap, regardless of whether they are endorsed by a party or running as an independent. However, any expenses incurred for electoral activity on behalf of a candidate must be properly apportioned and counts as part of that candidate's cap.²⁷
- 1.50 The New Zealand model is in contrast to the current NSW legislation, which allocates different expenditure caps depending on whether a candidate is endorsed by a party, an independent, or part of a group.
- 1.51 Having a cap which applies equally to all candidates was suggested by the Australian Labor Party (NSW Branch). They argued:

NSW Labor does not believe that Candidates, whether they are part of a group, endorsed by a party, or running as an independent should be treated differently for

²² Cr Linda Scott, President, Local Government NSW, Transcript of evidence, 24 September 2018, p13

²³ Local Government NSW, Answers to Questions on Notice, 9 October 2018, p1

²⁴ Local Government NSW, Answers to Questions on Notice, 9 October 2018, p2

²⁵ Mr Hugo Bergeron, Acting Executive Director, Funding Disclosures and Compliance, NSW Electoral Commission, Transcript of evidence, 24 September 2018, p3

²⁶ *Local Electoral Act 2001 (NZ)* s111

²⁷ *Local Electoral Act 2001 (NZ)* s112

the purposes of an electoral expenditure cap. The same electoral expenditure cap should apply to all Candidates equally.²⁸

- 1.52 This approach also had strong support amongst some local councils. Local Government NSW reported that 59 per cent of respondents wanted the same expenditure cap for independent and party candidates, compared to 33 per cent who argued for higher caps for independent candidates.²⁹

Committee comment

- 1.53 The Committee considers that a model for calculating expenditure caps based on bands is most appropriate. By grouping wards and electorates together into similar tiers and allocating a cap accordingly, all candidates who need to reach a similar number of electors will be allowed to spend the same amount of money. This creates a much fairer system than the current legislated model.
- 1.54 For particularly small councils, the Committee acknowledges that there may still be some discrepancies in the amount candidates are allowed to spend when considered on a per capita basis. However, the Committee also notes that there are some costs that cannot be avoided to run an effective campaign, so there needs to be a reasonable 'floor' to all the caps.
- 1.55 As elector populations increase, there will be economies of scale that can be harnessed by campaigners, so the caps should increase accordingly. However, the Committee also considers that it is important to have an upper limit for all the expenditure caps. This upper limit, or 'ceiling', will only be available to candidates running in a small number of LGAs but is necessary to ensure that there are reasonable limits on overall electoral expenditure in local government election campaigns.
- 1.56 In the Committee's recommended model, some electorates will have a cap that is smaller than under the current legislation and some will be subject to a larger cap. This is another benefit of introducing more tiers as more appropriate caps can be chosen. While smaller electorates do not require significant funding, the Committee accepts the arguments of those in larger electorates that the current caps were inadequate.
- 1.57 The Committee notes that this approach was supported by the majority of councils who contacted Local Government NSW. The large variance between the sizes of LGAs and whether or not those LGAs are divided into wards means that it is very difficult to create a system that is perfect for everyone. Nevertheless, the Committee considers that the recommended model will create an improved environment for the majority of candidates who choose to run in future local government elections.
- 1.58 The Committee also notes that the Electoral Commission has indicated that this would be a preferred model to administer. The Committee recognises the work of the Commission in preparing for local government elections and informing

²⁸ Australian Labor Party (NSW Branch), Submission 8, p5

²⁹ Local Government NSW, Answers to Questions on Notice, 9 October 2018, p5

candidates of their rights and responsibilities. The Committee is sure that the Commission will be able to adapt to the recommended model.

Recommendation 2

The Committee recommends that the following expenditure caps be introduced:

For a local government general election, the applicable cap for an ungrouped candidate or for a group of candidates is:

- **\$6,000 where the number of enrolled electors for the local government area or ward is smaller than 5,001**
- **\$10,000 where the number of enrolled electors for the local government area or ward is larger than 5,000 and smaller than 10,001**
- **\$18,000 where the number of enrolled electors for the local government area or ward is larger than 10,000 and smaller than 20,001**
- **\$25,000 where the number of enrolled electors for the local government area or ward is larger than 20,000 and smaller than 30,001**
- **\$36,000 where the number of enrolled electors for the local government area or ward is larger than 30,000 and smaller than 50,001**
- **\$46,000 where the number of enrolled electors for the local government area or ward is larger than 50,000 and smaller than 75,001**
- **\$63,500 where the number of enrolled electors for the local government area or ward is larger than 75,000 and smaller than 125,001**
- **\$72,000 where the number of enrolled electors for the local government area or ward is larger than 125,000**

1.59 There is also merit in the arguments that expenditure caps should apply equally to all candidates. If the Committee's recommended model is introduced, it would be further enhanced and present a simpler model for candidates if the current distinctions between candidates are removed. The Committee notes that removing the distinctions between party candidates and independent candidates was particularly strongly supported by those councils surveyed by Local Government NSW.

1.60 Where candidates are endorsed by a party and that party incurs electoral expenditure on behalf of that candidate or in the ward of LGA that they are running, that expenditure should be properly apportioned and count against the candidate's cap. This will ensure that independent candidates are not disadvantaged when running against those endorsed by a party.

Recommendation 3

The Committee recommends that the model for expenditure caps outlined in Recommendation 2 applies equally to candidates, or groups of candidates, whether they are endorsed by a party or are independent.

Recommendation 4

The Committee recommends that when a political party incurs electoral expenditure for the purposes of the election in a particular local government area or ward, that expenditure be apportioned to any candidates endorsed by that party running in that local government area or ward.

Ensuring accurate information is available

- 1.61 If the model proposed by the Committee is implemented, it is crucial that candidates have an accurate source of information available to them for how many enrolled electors are in their electorate. The Committee heard that this is not always the case at the present time.
- 1.62 Local Government NSW noted that information on the ward structure of councils was difficult to find. They observed that the Office of Local Government's Local Government Directory appeared to be out of date. The best source of information was the NSW Electoral Commission but this information was usually provided as a historical snapshot of previous elections. This means that it will not always be accurate for candidates who intend to run in upcoming elections.³⁰
- 1.63 Similarly, trying to find the number of enrolled electors in an LGA or ward can be challenging. The Local Government Directory contains LGA population figures but does not contain the numbers of enrolled electors. Again, more information is published by the NSW Electoral Commission but this is often referring to previous, rather than upcoming, elections.³¹
- 1.64 The issue is compounded by the fact that some councils choose to run their own elections and the amount of information these councils publish is not always to the same standard as that of the NSW Electoral Commission.
- 1.65 Cr Linda Scott, President, Local Government NSW noted the risks to candidates of running a campaign without accurate information:
- ... it is also very important that that information about how the formula is set is readily accessible. ... for example ... The Office of Local Government Local Government Directory is also not currently a reliable source of information. If candidates are referred to that, for example for the number of constituents enrolled in a ward, and that information is not up-to-date, that can also run the risk of candidates inadvertently breaching a cap.³²
- 1.66 For the upcoming by-election in Ku-ring-gai, the Electoral Commission has set up a website containing various information about the election, including the applicable spending cap. This allows prospective candidates to access the information, even if they have not yet registered. The Commission indicated that similar websites are created for each electoral event.³³

³⁰ Local Government NSW, Submission 3, pp15-16

³¹ Local Government NSW, Submission 3, pp16-17

³² Cr Linda Scott, President, Local Government NSW, Transcript of evidence, 24 September 2018, p13

³³ NSW Electoral Commission, Answers to Questions on Notice, 10 October 2018, p3

1.67 Upon registration, the Commission also sends a letter to candidates which outlines their responsibilities regarding nomination and disclosures. The letter includes a fact sheet summarising the requirements under the *Electoral Funding Act 2018*.³⁴

1.68 The NSW Electoral Commission told the Committee that if a date was chosen at which the number of enrolled electors in an LGA or ward was finalised it would have to consider certain other deadlines:

It definitely needs to be before the start of the capped expenditure period, and ideally a little bit before so the Commission can get its message across to the relevant candidates.³⁵

1.69 When a date of twelve months prior to the election was suggested, representatives from the NSW Electoral Commission indicated that they 'would be able to administer it'.³⁶ On further consideration, the Commission indicated that calculating the number of non-residential voters at a time other than the most recent ordinary election would create 'an additional administrative complexity for councils and the Electoral Commission'.³⁷ As such, they advised that:

... the most administratively straight forward approach would be to use the number of residential electors in an area/ward at the most recent ordinary election in setting a "per elector" cap for the next election ...³⁸

Committee comment

1.70 The Committee commends the NSW Electoral Commission for publishing large amounts of information following all elections. For those interested in previous local government elections, they are a valuable resource, even for those councils which manage their own elections. The Committee notes, however, that much of this information is historical and may not be useful for candidates in upcoming elections. The Committee is concerned to hear that the Local Government Directory is not an accurate resource.

1.71 In order for the Committee's recommended model for expenditure caps to operate properly, candidates must have clear, accurate information about the number of enrolled electors in their electorate. Given the Electoral Commission's position as the respected authority on elections in NSW, the Committee considers that it is most appropriate for the Commission to publish this information.

1.72 In order to ensure that candidates are properly informed, it would be helpful for the number of enrolled electors and the relevant cap to be outlined to candidates in the information they receive on registration. It would also be useful for a list of all wards and LGAs with the relevant expenditure caps to be published on the Commission's website for candidates to reference. This information should be

³⁴ NSW Electoral Commission, Answers to Questions on Notice, Appendix D, 10 October 2018, pp24-25

³⁵ Mr Hugo Bergeron, Acting Executive Director, Funding Disclosures and Compliance, NSW Electoral Commission, Transcript of evidence, 24 September 2018, p6

³⁶ Mr Hugo Bergeron, NSW Electoral Commission, Transcript of evidence, 24 September 2018, p6

³⁷ NSW Electoral Commission, Answers to Questions on Notice, 10 October 2018, p5

³⁸ NSW Electoral Commission, Answers to Questions on Notice, 10 October 2018, p5

provided to candidates regardless of whether the election is being administered by the Commission or by a council themselves.

- 1.73 The Committee considers that choosing a date 12 months out from the election would be a suitable cut-off point for finalising the number of enrolled electors in a ward or LGA. This will account for any high growth areas but also ensure that the Commission has adequate time to inform candidates and properly prepare. The Committee notes the comments of the Commission that there are additional complexities with calculating a population figure at a date later than the most recent ordinary election. However, on balance, the Committee considers that the population figure 12 months prior to the election will be much more useful to calculate the cap as it will more accurately reflect the number of electors that candidates will be required to communicate with.

Recommendation 5

The Committee recommends that the population figure of enrolled electors on which to calculate expenditure caps is taken to be the number of enrolled electors in a ward or undivided local government area twelve months prior to the election.

Recommendation 6

The Committee recommends that the NSW Electoral Commission provide candidates with the number of enrolled electors in their electorate and the relevant expenditure cap that they will be subject to. This information should also be published on the NSW Electoral Commission website.

Chapter Two – Improving Fairness

- 2.1 This chapter will examine other issues that arose during the inquiry in relation to applying electoral expenditure caps to mayoral candidates, third-party campaigners and whether to include non-residential voters.

Changing the cap for Mayoral elections

- 2.2 Electoral expenditure caps for mayoral candidates are outlined in the *Electoral Funding Act 2018* (the Act) as follows:

- For grouped mayoral candidates in a general election:
 - \$15,000—where the number of enrolled electors at the previous general election for the local government area concerned was 200,000 or fewer, and
 - \$20,000—where the number of enrolled electors at the previous general election for the local government area concerned was more than 200,000.
- For ungrouped mayoral candidates in a general election:
 - \$30,000—where the number of enrolled electors at the previous general election for the local government area concerned was 200,000 or fewer, and
 - \$40,000—where the number of enrolled electors at the previous general election for the local government area concerned was more than 200,000.³⁹

- 2.3 The Act also specifies that if a candidate is standing for election as a councillor and as a mayor at the same election, the applicable cap is the expenditure cap for mayoral candidates.⁴⁰

- 2.4 During the inquiry, stakeholders expressed concerns that the higher mayoral candidate expenditure caps may encourage candidates to run for mayor disingenuously solely to access the higher expenditure caps.

- 2.5 Local Government NSW argued that these higher expenditure caps raised issues of fairness and consistency amongst mayoral candidates. This has the potential to encourage dishonest campaigns for mayor and undermine mayoral elections. They stated that:

Electoral expenditure caps that are available to mayoral candidates are higher than caps that are applicable to party endorsed and independent candidates. As such, in the 34 LGAs that will directly elect mayors in 2020, this provision may have the unintended effect of creating an incentive for candidates to nominate for mayor in

³⁹ *Electoral Funding Act 2018* ss 31(7)-(8)

⁴⁰ *Electoral Funding Act 2018* s31(14)

order to access the higher cap – when they have no other intention of running for mayor.

This provision creates a loophole that has the potential to dilute the integrity of mayoral elections...⁴¹

- 2.6 In their answers to questions taken on notice, Local Government NSW further clarified that after a brief consultation with councils it appears that most are in favour of a system that does not allow an additional cap for mayoral candidates:

LGNSW recognises that the expenditure cap regime should not create an incentive for candidates to run for election as a mayoral candidate in order to access a higher cap. Based on feedback received, it appears that most councils would not support an additional cap for mayoral candidates.⁴²

- 2.7 The Clover Moore Independent Team also opposed the higher expenditure caps for mayor because it could encourage dishonest conduct by candidates:

The higher cap for mayoral contests creates a perverse incentive for candidates to run for Mayor to benefit from the higher allowable expenditure.⁴³

- 2.8 At the hearing, Mr Hugo Bergeron, Acting Executive Director, Funding Disclosures and Compliance, NSW Electoral Commission highlighted that there are higher costs associated with running for mayor, which would justify a higher expenditure cap:

... in order to be a candidate at a mayoral election, you also need to incur specific expenditure on, for example, how-to-vote material. Without speculating, I can see how someone who is also a candidate for mayoral election would need to spend more on their material, mainly how-to-vote material.⁴⁴

- 2.9 Local Government NSW indicated that they would support a model that did not allow candidates to 'game the system' by having an additional component for mayoral expenditure than other candidates:

We would not support a system where there is an incentive to, like the current Act, have a double cap when running for both positions.⁴⁵

- 2.10 The current model of expenditure caps for mayoral candidates also have the same issues of different sized LGAs leading to candidates being required to use the same amount of money to reach different numbers of people, to the disadvantage of those in larger electorates. As has been noted, none of the 34 LGAs which directly elect their mayor have more than 200,000 electors so they will all be subject to the same expenditure cap. Local Government NSW observed that:

... the higher tier cap for mayoral elections is not, at present, triggered for any LGAs in NSW and mayoral candidate caps are the same for all LGAs that directly elect mayors, regardless of their number of enrolled electors. ... this means that mayoral candidates

⁴¹ Local Government NSW, Submission 3, pp11-12

⁴² Local Government NSW, Answers to Questions on Notice, p7

⁴³ Clover Moore Independent Team, Submission 10, p14

⁴⁴ Mr Hugo Bergeron, Acting Executive Director, Funding Disclosures and Compliance, NSW Electoral Commission, Transcript of evidence, 24 September 2018, p3

⁴⁵ Cr Linda Scott, President, Local Government NSW, Transcript of evidence, 24 September 2018, p12

standing for election in LGAs with fewer numbers of electors are entitled to a substantially higher expenditure cap on a per-electoral basis. A mayoral candidate in Uralla can spend 33 times as much per-electoral than a mayoral candidate in Lake Macquarie.⁴⁶

- 2.11 Local Government NSW surveyed councils about their views on expenditure caps for directly and non-directly elected mayors and indicated the following:
- For candidates that are running for both councillor and directly elected mayor, 57 per cent of respondents did not support any additional cap beyond the councillor candidate cap
 - For candidates that are running for directly elected mayor but not separately for councillor, 73 per cent of respondents did not support any additional cap beyond the councillor candidate cap
 - For candidates in councils that select their mayor from among elected councillors, 85 per cent did not support any additional cap beyond the councillor candidate cap.⁴⁷

Committee Comment

- 2.12 The Committee recognises the concerns raised that higher expenditure caps for mayoral candidates may encourage some candidates to run for mayor solely to access a larger cap. The current model creates an incentive for candidates to disingenuously run for mayor to take advantage of the higher caps and makes it possible for candidates to 'game the system'. This may lead to some candidates choosing not to stand and could lead to electors losing faith in the electoral system.
- 2.13 However, the Committee acknowledges that mayoral candidates incur additional expenses that arise from a mayoral campaign, such as how-to-vote cards. The Committee considers that it is appropriate for there to be some additional expenditure when running for mayor. While this may still create some incentive for candidates to run for mayor disingenuously, the model that we have recommended, in partnership with the model for all other candidates should reduce the incentive to abuse the system.
- 2.14 The Committee also notes that the legislation is not clear on whether the higher expenditure caps apply to both mayoral candidates that are elected by a popular election and those that are elected by councillors. In the case that a mayor is to be elected by councillors, an additional mayoral electoral expenditure cap is not appropriate because no mayoral campaign material is required to be distributed to electors. This lack of distinction between these types of mayoral elections also leaves the system open to misuse through disingenuous mayoral campaigns.
- 2.15 The Committee considers that there is a need to allow some additional expenditure when running for mayor. We also consider that there is a need to clarify the cap for mayoral candidates that are also running for councillor, those that are just running for directly elected mayor, or those running for non-directly

⁴⁶ Local Government NSW, Submission 3, p11

⁴⁷ Local Government NSW, Answers to Questions on Notice, pp6-7

elected mayor. As such, the recommendations aim to allow some additional expenditure for mayoral candidates, however not so much that it would encourage disingenuous mayoral candidates. The recommendation only applies a higher expenditure cap for directly elected mayoral candidates.

- 2.16 The recommended expenditure caps for mayoral elections are also based on the proposed model outlined in Recommendation 2 and are proportionate to the size of the relevant LGA. This will remove the issue of large discrepancies between expenditure caps when considered on a per capita basis for mayoral candidates.

Recommendation 7

The Committee recommends that expenditure caps for directly elected mayoral candidates, or groups containing a candidate for directly elected mayor, be set at:

- **In multi-ward local government areas:**
 - **Where the mayoral candidate is also running for councillor, 100 per cent of the cap for the ward in which they are running, plus the sum of 25 per cent of each additional ward in that local government area.**
 - **Where the mayoral candidate is not running for councillor, 100 per cent of the cap for the largest ward in the local government area, plus the sum of 25 per cent of each additional ward in that local government area.**
- **In undivided local government areas:**
 - **100 per cent of the cap for councillors in that local government area, plus an additional 25 per cent of that cap.**

Changing the cap for third-party campaigners

- 2.17 The Act outlines the electoral expenditure caps that apply to third-party campaigners as follows:

- For third-party campaigners in a local government election
 - \$2,500 multiplied by the number of local government areas for which the third-party campaigner incurs electoral expenditure
- For a by-election for councillor (including mayor)
 - \$2,500 for each by-election
- Additional cap for individual areas or wards (within the overall cap) in local government general elections, or by-elections in more than one LGA:

- \$2,500 in respect of each such local government area or ward.⁴⁸

2.18 Third-party campaigners for local government elections are defined by the Act as 'a person or another entity (not being an associated entity, party, elected member, group or candidate) who incurs electoral expenditure for a local government election during a capped local government expenditure period that exceeds \$2,000 in total' or 'a registered third-party campaigner for an election for which it is registered'.⁴⁹

2.19 The Committee heard from stakeholders that this current cap is too low and not appropriate for the nature of third-party campaigns.

2.20 Local Government NSW argued that the current caps were too low and prevented third-party campaigners from adequately engaging with electors:

Indeed, in 118 of the 128 LGAs in NSW, a locally focused third-party campaigner could not pay postage costs for a single letter to each elector, to say nothing of printing and other costs that may be involved in running an effective campaign. The \$2,500 sum would be similarly inadequate for costs associated with campaign expenses including for advertising, telecommunications, digital campaigns and for production of other materials related to campaigning in the election...

Plainly, electoral expenditure caps amounting to less than two cents per elector do not allow third-party campaigners sufficient scope to run campaigns to influence voting. This low and inflexible third-party cap effectively stifles the voice of community groups that may campaign on local environmental, development or neighbourhood issues – particularly in LGAs with greater numbers of electors.⁵⁰

2.21 Local Government NSW recommended that 'electoral expenditure caps for third-party campaigners must be set at a level, or levels, that allow for genuine engagement with electors in LGAs of different sizes'.⁵¹

2.22 Unions NSW also stated that the cap is 'is too low to allow effective freedom of political communication'.⁵² Furthermore, they noted that the cap covering third-party campaigners is devised only using LGAs, while the cap for candidates and parties treats LGAs divided into wards differently. Unions NSW expressed the view that this is an unfair approach:

In its current form the approach to setting caps for third-party campaigners (local government areas) and political parties and candidates (ward or local government area) is inconsistent. The approach leads to a large and varying disparity between the caps for candidates and third-party campaigners when applied across different local governments.⁵³

2.23 Unions NSW argued that the current caps were not practical for the type of 'issues-based' campaigning that third parties often engage in across the state, which affect

⁴⁸ *Electoral Funding Act 2018* (NSW) ss 31(10)-(12)

⁴⁹ *Electoral Funding Act 2018* (NSW) s 4

⁵⁰ Local Government NSW, Submission 3, p13

⁵¹ Local Government NSW, Submission 3, p13

⁵² Unions NSW, Submission 7, p4

⁵³ Unions NSW, Submission 7, p4

multiple local government areas. They acknowledged, however, that apportioning spending across specific wards or LGAs would be a challenge.⁵⁴

2.24 The Australian Labor Party (NSW Branch) also stated their opposition to caps on third-party expenditure:

NSW Labor believes the cap on third-party campaigners is unduly restrictive, fails to correct an identifiable mischief; and is unconstitutional. Any cap set for third Party campaigning should be similar to those set for Candidates...⁵⁵

2.25 At the hearing, Mr Hugo Bergeron, Acting Executive Director, Funding, Disclosure and Compliance at the NSW Electoral Commission, noted that legislative distinctions for third-party campaigners are relatively new and were introduced in 2016.⁵⁶ Data obtained from the Electoral Committee indicated that only three organisations registered and lodged disclosures as third-party campaigners in 2016, as follows:

- Byron Shire Community Action Network - \$4,536.50
- Camden Community Alliance Incorporated - \$5,870.40
- NSW Local Government Clerical Administrative Energy Airlines & Utilities Union - \$40,611.00⁵⁷

Committee comment

2.26 The Committee acknowledges that the expenditure cap on third-party campaigners may not adequately allow for the type of campaigning undertaken by third-parties.

2.27 The Committee considers that expenditure caps for third-party campaigners should also be based on the model for candidates that has been recommended. This recognises that in areas where there are more electors, third-party campaigners will need to spend more money in order to communicate with the electorate, but not so much as to overwhelm those candidates or groups which are actually running for office.

2.28 The current expenditure cap for third-party campaigners is unreasonably low, particularly in larger wards or LGAs. Expenditure caps for third-party campaigners should be proportionate to the size of the relevant electorate. However, the Committee also supports a cap for third-party campaigners which does not lead to unnecessarily high expenditure – it should not be on par with that of candidates. As such, the Committee has recommended that the cap for third-party campaigners be set as a proportion of the amount set for candidates in the relevant LGA or ward.

⁵⁴ Unions NSW, Submission 7, p7

⁵⁵ Australian Labor Party (NSW Branch), Submission 8, p6

⁵⁶ Mr Hugo Bergeron, Acting Executive Director, Funding, Disclosure and Compliance, NSW Electoral Commission, Transcript of evidence, 24 September 2018, p3

⁵⁷ NSW Electoral Commission, Answers to Questions on Notice, p3

- 2.29 In larger areas, this will represent an increase in the amount that third-party campaigners can spend. The Committee notes the evidence provided by the Electoral Commission that most third-party campaigners do not run extravagant campaigns.

Recommendation 8

The Committee recommends that expenditure caps for third-party campaigners be set at one-third of the relevant cap that applies to a candidate running in the ward or undivided local government area in which the expenditure occurs.

Non-residential voters

- 2.30 Non-resident owners of rateable land and occupiers and rate paying lessees are eligible to vote in local government elections.⁵⁸ Unlike residential voters, voting is not compulsory for these non-residential voters, with the exception of the City of Sydney where voting is mandatory once enrolled.⁵⁹
- 2.31 During the inquiry, stakeholders noted that applying the legislation to non-residential voters presented some complexities.
- 2.32 Local Government NSW noted that outside the City of Sydney, most LGAs had very few registered non-residential electors:
- ...at the 2016 and 2017 local government general elections, the number of non-residential electors in Local Government Areas (LGAs) was negligible (with most having fewer than 10 non-residential electors). The only exception is the City of Sydney which had 22,972 electors on the non-residential roll.⁶⁰
- 2.33 The City of Sydney confirmed this in their submission, noting that the number of non-residential electors accounted for a high proportion on enrolled electors:
- At the 2016 election, those on the non-residential roll made up 16.2% of the City's 141,369 registered voters. Those voters, by their nature will necessarily require communication outside the City, a requirement not faced by candidates in other local government areas.⁶¹
- 2.34 The City of Sydney argued that the nature of non-residential voters meant that they lived outside the electorate area and that the type of communications involved in reaching these voters is different and required an additional cost for electoral candidates.⁶²
- 2.35 However, the issue of non-residential voters is distinctive to the City of Sydney. The NSW Electoral Commission noted that, outside of the City of Sydney, the number of non-residential voters in other LGAs was negligible:

⁵⁸ *Local Government Act 1993*, s286

⁵⁹ *City of Sydney Act 1988*, s22

⁶⁰ Local Government NSW, Submission 3, p4

⁶¹ City of Sydney, Submission 9, p2

⁶² City of Sydney, Submission 9, p2

...other than for the City of Sydney, the number of non-residential electors for NSW local government elections is miniscule. The number of non-resident electors at the 2017 local government elections was only 389. Of those electors, only 301 voted, representing approximately 0.014% of the 2,193,349 total votes cast. For the 2016 local government election, the City of Sydney had 118,398 electors on its residential roll and 22,972 electors on its non-residential roll.⁶³

Committee comment

- 2.36 The Committee understands that non-residential voting makes up a significant portion of the electors (16.2 per cent) within the City of Sydney. However, the Committee notes the evidence received indicating that, outside the City of Sydney, non-residential voting is limited or non-existent. Therefore, most candidates will not need to factor non-residential voters into their electoral expenditure.
- 2.37 The Committee notes that the legislation is unclear as to whether the expenditure caps are intended to apply to non-residential voters, as it only refers to 'enrolled electors'.
- 2.38 In an effort to clarify how the legislation is to be applied, the Committee considers that non-residential voters should not be counted towards the total number of electors in a ward or undivided LGA. However, an exception should be made for LGAs where voting by non-residential electors is mandatory.
- 2.39 Currently, only those non-residential electors enrolled in the City of Sydney are required to vote, and this unique situation will be taken into account, particularly given the large number of non-residential voters who participate in local government elections in that LGA. Should voting by non-residential electors become mandatory in other LGAs in the future, they will also be included within this model.
- 2.40 Otherwise, this recommendation aims to clarify and simplify the situation for candidates and other interested parties that need to consider how many electors are in an LGA or ward for the purpose of expenditure caps.

Recommendation 9

The Committee recommends that non-residential voters are not counted when calculating the number of electors in a ward or undivided local government area, except where voting by non-residential electors is mandatory.

⁶³ NSW Electoral Commission, Answers to Question on Notice, p5

Appendix One – Terms of Reference

Inquiry into the impact of expenditure caps for local government election campaigns

That the Committee inquire into and report on the impact of the expenditure caps for local government election campaigns on local government areas and wards with different populations, with particular reference to:

- a) Whether the current expenditure caps are adequate;
- b) Whether the number of enrolled electors in a ward or local government area is the best method to calculate expenditure caps; and
- c) Whether the current divisions around the number of enrolled electors on which the expenditure cap is calculated are adequate

Appendix Two – Conduct of Inquiry

The Joint Standing Committee on Electoral Matters was initially established in 2004, and re-established for the 56th Parliament on 28 May 2015 and 2 June 2016 by resolution of both Houses of Parliament.

On 15 August 2018, following a referral from the Premier, the Committee adopted terms of reference to inquire into and report on the impact of expenditure caps for local government election campaigns.

This followed the debate on the *Electoral Funding Bill 2018*, in which the Government indicated that it would ask the Committee to review the impact of expenditure caps for local government elections which were introduced by the *Electoral Funding Act 2018*. In particular, the Committee was asked to review the impact on local government areas and wards with different populations.

The Premier asked that the Committee reported as soon as practicable, and in any event by 31 December 2018.

The full terms of reference for this inquiry have been set out in Appendix One.

The Committee called for public submissions by issuing a media release and writing to key stakeholders. The closing date for submissions was 14 September 2018.

The Committee received ten submissions from stakeholder organisations and individuals. A complete list of the submissions received can be found in Appendix Three.

The Committee held a public hearing on 24 September 2018 at Parliament House, Sydney. Six witnesses provided oral evidence to the Committee. These included representatives from the NSW Electoral Commission, Local Government NSW and Unions NSW.

A list of the witnesses who appeared before the Committee can be found in Appendix Four.

Appendix Three – Submissions

1	Nambucca Shire Council
2	The Hills Shire Council
3	Local Government NSW
4	Cr Khal Asfour
5	Clarence Valley Council
6	Willoughby City Council
7	Unions NSW
8	Australian Labor Party (NSW Branch)
9	City of Sydney
10	Clover Moore Independent Team

Appendix Four – Witnesses

MONDAY, 24 SEPTEMBER 2018 – MACQUARIE ROOM, NSW PARLIAMENT

Witness	Organisation
Ms Rachel McCallum Director, Legal and Governance	NSW Electoral Commission
Mr Hugo Bergeron Acting Executive Director Funding, Disclosures and Compliance	NSW Electoral Commission
Cr Linda Scott President	Local Government NSW
Ms Jessica Wood Legal Officer	Local Government NSW
Mr Mark Morey Secretary	Unions NSW
Ms Kate Minter Research Officer	Unions NSW

Appendix Five – Extracts from Minutes

MINUTES OF MEETING No. 18

1:31pm Wednesday, 15 August 2018

Room 1043, Parliament House

Members Present

The Hon Dr Peter Phelps MLC (Chair), The Hon Robert Borsak MLC (Deputy Chair), The Hon Ben Franklin MLC, Mr Andrew Fraser MP, The Hon Courtney Houssos MLC, The Hon Peter Primrose MLC, Mr Jai Rowell MP, and Mr Paul Scully MP

Staff in attendance: Clara Hawker, Leon Last, Jenny Gallagher

1. Apologies

Apologies were received from Mr Crouch and Mr Taylor

2. Minutes of Meeting No. 17

Resolved, on the motion of Ms Houssos, that the minutes of meeting No. 17, held on 20 November 2017, be confirmed.

3. New Inquiry – the impact of expenditure caps on local government election campaigns

3.1. Correspondence

The Committee noted correspondence from the Premier requesting that the Committee establish an inquiry to review the impact of expenditure caps on local government election campaigns.

3.2. Consideration of terms of reference

The Committee considered draft Terms of Reference for an inquiry into the impact of expenditure caps on local government election campaigns.

Resolved, on the motion of Mr Rowell, seconded by Ms Houssos that:

- The Committee adopts the draft terms of reference for an inquiry into the impact of expenditure caps on local government election campaigns.
- The Committee advertises the inquiry and calls for submissions with a closing date of 14 September 2018.
- The Committee writes to appropriate stakeholders inviting submissions; and
- That the details of the inquiry are published on the Committee's webpage.

4. General Business

The Committee discussed potential dates for a public hearing in October and the timeline for the inquiry.

5. Next Meeting

The Committee adjourned at 1.39pm until a time and date to be determined.

MINUTES OF MEETING No. 19

10:46am Monday, 24 September 2018

Macquarie Room, Parliament House

Members Present

The Hon Dr Peter Phelps MLC (Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, Mr Andrew Fraser MP, The Hon Courtney Houssos MLC, The Hon Peter Primrose MLC, and Mr Paul Scully MP

Staff in attendance: Clara Hawker, Leon Last, Caroline Hopley, Jenny Gallagher, Derya Sekmen

1. Apologies

Apologies were received from Mr Borsak, Ms Cooke, and Mr Rowell.

2. Minutes of Meeting No. 18

Resolved, on the motion of Ms Houssos, seconded by Mr Fraser, that the minutes of meeting No. 18, held on 15 August 2018, be confirmed.

3. Inquiry into the impact of expenditure caps for local government election campaigns

3.1. Submissions

Resolved, on the motion of Mr Crouch, seconded by Mr Fraser, that Submissions 1 – 10 be accepted and published to the Committee's website, with the following redactions:

- Personal contact details, including residential addresses, personal telephone numbers, and personal email addresses
- Signatures

4. Public hearing on Monday, 24 September 2018

Resolved, on the motion of Mr Fraser that the Committee invite the witnesses listed in the notice of the public hearing for Monday, 24 September 2018 to give evidence in relation to the inquiry into the impacts of expenditure caps for local government election campaigns.

4.1 Media

Resolved, on the motion of Mr Fraser that the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 24 September 2018 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

4.2 Answers to questions on notice

Resolved, on the motion of Mr Crouch that witnesses be requested to return answers to questions taken on notice and supplementary questions within 14 days of the date on which the questions are forwarded to the witnesses.

The deliberative meeting concluded at 10.50am.

Witnesses and the public were admitted. The Chair opened the public hearing at 11.15am.

The following witnesses representing the **NSW Electoral Commission** were called:

- Mr Hugo Bergeron, Acting Executive Director, Funding Disclosures and Compliance was affirmed and examined.
- Ms Rachel McCallum, Director, Legal and Governance was affirmed and examined.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The Committee took a short adjournment at 11.52am and resumed the public hearing at 12.32pm.

The following witnesses representing **Local Government NSW** were called:

- Cr Linda Scott, President was affirmed and examined.
- Ms Jessica Wood, Legal Officer was affirmed and examined.

Cr Scott made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The following witnesses representing **Unions NSW** were called:

- Mr Mark Morey, Secretary was affirmed and examined.
- Ms Kate Minter, Research Officer was affirmed and examined.

Mr Morey made an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.43pm.

5. Post-Hearing deliberative meeting

The Committee commenced a deliberative meeting at 1.44 pm.

5.1. Publication orders

Resolved, on the motion of Ms Houssos that the corrected transcript of evidence given on 24 September 2018 be authorised for publication and uploaded to the Committee's website.

5.2 Acceptance and publication of tendered documents

Resolved, on the motion of Mr Fraser that the Committee accept the following documents, and publish them on the Committee's website:

- Outline of expenditure caps in other jurisdictions, submitted by Cr Linda Scott, President, Local Government NSW.

6. Next Meeting

The Committee adjourned at 1.50pm until a time and date to be determined.

MINUTES OF MEETING No. 20

1.31 pm Thursday, 25 October 2018

Room 1136, Parliament House

Members Present

The Hon Dr Peter Phelps MLC (Chair), Mr Adam Crouch MP, The Hon Ben Franklin MLC, Mr Andrew Fraser MP, The Hon Courtney Houssos MLC, The Hon Peter Primrose MLC, and Mr Paul Scully MP

Staff in attendance: Clara Hawker, Leon Last, Caroline Hopley, Jenny Gallagher, Derya Sekmen

1. Apologies

An apology was received from Mr Borsak.

2. Minutes of Meeting No. 19

Resolved, on the motion of Ms Houssos, that the minutes of meeting No. 19, held on 24 September 2018, be confirmed.

3. Inquiry into the impact of expenditure caps for local government election campaigns

3.1. Publication of answers to questions on notice

Resolved, on the motion of Mr Rowell, that the answers to questions on notice received by:

- Local Government NSW;
- NSW Electoral Commission; and
- Unions NSW

be published on the Committee's webpage.

4. Consideration of Chair's draft report

Mr Primrose moved:

That consideration be deferred pending proper and detailed modelling of the proposed option to determine any unintended consequences.

The committee notes that the Government got it wrong when, against advice, it rushed to include its spending caps model in the Electoral Funding Act only a few months ago. As predicted, this model has now proven to be unworkable.

While the proposed model is an improvement, it is again being rushed and again no detailed modelling or external assessment has been undertaken, risking yet another false start.

A proper, detailed and evidence based approach should be used to develop the best possible model for expenditure caps by the committee, which should recommend that these be legislated prior to June next year.

Question put.

The Committee divided

Ayes: Ms Houssos, Mr Primrose, Mr Scully

Noes: Dr Phelps, Ms Cooke, Mr Crouch, Mr Franklin, Mr Fraser, Mr Rowell

Question resolved in the negative.

Resolved, on the motion of Mr Fraser, seconded by Mr Crouch that the Committee considers the draft report on the impact of expenditure caps for local government election campaigns.

Ms Houssos moved that Recommendation 2 be deleted, and replaced with the words:

For local government general election, the applicable cap for an ungrouped candidate or for a group of candidates be set at the cost of a regular postage stamp multiplied by the number of electors for the local government area or ward, subject to a minimum cap of \$10,000 and a maximum cap of \$70,000.

That the minimum and maximum caps be increased annually in accordance with the annual adjustment for caps under the *Electoral Funding Act 2018*.

The Committee recommends that the following expenditure caps be introduced:

- \$10,000 where the number of enrolled electors for the local government area or ward is smaller than 10,001
- \$20,000 where the number of enrolled electors for the local government area or ward is larger than 10,000 and smaller than 20,001
- \$30,000 where the number of enrolled electors for the local government area or ward is larger than 20,000 and smaller than 30,001
- \$40,000 where the number of enrolled electors for the local government area or ward is larger than 30,000 and smaller than 50,001
- \$50,000 where the number of enrolled electors for the local government area or ward is larger than 40,000 and smaller than 50,001
- \$60,000 where the number of enrolled electors for the local government area or ward is larger than 50,000 and smaller than 60,001
- \$70,000 where the number of enrolled electors for the local government area or ward is larger than 70,000

Ms Houssos and Dr Phelps spoke to the amendment. Question put.

The Committee divided

Ayes: Ms Houssos, Mr Primrose, Mr Scully

Noes: Dr Phelps, Ms Cooke, Mr Crouch, Mr Franklin, Mr Fraser, Mr Rowell

Question resolved in the negative.

Ms Houssos moved that Recommendation 8 be amended by deleting the words 'be set at one-third of the relevant cap' and inserting the words 'be set at fifty per cent of the relevant cap'.

Ms Houssos and Dr Phelps spoke to the amendment. Question put.

The Committee divided

Ayes: Ms Houssos, Mr Primrose, Mr Scully

Noes: Dr Phelps, Ms Cooke, Mr Crouch, Mr Franklin, Mr Fraser, Mr Rowell

Question resolved in the negative.

Resolved, on the motion of Mr Fraser, seconded by Mr Crouch:

- That the draft report be the report of the Committee, and that it be signed by the Chair and presented to the House.
- That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.
- That, once tabled, the report be posted on the Committee's website.

5. Next Meeting

The Committee adjourned at 1.45 pm until a time and date to be determined.

Appendix Six – Glossary

Cr	Councillor
LGA	Local Government Area
MLC	Member of the Legislative Council
MP	Member of Parliament
NSW	New South Wales