



**REPORT OF THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS –
CAPS ON THIRD-PARTY CAMPAIGNERS' ELECTORAL EXPENDITURE IN S 29(11)
AND S 35 OF THE ELECTORAL FUNDING ACT 2018 (REPORT 2/57 –
NOVEMBER 2022)**

GOVERNMENT RESPONSE

The Joint Standing Committee on Electoral Matters (**Committee**) resolved on 23 March 2022 to conduct an inquiry into caps on third-party campaigners' electoral expenditure in accordance with the terms of reference contained in the referral from the former Attorney General in his letter dated 10 March 2022.

The Committee released its report (**Report**) on 23 November 2022.

The Government accepts one of the four recommendations made by the Committee. The Government notes the remaining three recommendations.

The Government's position on each of the Committee's recommendations is set out in **Attachment A**.

Consistent with the commitment provided by the Leader of the Government in the Legislative Council to the Clerk of the Parliaments by letter dated 24 May 2023, the Government provides this response on a voluntary basis.



JSCM RECOMMENDATION	GOVERNMENT RESPONSE	COMMENT
<p>1. The Committee recommends that the Government, in consultation with relevant stakeholders, identify an appropriate cap for third-party campaigners acting in concert.</p>	<p>Noted</p>	<p>The Government recognises concerns about attempts to circumvent caps applicable to electoral expenditure by third-party campaigners.</p> <p>Section 144 of the <i>Electoral Funding Act 2018 (EF Act)</i> currently provides that it is an offence for a person to enter into or carry out a scheme (whether alone or with others) for the purpose of circumventing a prohibition or requirement of Part 3 of that Act with respect to political donations or electoral expenditure (including caps on electoral expenditure by electoral participants). The offence carries a maximum penalty of imprisonment for 10 years.</p> <p>Any laws which limit electoral expenditure necessarily burden the freedom of political communication implied under the Commonwealth Constitution. A sufficient evidential basis would be required to be satisfied that further restricting electoral expenditure by third-party campaigners is justified, proportionate and compatible with the system of representative and responsible government.</p> <p>The existing offence under section 144 of the EF Act is the appropriate mechanism for preventing schemes designed to circumvent caps on electoral expenditure. It applies fairly to all electoral participants, including third-party campaigners. The Government considers that there is insufficient available evidence to justify further restrictions applicable only to third-party campaigners. There is therefore a significant risk that any such measures could not be shown to be compatible with the implied freedom of political communication.</p>



JSCEM RECCOMENDATION	GOVERNMENT RESPONSE	COMMENT
<p>2. The Committee recommends that the Government consider options to manage third-party campaigners acting in concert with a view to:</p> <ul style="list-style-type: none"> • introducing a new, appropriate cap for electoral expenditure of third-party campaigners acting in concert; and • providing more information and clarity on the definition of acting in concert and the expenditure that is covered in this new cap. 	<p>Noted</p>	<p>See response to recommendation 1.</p>
<p>3. The Committee recommends that, if a new cap for electoral expenditure for third-party campaigners acting in concert is introduced, the NSW Electoral Commission develop, distribute and promote clear and accessible information about the new regime to affected stakeholders.</p>	<p>Noted</p>	<p>See response to recommendation 1.</p>
<p>4. The Committee recommends that the cap on electoral expenditure for a third-party campaigner for a by-election be increased to \$198,750, and indexed to CPI or other increases to spending caps for registered political parties and candidates.</p>	<p>Accepted</p>	<p>Caps on electoral expenditure are a key pillar of the State's electoral funding laws, which are among the strongest in Australia. It is appropriate to reinstate a cap on electoral expenditure by third-party campaigners in by-elections, as recommended by the Committee. This will ensure that third-party campaigners are able to get their message out to electors, while ensuring that their voices are not allowed to overwhelm a campaign.</p>