



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 1

Electoral Funding Amendment Bill 2023

Report 61

September 2023

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Portfolio Committee No. 1 - Premier and Finance

Electoral Funding Amendment Bill 2023

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Report no. 61.

Electoral Funding Amendment Bill 2023

"September 2023"

Chair: Hon Jeremy Buckingham, MLC



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Terms of reference

That:

- (a) the [Electoral Funding Amendment Bill 2023](#) be referred to Portfolio Committee No. 1 – Premier and Finance for inquiry and report
- (b) the bill be referred to the committee at the conclusion of the mover's second reading speech in the Council
- (c) the committee report by 11 September 2023.

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 22 August 2023.¹

¹ *Minutes*, NSW Legislative Council, 22 August 2023, pp 363-364.

Committee details

Committee members

Hon Jeremy Buckingham MLC	Legalise Cannabis Party	<i>Chair</i>
Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
Ms Cate Faehrmann MLC*	The Greens	
Hon Sam Farroway MLC**	The Nationals	
Hon Stephen Lawrence MLC	Australian Labor Party	
Hon Bob Nanva MLC	Australian Labor Party	
Hon Peter Primrose MLC***	Australian Labor Party	
Hon Chris Rath MLC	Liberal Party	

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* Ms Cate Faehrmann MLC is a participating member from 24 August 2023 for the duration of the inquiry.

** The Hon Sam Farroway MLC substituted for the Hon Damien Tudehope MLC from 24 August 2023 for the duration of the inquiry.

*** The Hon Peter Primrose MLC substituted for the Hon Dr Sarah Kaine MLC from 29 August 2023 for the duration of the inquiry.

Secretariat

Frances Arguelles, Principal Council Officer

Gareth Perkins, Council/Administration Officer

Laura Ismay, Director

Chair's foreword

On 22 August 2023, the Legislative Council referred the Electoral Funding Bill 2023 to Portfolio Committee No. 1 – Premier and Finance for inquiry and report by 11 September 2023.

The bill has two provisions. Clause 1 seeks to amend section 29(11) of the *Electoral Funding Act 2018* (the EF Act) to introduce a cap on electoral expenditure by TPCs for state by-elections of \$225,900. Clause 2 seeks to amend section 29(12)(b) of the EF Act and increase the applicable cap for TPCs from \$24,700 to \$225,900 in each electoral district, in relation to electoral expenditure incurred substantially for the purposes of an election in a particular electoral district where there is a state general election or by-elections in more than one electoral district.

As part of the inquiry, the committee received evidence from a variety of stakeholders, including the NSW Electoral Commission, political parties, unions and representatives from the academic and accountability sectors. Most stakeholders were generally supportive of the bill, particularly in relation the first element of the bill, given there is currently no cap on the electoral expenditure for TPCs at state by-elections following the High Court's decision in *Unions NSW v New South Wales* [2023] HCA 4.

However, stakeholders held varied views on the actual figure and the appropriateness of increasing the cap to \$225,900, with some unions suggesting there should be no cap in place at all. Some stakeholders also expressed concern at the piecemeal nature of the bill's proposals, noting that it does not implement all recommendations of the 2022 Joint Standing Committee on Electoral Matters (JSCEM) inquiry, particularly those that related to an acting in concert provision.

Given the short timeframe for this inquiry, it is not possible for the committee to re-examine and re-explore all arguments on an appropriate cap and acting in concert provision.

However, we note that these issues were covered in great detail by the aforementioned JSCEM inquiry. As such, the committee is inclined to defer to the considerable work of this committee and accept that the recommended cap increase strikes the right balance. The committee also notes that the upcoming JSCEM Review of the 2023 State Election can more appropriately provide an opportunity for analysis of the concerns raised by some stakeholders during the course of this inquiry.

The committee is grateful to the various stakeholders who participated in the inquiry, particularly given the short notice for submissions and the hearing. Their contributions were invaluable in informing our consideration of the bill. Finally, the committee thanks the secretariat for their diligence and professional capacity for making it possible to undertake this inquiry in such a short timeframe.

The committee refers the bill back to the House for its consideration, and recommends that the concerns raised by stakeholders be addressed during debate.



Hon Jeremy Buckingham MLC
Committee Chair

Recommendations

Recommendation 1

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That the Legislative Council proceed to debate the Electoral Funding Amendment Bill 2023, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 22 August 2023.

The committee received 5 submissions.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Key definitions

Acting in concert	Now repealed, the acting in concert provision previously made it unlawful for a third-party campaigner to act in concert with another person or other persons to incur electoral expenditure in relation to an election campaign during the capped expenditure period for the election that exceeds the applicable cap for the third-party campaigner for the election. The section defined 'acting in concert' with another person as when the person acts under an agreement (whether formal or informal) with the other person to campaign with the object, or principal object of: <ol style="list-style-type: none"> a. having a particular part, elected member or candidate elected, or b. opposing the election of a particular party, elected member or candidate.²
Associated entity	An associated entity is a corporation or another entity that operates solely for the benefit of one or more registered parties or elected members. ³
Capped expenditure	Capped expenditure for a state general election begins on 1 October of the year before the election. ⁴ In any other case, such as a by-election, it is the period from and including the day of the issue of the writ or writs for the election to the end of the election day for the election. ⁵
Electoral expenditure	Electoral expenditure is money spent to influence voting at an election, including promoting or opposing a particular party or candidate. It can be incurred by a wide range of activities, including advertising, posters, social media campaigns, research, and 'how-to-vote' cards. ⁶
Third-party campaigners	Third-party campaigners (TPCs) are persons or entities (not being an associated entity, party, elected member, group or candidate) that incur more than \$2,000 in electoral expenditure during a capped expenditure period. ⁷ TPCs may, for example, be unions, charities, religious groups, environmental groups, business groups, or groups interested in a specific policy, issue, or government area. ⁸ A register of TPCs for each election period is managed by the NSW Electoral Commission. ⁹

² *Electoral Funding Act 2018*, s 35 (repealed).

³ *Electoral Funding Act 2018*, s 4.

⁴ *Electoral Funding Act 2018*, s 27(a).

⁵ *Electoral Funding Act 2018*, s 27(b).

⁶ *Electoral Funding Act 2018*, s 7(1).

⁷ *Electoral Funding Act 2018*, s 4.

⁸ Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, 2022, p 1.

⁹ NSW Electoral Commission, *Register of Third-party Campaigners*, 9 November 2022, <https://elections.nsw.gov.au/funding-and-disclosure/public-register-and-lists/register-of-third-party-campaigners>.

Chapter 1 Background

This chapter sets out the background to the Electoral Funding Amendment Bill 2023, (hereafter the bill), including a summary of the 2022 Joint Standing Committee on Electoral Matters' (JSCEM) inquiry and High Court decision in *Unions NSW v New South Wales* [2023] HCA 4. This chapter also gives an overview of the bill's proposed amendment of the the *Electoral Funding Act 2018* (the EF Act).

Background to the Electoral Funding Amendment Bill 2023

- 1.1 This section provides an overview of the 2022 Joint Standing Committee on Electoral Matters (JSCEM) inquiry and its recommendations, as well as the High Court decision in *Unions NSW v New South Wales* [2023] HCA 4 (*Union NSW*).
- 1.2 On 23 March 2022, following a referral from then-Attorney General, Hon Mark Speakman MP, the JSCEM commenced an inquiry into the caps on third-party campaigners' electoral expenditure in section 29(11) and section 35 of the *Electoral Funding Act 2018* (2022 JSCEM inquiry).¹⁰ During the course of the 2022 JSCEM inquiry, the Electoral Legislation Amendment Bill 2022 (the 2022 Bill) was passed by the NSW Parliament. This bill repealed section 35 of the *Electoral Funding Act 2018* (the EF Act), removing the acting in concert provisions in their entirety.¹¹
- 1.3 On 23 November 2022, the JSCEM tabled its report. The JSCEM found that acting in concert caps, repealed by the 2022 bill, are necessary to protect the balance of voices in election campaigns and to ensure 'that money does not become the primary influencer of elections'.¹²
- 1.4 The report also made four recommendations. The key recommendation relevant to this inquiry was Recommendation 4, which recommended that the cap on electoral expenditure for a third-party campaigner (TPC) 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.¹³ This amount represented 75 per cent of the candidate cap for by-elections, which at that stage, was \$265,000.¹⁴ The JSCEM considered that this increase would allow TPCs adequate resourcing to run campaigns in by-elections, while preserving the voices of candidates.¹⁵

¹⁰ Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, (2022), p 21.

¹¹ Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, p 1.

¹² Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, p 5.

¹³ Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, p 12.

¹⁴ Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, p 12.

¹⁵ Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, p 12.

- 1.5 At the time of the report's tabling, the cap on electoral expenditure for a TPC during a by-election was \$20,000.¹⁶
- 1.6 On 5 February 2023, the High Court in *Unions NSW* declared that the cap of \$20,000 imposed by section 29(11) of the EF Act was invalid, with a majority of the Court (Kiefel CJ, Gageler, Gordon, Gleeson and Jagot JJ) finding that the section impermissibly burdened the implied freedom of political communication.¹⁷ As a consequence of this decision, there is no cap on electoral expenditure at a by-election for a TPC.¹⁸

Referral of the Electoral Funding Amendment Bill 2023

- 1.7 The bill was introduced in the Legislative Council on 3 August 2023, by the Hon Anthony D'Adam MLC.¹⁹
- 1.8 On 22 August 2023, the bill was considered by the Selection of Bills Committee, which recommended that the bill not be referred to a committee for inquiry and report.²⁰ When the Selection of Bills Committee report was tabled in the House later that day, the Hon Chris Rath MLC moved an amendment to the tabling motion, proposing that the bill to be referred to Portfolio Committee 1 – Premier and Finance for inquiry and report by 11 September 2023. This amendment was agreed to on division.²¹

The provisions of the Electoral Funding Amendment Bill 2023

- 1.9 Clause 1 of the bill seeks to amend section 29(11) of the EF Act to increase the cap on electoral expenditure by TPCs for state by-elections from \$20,000 to \$225,900, indexed for inflation in line with other caps on electoral expenditure under the EF Act.²² As outlined in its explanatory note, this provision implements Recommendation 4 of the 2022 JSCEM inquiry, with the figure in the bill adjusted for inflation from the JSCEM's original figure of \$198,750, as discussed in paragraph 1.4.
- 1.10 During the second reading speech, the Hon Anthony D'Adam MLC referred to the High Court's decision in *Unions NSW*, which found that the current cap was 'invalid for impermissibly burdening the implied freedom of political communication under the Commonwealth Constitution'.²³ He observed that the outcome of the High Court's decision was:

¹⁶ *Electoral Funding Act 2018*, s 29(11) (repealed).

¹⁷ *Unions NSW & ORS v State of New South Wales*, [2023] HCA 4 at [34].

¹⁸ Evidence, Ms Rachel McCallum, Executive Director, Funding Disclosure and Compliance and General Counsel, NSW Electoral Commission, 30 August 2023, p 33; The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

¹⁹ *Minutes*, Legislative Council, 3 August 2023, pp 343-344.

²⁰ Selection of Bills Committee, NSW Legislative Council, Report No. 6 (2023), p 2

²¹ *Minutes*, NSW Legislative Council, 22 August 2023, pp 364-365.

²² Electoral Funding Amendment Bill 2023, Schedule 1 Item 1.

²³ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

...largely the result of the [s]tate conceding that the cap could not be defended, following the [JSC]EM's determination that the cap was "overly restrictive" and "too low for TPCs to run effective campaigns and properly participate in the electoral process during by-elections".²⁴

1.11 Mr D'Adam observed that there is presently no effective cap on electoral expenditure for a TPC for a by-election and explained that the bill is an appropriate response to ensure TPCs are able to 'get their message out to electors, while ensuring that their voices are not allowed to overwhelm a campaign'.²⁵

1.12 On the basis for the figure proposed for the cap in section 29(11), Mr D'Adam noted that 2022 JSC]EM inquiry 'recommended a new cap of 75 per cent of the cap applicable to candidates for a Legislative Assembly by-election', which currently sits at \$301,200. This percentage was suggested on the basis that the 75 per cent proportion would allow TPCs adequate resourcing to run campaigns in by-elections while preserving the voices of candidates.²⁶

1.13 The bill also proposes an amendment to section 29(12)(b) of the EF Act.²⁷ Currently, this section states:

...the applicable cap for parties and TPCs is subject to an additional cap (within the overall applicable cap) in relation to [s]tate general elections, or by-elections in more than one electoral district, for electoral expenditure incurred substantially for the purposes of the election in a particular electoral district, being—

(a) in the case of a party—\$61,500 in respect of each such electoral district, or

(b) **in the case of a third-party campaigner—\$24,700 in respect of each such electoral district.**²⁸

1.14 Clause 2 of the bill proposes to amend section 29(12)(b) of the EF Act to increase the applicable cap for TPCs in respect of each electoral district in relation to electoral expenditure incurred substantially for the purposes of an election in a particular electoral district when there is a state general election or by-elections in more than one electoral district from \$24,700 to \$225,900. This figure will also be adjusted for inflation.²⁹

1.15 In his second reading speech, Mr D'Adam said that the proposed amendment would mean that a TPC is only able to incur electoral expenditure for a particular electoral district up to its new capped amount for a single by-election, in the case of multiple by-elections or a state general election. He noted that this would serve to prevent expenditure within an overall limit being

²⁴ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

²⁵ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

²⁶ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

²⁷ Electoral Funding Amendment Bill 2023, Schedule 1 Item 2.

²⁸ *Electoral Funding Act 2018*, s 29 (12) [emphasis added].

²⁹ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

disproportionally targeted towards a single electoral district, as TPCs would be prevented from aggregating the caps applicable to each by-election.³⁰

- 1.16** Mr D'Adam described clause 2 of the bill as a 'consequential amendment ... to ensure that the intent of the [JSCEM's] recommendation is given effect to'.³¹ Without amendment, Mr D'Adam said, section 29(12)(b) is 'overly restrictive and could open the cap to a successful legal challenge', as TPCs would effectively be left with a similar level of cap per electorate to the one that the 2022 JSCEM inquiry report found was inadequate to allow them to participate in the electoral process.³²
- 1.17** Mr D'Adam noted that the figure for the additional cap proposed by clause 2 is the same as the amount proposed in clause 1, in order to ensure that TPCs have the benefit of the new cap when there are multiple by-elections on one day.³³

³⁰ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

³¹ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

³² The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

³³ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

Chapter 2 Key issues

This chapter considers key issues raised in relation to the Electoral Funding Amendment Bill 2023. These issues include stakeholder views on the appropriateness of the proposed cap amount, questions around the proposed amendment of section 29(12)(b) of the *Electoral Funding Act 2018* and the effect of the bill's failure to reintroduce an 'acting in concert' provision. This chapter also covers evidence received on the relationship between third-party campaigners and political parties, and whether the nature of this relationship could and should be altered.

Proposed amendment of section 29(11) of the *Electoral Funding Act 2018*

- 2.1** As noted in chapter 1, clause 1 of the Electoral Funding Amendment Bill 2023 (the bill) seeks to introduce a cap of \$225,900 on electoral expenditure for third-party campaigners (TPCs) at state by-elections. As outlined in paragraph 1.6, a majority of the High Court in *Unions NSW v New South Wales* [2023] HCA 4 (*Unions NSW*) at [32] – [34] noted that the Government was unwilling to discharge its onus to justify the burden on the implied right and as a consequence the Court unanimously declared that the previous cap of \$20,000 imposed by section 29(11) of the *Electoral Funding Act 2018* (the EF Act) was invalid, as it impermissibly burdened the implied freedom of political communication. As a consequence of this decision, there are currently no set caps for TPCs during a by-election.³⁴
- 2.2** In introducing the bill to reinstate these caps, the Hon Anthony D'Adam MLC advised that the amount of \$225,900 is in line with the recommendation of the 2022 Joint Standing Committee on Electoral Matters inquiry (2022 JSCEM inquiry) that the cap should be 75 per cent of the cap applicable to candidates.³⁵ Both the JSCEM and Mr D'Adam said that this amount would allow a TPC to complete on a 'level playing field and would have reasonable opportunity to present its case to voters'.³⁶
- 2.3** Mr D'Adam also noted that in formulating this figure, the JSCEM considered evidence from both Unions NSW and the NSW Nursing and Midwifery Associations (NSWNMA) who estimated that campaigning in an average state by-election would cost them \$114,000 and \$190,000 respectively.³⁷

³⁴ *Unions NSW & ORS v State of New South Wales*, [2023] HCA 4 at [34]. See also: Evidence, Ms Rachel McCallum, Executive Director, Funding Disclosure & Compliance and General Counsel, NSW Electoral Commission, 30 August 2023, p 31; The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

³⁵ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023; Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, (2022), p 12.

³⁶ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023. Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, pp 4, 12.

³⁷ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023. Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, pp 13-14. For the total expenditure disclosed by category by third-party campaigners for the 2019 State election

2.4 Many stakeholders agreed in principle with a proposed increase of the previous cap amount.³⁸ However, there was disagreement as to how much the increase should be.

2.5 On one hand, stakeholders included Australian Labor Party (NSW Branch) (ALP) and the NSWNMA supported the proposed cap of \$225,900.³⁹ Mr Michael Whaites, Assistant General Secretary, NSWNMA reiterated their evidence to the 2022 JSCEM inquiry that the cap should be 75 per cent of that of a candidate and agreed that the amount proposed in the bill:

...allows [TPCs] to execute a worthwhile campaign that allows our voice to be heard, and for the voters to hear and understand the arguments presented by all political participants.⁴⁰

2.6 Representatives from the academic and accountability sectors gave evidence that while the amounts in the bill might be considerable, there were broader considerations that led them to give their support to them. For example, Professor Anika Gauja, School of Social and Political Sciences, University of Sydney acknowledged that the proposed cap is 'generous' but noted that 'the balance and the rationale of around... 75 per cent of the cap for candidates and political parties is sound'.⁴¹ For Professor Gauja, actual and theoretical considerations led her to conclude that it was unlikely that many TPCs would meet this threshold:

I really do not see, in terms of political practice, that actually meeting the cap, as it is proposed, would be a great likelihood for the vast majority of [TPCs], which simply don't have these resources that a few potentially might.

What I'm trying to say is that I think that you need to work both with the actual figures and the expenditure and gather that data, but you also need to have a theoretical benchmark as against the parties and the candidates.⁴²

2.7 Mr Geoffrey Watson SC, Board Member, Centre for Public Integrity, and Board Director, Accountability Round Table gave his personal opinion that the sums were 'too large' but asserted that it was the High Court's jurisprudence on the issue that was the ultimate determinant of whether they were fair and reasonable in balance.⁴³ Professor Gauja agreed that while a cap of 75 per cent of that of a candidate might be generous in comparison to those of

see answers to supplementary questions, Ms Rachel McCallum, Executive Director, Funding Disclosure and Compliance and General Counsel, NSW Electoral Commission, received 5 September 2023, p 1.

³⁸ Evidence, Mr Mark Morey, Secretary, Unions NSW, 30 August 2023, p 2; Evidence, Mr Michael Whaites, Assistant General Secretary, NSW Nurses and Midwives' Association (NSWNMA), 30 August 2023, p 17; Evidence, Mr Geoffrey Watson SC, Board Director, Centre for Public Integrity and Board Director, Accountability Round Table, 30 August 2023, p 22; Evidence, Professor Anika Gauja, Professor, School of Social and Political Sciences, University of Sydney, 30 August 2023, p 22; Evidence, the Hon Kevin Rozzoli, Member, Accountability Round Table, 30 August 2023, p 23, Submission 2, Public Service Association NSW (PSA NSW), p 2.

³⁹ Submission 3, NSW Labor, p 1, Evidence, Mr Whaites, 30 August 2023, p 14,

⁴⁰ Evidence, Mr Whaites, 30 August 2023, p 14.

⁴¹ Evidence, Professor Gauja, 30 August 2023, pp 22, 24.

⁴² Evidence, Professor Gauja, 30 August 2023, p 24.

⁴³ Evidence, Mr Watson SC, 30 August 2023, p 23.

other international jurisdictions, a cap of between 10 and 15 per cent would fail to pass the constitutional threshold of the implied freedom of political communication.⁴⁴

2.8 Addressing rationales for the size of the cap proposed by the bill, Mr Watson SC noted that:

I've been researching in this area for some years now and I believe that the approach taken by JSCEM is valid and the result is a fair and reasonable one, based not only upon theory but also upon practice.⁴⁵

2.9 Mr Watson SC further noted that he could see 'no risk to the democratic process through the proposed third-party caps' and that 'on the whole', the proposal is well designed.⁴⁶

2.10 In contrast, The Nationals (NSW Branch) and Liberal Party of Australia – NSW Division argued that the figure set out in the bill is too high and, combined with the absence of acting in concert provisions, risked the voices of TPCs drowning out the voices of political actors.⁴⁷

2.11 The submission of The Nationals (NSW Branch) stated that [TPCs] with similar purposes are presently empowered to coordinate their activities and messages and should they choose to organise in this manner, the amount in the bill would allow them to amplify a particular message to a level significantly greater than other organisations.⁴⁸

2.12 Mr Chris Stone, State Director, NSW Division, Liberal Party of Australia gave similar evidence about the effect on political actors in the electoral sphere. While acknowledging that TPCs have a role to play in the electoral process, Mr Stone argued it should be 'proportional'.⁴⁹ He told the committee that the bill 'disturbs the balance that already exists between the caps for TPCs and candidates in the *Electoral Funding Act [2018]* ... benefiting trade unions and their political wing'.⁵⁰ He further added that it 'destroys the relativity between candidates and noncandidates and is particularly harmful to minor parties and Independents'.⁵¹

2.13 Mr Stone also disagreed with the amount proposed by Unions NSW and NSWNMA in the 2022 JSCEM inquiry, describing the assumptions built into the amount as 'flawed' and expressing concern that the 2022 JSCEM inquiry did not hear from either the Liberal or National Party.⁵² Noting these concerns, Mr Stone suggested that the applicable cap for TPCs be limited to no more than 15 per cent of a cap applicable to a candidate, as that in his experience, a sufficient campaign 'on a single issue' could be run on this amount.⁵³

⁴⁴ Evidence, Professor Gauja, 30 August 2023, p 25.

⁴⁵ Evidence, Mr Watson SC, 30 August 2023, p 22.

⁴⁶ Answers to supplementary questions, Mr Geoffrey Watson SC, Board Director, Centre for Public Integrity and Board Director, Accountability Round Table, received 5 September 2023, p 1.

⁴⁷ Submission 1, The Nationals (NSW Branch), p 2; Evidence, Mr Chris Stone, State Director, NSW Division, Liberal Party of Australia, 30 August 2023, p 8.

⁴⁸ Submission 1, The Nationals (NSW Branch), p 1.

⁴⁹ Evidence, Mr Stone, 30 August 2023, p 9.

⁵⁰ Evidence, Mr Stone, 30 August 2023, p 8.

⁵¹ Evidence, Mr Stone, 30 August 2023, p 8.

⁵² Evidence, Mr Stone, 30 August 2023, pp 8, 12.

⁵³ Evidence, Mr Stone, 30 August 2023, pp 9 and 12-13.

- 2.14** Mr Paul Dignam, Treasurer, NSW Greens also advised that while The Greens supported caps on electoral expenditure, the proposed cap in the bill is 'too high'.⁵⁴ He reiterated their proposal to the 2022 JSCEM inquiry and suggested a cap of \$75,000 for TPCs, describing this amount as 'high enough not to be considered too low by the High Court but proportional to an appropriate cap'.⁵⁵ This would seem to reflect a policy preference for lower expenditure caps overall, as Mr Dignam also endorsed a TPC cap set at 75 per cent of a candidate cap.⁵⁶
- 2.15** When asked about the impact of the proposed cap to minor parties such as The Greens, Mr Dignam considered that it would 'probably have more adverse effect on smaller parties that may be running in a small number of electorates given that the cap is 'almost' the same amount for a party itself'.⁵⁷
- 2.16** Separate to the adequacy of the proposed amount, some union stakeholders argued that a cap on TPCs should not exist at all.⁵⁸ Mr Mark Morey, Secretary, Unions NSW told the committee that the nature of unions' work makes it difficult for them to distinguish between 'business-as-usual' work and electoral expenditure during a campaign, with a consequential 'cooling effect' on their advocacy.⁵⁹ He gave the example of how a similar message would be treated in and outside the electoral period:
- Past 1 October when the cap period starts, you could run a campaign, "This government is attacking rail workers. They should get a pay rise." You can say that. I think that is business as usual. If you say, "This government is attacking rail workers. They should get a pay rise and you need to vote the government out," that is arguably electoral expenditure. There is a cooling effect on the way in which you advocate for the issues you have in the movement during an electoral period.⁶⁰
- 2.17** Mr Morey also said that while he did not think there should be a cap, if there was, it should be set at a level that allow[s] people to be able to campaign as TPCs, 'but not drown out the voices of the candidates'.⁶¹ On the costs associated with running a campaign, Mr Morey observed that 'you can't run a campaign on \$20,000' as the media market, in particular in Sydney, is at a 'premium cost' in which increases when an election is called.⁶² He also explained that the biggest cost for election campaigns are staff wages.⁶³
- 2.18** Mr Nathan Bradshaw, Acting Assistant General Secretary, Public Sector Association NSW (PSA NSW) also suggested that caps impede the 'core functions' of their union on the basis that their long-running campaigns 'cut across the traditional electoral cycle'.⁶⁴ Their submission also

⁵⁴ Evidence, Mr Paul Dignam, Treasurer, NSW Greens, 30 August 2023, p 34.

⁵⁵ Evidence, Mr Dignam, 30 August 2023, p 34.

⁵⁶ Evidence, Mr Dignam, 30 August 2023, pp 34-35.

⁵⁷ Evidence, Mr Dignam, 30 August 2023, p 34.

⁵⁸ Submission 2, PSA NSW, p 2; Evidence, Mr Morey, 30 August 2023, pp 2-3; Evidence, Mr Nathan Bradshaw, Acting Assistant General Secretary, PSA NSW, 30 August 2023, p 18.

⁵⁹ Evidence, Mr Morey, 30 August 2023, p 6.

⁶⁰ Evidence, Mr Morey, 30 August 2023, p 6.

⁶¹ Evidence, Mr Morey, 30 August 2023, p 4.

⁶² Evidence, Mr Morey, 30 August 2023, p 4.

⁶³ Evidence, Mr Morey, 30 August 2023, p 4.

⁶⁴ Evidence, Mr Bradshaw, 30 August 2023, p 14

described them as being in a 'unique position' during an election period, as their 'daily business becomes subject to electoral funding laws'.⁶⁵ Mr Bradshaw explained the effect of these electoral requirements, telling the committee that 'any attempt to control or limit our expenditure around elections can seriously inhibit our ability to function effectively'.⁶⁶

- 2.19** Furthermore, Mr Bradshaw advised that unlike major parties, TPCs do not have an immediate platform and TPCs like PSA NSW need to spend significant amounts of money to be seen and heard.⁶⁷ This issue was also addressed by other witnesses. Mr Watson SC gave evidence that the 'brand' and 'incumbency' advantages of established political parties ought to be factored in when considering what the ratio of spending caps should be between candidates and TPCs. Mr Watson SC also indicated he 'worried' that caps on TPCs could tend to entrench a supremacy of established political parties.⁶⁸ Professor Gauja agreed that established political parties enjoyed an 'advantage' by virtue of 'brand recognition'.⁶⁹

Proposed amendment of section 29(12)(b) of the *Electoral Funding Act 2018*.

- 2.20** While the majority of the evidence received by the committee related to proposed changes to section 29(11), the Liberal Party of Australia – NSW Division, and the party's State Director, Mr Chris Stone raised a number of concerns with the proposed amendment of section 29(12)(b).

- 2.21** Their submission stated:

The proposed amendment of section 29(12)(b) contained in this [b]ill represents a significant uplift on the additional cap for [TPCs] in relation to [s]tate general elections from \$30,400 (after indexation) to \$225,900 without any provisions concerning collusion between parties and/or [TPCs].⁷⁰

- 2.22** At the hearing, Mr Stone, State Director, NSW Division, Liberal Party of Australia told the committee that amending section 29(12)(b), in the absence of any accompanying acting in concert provisions, would allow affiliated trade unions to 'coordinate their efforts and direct their additional caps in a targeted manner to those marginal seats where the Liberal or National parties, minor parties or Independents may hold seats or where there are tight contests'.⁷¹

- 2.23** In practical terms, he explained that the risk of this proposed amendment is that:

In a general election context, [TPCs] can register and get an overall cap and then within that they have this additional cap that they can spend in particular electoral districts. What this means is a tenfold increase in the amount of money that they could spend in a single electoral district. ... In those circumstances where there's a small number of candidates in the field and then you have the ability of third-party campaigners to

⁶⁵ Submission 2, PSA NSW, p 2.

⁶⁶ Evidence, Mr Bradshaw, 30 August 2023, p 14.

⁶⁷ Evidence, Mr Bradshaw, 30 August 2023, p 21.

⁶⁸ Evidence, Mr Watson SC, 30 August 2023, p 27.

⁶⁹ Evidence, Professor Gauja, 30 August 2023, p 27.

⁷⁰ Submission 4, Liberal Party of Australia – NSW Division, p 4.

⁷¹ Evidence, Mr Stone, 30 August 2023, p 8.

register and spend up to the same amount as a candidate you can expect that that's going to have a significant impact on electoral outcomes in the seat.⁷²

- 2.24** Mr Stone also suggested that as 29(12)(b) was not addressed in the 2022 JSCEM inquiry there is an 'unreliable basis' for the amendment.⁷³
- 2.25** In his second reading speech, Mr D'Adam noted that JSCEM did not make any recommendations regarding the provisions which caps the seat-specific expenditure of TPCs and parties in by-elections. However, he maintained that if section 29(12)(b) was not increased, then 'seat-specific expenditure will apply in the case of multiply by-elections on the same day, which is likely to be overly restrictive and could open the cap to [a] successful legal challenge'.⁷⁴ He added that he would undertake to make a reference to JSCEM so that it could consider whether any other changes should be made to section 29(12) of the EF Act.⁷⁵

Acting in concert provision

- 2.26** As mentioned in chapter 1, the *Electoral Legislation Amendment Act 2022* (the 2022 Amendment Act) repealed section 35 of the EF Act, removing the 'acting in concert' provision from the EF Act.⁷⁶ Some stakeholders expressed concern that the current bill did not seek to reintroduce a provision of this nature.⁷⁷
- 2.27** The Liberal Party of Australia – NSW Division stated that while the 2022 JSCEM inquiry made three recommendations regarding acting in concert provisions, none of these recommendations are addressed in the bill.⁷⁸ During the hearing, Mr Stone, State Director, Liberal Party of Australia – NSW Division, explained the importance of acting in concert provisions to prevent the aggregation of caps:

...at some of the recent by-elections over the past few years...multiple unions registered as [TPCs] campaigned on issues as they are legitimately able to do, all with a consistency of message and generally a message that is against the Coalition side of politics. Really that question around should they be able to aggregate their collective caps for the purposes of campaigning against candidates or against political parties is fundamentally the question here. They all have a legitimate role to play. But if they are all working in a

⁷² Evidence, Mr Stone, 30 August 2023, p 10.

⁷³ Evidence, Mr Stone, 30 August 2023, p 8.

⁷⁴ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

⁷⁵ The Hon Anthony D'Adam MLC, Second reading speech: Electoral Funding Amendment Bill 2023, 3 August 2023.

⁷⁶ Joint Standing Committee on Electoral Matters, *Inquiry into Caps on third-party campaigners' electoral expenditures in section 29 (11) and section 35 of the Electoral Funding Act 2018*, p 1. See also: *Votes and Proceedings*, NSW Legislative Assembly, 19 October 2022, p 1937.

⁷⁷ Submission 4, Liberal Party of Australia – NSW Division, p 3; Submission 1, The Nationals (NSW Branch), p 2.

⁷⁸ Submission 4, Liberal Party of Australia – NSW Division, p 3; Evidence, Mr Stone, 30 August 2023, p 8.

coordinated way to aggregate their caps, arguably the result is disproportionate and will have a direct impact on electoral outcomes.⁷⁹

2.28 The Nationals (NSW Branch) also argued that TPCs with similar purposes are presently empowered to co-ordinate their activities and messages.⁸⁰ They told the committee that without an acting in concert provision, TPCs are able to 'co-ordinate their activities and collectively spend significantly more than candidates or parties in election.'⁸¹

2.29 When asked about this issue, Mr Geoffrey Watson SC, Board Member, Centre for Public Integrity, and Board Director, Accountability Round Table, strongly rejected the idea that the union movement presented a uniform argument:

...anybody who suggests that the trade union movement is presenting, through its many different emanations, one argument has rocks in their head. ... They are very diverse organisations with very different views...To put everybody in a bag and say that because they tend to support one side of politics is really not fair because this is a democratic voice.... To say, "No, your voice is shut down because we are going to only accept that one of you can speak", is wrong. That offends the constitutional principle as well. That's why I've said that it should move slowly, bit by bit. We don't want to get it wrong.⁸²

2.30 Furthermore, Mr Watson SC gave evidence that the remaining recommendations from the 2022 JSCEM inquiry, including those concerning acting in concert provisions, should be the subject of further scrutiny independently from consideration of the current bill:

I read those parts of the JSCEM report which suggested the reform should go further, combining spending from similar organisations, but I believe that should wait. It should wait for two reasons. One, it could present a constitutional validity issue. The second is it should await some experience.⁸³

2.31 Professor Gauja, University of Sydney, also raised problems with acting in concert provisions, arguing that it would be difficult to determine what is '[acting] in concert behaviour'. In response to questions around this issue, she gave similar evidence on the diversity of TPCs, while also questioning the actual likelihood of these bodies running a coordinated effort:

How can you differentiate the activities of a number of like-minded [TPCs] that happen to reflect a groundswell of support on a particular issue from a coordinated effort on the parts of those third parties. I think that that sort of evidentiary burden is going to be very difficult to meet.

I think the ways in which third-parties operate in practice—they are a diffuse group. They are not particularly coordinated. They hold diverse views. Often campaigns are run on a shoestring, with limited staff. The issue of being able to run our concerted, coordinated effort, I see it's always a possibility, yes—always, theoretically. But in practice I don't see it as a potentially high risk. The third thing I wanted to raise with that point is that I agree there is an inverse relationship between the size of the cap and

⁷⁹ Evidence, Mr Stone, 30 August 2023, p 9.

⁸⁰ Submission 1, The Nationals (NSW Branch), p 2.

⁸¹ Submission 1, The Nationals (NSW Branch), p 3.

⁸² Evidence, Mr Watson SC, 30 August 2023, p 25.

⁸³ Evidence, Mr Watson SC, 30 August 2023, p 22.

the necessity of having the acting in concert provisions. The lower the cap, the less likely that any in concert behaviour would have an impact.⁸⁴

2.32 Mr Bradshaw, Acting Assistant General Secretary, PSA NSW was adamant in his opposition to acting in concert provisions, asserting that:

...acting in concert provisions have been used to neuter the activities of trade unions through an ambiguous and broad usage of the acting in concert ... the legal standing of such provisions remains contentious and so we do, along with the rest of the union movement, support the removal of section 35 from the [EF Act].⁸⁵

Relationship between third-party campaigners and political parties

2.33 The committee also received evidence on the nature of the relationship between TPCs and political parties. Mr Stone, State Director, Liberal Party of Australia – NSW Division expressed the view that there is an 'interdependent relationship with the trade union (a TPC) and the ALP', observing that the ALP receives 'significant financial and electoral benefits through affiliation fees and political donations from relevant trade unions'.⁸⁶

2.34 In contrast, a number of union witnesses disputed the nature of this relationship. Mr Bradshaw, Acting Assistant General Secretary, PSA NSW, advised that the PSA NSW is not affiliated with any political parties but engaged with all political parties.⁸⁷ Mr Whaites, Assistant General Secretary, NSWNMA provided evidence of the NSWNMA's support to political parties and candidates that support their campaigns, which is a broad spectrum of independents and political parties.⁸⁸

2.35 Mr Whaites also provided evidence of the association's independent decision-making considerations and processes. The NSWNMA stated that:

What we campaign on is voted on at either our bi-monthly Committee of Delegates or Annual Conference. Those resolutions are then considered by the Association's Executive and Council. Once they have endorsed the resolutions, Executive of the Association approves expenditure on major campaigns. All such decisions and expenditure are reported to the members.⁸⁹

2.36 Mr Morey, Secretary, Unions NSW advised that while some unions have affiliated membership with the ALP with some of their issues overlapping, Unions NSW do not act in concert with the ALP.⁹⁰ Mr Morey told the committee that Unions NSW run their own campaigns, as to not do so would be unpopular with their members:

⁸⁴ Evidence, Professor Gauja, 30 August 2023, p 25.

⁸⁵ Evidence, Mr Bradshaw, 30 August 2023, p 14.

⁸⁶ Evidence, Mr Stone, 30 August 2023, p 8.

⁸⁷ Evidence, Mr Bradshaw, 30 August 2023, p 14.

⁸⁸ Evidence, Mr Whaites, 30 August 2023, p 15.

⁸⁹ Answers to supplementary questions, NSWNMA, received on 5 September 2023, p 3

⁹⁰ Evidence, Mr Morey, 30 August 2023, pp 4-6.

For Unions NSW to simply go out and run an ALP campaign, we would have a massive backlash from significant unions who are not affiliated to the party nor wish to be affiliated to the party. We had to run a campaign that captures the issues for our members.⁹¹

- 2.37** In addition, Mr Dignam, Treasurer, NSW Greens, advised that although The Greens does not accept political donations from any organisations, in the 2023 election, some union campaigns may have helped The Greens where their policies aligned. Mr Dignam conceded that increasing TPC spend might support the aims of a minor party but that it would be a 'different situation for every party'.⁹²
- 2.38** Mr Hugo Bergeron, Director, Compliance, NSW Electoral Commission (NSWEC) explained the requirements for disclosing affiliation fees to parties. He clarified that when it comes to an organisation donating to a political party, having affiliation fees and then registering as a TPC, an affiliation fee is considered as a political donation and subject to the same disclosure requirement.⁹³
- 2.39** Mr Bergeron also advised that affiliation fees are limited to \$2,000 per member, with their use is restricted to administration purposes, and that these fees cannot be paid in the state or local government campaign account for the party.⁹⁴ He also confirmed that the NSWEC conduct 'routine compliance audits of disclosures, and that includes a review of the campaign accounts of registered political parties'.⁹⁵

Proposals to alter the relationship

- 2.40** The Liberal Party of Australia – NSW Division's submission made a number of suggestions for how this 'interdependent relationship' could be managed:
- That organisations that choose to affiliate with a registered political party should not be permitted to register as [TPC].
 - That organisations that choose to make political donations to a registered political party should not be permitted to register as [TPC] for a period of four years.
 - That different branches or divisions of the same organisation should not be able to register separately as [TPC] in the same way that related bodies corporate are treated for the purposes of aggregating reportable political donations.
 - That [TPCs] should have to register if they incur *any* expenditure during the regulated period (noting that currently, the threshold for registration of a [TPC] is that they have incurred at least \$2,000 in electoral expenditure).⁹⁶

⁹¹ Evidence, Mr Morey, 30 August 2023, p5.

⁹² Evidence, Mr Dignam, 30 August 2023, p 34.

⁹³ Evidence, Mr Hugo Bergeron, Director, Compliance, NSW Electoral Commission, 30 August 2023, p 30.

⁹⁴ Evidence, Mr Bergeron, 30 August 2023, p 30.

⁹⁵ Evidence, Mr Bergeron, 30 August 2023, p 30.

⁹⁶ Submission 4, Liberal Party of Australia – NSW Division, p 23.

- 2.41** During the hearing, representatives from the academic and accountability sectors were asked about their views regarding these recommendations. Mr Watson SC, Board Director, Centre for Public Integrity, and Board Director, Accountability Round Table, considered that the 'advantage of affiliation' is not purely the ALP's problem, as other parties which are not yet formed will come about in the same way explaining that 'a group of like-minded people [would want] to get a political vote'.⁹⁷
- 2.42** When asked how a proposal to prohibit organisations that choose to make political donations to a registered political party from registering as TPCs for a period of four years would sit with the implied freedom of political communication, Mr Watson responded that it would be 'a straightforward clog' and that 'to impose that as a blanket just seems to me to be shutting out potential voices who wish to be heard on a democratic issue, which is something you can't do in Australia'.⁹⁸
- 2.43** Professor Gauja, Professor, School of Social and Political Sciences, University of Sydney, was similarly adamant that such a proposal was inappropriate. She stated that 'you can't make people choose only one way to participate in politics. You can't say, "If you go and vote, we're not going to let you sign a petition." That's an analogy of what that proposal does'.⁹⁹
- 2.44** The Hon Keven Rozzoli, Member, Accountability Round Table, proposed an alternative recommendation to address this issue. He advocated for a mandated review of the bill to examine its effectiveness and the use of electoral funds after the first election in which it is applied. In the hearing, he explained his proposal:

Once [the bill] had one election in trial, it should be reviewed to see whether there is evidence of distortion in the capacity of the electorate to choose its own candidate to represent it in Parliament as distinct from representing an issue.¹⁰⁰

Committee comment

- 2.45** The aim of the Electoral Funding Amendment Bill 2023 is to introduce a cap of \$225,900 on electoral expenditure for third-party campaigners (TPCs) at state by-elections. The bill also seeks to increase the applicable cap for TPCs from \$24,700 with \$225,900 in each electoral district, in relation to electoral expenditure incurred substantially for the purposes of an election in a particular electoral district when there is a state general election or by-elections in more than one electoral district.
- 2.46** Most stakeholders accepted that the first element of the bill is necessary, as there is currently no cap on the electoral expenditure for TPCs at state by-elections following the High Court's decision in *Unions NSW v New South Wales* [2023] HCA 4. However, it is important to note that stakeholders held varied views on the actual figure and the appropriateness of a cap of 75 per cent of the candidate cap. Stakeholders expressed concern at the piecemeal nature of the bill's proposals, noting that it does not implement all recommendations of the 2022 Joint Standing

⁹⁷ Evidence, Mr Watson SC, 30 August 2023, pp 27-28.

⁹⁸ Evidence, Mr Watson SC, 30 August 2023, p 28.

⁹⁹ Evidence, Professor Guaja, 30 August 2023, p 28.

¹⁰⁰ Evidence, The Hon Kevin Rozzoli, Member, Accountability Round Table, 30 August 2023, pp 23-24.

Committee on Electoral Matters inquiry into caps on TPCs, particularly those that related to an acting in concert provision. The committee acknowledges the view of other stakeholders who believe that the implementation of those recommendations should be the subject of further legal and practical analysis independently of consideration of the current bill. The committee encourages the Government to provide some indication on its future approach to these issues.

- 2.47** Furthermore, and in this context, the committee notes general state election figures provided by the NSW Electoral Commission with respect to TPC expenditure and a conservative assessment of 2023 expenditure by political parties and candidates reimbursed out of the Election Campaigns Fund. The Joint Select Committee on Electoral Matters' review of the 2023 state election can more appropriately provide a practical analysis of the concerns raised by some stakeholders during the course of this inquiry.
- 2.48** While a number of witnesses emphasised the central role of candidates in a democratic contest, the committee also notes that citizens themselves play a central role in a democratic contest including in endeavouring to influence others. The committee is mindful that the law should not unduly privilege political parties who contest elections. Their voices are not the only important voices and indeed in some contests a large number of TPCs might represent a 'groundswell of support on a particular issue'. The proposal from the Liberal Party to limit the cap to no more than 15 per cent of the cap applicable to a candidate would in the committee's view unacceptably burden the freedom of political communication. The committee is mindful that any spending cap is a direct limitation on political activity and needs to be clearly consistent with the implied freedom.
- 2.49** Given the short timeframe for this inquiry, it is not possible for the committee to re-examine and re-explore all arguments on an appropriate cap. However, we note that this issue was covered in great detail by the Joint Standing Committee on Electoral Matters in its 2022 inquiry into caps, albeit, without any evidence from witnesses from the Liberal or National Parties. In this context, the committee is inclined to defer to the considerable work of this committee and accept its recommended figure, as contained in the bill.
- 2.50** The committee also acknowledges concerns from some stakeholders that proposed amendments to section 29(12)(b) of *Electoral Funding Act 2018* have not been considered by the Joint Standing Committee on Electoral Matters, but notes that an undertaking to refer this provision has been made.
- 2.51** Having concluded its inquiry, the committee refers the bill back to the House and recommends that the House proceed to debate the Electoral Funding Amendment Bill 2023, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Recommendation 1

That the Legislative Council proceed to debate the Electoral Funding Amendment Bill 2023, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Appendix 1 Submissions

No.	Author
1	The Nationals (NSW Branch)
2	PSA (Public Service Association of NSW)
3	NSW Labor
4	Liberal Party of Australia - NSW Division
5	Unions NSW

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Thursday 30 August 2023 Preston Stanley Room Parliament House, Sydney	Mr Mark Morey	Secretary, Unions NSW
	Mr Ed Yap	Senior Legal/Industrial Officer, Unions NSW
	Mr Chris Stone	State Director, NSW Division, The Liberal Party of Australia
	Mr Michael Whaites	Assistant General Secretary, NSW Nurses and Midwives Association
	Ms Lucy Walker	Manager, Business Services & Compliance, NSW Nurses and Midwives Association
	Mr Nathan Bradshaw	Acting Assistant General Secretary, PSA NSW
	Ms Marianne Ledic	Manager, Communications and Campaigns, PSA NSW
	Mr Geoffrey Watson SC	Board Member, Centre for Public Integrity and Board Director, Accountability Round Table
	Hon Kevin Rozzoli	Member, Accountability Round Table
	Professor Anika Gauja	Professor, School of Social and Political Sciences, University of Sydney
	Ms Rachel McCallum	Executive Director, Funding Disclosure & Compliance and General Counsel, NSW Electoral Commission
	Mr Hugo Bergeron	Director, Compliance, NSW Electoral Commission
Mr Paul Dignam	Treasurer, NSW Greens	

Appendix 3 Minutes

Minutes no. 3

Wednesday 24 August 2023

Portfolio Committee 1 – Premier and Finance

Room 1043, Parliament House, Sydney at 12.34 pm

1. Members present

Mr Buckingham, Chair

Mr Borsak, Deputy Chair

Mr Donnelly (substituting for Mr Lawrence)

Mr Farraway (substituting for Mr Tudehope)

Mr Nanva

Mr Primrose (substituting for Dr Kaine)

Mr Rath

2. Apologies

Ms Faehrmann (participating)

Dr Kaine

Mr Tudehope

3. Previous minutes

Resolved, on the motion of Mr Borsak: That draft minutes no. 2 be confirmed.

4. Inquiry into the Electoral Funding Amendment Bill 2023

4.1 Terms of reference

The committee noted the following terms of reference referred by the House on 22 August 2023:

That:

- a. the Electoral Funding Amendment Bill 2023 be referred to Portfolio Committee No. 1 – Premier and Finance for inquiry and report
- b. the bill be referred to the committee at the conclusion of the mover's second reading speech in the Council
- c. the committee report by 11 September 2023.

4.2 Proposed timeline

Resolved, on the motion of Mr Borsak:

- That the committee adopt the following timeline for the administration of the inquiry:
 - Tuesday, 29 August 2023 (12pm) – closing date for submissions
 - Wednesday, 30 August 2023 – public hearing
 - Tuesday, 5 September 2023 – circulation of Chair's draft report
 - Thursday, 7 September 2023 – report deliberative
 - Monday, 11 September 2023 – report tabling.
- That, owing to the short timeframe for the inquiry, the committee only call for submissions from invited stakeholders, with a note to be included on the inquiry webpage stating this.

4.3 Stakeholder list

Resolved, on the motion of Mr Nanva: That the following stakeholders be invited to make a submission, with members to forward additional stakeholders to the secretariat by COB Friday 25 August 2023:

- NSW Electoral Commission
- NSW Labor
- NSW Liberal Party

- The Greens NSW
- NSW Nationals
- Liberal Democrats
- Shooters, Fishers and Farmers Party
- Animal Justice Party
- Pauline Hanson's One Nation Party
- Legalise Cannabis Party
- Unions NSW
- NSW Nurses and Midwives' Association
- PSA NSW
- Business NSW
- Australian Education Union - NSW Teachers Federation Branch
- The Australian Workers' Union
- United Workers Union
- NSW Minerals Council
- Centre for Public Integrity
- Professor Anne Twomey
- Mr Nick Owens SC, Barrister

Resolved, on the motion of Mr Rath: That the following stakeholders be invited to appear at the public hearing, with members to forward additional witnesses to the secretariat by COB Friday 25 August 2023:

- NSW Electoral Commission
- NSW Labor
- NSW Liberal Party
- The Greens NSW
- NSW Nationals
- Liberal Democrats
- Shooters, Fishers and Farmers Party
- Animal Justice Party
- Pauline Hanson's One Nation Party
- Legalise Cannabis Party
- Unions NSW
- NSW Nurses and Midwives' Association
- PSA NSW
- Business NSW
- Australian Education Union - NSW Teachers Federation Branch
- The Australian Workers' Union
- United Workers Union
- NSW Minerals Council
- Centre for Public Integrity
- Professor Anne Twomey
- Mr Nick Owens SC, Barrister

4.4 Provision of documents to participating member

Resolved, on the motion of Mr Rath: That Ms Faehrmann, who has advised the committee that she intends to participate for the duration of the inquiry into the Electoral Funding Amendment Bill 2023, be provided with copies of meeting papers and unpublished submissions.

5. Adjournment

The committee adjourned at 12.47 pm, until Wednesday 30 August 2023 (public hearing into the inquiry into the Electoral Funding Amendment Bill 2023).

Frances Arguelles

Committee Clerk

Minutes no. 4

Wednesday, 30 August 2023

Portfolio Committee 1 – Premier and Finance

Preston Stanley Room, Parliament House, Sydney at 12.26 pm

1. Members present

Mr Buckingham, Chair

Mr Borsak, Deputy Chair (until 3.20 pm)

Ms Faehrmann (participating until 2.17 pm)

Mr Farroway (substituting for Mr Tudehope for the duration of the inquiry into the Electoral Funding Amendment Bill 2023)

Mr Lawrence

Mr Nanva (until 3.44 pm)

Mr Primrose (substituting for Dr Kaine for the duration of the inquiry into the Electoral Funding Amendment Bill 2023)

Mr Rath

2. Previous minutes

Resolved, on the motion of Mr Nanva: That draft minutes no. 3 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 24 August 2023 – Email from Deyi Wu, Whip's Advisor, Office of the Hon Chris Rath MLC, advising that the Hon Sam Farroway MLC will substitute the Hon Damien Tudehope for duration of the inquiry into the Electoral Funding Amendment Bill 2023
- 24 August 2023 – Email from Professor Anne Twomey advising that she is unable to attend the public hearing for the inquiry into the Electoral Funding Amendment Bill 2023 on 30 August 2023
- 24 August 2023 – Email from Mr Nicholas Owen SC, Barrister, advising that he is unable to attend the public hearing on 30 August 2023 and unable to provide a written submission for the inquiry into the Electoral Funding Amendment Bill 2023
- 25 August 2023 – Email from Ms Phoebe Patten, Executive Assistant to the President of the NSW Teacher's Federation advising that the NSW Teacher's Federation is unable to attend the public hearing on 30 August 2023 for the inquiry into the Electoral Funding Amendment Bill 2023
- 28 August 2023 – Email from Mr Grant Layland, Treasurer, Shooters, Fishers and Farmers Party, advising that the Shooters, Fishers and Farmers Party is unable to attend the public hearing on 30 August 2023 and unable to provide a written submission for the inquiry into the Electoral Funding Amendment Bill 2023
- 28 August 2023 – Email from Mr Glenn Bacic, Director Governance, Australian Labor Party (NSW Branch), advising that the Australian Labor Party (NSW Branch) is unable to attend the public hearing on 30 August 2023 and will only be providing a submission to the inquiry into the Electoral Funding Amendment Bill 2023
- 28 August 2023 - Email from Ms Phoebe Patten, Executive Assistant to the President of the NSW Teacher's Federation, regarding the NSW Teacher's Federation's submission to the inquiry into the Electoral Funding Amendment Bill 2023

- 28 August 2023 – Email from Ms Mel Gatfield, National Director – Food & Beverages, NSW Secretary, United Workers Union, advising that the United Workers Union will be unable to appear at the hearing scheduled on 30 August 2023 for the inquiry into the Electoral Funding Amendment Bill 2023
- 29 August 2023 – Email from Mr Ed Yap, Senior Legal and Industrial Officer, Unions NSW, regarding an extension for the written submission for the inquiry into the Electoral Funding Amendment Bill 2023
- 29 August 2023 – Email from Ms Nicole Alexander, Australian Workers Union NSW, advising that the Australian Workers Union NSW will be unable to appear at the hearing scheduled on 30 August 2023 for the inquiry into the Electoral Funding Amendment Bill 2023
- 29 August 2023 – Email from Ms Mel Gatfield, National Director – Food & Beverages, NSW Secretary, United Workers Union, advising that the United Workers Union will not be providing a submission to the inquiry into the Electoral Funding Amendment Bill 2023
- 29 August 2023 – Email from Mr Max Kennedy, Whip's Adviser, Office of the Hon Bob Nanva MLC, advising that the Hon Peter Primrose MLC will substitute the Hon Dr Sarah Kaine for duration of the inquiry into the Electoral Funding Amendment Bill 2023
- 29 August 2023 – Email from Mr Hugo Bergeron, Director Compliance, NSW Electoral Commission, advising that the NSW Electoral Commission will not be provided a submission to the inquiry into the Electoral Funding Amendment Bill 2023
- 29 August 2023 – Email from Ms Jo Schofield, United Workers Union NSW, advising that the United Workers Union will be unable to appear at the hearing scheduled on 30 August 2023 for the inquiry into the Electoral Funding Amendment Bill 2023
- 29 August 2023 – Email from Mr Max Enthoven, Liberal Democrats, advising that the Liberal Democrats is unable to attend the public hearing on 30 August 2023 and unable to provide a written submission for the inquiry into the Electoral Funding Amendment Bill 2023
- 29 August 2023 – Email from Ms Louise Ward, Animal Justice Party advising that the Animal Justice Party is unable to attend the public hearing on 30 August 2023 for the inquiry into the Electoral Funding Amendment Bill 2023.

4. Inquiry into the Electoral Funding Amendment Bill 2023

4.1 Public submissions

Resolved, on the motion of Mr Primrose: That the committee authorises the publication of submission nos. 1-4.

4.2 Public hearing

Timeframe for answers to questions on notice and supplementary questions

The committee noted that due to the short timeframe between the return of the transcripts and drafting the report for the deliberative, it may be unlikely for any written responses received in relation to questions on notice/supplementary questions to be included in the final report.

Resolved, on the motion of Mr Nanva: That witnesses be required to provide answers to questions on notice within 48 hours of receiving the transcript of evidence.

Sequence of questions

The committee considered the allocation of questioning.

Resolved, on the motion of Mr Rath: That the sequence of questions to be asked at hearing alternate between opposition, crossbench and government members, in that order, with equal time allocated to each.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Mark Morey, Secretary, Unions NSW
- Mr Ed Yap, Senior Legal and Industrial Officer, Unions NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Chris Stone, State Director, NSW Division, Liberal Party of Australia.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Michael Whaites, Assistant General Secretary, NSW Nurses and Midwives Association
- Ms Lucy Walker, Manager, Business Services & Compliance, NSW Nurses and Midwives Association.
- Mr Nathan Bradshaw, Acting Assistant General Secretary, PSA NSW
- Ms Marianne Ledic, Manager, Communications and Campaigns, PSA NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Geoffrey Watson SC, Board Member, Centre for Public Integrity and Board Director, Accountability Round Table
- Hon Kevin Rozzoli, Member, Accountability Round Table
- Professor Anika Gauja, Professor, School of Social and Political Sciences, University of Sydney.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Rachel McCallum, Executive Director, Funding Disclosure & Compliance and General Counsel, NSW Electoral Commission
- Mr Hugo Bergeron, Director, Compliance, NSW Electoral Commission.

Mr Bergeron tendered a document entitled 'February 2022 by-elections – TPC electoral expenditure disclosures'.

The evidence concluded and the witnesses withdrew.

The Chair informed committee that Mr Paul Dignam, Treasurer, NSW Greens had requested to give evidence at the hearing.

Mr Rath moved: That Mr Paul Dignam, Treasurer, NSW Greens be permitted to appear and give evidence to the committee between 3.45-4.00 pm.

Question put.

The committee divided.

Ayes: Mr Buckingham, Mr Farraway, Mr Lawrence, Mr Nanva, Mr Primrose, Mr Rath.

Noes: Mr Borsak.

Question resolved in the affirmative.

The following witness was sworn and examined:

- Mr Paul Dignam, Treasurer, NSW Greens.

The evidence concluded and the witness withdrew.

Tendered documents

Resolved, on the motion of Mr Primrose: That the committee accept and publish the following document tendered during the public hearing:

- February 2022 by-elections – TPC electoral expenditure disclosures, tendered by Mr Bergeron.

5. Adjournment

The committee adjourned at 4.01 pm until 2.00 pm Thursday, 7 September 2023.

Frances Arguelles
Committee Clerk

Draft minutes no. 5

7 September 2023

Portfolio Committee 1 – Premier and Finance

Room 814, Parliament House Sydney at 2.01 pm

1. Members present

Mr Buckingham, Chair

Mr Borsak, Deputy Chair

Mr Farraway (via videoconference until 2.26 pm)

Mr Lawrence

Mr Nanva

Mr Primrose

Mr Rath

Mr Tudehope (substituting for Mr Farraway from 2.26 pm)

2. Apologies

Ms Faehrmann (participating)

3. Previous minutes

Resolved, on the motion of Mr Lawrence: That draft minutes no. 4 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 1 September 2023 – Email from Mr Ed Yap, Senior Legal and Industrial Officer, Unions NSW, to the secretariat, requesting for a further extension for their submission until Monday 4 September 2023.
- 5 September 2023 – Email from Professor Anika Gauja, Professor, School of Social and Political Sciences, University of Sydney, requesting for an extension for the deadline of her answers to supplementary questions until Friday 8 September 2023.

Sent

- 3 September 2023 – Email from the secretariat to Mr Ed Yap, Senior Legal and Industrial Officer, Unions NSW, confirming submission extension until Monday 4 September 2023.
- 5 September 2023 – Email from the secretariat to Professor Anika Gauja, Professor, School of Social and Political Sciences, University of Sydney, confirming an extension for the deadline of her answers to supplementary questions until Friday 8 September 2023.

5. Inquiry into Electoral Funding Amendment Bill 2023

5.1 Submissions

Resolved, on the motion of Mr Borsak: That the committee authorise the publication of submission no. 5.

5.2 Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Rath: That the committee authorises the publication of the following answers to questions on notice:

Resolved, on the motion of Mr Rath: That the committee authorise:

- the publication of the following answers to questions on notice provided by the following witnesses:
 - Mr Hugo Bergeron, Director, Compliance, NSW Electoral Commission, received 31 August 2023
 - Mr Hugo Bergeron, Director, Compliance, NSW Electoral Commission, , received 5 September 2023
 - Ms Lucy Walker, Manager – Business Services and Compliance, NSW Nurses and Midwives' Association, received 5 September 2023.
- the publication of the following answers to supplementary questions provided by the following witnesses:
 - Mr Geoffrey Watson SC, Board Director, Centre for Public Integrity and Board Director, received 3 September 2023
 - Ms Lucy Walker, Manager – Business Services and Compliance, NSW Nurses and Midwives' Association, received 5 September 2023
 - Mr Ed Yap, Senior Legal and Industrial Officer, Unions NSW, received 6 September 2023.

Resolved, on the motion of Rath: That the committee authorise the publication of the answers to questions on notice and supplementary questions from Mr Chris Stone, State Director, NSW Division, Liberal Party of Australia and redact the photograph of the individual on page 10, as per the recommendation of the secretariat.

5.3 Transcript correction

Resolved, on the motion of Mr Rath: That the committee authorise the correction of page 28 of the transcript of evidence of Professor Anika Gauja, Professor, School of Social and Political Sciences, University of Sydney from 30 August 2023, omitting the words 'You can't make people participate in politics' and inserting instead 'You can't make people choose only one way to participate in politics'.

5.4 Consideration of Chair's draft report

The Chair submitted his draft report entitled Electoral Funding Amendment Bill 2023, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Nanva: That paragraph 1.14 be amended by omitting 'from \$24,700 with \$225,900' and inserting instead 'from \$24,700 to \$225,900'.

Resolved, on the motion of Mr Rath: That paragraph 2.1 be amended by inserting 'at [32] – [34] noted that the Government was unwilling to discharge its onus to justify the burden on the implied right and as a consequence the Court unanimously' before 'declared'.

Resolved, on the motion of Mr Nanva:

- That paragraph 2.7 be amended by inserting a new sentence at the end: 'Addressing rationales for the size of the cap proposed by the bill, Mr Watson SC noted that: "I've been researching in this area for some years now and I believe that the approach taken by JSCEM is valid and the result is a fair and reasonable one, based not only upon theory but also upon practice". [FOOTNOTE: Evidence, Mr Watson SC, 30 August 2023, p 22]
- That a new paragraph be inserted after paragraph 2.7: Mr Watson SC further noted that he could see 'no risk to the democratic process through the proposed third-party caps' and that 'on the whole', the proposal is well designed. [FOOTNOTE: Answers to supplementary questions, Mr Geoffrey Watson SC, Board Director, Centre for Public Integrity and Board Director, Accountability Round Table, received 5 September 2023, p 1.]'

Mr Rath moved: That paragraph 2.10 be amended by inserting a new sentence at the end: 'Mr Stone further expressed the view that the increase in amount was so great that it would allow opposing political parties

and their TPCs to swamp another political candidate's lawful expenditure thereby impermissibly burdening the constitutional right to the freedom of political expression.'

Question put.

The committee divided.

Ayes: Mr Farraway, Mr Rath.

Noes: Mr Buckingham, Mr Borsak, Mr Lawrence, Mr Nanva, Mr Primrose.

Question resolved in the negative.

Resolved, on the motion of Mr Lawrence: That paragraph 2.12 be amended by inserting a new sentence at the end of the paragraph: 'This would seem to reflect a policy preference for lower expenditure caps overall, as Mr. Dignam also endorsed a third-party campaigner cap set at 75 per cent of a candidate cap'. [FOOTNOTE: Evidence, Mr Dignam, 30 August 2023, pp 34-35]

Resolved, on the motion of Mr Nanva: That paragraph 2.17 be amended by inserting the following sentences at the end: 'This issue was also addressed by other witnesses. Mr Watson SC gave evidence that the "brand" and "incumbency" advantages of established political parties ought be factored in when considering what the ratio of spending caps should be between candidates and third-party campaigners. Mr Watson SC also indicated he "worried" that caps on third-party campaigners could tend to entrench a supremacy of established political parties. [FOOTNOTE: Evidence, Mr Watson SC, 30 August 2023, p 27] Professor Gauja agreed that established political parties enjoyed an "advantage" by virtue of "brand recognition". [FOOTNOTE: Evidence, Professor Gauja, 30 August 2023, p 27]

Resolved, on the motion of Mr Nanva: That the following new paragraph be inserted after paragraph 2.27:

'Furthermore, Mr Watson SC gave evidence that the remaining recommendations from the 2022 JSCEM inquiry, including those concerning acting in concert provisions, should be the subject of further scrutiny independently from consideration of the current bill:

'I read those parts of the JSCEM report which suggested the reform should go further, combining spending from similar organisations, but I believe that should wait. It should wait for two reasons. One, it could present a constitutional validity issue. The second is it should await some experience.' [FOOTNOTE: Evidence, Mr Watson SC, 30 August 2023, p 22]

Resolved, on the motion of Mr Nanva: That paragraph 2.31 be:

- omitting 'also informed the committee that the NSWNMA provide' and inserting instead 'provided evidence of the NSWNMA's'
- inserting 'and candidates' after 'provide support to political parties'
- inserting a new sentence at the end of the paragraph: 'Mr Whites also provided evidence of the association's independent decision-making considerations and processes. The NSWNMA stated that: 'What we campaign on is voted on at either our bi-monthly Committee of Delegates or Annual Conference. Those resolutions are then considered by the Association's Executive and Council. Once they have endorsed the resolutions, Executive of the Association approves expenditure on major campaigns. All such decisions and expenditure are reported to the members.' [FOOTNOTE: Answers to supplementary questions, NSWNMA, received on 5 September 2023, p 3]

Mr Nanva moved: That paragraph 2.42 be amended by omitting 'While some supported the figure, other stakeholders believe that the increased caps are too high and advocated for a much lower level, around 10 to 15 per cent of the cap imposed on a candidate.'

Question put.

The committee divided.

Ayes: Mr Buckingham, Mr Borsak, Mr Lawrence, Mr Nanva, Mr Primrose.

Noes: Mr Rath, Mr Tudehope.

Question resolved in the affirmative.

Resolved, on the motion of Mr Nanva: 'That paragraph 2.7 be amended by omitting 'Both he and Professor Gauja agreed that while a cap of 75 per cent of that of a candidate might be generous' and inserting instead 'Professor Gauja agreed that while a cap of 75 per cent of that of a candidate might be generous in comparison to those of other international jurisdictions'

Mr Nanva moved: 'That paragraph 2.42 be amended by omitting 'These stakeholders also expressed concern at the piecemeal nature of the bill's proposals, noting that it does not implement all recommendations of the 2022 Joint Standing Committee on Electoral Matters inquiry, particularly those that related to an acting in concert provision.' and inserting the following new paragraphs after 2.42:

'Stakeholders expressed concern at the piecemeal nature of the bill's proposals, noting that it does not implement all recommendations of the 2022 Joint Standing Committee on Electoral Matters inquiry, particularly those that related to an acting in concert provision. The committee acknowledges the view of other stakeholders who believe that the implementation of those recommendations should be the subject of further legal and practical analysis independently of consideration of the current bill. The committee encourages the Government to provide some indication on its future approach to these issues.

Furthermore, and in this context, the committee notes general state election figures provided by the NSWEC with respect to third-party campaign expenditure and a conservative assessment of 2023 expenditure by political parties and candidates reimbursed out of the Election Campaigns Fund. JSCEM's review of the 2023 state election can more appropriately provide a practical analysis of the concerns raised by some stakeholders during the course of this inquiry.'

Question put.

The committee divided.

Ayes: Mr Buckingham, Mr Borsak, Mr Lawrence, Mr Nanva, Mr Primrose.

Noes: Mr Rath, Mr Tudehope.

Question resolved in the affirmative.

Mr Lawrence moved: 'That paragraph 2.43 be amended by inserting: 'While a number of witnesses emphasized the central role of candidates in a democratic contest the committee also notes that citizens themselves play a central role in a democratic contest including in endeavouring to influence others. The committee is mindful that the law should not unduly privilege political parties who contest elections. Their voices are not the only important voices and indeed in some contests a large number of third-party campaigner might represent a 'groundswell of support on a particular issue'. The proposal from the Liberal Party to limit the cap to no more than 15 per cent of the cap applicable to a candidate would in the committee's view unacceptably burden the freedom of political communication. The committee is mindful that any spending cap is a direct limitation on political activity and needs to be clearly consistent with the implied freedom' before the word 'Given'.

Question put.

The committee divided.

Ayes: Mr Buckingham, Mr Borsak, Mr Lawrence, Mr Nanva, Mr Primrose.

Noes: Mr Rath, Mr Tudehope.

Question resolved in the affirmative.

Resolved, on the motion of Mr Rath: 'That paragraph 2.43 be amended by inserting 'albeit, without any evidence from witnesses from the Liberal or National Parties' after 'its 2022 inquiry into caps'.

Mr Rath moved: 'That paragraph 2.43 be amended by omitting 'In this context, the committee is inclined to defer to the considerable work of this committee and accept its recommended figure, as contained in the bill.'

Question put.

The committee divided.

Ayes: Mr Rath, Mr Tudehope, Mr Borsak,

Noes: Mr Buckingham, Mr Lawrence, Mr Nanva, Mr Primrose.

Question resolved in the negative.

Mr Nanva moved: That paragraph 2.45 be omitted.

Question put.

The committee divided.

Ayes: Mr Buckingham, Mr Borsak, Mr Lawrence, Mr Nanva, Mr Primrose.

Noes: Mr Rath, Mr Tudehope.

Question resolved in the affirmative.

Mr Nanva moved that: The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice, supplementary questions and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report with the Clerk on Monday 11 September 2023;

The committee divided.

Ayes: Mr Buckingham, Mr Borsak, Mr Lawrence, Mr Nanva, Mr Primrose.

Noes: Mr Rath, Mr Tudehope.

Question resolved in the affirmative.

6. Adjournment

The committee adjourned at 2.47 pm until 2.47 pm, Thursday 7 September 2023, Room 814 (private briefing, Inquiry into AI in NSW).

Frances Arguelles
Committee Clerk

Appendix 4 Dissenting statements

Hon Chris Rath, Liberal Party

Hon Sam Faraway, The Nationals

The Inquiry into the Electoral Funding Amendment Bill 2023 was an invaluable opportunity for Members to draw out additional evidence that was not captured by the 2022 Joint Standing Committee on Electoral Matters' (JSCEM) inquiry, in particular new evidence from the Liberal and National Parties. It is also important to note that the Government opposed referring this bill to an Inquiry for examination, both at a Selection of Bills Committee meeting and on the floor of the Legislative Council.

Portfolio Committee No. 1 Chair, the Hon. Jeremy Buckingham, should be applauded for his professionalism and even-handedness throughout the inquiry. This is demonstrated through the report, and in particular the draft report before amendments, encapsulating the different arguments from a wide range of stakeholders.

However, there remains several concerning aspects of the report in its current form. The Committee should not have accepted the proposed tenfold increase in the Third-Party Campaigner (TPC) expenditure cap to \$225,900 for both by-elections and general elections. The scale of the increase is so great that it would allow opposing political parties and their TPCs to swamp another political candidate's lawful expenditure, thereby impermissibly burdening the constitutional right to the freedom of political expression.

NSW Liberal Party State Director, Mr Chris Stone, correctly identified:

“The bill disturbs the balance that already exists between the caps for third-party campaigners and candidates in the Electoral Funding Act. It benefits trade unions and their political wing, the Labor Party, by allowing an excessive uplift in the cap for third-party campaigners—an almost tenfold increase.”

Mr Stone was not the only stakeholder to share concerns about the drastic increase in the expenditure cap. Mr Geoffrey Watson SC, Board Director at both the Centre for Public Integrity and the Accountability Round Table, provided evidence that: “I personally think that the sums advanced are too large”. Similarly, the Hon. Kevin Rozzoli, also from the Accountability Round Table outlined that: “... as soon as you bring more money into the equation, you bring out the worst in human nature. It's as simple as that.”

Mr Paul Dignam, Treasurer of the NSW Greens, proposed to the Committee a cap of \$75,000, as the proposed cap in the bill is “too high”. This is consistent with the NSW Greens' evidence to the 2022 JSCEM inquiry, describing this \$75,000 cap as “high enough not to be considered too low by the High Court but proportional to an appropriate cap”. He also outlined that the impact of the proposed cap would “probably have more adverse effect on smaller parties”.

Unfortunately, these concerns from a myriad of multipartisan voices have largely fallen on deaf ears inside the new Labor Government, which seems utterly determined to press ahead with the bill in its original form. Instead of rushing this bill through Parliament, the Government should review the bill in light of the evidence provided by Professor Anika Gauja, from the University of Sydney's School of

Social and Political Sciences. It is Professor Gauja's opinion that the proposed cap for TPC expenditure relative to party expenditure is very generous, when compared to international jurisdictions like Canada, New Zealand, and the United Kingdom, where historically, caps have hovered at a ratio of 10 per cent rather than the proposed 75 per cent.

In addition to considering international examples, the Government should also re-draft the bill to take account of all four of JSCEM's recommendations, rather than cherry picking one recommendation that suits their political disposition. This would mean implementing the acting in-concert provision to prevent TPCs, like trade unions, coordinating their efforts and drowning out the voices of other political actors. The most propitious time to consider the acting in-concert provision is now, alongside other changes to the Electoral Funding Act 2018, rather than at some future unspecified and uncommitted time.

For the reasons, among many others, the bill should be either amended to address these concerns or subject to a longer, more in-depth review.

