

## ELECTORAL FUNDING AMENDMENT BILL 2023

### STATEMENT OF PUBLIC INTEREST

#### **Need: Why is the policy needed based on factual evidence and stakeholder input?**

The report of the Joint Standing Committee on Electoral Matters (JSCEM) entitled "Caps on third-party campaigners' electoral expenditure in s29(11) and s35 of the *Electoral Funding Act 2018*", was tabled on 23 November 2022. Recommendation 4 of the Report was 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.*" This Recommendation was made after consideration of submissions and evidence from stakeholders.

The previous cap of \$20,000 (as it was prior to indexation for inflation) was considered overly restrictive by the JSCEM. It was declared by the High Court to be invalid on 15 February 2023, so there is presently no effective cap.

The Government accepted recommendation 4 in its response to the Report tabled on 28 June 2023. The Bill implements this recommendation by putting in place a cap of \$225,900 for electoral expenditure by third-party campaigners at Assembly by-elections and for electoral expenditure incurred substantially for the purposes of the election in a particular electoral district when there is a general election or by-elections in multiple districts.

#### **Objectives: What is the policy's objective couched in terms of the public interest?**

The objective is to ensure that electoral expenditure by third-party campaigners at Assembly by-elections is capped at an appropriate level that allows third-party campaigners adequate resourcing to run campaigns in by-elections, while preserving the voices of candidates. The previous cap, which was considered overly restrictive by the JSCEM, was declared invalid. This means that there is presently no cap.

There is a strong public interest in electoral expenditure caps, but they must be set at level that allows a wide variety of groups and voices to be heard in the political process.

#### **Options: What alternative policies and mechanisms were considered in advance of the bill?**

Legislative amendment is the only way to implement a cap on electoral expenditure by third-party campaigners at by-elections to replace the cap which has been declared invalid, or to vary the cap on electoral expenditure incurred substantially for the purposes of the election in a particular electoral district when there is a general election or by-elections in multiple districts.

#### **Analysis: What were the pros/cons and benefits/costs of each option considered?**

The option of doing nothing would mean that there is no cap on electoral expenditure by third-party campaigners for Assembly by-elections. This is a significant gap, given that all other political participants are subject to caps, which undermines the integrity of the framework for caps on electoral expenditure and political donations as a whole.

#### **Pathway: What are the timetable and steps for the policy's rollout and who will administer it?**

The Bill will, if enacted, commence on assent. The Electoral Commission has statutory powers to investigate compliance with and enforce the provisions of the *Electoral Funding*

*Act 2018*. The Electoral Commission will also be involved in educating stakeholders on the changes to the law.

**Consultation: Were the views of affected stakeholders sought and considered in making the policy?**

The JSCEM received submissions and heard evidence from a variety of stakeholders before making the recommendation that this Bill implements. A copy of the draft bill was provided to staff of the NSW Electoral Commission in advance of its introduction to Parliament.