

The Hon Peter Primrose MLC
Chair, Joint Standing Committee on Electoral Matters
NSW Parliament House

By email: electoralmatters@parliament.nsw.gov.au

19 March 2025

Dear Mr Primrose

Proposals to increase voter engagement, participation and confidence

Thank you for the invitation to give evidence to the above Committee inquiry on 17 March 2025.

During our discussion, I referred to the need to strengthen the laws, policies and procedures concerning political donations in NSW. In particular, I discussed the need for payments from the Administration Fund being contingent on the achievement of acceptable standards of party governance and internal control. To progress this reform, the Commission recommended that a working group be established, with input sought from the NSW Electoral Commission.

For your information, I also enclose a comparative table of electoral legislation in NSW with electoral reforms recently passed by the Australian Parliament.

In the meantime, if the Committee requires further information or assistance, please contact my office or Lewis Rangott, Executive Director Corruption Prevention on [REDACTED] or [REDACTED]

Yours sincerely,

The Hon John Hatzistergos AM
Chief Commissioner

OFFICIAL

Table: A comparative analysis of election rules (donations and expenditure caps) in NSW and Australia.

Variable	NSW	Federal
Prohibited political donations	<p>Prohibited donors include:</p> <ul style="list-style-type: none"> - a property developer - a tobacco industry business entity - a liquor or gambling industry business entity, including a registered club if the business undertaken by the registered club includes wagering, betting or other gambling - any industry representative organisation if the majority of its members are such prohibited donors - a close associate of a prohibited donor. 	<p>Foreign donations were banned in 2018</p>
Donation caps	<p>For registered parties, or group of candidates, the cap is currently set at \$7900.</p> <p>For an unregistered party (or party registered for less than 12 months), elected member or candidate, the cap is currently set at \$3800 per financial year.</p> <p>Political donation cap for an associated entity or third-party campaigner is currently set at \$3800 per financial year.</p> <p>Cap exemptions: A candidate for a Legislative Assembly election, can donate to their party up to a certain amount, during the financial year in which the election is held: \$75,500</p> <p>A candidate for a Legislative Council election, can donate to their party up to a certain amount, during the financial year in which the election is held: \$62,300</p> <p>A candidate who is a member of a group for a Legislative Council election (who is not a member of a political party), can donate to their group up to a certain amount, during</p>	<p>Individual donors can give no more than \$50,000 per calendar year - indexed pursuant to s 321A (Sch 3 cl 1) – to a single candidate or party branch, allowing up to \$150,000 over a parliamentary term. The government set the amount at \$50,000, up from a planned \$20,000, in a concession to the Coalition.</p> <p>However, an individual donor can give \$50,000 to all state and territory party branches - \$450,000 each year (or \$1,350,000 over the electoral cycle, or if the cap is extended for a fourth year, this amounts to \$1.8 m). If donations are kept just under the capped amount (e.g. \$45,000), there is no requirement to declare.</p> <p>Donations made to a party without branches are restricted to \$50,000 each year.</p>

Variable	NSW	Federal
	the financial year in which the election is held: \$62,300	
Donation disclosure threshold	Any person or entity that has made a political donation of \$1,000 or more within the annual period is defined as a major political donor and is required to make a disclosure for the annual period in which the donation was made.	Donations of more than \$5000 to be publicly disclosed (down from \$16,900) and up from the government's proposed \$1000.
Overall 'gift cap'	See: s49 of the <i>EFA Act</i> - Prohibition on receiving gifts of unknown source	Total donations made to political parties and candidates is \$1.6 million.
Associated/ Nominated entities	Associated entities do not have a standalone expenditure cap, their expenditure is aggregated to that of the party to which they are associated – see section 30(4) of the Act. Any expenditure they incur for a State election counts towards the party cap.	No restrictions: meaning that nominated entities can provide (parties) with significantly more funds.
Donation disclosure timing	The annual major political donor disclosure period: starts on 1 July – ends on 30 June. Disclosures must be lodged with the NSW Electoral Commission within six weeks of the end of the annual disclosure period.	Must be disclosed within 21 days (previously up to 24 weeks after polling day). Once election has been called, disclosures to be made within 7 days, and 24 hours in the week before and after polling day (in effect, near-real time).
Donations Associated entities	A political donation to a third-party campaigner that is in excess of the donation caps is exempt from the caps if it is not paid into the third-party campaigner's campaign account.	Previous exclusions for membership and affiliation fees (disguised donations) are now capped. It is possible for an entity to meet the definition of both a significant third party and an associated entity.
Campaign expenditure cap – parties	Caps apply to the electoral expenditure of political parties and their associated entities, candidates, groups of candidates, and third-party campaigners. In NSW, there is a distinction between party and candidate expenditure. The cap on a Party with more than 10 endorsed Legislative Assembly candidates at a general election is \$150,700 multiplied by the number of electoral districts in which a candidate is endorsed by the party	Parties would be able to spend up to \$90 million across the nation for an election campaign. The Commonwealth is highly centralised with respect to divisional expenditure (candidates are not granted an allocation for their own expenditure, nor can they bargain). Spending can be targeted at marginal seats (giving parties an advantage over independents and new entrants).

Variable	NSW	Federal
	<p>Party that endorses candidates in a group for the Legislative Council but does not endorse any candidates for election to the Legislative Assembly or does not endorse candidates in more than 10 electoral districts - \$1,579,400</p> <p>Independent Legislative Council group at a general election - \$1,579,400</p>	CI 302ALC defines targeted expenditure.
Campaign expenditure cap – individuals	<p>There are many different types of electoral expenditure that the caps apply to.</p> <p>Some common examples are:</p> <ul style="list-style-type: none"> - expenditure on the production and distribution of electoral material (such as 'how to vote' cards, and advertising on TV, radio, or social media) - expenditure used to employ campaign staff. <p>Exemptions apply.</p>	<p>Any candidate (independent, small or major party) would be allowed to spend \$800,000 in a single seat for an election campaign. This does not include advertising for a party.</p> <p>(The party can also spend an unlimited amount on party advertising, so as long as they don't mention that candidate's name - there really is no cap up to the \$90 million spending cap per party).</p>
Party registration model	Parties seeking to be registered for a particular election in order to receive the entitlements of registration should submit their application for registration to the NSW Electoral Commissioner at least 16 months before that election.	Parties can access the \$90m expenditure cap as soon as they are federally registered as a party (small and large parties are the same; and may encourage bogus registration of parties, even if only one candidate is endorsed).
Campaign Expenditure cap – politically active groups/third party campaigners	<p>Donations made to TPCs are capped and are subject to disclosure rules, but TPCs are allowed to campaign with their own funds—so funds that they've gathered from other activities, without being disclosed.</p> <p>\$1,464,200 if the third-party campaigner was registered before the commencement of the capped state expenditure period for the election - \$732,200 in all other cases</p> <p>\$180,720 for each by-election</p>	<p>An earlier draft of the law would have limited peak business and union groups to receiving \$20,000 from each of their members for election campaigns. That has been increased to \$250,000.</p> <p>Politically active groups (such as GetUp, unions and Advance) would also be subject to a spending cap of \$11 million per election. This would include advertisements attacking policies or parties. Groups such as Climate 200 could still crowdfund and distribute cash to MPs but would have to prove no individual donors breached the caps.</p>

Variable	NSW	Federal
Public funding Per vote	<p>The NSW Electoral Commission administers three public funding schemes in New South Wales. Public funding is available to eligible parties and candidates contesting state elections and to eligible parties and independent members of Parliament.</p> <p>Public funding is not available to political parties registered for local government elections.</p>	<p>The bill increases the amount of public funding per vote that candidates receive after an election, which benefits incumbents, to make up for the caps on donations.</p> <p>The amount of money per vote given to political parties and candidates would go up from about \$3.50 to \$5, which would mean the taxpayer reimbursement would rise from the \$75 million handed out after the last election to an estimated \$100 million.</p> <p>\$5 funding is paid in advance to incumbents – before the election. New entrants/candidates do not get this funding.</p>
Administrative funding	<p>The public funding scheme, including the Administration Fund, are a reimbursement scheme, meaning that the Electoral Commission needs to be satisfied that that expenditure is, in the case of the Administration Fund, administrative expenditure and that it was incurred in the right period and may be reimbursed.</p> <p>Administrative funding is scaled at a decreasing marginal rate in NSW (but not at federal level) in recognition of the fact that a flat rate should not be used to meet mixed costs.</p> <p>In NSW, the amount of administrative funding payable to an eligible party or elected member is the amount of actual expenditure incurred.</p> <p>For political parties, the maximum entitlement is based on the number of elected members endorsed by the party, and it is capped at 25 elected members (just over a million dollars per quarter of funding for a political party that has 25 or more elected members).</p>	<p>Registered parties (at least one sitting member) are entitled to \$7500 per quarter per house member and \$3750 per quarter per Senate Member (cl 302AB). Sitting independents in the House and Senate are entitled to the same (cl 302AC).</p> <p>Administrative funding is paid regardless of actual expenditure.</p> <p>No policy development funding to support new entrants.</p>
	Provisions of the Electoral Funding Act 2018 have commenced.	2026

Variable	NSW	Federal
Reforms effective from		
Review of the Act	<p>(1) The Electoral Commission must review Part 3, Division 4 to determine whether—</p> <p>(a) the policy objectives of the Act remain valid, and</p> <p>(b) the terms of the Act remain appropriate for securing the objectives.</p> <p>(2) The review must be undertaken as soon as possible after the period of 1 year after the first general election after the commencement of this section.</p> <p>(3) A report on the outcome of the review must be given to the Minister within 12 months after the end of the 1-year period.</p>	<p>No scrutiny by parliamentary committee</p> <p>No legislative provision for future independent statutory review.</p>