

**Submission
No 2**

**INQUIRY INTO THE IMPACT OF EXPENDITURE CAPS FOR LOCAL
GOVERNMENT ELECTION CAMPAIGNS**

Organisation: The Hills Shire Council

Date Received: 13 September 2018

ITEM

REVIEW OF ELECTORAL FUNDING LAW

THEME:	Proactive Leadership
OUTCOME:	3 Sound governance that values and engages our customers and is based on transparency and accountability.
STRATEGY:	3.1 Facilitating strong two way relationships and partnerships with the community involve them in local planning and decision making and actively advocate community issues to other levels of government.
MEETING DATE:	11 SEPTEMBER 2018 COUNCIL MEETING
GROUP:	FINANCE AND ORGANISATIONAL PERFORMANCE
AUTHOR:	MANAGER GOVERNANCE AND PUBLIC OFFICER ████████████████████
RESPONSIBLE OFFICER:	GROUP MANAGER – FINANCE & ORGANISATIONAL PERFORMANCE ████████████████████

EXECUTIVE SUMMARY

The NSW Government has announced a review of electoral funding laws and in particular, a Parliamentary Inquiry into the expenditure caps for local government election campaigns. In 2018 the Electoral Funding Act 2018 was introduced with the intention that the caps produced a level playing field for everyone in local government elections. The NSW Parliament's Joint Standing Committee on Electoral Matters has adopted a new inquiry to look into expenditure caps for local government election campaigns as it has recognised the complexity of the issue and it is seeking submissions which close on 14 September 2018.

The terms of reference are to inquire and report on the impact of the expenditure caps for local government election campaigns on local government areas and wards with different populations; with particular reference to:

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

REPORT

The NSW Government has received feedback that the newly introduced Electoral Funding Act 2018 is confusing and complex. It has also been suggested that the caps are inequitable between different local government areas as it did not adequately deal with different populations. Further, in its current complex form it is a concern that candidates may unintentionally breach the law and then be penalised.

Details of applicable caps on electoral expenditure for local government election campaigns are shown below. The information in bold is what is likely to apply at The Hills Shire Council elections:

- (1) General The applicable caps on electoral expenditure for a local government election campaign are as provided by this section, as modified by section 32 (Aggregation of applicable caps—local government election campaigns).

Note. This Act does not apply to an election of mayor by councillors - see the definition of local government election in section 4.

- (2) Parties with candidates in a general election for a local government general election, the applicable cap for a party that endorses candidates for election is the sum of the following:

- (a) **\$5,000 multiplied by the number of wards (in local government areas divided into wards) in which the party has endorsed candidates,**

- (b) \$5,000 multiplied by the number of local government areas not divided into wards in which the party has endorsed candidates.

- (3) Party (ungrouped) candidates in general election For a local government general election, the applicable cap for a candidate for election (other than a candidate who is a member of a group or a candidate for mayor) endorsed by a party is:

- (a) **\$20,000—where the number of enrolled electors at the previous general election for the local government area or ward concerned was 200,000 or fewer, and**

- (b) \$30,000 — where the number of enrolled electors at the previous general election for the local government area or ward concerned was more than 200,000.

- (4) Independent (ungrouped) candidates in general election For a local government general election, the applicable cap for a candidate (other than a candidate who is a member of a group or a candidate for mayor) not endorsed by any party is:

- (a) **\$25,000 - where the number of enrolled electors at the previous general election for the local government area or ward concerned was 200,000 or fewer, and**

- (b) \$35,000 - where the number of enrolled electors at the previous general election for the local government area or ward concerned was more than 200,000.

- (5) Party groups of candidates in general elections For a local government general election, the applicable cap for a group of candidates who are endorsed by a party is:

- (a) **\$30,000 - where the number of enrolled electors at the previous general election for the local government area or ward concerned was 200,000 or fewer, and**

- (b) \$40,000 - where the number of enrolled electors at the previous general election for the local government area or ward concerned was more than 200,000.

- (6) Independent groups of candidates in general elections For a local government general election, the applicable cap for a group of candidates who are not endorsed by any party is:

- (a) **\$35,000 - where the number of enrolled electors at the previous general election for the local government area or ward concerned was 200,000 or fewer, and**
 - (b) \$45,000 - where the number of enrolled electors at the previous general election for the local government area or ward concerned was more than 200,000.
- (7) Grouped mayoral candidates in general election For a local government general election, the applicable cap for a candidate for mayor who is a member of a group participating in the general election is:
 - (a) **\$15,000 - where the number of enrolled electors at the previous general election for the local government area concerned was 200,000 or fewer, and**
 - (b) \$20,000 - where the number of enrolled electors at the previous general election for the local government area concerned was more than 200,000.
- (8) Ungrouped mayoral candidates in general election For a local government general election, the applicable cap for a candidate for mayor who is not a member of a group participating in the general election is:
 - (a) **\$30,000 - where the number of enrolled electors at the previous general election for the local government area concerned was 200,000 or fewer, and**
 - (b) \$40,000 - where the number of enrolled electors at the previous general election for the local government area concerned was more than 200,000.
- (9) Candidates in by-elections For a by-election for a local government area or ward, the applicable cap for a candidate (whether or not endorsed by a party) is:
 - (a) **\$40,000 - where the number of enrolled electors at the previous general election for the local government area concerned was 200,000 or fewer, and**
 - (b) \$60,000 - where the number of enrolled electors at the previous general election for the local government area concerned was more than 200,000.
- (10) **Third-party campaigners for a local government general election, the applicable cap for a third-party campaigner is \$2,500 multiplied by the number of local government areas for which the third-party campaigner incurs electoral expenditure.**
- (11) **For a by-election for Councillor (including mayor), the applicable cap for a third-party campaigner is \$2,500 for each by-election.**

Whilst there are numerous scenarios as shown above, under the current law, the applicable caps on electoral expenditure for the Hills Shire Council Local Government area election campaigns for political parties that endorses candidates is \$20,000 based on 110,280 registered voters. These amounts are different for Party grouped candidates whereby an amount of \$30,000 per party group for each ward is allowed. There are also different caps for independent candidates. As a further complication there are additional caps such as \$5,000 expenditure per ward per party, provided candidates' names are not mentioned. There are also caps for Mayoral candidates.

It is apparent from the information above, that there are inequities within the caps between candidates within the same LGA. The information suggests there needs to be differentiation

between parties endorsed candidates and independents recognising the different effects of having the political brands backing. It would appear that the intent is to introduce some parity in the process. It would seem a better model would be to determine what would be considered a reasonable expenditure cost for any candidate to be able to reach electors with information about their candidacy. If that cap was reasonable and there was some thought given to a reimbursement of some costs depending on a candidate's success, there would not need to be such a differentiation in the cap structure. It also needs to be considered that a local elected councillor is essentially a volunteering role and funding these campaigns would be a barrier to entry that warrants some consideration.

Under the current arrangements, the expenditure cap per candidate for Council elections can be as low as \$2,500 whereas in state elections it is around \$61,500. These caps equate to a candidate at The Hills Shire Council elections being able to spend between \$0.09 and \$0.18 per registered voter depending on how they are grouped. This amount is inconsistent across Local Government areas with examples of expenditure per voter being:

- Blacktown City Council \$0.14
- City of Parramatta \$0.19
- City Of Sydney \$0.19
- Orange City Council \$0.07
- Dubbo Regional Council \$0.44
- Campbelltown City Council \$0.05
- Waverley Council \$0.44
- Walcha Shire Council \$8.71

For the purposes of these requirements, electoral expenditure is taken to be incurred when the services for which the expenditure is incurred are actually provided or the goods for which the expenditure is incurred are actually delivered.

In particular:

- a) expenditure on advertising is incurred when the advertising is broadcast or published, and
- b) expenditure on the production and distribution of election material is incurred when the material is distributed, and
- c) expenditure on the employment of staff is incurred during the period of their employment, and
- d) expenditure of a class prescribed by the regulations is incurred at the time so prescribed.

Local Government NSW has advised they will make representations on behalf of Councils, about the need for change to ensure electoral funding caps are fair and transparent. Local Government NSW has also advised they do not have a preferred methodology and are seeking guidance from Councils.

It would seem that a fairer, more equitable system could be one where there is a certain "base amount" and then a value per voter as the more votes the more distribution required. This leads to greater cost. The thresholds of 200,000 seem to create too much of a differential across the various Councils and there needs to be some thought to having less differential between the different types of candidate as indicated earlier. Clearly in rural areas, the base rate may need to consider the "tyranny of distance" in recognising an appropriate cost structure.

It is also considered that imposing expenditure caps ought not to be considered in isolation. The requirements relating to political donations and how candidates are able to fund their election needs to be considered. Once that is determined, it would seem appropriate to

determine a reasonable limit as a cap based on reasonable costs. Consideration also should be given to an offset of those costs depending on the success of candidates similar to elections in other levels of Government.

CONCLUSION

The inquiry is an opportunity for improvement if expenditure caps are to remain. It is very important that any expenditure cap does not impact a reasonable democracy and or the ability of candidates to reasonably present their message to help voters make informed choices. It is a complex area, however it would seem appropriate that a uniform base amount be determined having regard to reasonable expenditure and costs. It is also recommended that an actual rate per elector be determined to add to the base amount as the current threshold is inadequate.

The expenditure caps have presumably been put in place to provide some “parity” between different candidates. It should however be a monetary value that has some relationship to reasonable costs to reasonably reach out to all voters. Different populations, the tyranny of distance are factors that would give differential costs and while they are the same for candidates within the same LGA, there is difference between LGA’s and given it is a cap with penalty’s, a more robust funding model would seem appropriate.

It would also seem appropriate for the inquiry to consider funding sources and reimbursement for local government candidates given the positions are effectively voluntary with a very modest allowance available under the Local Government act to Councillors.

IMPACTS

Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Strategic Plan - Hills Future

Local government elections are an important part of the democratic process.

RECOMMENDATION

Council forward this report as its submission to the Parliamentary inquiry.

ATTACHMENTS

1. Parliament of NSW Joint Standing Committee on electoral Matters Media Release - Inquiry into the impact of expenditure caps for local government election campaigns (1 page)