

**Submission  
No 7**

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

**Organisation:** Unions NSW

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# Unions NSW and United Services Union Submission

Joint Standing Committee on Electoral Matters  
Inquiry into the impact of expenditure caps for local  
government election campaigns

14 September 2018

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## Introduction

1. Unions NSW and the United Services Union make this submission to the Joint Standing Committee on Electoral Matters.
2. Unions NSW is the peak body for trade unions and union members in NSW and has been fighting for the rights of working people in Australia since 1871. It has over 65 affiliated unions and Trades and Labour Councils, representing over 550,000 workers across the State. Affiliated unions cover the spectrum of the workforce in both the public and private sectors. Unions NSW is a not-for-profit organisation funded by its affiliates.
3. United Services Union has 30,000 members in NSW. It is the largest employee organisation in local government in NSW and has members in every local government area across the state.
4. Unions NSW welcomes the opportunity to make a submission to the Inquiry on expenditure caps in local government election campaigns. Unions NSW has been a registered third-party campaigner in the last two NSW State Elections. Unions NSW was not a registered third-party campaigner in the 2016 or 2017 local government elections, but has an interest in ensuring the role of third-party campaigners in elections is maintained at all levels of government.
5. Unions and its affiliated unions work to represent and advance the interests of working people in NSW. The majority of this work takes place at the workplace level and through the industrial relations system. However, the interests of workers are also inextricably linked to the government or council of the day and their legislative and political agenda. As such Unions NSW and its affiliated unions have a proud tradition of playing an active role in political debate and campaigns at federal, state and local government level elections.

## The Electoral Funding Act 2018

6. The *Electoral Funding Act 2018* (NSW) (**the Act**) commenced on 1 July 2018, repealing and replacing the *Electoral Funding, Expenditure and Disclosure Act 1981* (NSW). In addition to introducing expenditure caps in local government elections, the Act introduced a number of

new measures which significantly restricted the ability of third-party campaigners to participate in state elections. The Act halves the expenditure cap for third-party campaigners in state election campaigns and restricts third-party campaigners from pooling their members money to run an election campaign by working together or '*acting in concert*'.

7. On 23 May 2018, when the Electoral Funding Bill was being debated in both houses of the NSW Parliament, Unions NSW voiced its concern that if passed, the Bill would remove the right of freedom of political communication by removing the ability of third-party campaigners, churches, charities, environmental groups and activist organisations to communicate to electors and the broader community in the electoral process.
8. On 10 August 2018, Unions NSW filed a Writ of Summons and Statement of Claim in the High Court of Australia, challenging the constitutional validity of sections 29(10) and 35 of the Act. In addition to Unions NSW, the plaintiffs are the NSW Nurses and Midwives Association, the Electrical Trades Union, the Australian Education Union, the United Services Union and the Health Services Union.
9. Section 29(10) relates to the expenditure caps for third-party-campaigners at state elections. Section 35 prohibits third-party campaigners acting in concert with other persons to incur electoral expenditure which exceeds the cap. The High Court pleading argues these sections limit the ability of third-party campaigners to engage in elections and impermissibly burdens the freedom of political communication implied by the Constitution.
10. The acting in concert provision of the Act (s 35) applies to third-party campaigners at both state and local government elections. Unions NSW reiterates its opposition to the provision in its entirety. Unions NSW recommends the removal of section 35.

## **Local Government Caps in the Electoral Funding Act**

11. The Act introduced expenditure caps for local government elections where previously there were no limits on spending. Third-party campaigners have their expenditure capped at \$2,500 per local government area.

12. The cap for political parties and candidates has been applied differently, with caps set at \$5,000 for each ward in the local government area or for the local government area if there are no wards.
13. The Act's drafting of expenditure caps in local government elections raises four key concerns for Unions NSW:
  - a) In its current form the approach to setting caps for third-party campaigners (local government areas) and political parties and candidates (ward or local government area) is inconsistent. The approach leads to a large and varying disparity between the caps for candidates and third-party campaigners when applied across different local governments.
  - b) The provision of candidate caps being applied per ward is inequitable. This approach fails to account for the many differences between local government areas. It is particularly inequitable when applied to local government areas without wards, areas with a limited number of wards, or areas with wards that have very large populations.

Application of the Act means expenditure in Woollahra is capped at \$3.68 per enrolled elector but only 28 cents per enrolled elector in Campbelltown<sup>1</sup>.
  - c) The cap of \$2,500 per local government area for third-party campaigners is too low to allow effective freedom of political communication.

In a large local government area like Canterbury-Bankstown (224,474 enrolled electors<sup>2</sup>) this equates to an expenditure cap of 1 cent per voter which does not allow for the production of 'how-to-vote' material for election day or to provide a mail out to electors on a candidate's position on electoral matters.

During the election period it is unlawful for third-party campaigners to act in concert with other persons to incur electoral expenditure which exceeds the cap for third-party campaigners. This restriction places an even greater burden on third-party campaigners

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<sup>1</sup> NSW Electoral Commission, *Council Area Statistics*, August 2018, available from: <https://roll.elections.nsw.gov.au/lg/ex35>

<sup>2</sup> *ibid*

and their ability to run an effective local government election campaign within the limits of the Act.

The Government has provided no evidence that there is an issue with excessive spending by third-party campaigners in local government election campaigns. In the Parliamentary Debate, the Hon. Anthony Roberts MP argued that the expenditure caps for third-party campaigners had been lowered in response to the Schott report<sup>3</sup>. The Schott report made no reference to third-party campaigns at the local government level<sup>4</sup>.

- d) The blanket candidate cap of \$5,000 per local government ward or area is too low and fails to take into account the costs of running a local government election campaign.

In a local government area such as the Campbelltown, this equates to 28 cents<sup>5</sup> per enrolled elector which would not provide sufficient funding to contact voters in the lead up to the election and may not even provide sufficient funding for the printing of ‘how to vote’ cards on election day.

## Proposal for the calculation of Local Government Expenditure Caps

14. Unions NSW supports an electoral system that maintains the confidence of the community while upholding democratic values and rights to political expression and communication. As such, expenditure caps should be set in a manner and at a level which does not restrict the ability of all participants to fully engage in the electoral process.
15. To avoid the inequitable outcome of candidate caps being set at a per ward basis, Unions NSW supports the introduction of an expenditure cap calculated on a ‘per enrolled elector’ basis. This calculation should apply to all categories of candidates and third-party campaigners.

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<sup>3</sup> The Hon. Anthony Roberts MP, *Hansard – Electoral Funding Bill 2018 Second Reading Speech*, 17 May 2018.

<sup>4</sup> NSW Department of Premier and Cabinet, Panel of Experts, *Political Donations Final Report – Volume 1*, December 2014.

<sup>5</sup> NSW Electoral Commission, *Council Area Statistics*, August 2018, available from: <https://roll.elections.nsw.gov.au/lg/ex35>

16. Unions NSW has not settled on a specific dollar figure. Any figure selected should:
- a) Acknowledge there is a diverse range of election campaigning costs across different local government areas and wards. Costs will vary on geographical size, population size, media markets and/or different modes of communication with electors. This creates a challenge in ensuring expenditure caps are suitable for all local government areas and candidates.
  - b) Be set at the same rate for all local council areas and wards to avoid any confusion in its application.
  - c) Be set at the same rate for all categories of candidates and third-party campaigners.
  - d) Take into account the spending in local government elections over the past two elections as a guide to the costs involved in running a local government election campaign.
  - e) Consider the costs of communicating with electors prior to election day. Some key considerations would include the costs of postage, advertising and printing.
  - f) Be guided by the upper spending limits of past elections and potential election costs. This would ensure no particular group of candidates or campaigners were unfairly restricted in their ability to effectively communicate with electors based on the size or particular features of the local government area or ward.
  - g) Include a floor to the cap. This would prevent local government wards with a very small number of electors from having a restrictive expenditure cap imposed.
  - h) Ensure information on the number of electors in each ward and the corresponding cap is readily available to all candidates and campaigners.
  - i) Be adjusted yearly in line with the Consumer Price Index (CPI).

17. Per voter caps for candidates could be set at the ward level or local government area level if there are no wards for candidate. Because the caps would be based on the number of voters, this wouldn't lead to the inequitable outcomes present in the Act currently.
18. Third-party campaigners at elections generally run issues based campaigns, such as addressing privatisation or seeking insourcing of jobs and services, which affect multiple local government areas. As such, the calculation of caps on a per ward or per local government area would be difficult to implement and enforce for a number of reasons.
19. For example, a radio advertisement about the negative impacts of the privatisation on local government services may be targeted at three local government areas, but because of the reach of the radio station, it is broadcast across eight different local government areas. It would be difficult to know how the spending should be apportioned to each local government area or ward. That is, would it just be divided across the local government areas or the number of wards? Would the dominant or target audience be taken into account? Would the listener numbers need to be collected and applied?
20. To deal with these complexities, the per elector cap for third party campaigners should be set at a state-wide level and be calculated on the number of local government areas holding elections. The third-party campaigner per elector cap should be set at the same amount as candidates and parties.
21. To prevent third party campaigners from spending the entire cap in one or two local government areas, the expenditure caps should mirror the approach of the state election expenditure caps which place a cap on the amount of electorate specific spending. Unions NSW proposes this amount be set at the same per elector level and applied based on the number of electors in each local government area. In order for spending to be considered local government area specific, it must mention the name(s) of candidates, wards or local government area.
22. The cap at the local government area level would be considered as part of the state-wide cap and not in addition to it.



## Conclusion

23. Unions NSW believes the Electoral Funding Act in its current form places an unreasonable restriction on the campaigning activities of third-party campaigners including unions, charities, advocacy organisations and environmental groups.
  
24. Unions NSW recommends:
  - a) The removal of the acting in concert provision of the Act (s35).
  - b) The introduction of an expenditure cap calculated on a 'per enrolled elector' basis. This calculation should apply to all categories of candidates and third-party campaigners.
  
25. Urgent amendments are needed to expenditure caps in local government elections in order to provide for the equitable distributions of caps. Amendments to caps are also needed so they are set at a level which provides candidates and third-party with the ability to engage with electors in the lead up to an election. It is important these amendments be made prior to the scheduled 2020 general council elections.