

**Submission
No 8**

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

Organisation: Australian Labor Party (NSW Branch)

Date Received: 14 September 2018



Inquiry into the impact of expenditure caps for Local Government Election Campaigns

Submission by the Australian Labor Party (NSW Branch) to the
Joint Standing Committee on Electoral Matters

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14 September 2018

The Hon Dr Peter Phelps MLC
Chair
Joint Standing Committee on Electoral Matters
Parliament of New South Wales
Macquarie Street SYDNEY NSW 2000

BY EMAIL: electoralmatters@parliament.nsw.gov.au

Dear Dr Phelps

Re: The Impact of Expenditure Caps for Local Government Elections

Thank you for your correspondence in relation to caps for Local Government Elections.

Please find below the submission of the Australian Labor Party (NSW Branch) (“NSW Labor”) with regard to the inquiry into the impact of expenditure caps for Local Government Election Campaigns.

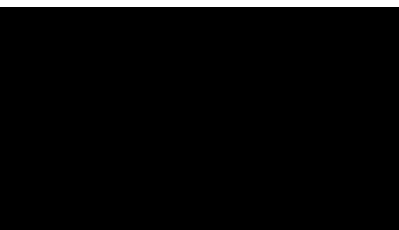
NSW Labor welcomes increased transparency measures in relation to the introduction of expenditure caps for Local Government Elections.

NSW Labor however notes with concern the lack of consultation in the development of the new Act and we believe there should be a further review into the impact of the change of legislation.

Thank you for the opportunity to provide feedback on this important matter.

If you require further information, please do not hesitate to contact me on 


Yours sincerely



Kaila Murnain
GENERAL SECRETARY

AUSTRALIAN LABOR PARTY (NSW BRANCH) SUBMISSION TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

1 Introduction

The Australian Labor Party (NSW Branch) is the largest and oldest political Party in Australia and has consistently argued for a cap on campaign spending during Local Government Elections.

On 24 August 2015, NSW Labor Leader Luke Foley proposed a three point plan to improve the integrity of local government, of which expenditure caps was an integral part.

While NSW Labor welcomes expenditure caps at a Local Government level, it is also mindful of the inequities or diminution of freedoms of political expression that can result from too restrictive a cap on campaign expenditure.

Getting the right balance is critically important.

NSW Labor thanks the Joint Standing Committee on Electoral Matters (Committee) for the opportunity to provide a submission to the Inquiry into the impact of expenditure caps for local government election campaigns.

This submission is in draft form until endorsed by the NSW Labor Administrative Committee. Any revisions made by the Administrative Committee at that time will be forwarded the Committee in the form of an updated submission.

2 The need for expenditure caps

NSW Labor submits there are a variety of cogent reasons for the introduction of expenditure caps.

Firstly, very high levels of campaign expenditure can be symptomatic of an unfair electoral contest. Caps can reduce the level of financial inequality between Candidates.

Second, caps can curtail the level of campaign expenditure and, in that way, reduce the perceived influence of private donors on Candidate platforms and policies.

Third, high levels of campaign expenditure can be a barrier to entry into an electoral contest. Electoral expenditure caps can mean that electoral contests are more accessible to a greater number of Candidates.

3 The need for balance

The benefits obtained from restrictions on campaign expenditure must be balanced against a number of competing priorities.

Caps on electoral expenditure are a limitation placed on freedoms of speech and political expression. Expenditure caps should only be implemented in so far as they address a particular mischief and no further. Caps should address the concerns raised in the section above but also ensure, where possible, that Candidates are free to conduct the sort of campaigns and deliver the sort of electoral communications they choose.

The reality is that modern elections require a minimum level of expenditure in order for Candidates to communicate with their constituents. The implementation of too restrictive a cap can limit the breadth, frequency and effectiveness of electoral communication – and therefore, the quality of a jurisdiction’s democracy, community understanding, civic participation and political debate.

Recommendation: That the Joint Standing Committee recommend the retention of reasonable and balanced electoral expenditure caps for Local Government Elections in New South Wales.

4 Calculating expenditure caps

NSW Labor submits that the number of enrolled electors in a ward or local government area is the best proxy for expected electoral expenditure requirements. Clearly, the larger the constituency, the larger the budget required to communicate with them.

There are, of course, a range of factors that influence campaign budgets including but not limited to: whether the electorate is rural or regional; the number of channels through which a constituency typically obtains their news; and the density of the jurisdiction’s population. However, factoring such determinants into a formula would be far too complex, onerous and subject to disagreement.

NSW Labor suggests that the electoral expenditure cap per Candidate, take the form of: the cost of sending a letter to an elector multiplied by the number of electors in the local government area twelve months¹ before the election is held.

NSW Labor suggests that the rate be adjusted for inflation at regular intervals.

¹ NSW Labor believes there should be a cut-off ahead of time so Candidates know exactly what the cap will be.

NSW Labor believes the cap should apply per Candidate and for expenditure on cross-ward material, in-ward material, and mayoral material.

NSW Labor does not believe that Candidates, whether they are part of a group, endorsed by a party, or running as an independent should be treated differently for the purposes of an electoral expenditure cap. The same electoral expenditure cap should apply to all Candidates equally.

NSW Labor believes the electoral expenditure cap should permit a group to spend only as much as it would to nominate a Candidate for every vacant position and no more, that is, if a Party were to run five Candidates for a three councillor ward, the cap only permits the Party to spend as if they were running three Candidates.

Also, if a Party or group were to run three mayoral Candidates, the cap only permits the Party or group to spend as if there was one mayoral Candidate. Such a rule would seek to limit the extent to which Candidates can 'game' the system to circumvent the electoral expenditure cap.

Recommendation: That the Joint Standing Committee recommend, as a principle, an electoral expenditure cap per Candidate calculated as the cost of sending a letter to an elector multiplied by the number of electors in the local government area. This number should be reviewed periodically by the Joint Standing Committee.

Recommendation: That the Joint Standing Committee recommend the number of electors be calculated using the enrolled electors as at twelve months² before the scheduled election, including for by-elections.

Recommendation: That the Joint Standing Committee recommend that the level of the cap be adjusted for inflation over time.

5 Whether the current divisions around the number of enrolled electors on which the expenditure cap is calculated are adequate

NSW Labor does not believe that the figure of 200,000 electors referred to s.31 of the *Electoral Funding Act 2018 (NSW)* is a useful division. The figure appears to have been arbitrarily chosen.

6 Caps for Parties

NSW Labor believes the electoral expenditure cap for Parties with Candidates in a general election should not be arbitrarily determined as appears to be the case in

s.31(2) of the *Electoral Funding Act 2018 (NSW)* but be based on the same principles determined to calculate the Candidate electoral expenditure cap. NSW Labor suggests that the Joint Standing Committee consider an electoral expenditure cap based on a percentage of the cap set for the Candidates a Party runs in either a local government election.

Recommendation: That the Joint Standing Committee consider an electoral expenditure cap for parties with Candidates in a general election based on a percentage of the cap set for the Candidates a Party runs in a local government election.

7 Third-Party Campaigners

NSW Labor believes the cap on third-party campaigners is unduly restrictive, fails to correct an identifiable mischief; and is unconstitutional. Any cap set for third Party campaigning should be similar to those set for Candidates and should be set at a rate that permits the third Party campaigner to communicate with every single elector in a local government area.

NSW Labor believes the prohibition on third-party campaigners acting in concert with other persons as set out in s.35 of the *Electoral Funding Act 2018 (NSW)* is similarly unconstitutional.

Recommendation: That the Joint Standing Committee recommend electoral expenditure caps on third Party campaigners should be set at a rate that permits the third Party campaigner to send a letter to every single elector in a local government area.

Recommendation: That the Joint Standing Committee recommend the deletion of the prohibition on third-party campaigners acting in concert with other persons as set out in s.35 of the *Electoral Funding Act 2018 (NSW)*.