

**Submission
No 2**

**CAPS ON THIRD-PARTY CAMPAIGNERS' ELECTORAL EXPENDITURE IN
S29(11) AND S35 OF THE ELECTORAL FUNDING ACT 2018**

Organisation: NSW Minerals Council

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Mr Lee Evans MP
Chair, Joint Standing Committee on Electoral Matters

22 April 2022

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

Dear Mr Evans,

I'm responding to the invitation to make a submission to the Joint Standing Committee on Electoral Matters for its inquiry into caps on third-party campaigners' electoral expenditure in s29(11) and s35 of the *Electoral Funding Act 2018*.

The NSW Minerals Council is the peak industry body for the mining and exploration sector in NSW and we appreciate the opportunity to comment as the committee makes its inquiries.

We regularly conduct public information campaigns, including advertising across a range of mediums, to educate the community about the number of people working in the sector, the wide range of high-skilled jobs they undertake across NSW, and a variety of other matters ranging from the economic benefits of mining to the work undertaken to rehabilitate mine sites during and after mining.

Our advertising generally appears on TV, radio, print and online across NSW during and outside of electoral periods.

The Electoral Act 2018 states that:

For a State general election, the applicable cap for a third-party campaigner is

(a) \$500,000 if the third-party campaigner was registered under this Act before the commencement of the capped State expenditure period for the election, or

(b) \$250,000 in any other case.

The NSW media market is generally considered to be the largest and most expensive in the country. Electoral expenditure caps such as these in a costly media market like NSW makes it very difficult to undertake our business as usual activities to share information with the community, especially when the caps are applied across such a long period as six months.



The NSW Minerals Council has registered as a Third Party Campaigner since prior to the 2015 election and has complied with the rules as administered by NSW Elections.

We will also register as a third party campaigner for the upcoming NSW state election and intend to provide an accurate report of any relevant activities as required. It is not clear whether this report must be audited, as this was not required following the successful challenge to the legislation ahead of the 2019 NSW state election.

However, in our experience, the way that the legislation has been drafted and the requirements contained therein are not clear. This has necessitated the expense of external legal advice to work out how we could best comply. We also thought based on that legal advice that we would need to provide audited reports.

These were both costly exercises, and perversely it appeared that these costs also needed to be included in the capped expenditure amount for the relevant electoral periods, further limiting our normal business as usual expenditures in the electoral period.

In our experience, the way the caps have been enforced in the past has also been overly bureaucratic and at times ambiguous. This has made efforts to comply with the rules time consuming and very difficult. For example, it isn't clear which expenses should and should not be included in reporting, meaning a wide range of our business as usual expenses are captured in an attempt to ensure we are compliant.

In the lead up to previous electoral periods, the NSW Minerals Council made numerous attempts to clarify what expenses are supposed to be covered but was unable to obtain such information from Elections NSW. During a number of enquiries with Elections NSW, they either did not want to, or would not give advice, instead simply advising the NSW Minerals Council to read the legislation and comply with it.

It also subsequently took them a long time to understand the details in our completed returns, even though all details were given and explained, and involved our best endeavours to comply, including obtaining legal advice at our own expense to do so. It seemed that Elections NSW was itself unsure about how the system was supposed to work in practice. This may be a resourcing issue within Election NSW that should be addressed if expenditure caps are to continue into the future. Surely the agency responsible for these rules should be able to explain them to those seeking to comply with them.



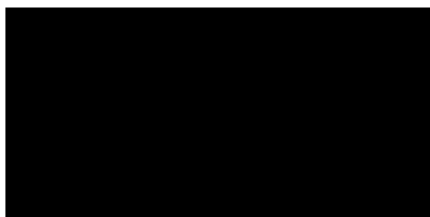
The NSW Minerals Council maintains that business as usual advertising and other business as usual spending that would be undertaken, regardless of an election, that falls within the electoral period should not be captured within any third party campaigner caps. The effect of the capture of these business as usual expenses is to distort reporting of specific campaign spending, as any expenditure above and beyond business as usual spending is not specifically identified. This also means the intent of the caps and the reasons for reporting of campaign spending are not actually met in practice. All that is reported is overall expenditure during the reporting period, not specific campaign spending. The end result is an overly bureaucratic and complicated administrative process that imposes additional costs on those attempting to comply with it, without any real benefits in relation to the accurate reporting of specific additional spending relating to campaigning.

The rules as previously applied captured communications that are not political in nature nor meet the definition of political advertising as set out on the NSW Electoral Commission website: 'Electoral expenditure of a third-party campaigner includes only the expenditure which is incurred for the dominant purpose of promoting or opposing a party or the election of a candidate or candidates or influencing the voting at an election'.

In conclusion, the previous caps on third-party campaigners' electoral expenditure in s29(11) and s35 of the *Electoral Funding Act 2018* have been poorly framed, they are opaque and confusing, and fail to meet their objectives of ensuring electoral expenditure is disclosed accurately. They are a public policy failure and should be recognised as such.

If these provisions are to be reinstated, they need to be thoroughly reviewed for clarity and to ensure applicability to capture actual electoral expenditure which has the intention or "dominant purpose of promoting or opposing a party or the election of a candidate or candidates or influencing the voting at an election". Further, Elections NSW needs to be properly resourced to enable it to provide specific advice and assistance to those seeking to comply with the reporting requirements.

Yours sincerely



Stephen Galilee
CHIEF EXECUTIVE OFFICER