

## Answers to Supplementary Questions from Portfolio Committee No.1: Inquiry into the Electoral Funding Amendment Bill 2023

The responses below are provided by Rachel McCallum, Executive Director Funding Disclosure and Compliance and General Counsel

Question	Response																				
(1) How much money was spent by third parties overall on advertising through radio, television, internet, cinemas and other mediums at the 2019 and 2023 state elections?	<p>The NSW Electoral Commission's electoral expenditure disclosure forms categorise electoral expenditure in accordance with the kinds of expenditure stipulated at section 7(1) of the <i>Electoral Funding Act 2018</i> (the EF Act).</p> <p>Parties and candidates are required to separately identify expenditure incurred in any category of expenditure (see section 18(1) of the EF Act and clause 7, EF Regulation). Third-party campaigners also generally disclose their expenditure using the same categorisation, but this is not mandatory.</p> <p>Total expenditure disclosed by category by third-party campaigners for the 2019 State election was as follows:</p> <table border="1" data-bbox="573 794 1771 1177"> <thead> <tr> <th data-bbox="573 799 1599 834">Type of Expenditure</th> <th data-bbox="1610 799 1771 834">Amount</th> </tr> </thead> <tbody> <tr> <td data-bbox="573 839 1599 900">Advertisements in radio, television, internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material</td> <td data-bbox="1610 871 1771 900">\$4,251,619</td> </tr> <tr> <td data-bbox="573 904 1599 933">Production and distribution of election material</td> <td data-bbox="1610 904 1771 933">\$1,054,282</td> </tr> <tr> <td data-bbox="573 938 1599 967">Internet, telecommunications, stationery and postage</td> <td data-bbox="1610 938 1771 967">\$88,853</td> </tr> <tr> <td data-bbox="573 971 1599 1000">Employing staff engaged in election campaigns</td> <td data-bbox="1610 971 1771 1000">\$625,906</td> </tr> <tr> <td data-bbox="573 1005 1599 1034">Office accommodation for staff and candidates</td> <td data-bbox="1610 1005 1771 1034">\$903</td> </tr> <tr> <td data-bbox="573 1038 1599 1067">Travel and travel accommodation for candidates and staff engaged in electoral campaigning</td> <td data-bbox="1610 1038 1771 1067">\$69,189</td> </tr> <tr> <td data-bbox="573 1072 1599 1101">Research associated with election campaigns (other than in-house research)</td> <td data-bbox="1610 1072 1771 1101">\$431,578</td> </tr> <tr> <td data-bbox="573 1106 1599 1134">Raising funds for an election or in auditing campaign accounts</td> <td data-bbox="1610 1106 1771 1134">\$13,796</td> </tr> <tr> <td data-bbox="573 1139 1599 1168"><b>Total</b></td> <td data-bbox="1610 1139 1771 1168"><b>\$6,536,126</b></td> </tr> </tbody> </table> <p>Disclosures by third-party campaigners for the period that includes the 2023 State election are due to be lodged by 22 September 2023 and will be published as soon as practicable after this date.</p>	Type of Expenditure	Amount	Advertisements in radio, television, internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material	\$4,251,619	Production and distribution of election material	\$1,054,282	Internet, telecommunications, stationery and postage	\$88,853	Employing staff engaged in election campaigns	\$625,906	Office accommodation for staff and candidates	\$903	Travel and travel accommodation for candidates and staff engaged in electoral campaigning	\$69,189	Research associated with election campaigns (other than in-house research)	\$431,578	Raising funds for an election or in auditing campaign accounts	\$13,796	<b>Total</b>	<b>\$6,536,126</b>
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## Answers to Supplementary Questions from Portfolio Committee No.1: Inquiry into the Electoral Funding Amendment Bill 2023

Question	Response
<p>(2) Are there currently any restrictions on a third-party campaigner working 'in-concert' with a political party?</p>	<p>A third-party campaigner is defined in the EF Act to exclude entities that are political parties or their associated entities (section 4).</p> <p>Previous section 35 made it unlawful for a third-party campaigner to act under an agreement with another person to incur electoral expenditure that exceeded the campaigner's electoral expenditure cap. This section was repealed by the <i>Electoral Legislation Amendment Act 2022</i>.</p> <p>There are no provisions for a third-party campaigner's electoral expenditure to be aggregated with a political party's expenditure for the purpose of calculating a relevant electoral expenditure cap. An associated entity's expenditure, however, must be aggregated with the relevant political party's expenditure (section 30, EF Act). An associated entity is a corporation or other entity that operates solely for the benefit of one or more parties or elected members (section 4, EF Act).</p> <p>Section 144 of the EF Act makes it an offence for any person to enter into or carry out a scheme (whether alone or with other) for the purpose of circumventing a prohibition or requirement of Part 3 with respect to political donations or electoral expenditure. Any allegation that an arrangement between third-party campaigners is a scheme of circumvention would need to be considered on a case-by-case basis.</p> <p>Section 25 of the EF Act also makes it unlawful for a person to make or accept political donations to more than three third-party campaigners in the same financial year.</p>

## Answers to Supplementary Questions from Portfolio Committee No.1: Inquiry into the Electoral Funding Amendment Bill 2023

Question	Response
<p>(3) Are there currently any restrictions on a third-party campaigner working 'in-concert' with another third-party campaigner/s?</p>	<p>A third-party campaigner is defined in the EF Act to exclude entities that are political parties or their associated entities (section 4).</p> <p>There are no provisions for a third-party campaigner's electoral expenditure to be aggregated with another third-party campaigner's expenditure for the purpose of calculating a relevant electoral expenditure cap, unless they are related bodies corporate under section 9(8). Previous section 35 made it unlawful for a third-party campaigner to act under an agreement with another person to incur electoral expenditure that exceeded the campaigner's electoral expenditure cap. This section was repealed by the <i>Electoral Legislation Amendment Act 2022</i>.</p> <p>An associated entity's expenditure, however, must be aggregated with the relevant political party's expenditure (section 30, EF Act). An associated entity is a corporation or other entity that operates solely for the benefit of one or more parties or elected members (section 4, EF Act).</p> <p>Section 144 of the EF Act makes it an offence for any person to enter into or carry out a scheme (whether alone or with other) for the purpose of circumventing a prohibition or requirement of Part 3 with respect to political donations or electoral expenditure. Any allegation that an arrangement between third-party campaigners is a scheme of circumvention would need to be considered on a case-by-case basis.</p> <p>Section 25 of the EF Act also makes it unlawful for a person to make or accept political donations to more than three third-party campaigners in the same financial year.</p>
<p>(4) Are there currently any restrictions preventing political parties from creating additional supportive or affiliated entities as third-party campaigners?</p>	<p>The EF Act defines the types of election participants that are subject to regulation, including associated entities of political parties (see section 4 of the EF Act). A third-party campaigner is defined in the EF Act to exclude entities that are political parties or their associated entities. If a political party created an entity to operate solely for its benefit, it may be an associated entity and not be a third-party campaigner, meaning its electoral expenditure may need to be aggregated with that party's expenditure.</p> <p>In addition, section 9(1) provides that things done by parts of a party (such as branches, groups, subdivisions, controlled entities) are taken to be done by or on behalf of the party. Electoral expenditure incurred by parts of parties would be taken to be expenditure incurred by the party.</p>

## Answers to Supplementary Questions from Portfolio Committee No.1: Inquiry into the Electoral Funding Amendment Bill 2023

Question	Response
<p>(5) Could an entity be created solely to facilitate the funding of a third-party campaign which favours one political party, similar to 'Super PACs' in the United States (also known as independent expenditure-only political action committees)?</p>	<p>The EF Act defines the types of election participants that are subject to regulation, including associated entities of political parties (see section 4 of the EF Act). A third-party campaigner is defined in the EF Act to exclude entities that are political parties or their associated entities. If an entity operates solely to fund a campaign to benefit one political party, it may be an associated entity of that party and its electoral expenditure may need to be aggregated with that party's expenditure.</p> <p>In addition, any entity is limited in its ability to fund the electoral expenditure of a third-party campaigner by the caps on political donations in NSW.</p>

## Answers to Supplementary Questions from Portfolio Committee No.1: Inquiry into the Electoral Funding Amendment Bill 2023

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<p>(6) For each of the 2019 and 2023 state general elections, and having consideration to the number of electoral districts in which candidates were endorsed by the following, what was the maximum cap allowable under s29(2) for:</p> <p>(a) The Nationals</p> <p>(b) The Liberal Party</p>	<p><b>2019 State election</b></p> <table border="1" data-bbox="573 363 1823 603"> <thead> <tr> <th>Political Party</th> <th>LA candidates endorsed</th> <th>Applicable adjustable amount at section 29(2)</th> <th>Expenditure cap in accordance with section 29(2)</th> </tr> </thead> <tbody> <tr> <td>National Party of Australia - NSW</td> <td>20</td> <td>\$122,900</td> <td>\$2,458,000</td> </tr> <tr> <td>The Liberal Party of Australia New South Wales Division</td> <td>73</td> <td>\$122,900</td> <td>\$8,971,700</td> </tr> </tbody> </table> <p><b>2023 State election</b></p> <table border="1" data-bbox="573 695 1823 935"> <thead> <tr> <th>Political Party</th> <th>LA candidates endorsed</th> <th>Applicable adjustable amount at section 29(2)</th> <th>Expenditure cap in accordance with section 29(2)</th> </tr> </thead> <tbody> <tr> <td>National Party of Australia - NSW</td> <td>20*</td> <td>\$132,600</td> <td>\$2,652,000</td> </tr> <tr> <td>The Liberal Party of Australia New South Wales Division</td> <td>75*</td> <td>\$132,600</td> <td>\$9,945,000</td> </tr> </tbody> </table> <p>* Includes candidates dis-endorsed between nomination and election day.</p>	Political Party	LA candidates endorsed	Applicable adjustable amount at section 29(2)	Expenditure cap in accordance with section 29(2)	National Party of Australia - NSW	20	\$122,900	\$2,458,000	The Liberal Party of Australia New South Wales Division	73	\$122,900	\$8,971,700	Political Party	LA candidates endorsed	Applicable adjustable amount at section 29(2)	Expenditure cap in accordance with section 29(2)	National Party of Australia - NSW	20*	\$132,600	\$2,652,000	The Liberal Party of Australia New South Wales Division	75*	\$132,600	\$9,945,000
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<p>(7) Can you confirm that registered political parties are also eligible to receive quarterly payments from taxpayers through the Administrative Fund overseen by the New South Wales Electoral Commission?</p>	<p>Only the registered political parties that meet the conditions at section 87(2) of the EF Act are eligible to receive public funding from the Administration Fund:</p> <ol style="list-style-type: none"> <li>The party was a registered party on the election day for the previous State election and continues to be a registered party on the date that the entitlement for a quarterly payment is determined (the last day of the quarter), and</li> <li>Candidates endorsed by the party were elected at a State election (including at a joint sitting to fill a vacancy in the Council) and the Electoral Commission is satisfied that the elected members claimed to be endorsed by the party, and</li> <li>the Electoral Commission is satisfied that the elected members continue to be members or representatives of the party on the date that the entitlement for a quarterly payment is determined (the last day of the quarter).</li> </ol>																								

## Answers to Supplementary Questions from Portfolio Committee No.1: Inquiry into the Electoral Funding Amendment Bill 2023

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<p>(8) In the 2022 calendar year, how much were each of the following eligible to receive from the Administration Fund under section 87(3):</p> <p>(a) The Liberal Party</p> <p>(b) The Nationals</p> <p>(c) The Australian Labor Party</p>	<p>Details of each eligible party and independent elected member's maximum entitlements and payments from the Administration Fund can be accessed from this page of the NSW Electoral Commission's website:  <a href="https://elections.nsw.gov.au/about-us/reports/public-funding-claims-and-payments">https://elections.nsw.gov.au/about-us/reports/public-funding-claims-and-payments</a></p> <p>The relevant amounts for the parties referred to in the question are extracted below:</p> <p><b>Administration Fund entitlement and payments for the 2022 calendar year</b></p> <table border="1" data-bbox="573 536 1823 823"> <thead> <tr> <th>Political Party</th> <th>Maximum entitlement</th> <th>Total payments*</th> </tr> </thead> <tbody> <tr> <td>The Liberal Party of Australia New South Wales Division</td> <td>\$2,734,400</td> <td>\$2,734,400</td> </tr> <tr> <td>National Party of Australia - NSW</td> <td>\$3,636,000</td> <td>\$3,636,000</td> </tr> <tr> <td>Australian Labor Party (NSW Branch)</td> <td>\$3,636,000</td> <td>\$3,636,000</td> </tr> </tbody> </table> <p>* Payments made in relation to the 2022 calendar year may have been made after the end of the year</p>	Political Party	Maximum entitlement	Total payments*	The Liberal Party of Australia New South Wales Division	\$2,734,400	\$2,734,400	National Party of Australia - NSW	\$3,636,000	\$3,636,000	Australian Labor Party (NSW Branch)	\$3,636,000	\$3,636,000
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<p>(9) How much was distributed in total from the Administration Fund in the 2022 calendar year to each of the following:</p> <p>(a) The Liberal Party</p> <p>(b) The Nationals</p> <p>(c) The Australian Labor Party</p>	<p>Payments from the Administration Fund were made in the amounts referred to in the answer to the previous question.</p>												

## Answers to Supplementary Questions from Portfolio Committee No.1: Inquiry into the Electoral Funding Amendment Bill 2023

Question	Response
<p>(10) Can you confirm that all registered parties and candidates are eligible to receive public funds for electoral expenditure, including expenditure within capped periods, through the Election Campaigns Fund?</p>	<p>In accordance with section 66 of the EF Act, a registered political party is eligible for payments from the Election Campaigns Fund in respect of a State general election if it is a registered party on the election day, it endorses candidates who are duly nominated for the election and the Electoral Commission is satisfied that the candidates claim to be endorsed by the party, and it satisfies at least one of these criteria:</p> <ul style="list-style-type: none"> <li>a) In the case of an Assembly general election—the total number of first preference votes received by all those candidates endorsed by a party is at least 4% of the total number of first preference votes in all electoral districts in which the candidates were duly nominated for election,</li> <li>b) in the case of a periodic Council election—the total number of first preference votes received by all those candidates endorsed by a party (and by all other candidates included in the same group) is at least 4% of the total number of first preference votes in that election, or</li> <li>c) in the case of any election—at least one of those candidates endorsed by a party is elected at the State election.</li> </ul> <p>Registered parties that are not eligible to claim from the Election Campaigns Fund may claim reimbursement of their electoral expenditure from the New Parties Fund, up to their maximum entitlement.</p> <p>In accordance with section 68 and 70 of the EF Act, a candidate who is duly nominated for a State election and not endorsed by an eligible registered party is eligible to claim from the Election Campaigns Fund if:</p> <ul style="list-style-type: none"> <li>a) The candidate is registered for the election on the election day, and</li> <li>b) In the case of a candidate for periodic Council election, the candidate was not included in a group, or was included in a group none of whose members were endorsed by a party, and</li> <li>c) The candidate satisfies at least one of the following criteria: <ul style="list-style-type: none"> <li>i. in the case of an Assembly general election or by-election for the Assembly—the candidate is elected or the total number of first preference votes received by the candidate is at least 4% of the total number of first preference votes in the electoral district in which the candidate was duly nominated for election,</li> <li>ii. in the case of a periodic Council election—the candidate is elected or the total number of first preference votes received by the candidate (and, if included in a group, by all other candidates included in the same group) is at least 4% of the total number of first preference votes in the election.</li> </ul> </li> </ul> <p>Only eligible candidates (including endorsed candidates), not parties, may claim from the Election Campaigns Fund for a State by-election.</p>

## Answers to Supplementary Questions from Portfolio Committee No.1: Inquiry into the Electoral Funding Amendment Bill 2023

Question	Response																												
(11) Are third party campaigners eligible to receive any funds for electoral expenditure through the Election Campaigns Fund?	No.																												
<p>(12) How much public funding was distributed in total to all registered parties and candidates from the Election Campaigns Fund for each of the following:</p> <p>(a) The 2019 general state election</p> <p>(b) The 2023 general state election</p> <p>(c) All by-elections conducted in 2022</p>	<p>Details of each eligible party and candidate's maximum entitlements and payments from the Election Campaigns Fund can be access from this page of the NSW Electoral Commission's website:  <a href="https://elections.nsw.gov.au/about-us/reports/public-funding-claims-and-payments">https://elections.nsw.gov.au/about-us/reports/public-funding-claims-and-payments</a></p> <p>Payments made from the Election Campaigns Fund</p> <table border="1" data-bbox="573 754 1823 1123"> <thead> <tr> <th data-bbox="573 754 1010 834">Election event</th> <th data-bbox="1016 754 1272 834">Total payments to parties (to date)</th> <th data-bbox="1279 754 1554 834">Total payments to candidates (to date)</th> <th data-bbox="1561 754 1823 834">Total Payments</th> </tr> </thead> <tbody> <tr> <td data-bbox="573 839 1010 882">2019 State general election</td> <td data-bbox="1016 839 1272 882">\$29,351,372</td> <td data-bbox="1279 839 1554 882">\$611,550</td> <td data-bbox="1561 839 1823 882">\$29,962,922</td> </tr> <tr> <td data-bbox="573 887 1010 930">2022 Bega State by-election</td> <td data-bbox="1016 887 1272 930">N/A</td> <td data-bbox="1279 887 1554 930">\$209,381</td> <td data-bbox="1561 887 1823 930">\$209,381</td> </tr> <tr> <td data-bbox="573 935 1010 978">2022 Monaro State by-election</td> <td data-bbox="1016 935 1272 978">N/A</td> <td data-bbox="1279 935 1554 978">\$177,570</td> <td data-bbox="1561 935 1823 978">\$177,570</td> </tr> <tr> <td data-bbox="573 983 1010 1026">2022 Strathfield State by-election</td> <td data-bbox="1016 983 1272 1026">N/A</td> <td data-bbox="1279 983 1554 1026">\$182,933</td> <td data-bbox="1561 983 1823 1026">\$182,933</td> </tr> <tr> <td data-bbox="573 1031 1010 1074">2022 Willoughby State by-election</td> <td data-bbox="1016 1031 1272 1074">N/A</td> <td data-bbox="1279 1031 1554 1074">\$122,549</td> <td data-bbox="1561 1031 1823 1074">\$122,549</td> </tr> <tr> <td data-bbox="573 1078 1010 1121">2023 State general election*</td> <td data-bbox="1016 1078 1272 1121">\$27,563,812</td> <td data-bbox="1279 1078 1554 1121">\$934,432</td> <td data-bbox="1561 1078 1823 1121">\$28,498,244</td> </tr> </tbody> </table> <p data-bbox="573 1142 2027 1201">* Claims for payments from the Election Campaigns Fund for the 2023 State election were due to be made by 4 September 2023. Claims are still being processed at the time of answering this question so the total payments will increase.</p>	Election event	Total payments to parties (to date)	Total payments to candidates (to date)	Total Payments	2019 State general election	\$29,351,372	\$611,550	\$29,962,922	2022 Bega State by-election	N/A	\$209,381	\$209,381	2022 Monaro State by-election	N/A	\$177,570	\$177,570	2022 Strathfield State by-election	N/A	\$182,933	\$182,933	2022 Willoughby State by-election	N/A	\$122,549	\$122,549	2023 State general election*	\$27,563,812	\$934,432	\$28,498,244
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