

RESPONSES TO SUPPLEMENTARY QUESTIONS

- 1. What was the maximum cap allowable for The Liberal Party under s29(2) of the EF Act in the 2023 general election - having regard to the number of candidates endorsed by the party?**

The maximum party cap applicable to The Liberal Party of Australia, NSW Division under section 29(2) of the *Electoral Funding Act 2018* was \$132,600 multiplied by the 75 Legislative Assembly electoral districts where the party nominated an endorsed candidate, which totalled \$9,945,000.

- 2. Is it correct that a significant proportion of electoral expenditure incurred by the Liberal Party under this cap, including general advertising and other material - but not directly allocated to specific seats caps - would nonetheless benefit candidates endorsed by The Liberal Party in those seats?**

Electoral expenditure that is incurred within the applicable cap for parties with Assembly candidates, but that is not subject to the additional cap in section 29(12), would benefit candidates endorsed by that party, regardless of whether they are endorsed by the Liberal Party, the Labor Party or any other registered political party. General advertising and other material that is not directly allocated to seat specific caps would help promote that party's brand and message.

- 3. Do you agree that there is an interdependent relationship between The Liberal Party and The Nationals notwithstanding the separate structures and governance arrangements of both organisations?**

I do not agree. The Liberal Party of Australia, NSW Division and the National Party of Australia – NSW are separate political parties registered under Part 6 of the Electoral Act 2017. As acknowledged in the premise of the question, the parties have separate structures and governance arrangements.

As noted in our submission, there were two three-cornered contests at the recent 2023 election – Port Macquarie and Wagga Wagga, where the parties competed against each other, and in the remaining electoral districts one party or the other contested it. In government and opposition, the Liberal and Nationals parliamentary parties work co-operatively in accordance with longstanding convention but also maintain separate structures and governance arrangements.

- 4. Can you confirm that The Liberal Party does not coordinate with, discuss, or liaise in any way with other third parties regarding their campaigns or participation in electoral processes.**

As I said in my testimony, the Liberal Party regularly talks with other organisations.

During the time I have worked as State Director, I don't recall coordinating with, discussing or liaising in any way with any registered third party campaigners as to how they would conduct their campaigns or the way in which they participate in electoral processes.

- 5. Can you provide additional real examples from recent election campaigns of third parties attempting to influence an election outcome in favour of a particular party?**

Yes, I refer the Committee to some examples I have included at Annexure A to this response.

- 6. Are you aware of any campaigns where union third party material has asked voters to vote the Liberals or Nationals last? Could you please provide examples?**

Yes, I refer the Committee to some examples I have included at Annexure B to this response.

7. Are you aware of any campaigns where union third party material has asked voters to vote Labor last? Could you please provide examples?

I cannot recall seeing any material from a trade union that has registered as a third party campaigner and has advocated to voters that Labor be put last in their voting preferences.

8. Is there any additional information you would like to provide the committee?

I note that during the course of this inquiry, there has been significant commentary around the various proceedings taken by Unions NSW in the High Court of Australia, and the implications of the decisions of the Court. It is worth noting that in each of these cases, the High Court was asked to decide very specific questions as to the validity of sections of relevant Acts, as outlined below.

Unions NSW [No 1] [2013] HCA 58

The case involved a constitutional challenge to the validity of sections 96D and 95G(6) of the *Election Funding, Expenditure and Disclosures Act 1981* ('**EFED Act**'), which made it unlawful for a political entity to accept a political donation except when the donor is enrolled on the roll of electors for a local, state, or federal election, and which aggregated all the donations made by entities subject to its restrictions.

The High Court unanimously held that sections 96D and 95G(6) the EFED Act were invalid because they were not reasonably connected to a legitimate purpose of lessening corruption.

Unions NSW [No 2] [2019] HCA 1

The case involved a constitutional challenge to the validity of sections 29(10) and 35 of the *Electoral Funding Act 2018* ('**EF Act**') which reduced the amount of electoral expenditure that could be incurred by third party campaigners, down from \$1,050,000 to \$500,000 and prohibited third party campaigners from acting in concert with others to exceed the applicable cap.

Prior to its introduction, an Expert Panel had suggested that third party campaigners should not be able to drown out the voices of parties and candidates and that political parties and candidates should have a privileged position in election campaigns because they are directly engaged in the contest and are the only ones able to form government. It recommended that the spending cap be halved to \$500,000, but also that the amount be checked against actual expenditure incurred on the 2015 election.

The government referred the Expert Panel Report to the Joint Standing Committee on Electoral Matters ('**JSCEM**') for review. The JSCEM recommended that before cutting the cap on third party campaigners, the Government consider whether there was sufficient evidence that a third party campaigner could present its case within that expenditure limit.

The High Court was not presented with any evidence that such consideration had occurred and held that section 29(10) of the EF Act was invalid as it impermissibly burdened the implied freedom of political communication. Given that section 29(10) was held to be invalid, it followed that there was no cap on which section 35 of the Act could operate.

It is important to note that in this case, their Honours found that NSW had not justified how halving the cap on third party campaigners was necessary to prevent the drowning out of voices other than third parties. Although the parliament does not ordinarily need to provide evidence

for the legislation it passes, if the law burdens the implied freedom of political expression then it must be justified, as determined in *Lange v Australian Broadcasting Corporation* [1997] HCA 25 and *McCloy v New South Wales* [2015] HCA 34.

In this case, no basis had been provided for halving the cap applicable to third party campaigners, nor was the figure checked against actual expenditure at the 2015 election, nor had any inquiry been made as to what amount is necessary to allow third party campaigners reasonably to communicate their message.

Unions NSW [No 3] [2023] HCA 4

The case involved a constitutional challenge to the validity of sections 29(11) and 35 of the *Electoral Funding Act 2018*, which imposed an electoral expenditure cap of \$20,000 (indexed for inflation) for third-party campaigners in State by-elections, and restrictions on the campaigning expenditure permitted where third party campaigners 'act in concert' by campaigning together or in a coordinated way.

The NSW Parliament repealed the acting in concert provisions before the High Court hearing took place. When the JSCEM released its report in November 2022 recommending that, with other reforms not included within this Bill, the applicable cap for by-elections should be increased, the Government conceded that it could not justify the by-election cap at the amount then included in the legislation.

Due to the facts of the aforementioned cases, the key issues regarding the implied freedom of political communication are not fully resolved. They remain an unsettled, but dynamic, area of Australian constitutional law.

<p>Active</p> <p>Started running on 25 Feb 2023</p> <p>Platforms</p> <p>Categories</p> <p>ID: 480610274278676</p> <p>3 ads use this creative and text</p> <p>See summary details</p> <p>Climate 200 Sponsored • Paid for by Climate 200</p> <p>PEP11, the insane proposal to drill for oil and gas off the beautiful northern beaches of Sydney is back on the table.</p> <p>Joeline Hackman the independent for Manly has committed to introduce legislation to stop PEP11 for good.</p> <p>The NSW State Government could have done this already...</p> 	<p>Active</p> <p>Started running on 23 Feb 2023</p> <p>Platforms</p> <p>Categories</p> <p>ID: 1616224382215725</p> <p>2 ads use this creative and text</p> <p>See summary details</p> <p>Climate 200 Sponsored • Paid for by Climate 200</p> <p>A coalition of independent candidates, who could hold the balance of power in under 2 months, have proposed killing the Pep-11 oil and gas exploration licence by banning development of the area.</p> <p>Lane Cove Independent candidate Victoria Davidson said it was a "landmark example of how our politicians are failin...</p> 
---	---

2023 State election, Climate 200 Facebook advertising promoting Teal candidates in Manly and Lane Cove.

Active ...
Started running on 8 Mar 2023
Platforms f
Categories 🗨
Estimated audience size >1M i
Amount spent (AUD): <AUS\$100
Impressions: 10K-15K
ID: 612075097429322

[See ad details](#)

 **Maurice Blackburn Lawyers**
Sponsored · Paid for by Maurice Blackburn Lawyers

We're excited to see Chris Minns and NSW Labor committed to introducing essential protections for gig and other precarious workers, such as worker's compensation entitlements, annual and long-service leave, and minimum rates and conditions. This plan is a significant step towards ensuring that all workers have the same basic rights and protections...



CHRIS MINNS
NSW LABOR LEADER

CHRISMINNS.COM.AU
Modernise NSW Law to Respond to the Rise of the Gig Economy
A Minns Labor Government is vowing to modernise New South Wales laws and respond to the rise of the gig... [Learn more](#)

2023 State election, Maurice Blackburn Lawyers promoting Chris Minns and Labor.

Active ...

Started running on 2 Mar 2023

Platforms 

Categories 

ID: 529284002626012

2 ads use this creative and text

[See summary details](#)

 **Climate 200**
Sponsored · Paid for by Climate 200

"The benefits are really clear," says Jacqui Scruby, a "teal" candidate for the seat of Pittwater.

"The indirect [effect] is driving the conversation – putting policies on the agenda that the major parties won't touch, and forcing them to address those issues."



2023 State election, Climate 200, Facebook advertising promoting the Teal candidate for Pittwater.

Active

Started running on 9 Mar 2023

Platforms  

Categories 

Estimated audience size: 10K-50K 

Amount spent (AUD): AU\$100-AU\$199

Impressions: 15K-20K

ID: 552143126732607

[See ad details](#)

NSW Nurses and Midwives' Association
Sponsored - Paid for by NSW Nurses and Midwives' Association

Karen McKeown for Penrith supports nurse-to-patient ratios. Vote for the candidates who support ratios on March 25.



RATIOSNSW.COM.AU
Western sydney patients deserve better

[Learn more](#)

Active

Started running on 9 Mar 2023

Platforms  

Categories 

Estimated audience size: 50K-100K 

Amount spent (AUD): AU\$100-AU\$199

Impressions: 15K-20K

ID: 948408503202970

[See ad details](#)

NSW Nurses and Midwives' Association
Sponsored - Paid for by NSW Nurses and Midwives' Association

Donna Davis for Parramatta supports nurse-to-patient ratios. Vote for candidates who support ratios on March 25.



RATIOSNSW.COM.AU
Western sydney patients deserve better

[Learn more](#)

2023 State election, NSW Nurses and Midwives' Association Facebook advertising promoting the Labor candidates for Penrith and Parramatta (above) and Summer Hill (below).

Started running on 8 Mar 2023

Platforms  

Categories 

Estimated audience size: 10K-50K 

Amount spent (AUD): AU\$400-AU\$499

Impressions: 30K-35K

This ad has multiple versions 

ID: 607232004788141

[See ad details](#)

NSW Nurses and Midwives' Association
Sponsored - Paid for by NSW Nurses and Midwives' Association

Jo Haylen supports nurse-to-patient ratios. Vote for candidates who support ratios on March 25th.



RATIOSNSW.COM.AU
Inner west patients deserve better

[Learn More](#)



2022 By-elections, Unions NSW poster opposing the Liberal Party.

HOW DO THE PARTIES SCORE ON FIXING OUR FIRE SERVICE?



KEY COMMUNITY NEEDS		Labor	LIBERAL	THE GREENS	INDIPENDENT
1	Fight for Safer Fire Stations	✓	✗	✓	✓
2	Protect Those Who Protect Us	✓	✗	✓	✓
3	More Trained Firefighters to Keep our Community Safe	✓	✗	✓	✓

FIND OUR MORE: www.FixOurFireService.com




Authorised by Leighton Drury, Fire Brigade Employees' Union, 1-7 Belmore St, Surry Hills NSW 2010. Printed by Jeffries Printing Services, 5/71A Milperra Rd, Revesby NSW 2212.

ARE YOU VOTING TO:



FIX OUR FIRE SERVICE IN BEGA?

Authorised by Leighton Drury, Fire Brigade Employees' Union, 1-7 Belmore St, Surry Hills NSW 2010. Printed by Jeffries Printing Services, 5/71A Milperra Rd, Revesby NSW 2212.

2022 Bega by-election, Fire Brigade Employees' Union flyer.

THE FACTS

1. The NSW population has grown 12% over a decade but professional firefighters have only increased by .06%
2. NSW professional firefighting budgets have been cut.
3. Firefighters can no longer do more with less.
4. Our communities need more frontline firefighters.

Authorised by Leighton Drury, Fire Brigade Employees' Union, 1-7 Belmore St, Surry Hills NSW 2010

The NSW Labor Party has committed to more firefighters and resources if they are in government.

The NSW Greens support firefighters.

The Shooters, Fishers and Farmers support firefighters.

The Liberal and National Parties have ignored firefighters. You deserve better.

**Make your vote count.
Number every square.
Put the Liberals last.**

fixourfireservice.com

Printed by Jefferies Printing Services 5/71A Milperra Rd, Revesby NSW 2212

2022 Bega by-election, Fire Brigade Employees' Union flyer and campaigner in uniform opposing the Liberal Party.



2023 State election, United Workers Union flyer and signage opposing the Liberal Party.



2023 State election, United Workers Union mobile billboard opposing the Liberal Party.

Inactive ...
9 Feb 2023 - 26 Feb 2023
Platforms
Categories
ID: 918552212903089
3 ads use this creative and text

[See summary details](#)

Climate 200
Sponsored • Paid for by Climate 200

The controversial Liberal candidate for Pittwater, Rory Amon, has had to defend his vote against a gambling harm minimisation policy when he was on the Northern Beaches council.

The local council had proposed reforms in 2018 to control the harm caused by poker machines, following...

SMH.COM.AU
Liberal candidate voted against pokies reform.

SMH.COM.AU
Liberal candidate voted against pokies reform.

2023 State election, Climate 200 Facebook advertising opposing the Liberal candidate for Pittwater.

Active Facebook
Started running on 21 Feb 2023
Platforms  
Categories 
Estimated audience size: 500K-1M 
Amount spent (AUD): AU\$2.5K-AU\$3K
Impressions: 350K-400K
This ad has multiple versions 
ID: 1424834578324720

[See ad details](#)

 **United Workers Union**
Sponsored • Paid for by United Workers Union

Send Dominic Perrottet and the Liberals a message. Vote them out on Saturday 25 March.



© 2023 United Workers Union. All rights reserved.

2023 State election, United Workers Union Facebook advertising opposing the Liberal Party.

Active ...

Started running on 12 Mar 2023

Platforms 

Categories 

ID: 160912890119305

7 ads use this creative and text

[See summary details](#)



Essential Workers Deserve Better
Sponsored • Paid for by Mark Morey

Thanks to a wage cap from the NSW Liberal Government, essential workers are facing a real wage cut.

Meanwhile, cost of living is soaring, in no small part due to the privatisation of NSW public assets. It's no wonder we're facing an understaffing crisis in our public schools and hospitals....



Advertisement. Not for sale. © 2023 Unions NSW

2023 State election, Unions NSW Facebook advertising opposing the Liberal Party.

Active
Started running on 6 Mar 2023
Platforms
Categories
Estimated audience size: 100K-500K
Amount spent (AUD): AU\$100-AU\$199
Impressions: 10K-15K
ID: 217806474087630

Public Service Association of NSW
Sponsored · Paid for by Public Service Association of NSW

The state Liberals are selling our public services to big business. Every time they sell another service, up go your prices.

SAY NO TO PRIVATISATION

Public Service Association of NSW
Organization
20,629 people like this

Like Page

2023 State election, Public Service Association Facebook advertising opposing the Liberal Party (above and below).

Active
Started running on 18 Mar 2023
Platforms
Categories
ID: 1138451424241793
10 ads use this creative and text

Association of NSW
Trade union
The Public Service Association of NSW represents 39,000 members across New South Wales, Australia.
<http://psa.asn.au/>
32,473 likes

View Ads
Go to Page

Public Service Association of NSW
Sponsored · Paid for by Public Service Association of NSW

The state Liberals are selling our public services to big business. Every time they sell another service, up go your prices.

ELECTRICITY PRICES

👤 Estimated audience size: **500K-1M** ⓘ

💰 Amount spent (AUD): **AU\$500-AU\$599**

👁️ Impressions: **90K-100K**

This ad has multiple versions ⓘ

ID: 540795398161193

[See ad details](#)

 **United Workers Union**
Sponsored · Paid for by United Workers Union

This weekend Send Dominic Perrottet and the Liberals a message. Vote them out on Saturday.



This ad has multiple versions ⓘ

ID: 1013604193331088

2 ads use this creative and text

[See summary details](#)

 **United Workers Union**
Sponsored · Paid for by United Workers Union

Send Dominic Perrottet and the Liberals a message. Vote them out on Saturday 25 March.



2023 State election, United Workers Union Facebook advertising opposing the Liberal Party.

The image displays five individual Facebook ad creatives arranged horizontally. Each ad is for the campaign 'Essential Workers Deserve Better', sponsored by Mark Morey. The ads are active and were started running on 18 or 19 March 2023. Each ad includes a 'See summary details' button and a '20 ads use this creative and text' notification.

- Ad 1 (ID: 114642474851231):** Text: 'BREAKING: Perrotet and the Liberals are selling off our precious water resources to the highest bidder. This election is our last chance to stop the Liberals from selling off Sydney Water. Don't let the Liberals sell-off OUR water.' Image: A video thumbnail showing two men, Daniel Johns and Dominic Perrotet, with a 'sydney WATER' logo.
- Ad 2 (ID: 134569219555106):** Text: 'We can't risk handing a profit-hungry company a monopoly over our drinking water. This election, vote to save Sydney Water from Dominic Perrotet's auction block.' Image: A child drinking water with the text 'Water is for life, not profit. Don't let the NSW Liberals privatise Sydney Water.'
- Ad 3 (ID: 136926192406066):** Text: 'Thanks to a wage cap from the NSW Liberal Government, essential workers are facing a real wage cut. Meanwhile, cost of living is soaring, in no small part due to the privatisation of NSW public assets. It's no wonder we're facing an understaffing crisis in our public schools and hospitals...' Image: A map of NSW with a play button icon.
- Ad 4 (ID: 152947811012062):** Text: 'Thanks to a wage cap from the NSW Liberal Government, essential workers are facing a real wage cut. Meanwhile, cost of living is soaring, in no small part due to the privatisation of NSW public assets. It's no wonder we're facing an understaffing crisis in our public schools and hospitals...' Image: A portrait of Daniel Johns with a play button icon and text: 'Perrotet won't address the chronic staff shortages that are hurting NSW.'
- Ad 5 (ID: 155582867407648):** Text: 'Thanks to a wage cap from the NSW Liberal Government, essential workers are facing a real wage cut. Meanwhile, cost of living is soaring, in no small part due to the privatisation of NSW public assets. It's no wonder we're facing an understaffing crisis in our public schools and hospitals...' Image: A portrait of Daniel Johns with a play button icon and text: 'The NSW Liberal Government has abandoned essential workers' (bullet points: Real wage cut, Increasing cost of living, Understaffing crisis) and 'Daniel Johns - Labor Party'.

2023 State election, Unions NSW Facebook advertising opposing the Liberal Party.

RESPONSES TO QUESTIONS ON NOTICE

Ms CATE FAEHRMANN: *Do you know the rough percentage of what you receive from the business sector, for example, compared to individuals?*

CHRIS STONE: *Off the top of my head, I don't. I can take it on notice.*

Response

In its disclosure to the NSW Electoral Commission for the period 1 July 2021 to 30 June 2022 (the last full financial year of disclosures currently available) The Liberal Party of Australia, NSW Division disclosed \$1,720,112.14 in donations for State campaigns, made up of \$1,230,787.51 in donations from individuals (71.55%) and \$489,324.63 from organisations (28.45%).

Excluding members of the Liberal Party of Australia, NSW Division, there were 1,955 unique donors, comprising 1,635 individuals (83.63%) and 320 organisations (16.37%).

Whilst we do not keep statistics as to whether donations come from the business sector or not, the 28.45% from organisations (referred to above) would equate to the maximum in business sector donations, as not all of the organisations included in that calculation would be from the business sector. For example, this figure may include sole trader professionals and professional organisations, which people might not equate with the business sector (i.e. doctors, lawyers, accountants, engineers etc.)