

A farewell to arms

Part 1: The case for Commonwealth expenditure caps

Briefing paper

October 2022

There are no limits on electoral expenditure at the Commonwealth level in Australia. Political parties, their associated entities, endorsed candidates as well as independent candidates are at liberty to spend (and raise) increasingly large war-chests in their effort to be elected. Third parties such as corporations and trade unions, while not able to vote on election day, are also not subject to an expenditure cap – allowing them to potentially exert undue influence on the preferences of electors. Such excessive expenditure is potentially highly damaging to Australia's democracy.

Expenditure caps seek to regulate the amount of electoral expenditure relevant actors may incur during election campaigns. Expenditure caps currently exist in New South Wales, Queensland, South Australia, the Australian Capital Territory, the Northern Territory and for Legislative Council elections in Tasmania. They previously existed at the Commonwealth level, until their abolition in 1980.¹

The Centre for Public Integrity recommends the implementation of expenditure caps at the Commonwealth level according to the following thirteen principles:

- 1) A capped expenditure period commencing two years after previous polling day;
- 2) Caps on electoral expenditure for political parties proportional to the number of electoral divisions in which they endorse candidates;
- 3) A bargaining system between endorsed candidates and political parties over the applicable expenditure cap;
- 4) Aggregation of associated entity electoral expenditure with party expenditure – with associated entity defined narrowly;
- 5) Caps on electoral expenditure for independent candidates which are proportionally higher than those for endorsed candidates and parties to account for the positive externalities of general party advertising;
- 6) Moderate third-party expenditure caps with a requirement to register with the Australian Electoral Commission (**AEC**) when intending to, or having reached, a threshold level of electoral expenditure;
- 7) Capped in-electorate spending by third parties;
- 8) A broader definition of electoral matter such that most third-party issues-based advertising campaigns are captured;

¹ See Debora Cass and Sonia Burrows, 'Commonwealth Regulation of Campaign Finance: Public Funding, Disclosure and Expenditure Limits' (2000) 22 Sydney Law Review 491.

- 9) An anti-circumvention offence to prevent candidates, parties, associated entities or third parties from acting in concert to circumvent their applicable cap;
- 10) A double-repayment penalty for negligently exceeding the cap, a punitive financial penalty and possible imprisonment for intentionally exceeding the cap;
- 11) Real time disclosure by parties, candidates, associated entities and third parties;
- 12) A mandatory statutory review of the expenditure cap regime after its first election cycle;
- 13) Increased resourcing and funding to the AEC to manage additional educative, enforcement and compliance duties.

These design principles, and their practical justifications, are considered in-depth in Part 2 of the paper.

1. Trends in Commonwealth Electoral Expenditure

Spending by political parties, and, by implication, electoral expenditure, has been trending upwards by the major parties since data collection began in 1998. This upward trend has been especially pronounced for the Coalition and, more recently, driven by the influence of Clive Palmer.

While officially reported third-party expenditure has trended downwards over the past three years, this is largely attributable to the definition of 'electoral expenditure' which was changed in 2018. Despite this, particular instances of excessive third-party expenditure in recent years show its potentially corrosive effect on public debate.

a. Political parties

The *Electoral Act 1918* (Cth) does not require political parties to disclose their electoral expenditure to the AEC. This is understandable, given that electoral expenditure is largely unregulated.

Parties are, however, required to disclose their total payments each financial year – and this can serve to roughly indicate electoral expenditure during financial years in which elections were held after accounting for payments in non-election years. Accordingly, after subtracting routine expenses, estimated inflation adjusted electoral expenditure by Australian political parties increased by **144 per cent**,² and total real payments increased **96 per cent** between 1998-99 and 2018-19. This is despite the electoral roll increasing only **37.4 per cent**.

² This upper estimate is based off subtracting the average aggregated payments in non-election years from the election year. For example, 2018-19 electoral expenditure was derived from subtracting the average of 2017-18 and 2019-20 total payments, and 1998-99 was derived from subtracting the 1999-2000 total payments.

Financial Year	1998-99	2018-19	Change
Real Total Political Party Payments	\$227,406,640	\$446,230,210	96%
Estimated Real Aggregate Electoral Expenditure	\$123,779,891	\$302,015,117	144%
Electoral Roll	12,056,625	16,567,519	37%

Figure 1: Total Political Party Payments, Estimated Aggregate Electoral Expenditure and the size of the Electoral Roll 1998-2019³

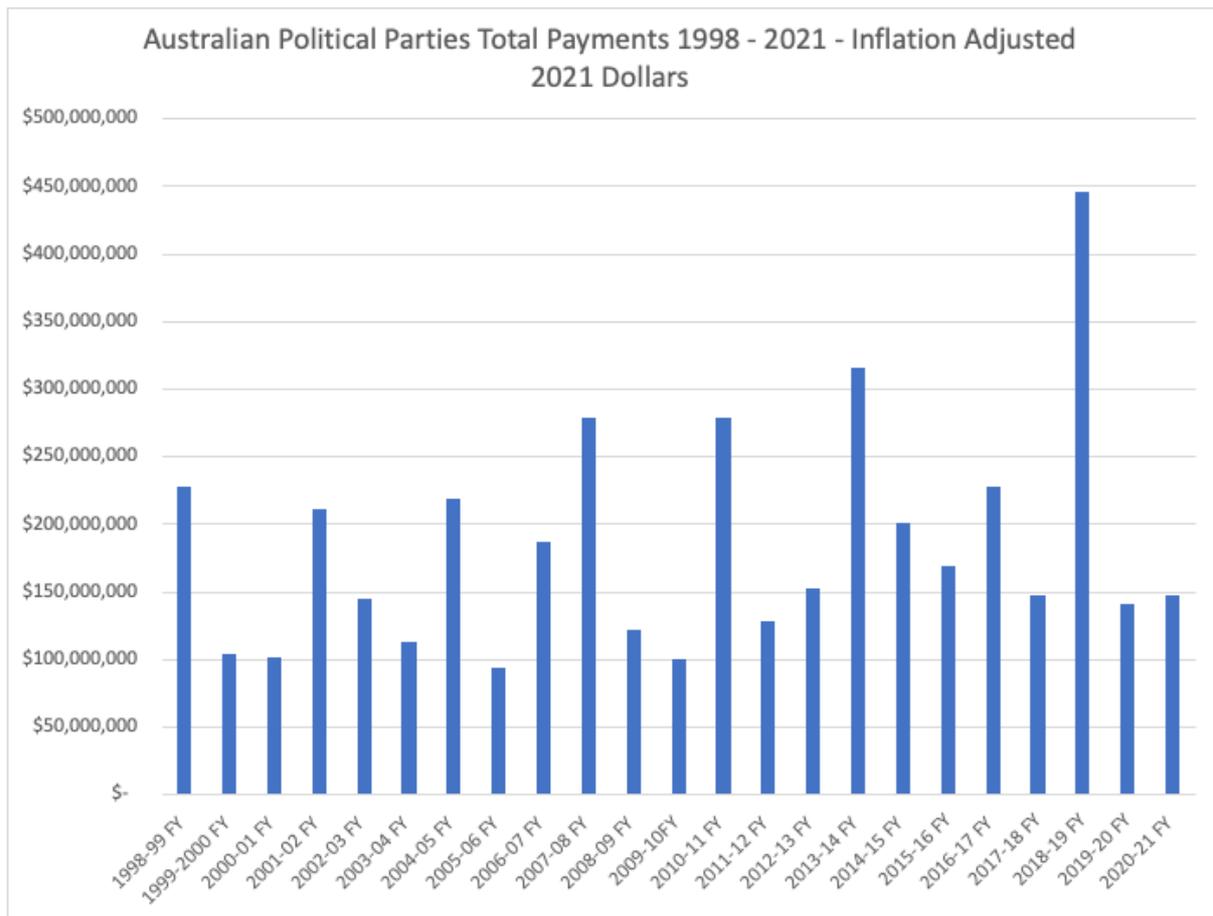


Figure 2: Australian Political Parties Total Payments 1998-2021 – Inflation Adjusted 2021 Dollars⁴

There has also been an upward trend in total payments from the major political parties in Australia. While the Australian Labor Party (ALP) and Coalition spent approximately \$208.5 million in 1998-1999, this figure had increased almost 50 per cent to \$309 million by 2018-19.

³ Data Source: 'Transparency Register', *Australian Electoral Commission* (Web Page) < https://www.aec.gov.au/parties_and_representatives/financial_disclosure/transparency-register/>.

⁴ Data Source: 'Transparency Register', *Australian Electoral Commission* (Web Page) < https://www.aec.gov.au/parties_and_representatives/financial_disclosure/transparency-register/>.

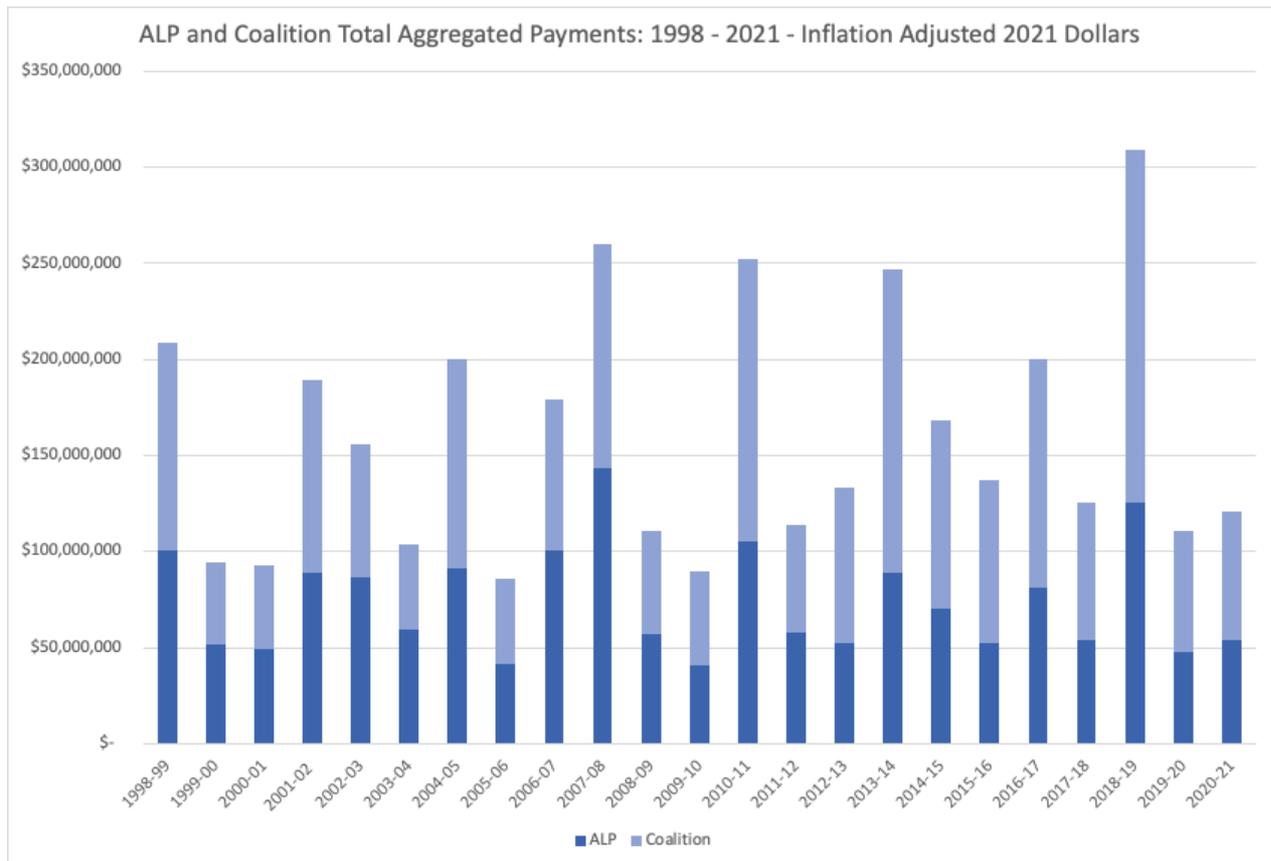


Figure 3: ALP and Coalition Total Aggregated Payments 1998-2021 – Inflation Adjusted 2021 Dollars⁵

The emergence of Clive Palmer as an electoral force at the 2013, 2019 and 2022 elections also evidences the increasing presence of ‘big money’ at Australian elections. Despite minimal popular support, Palmer was able to spend almost \$92.1 million in 2018-19 and arguably tilt the result in favour of the Coalition,⁶ as well as seemingly outspend the ALP in 2013-14.

The 2019 election saw the highest aggregate estimated electoral expenditure from all participants – with the Coalition spending an estimated \$116.5 million, the ALP spending \$74.5 million and other parties spending approximately \$18.8 million.

⁵ It should also be noted that state branch spending also contributes to supporting candidates at state elections – and therefore also fluctuates with relevant state elections. Data Source: ‘Transparency Register’, Australian Electoral Commission (Web Page) < https://www.aec.gov.au/parties_and_representatives/financial_disclosure/transparency-register/>.

⁶ Ben Smee, ‘Clive Palmer says he “decided to polarise electorate” with anti-Labor ads to ensure Coalition win’, *The Guardian* (online, 22 May 2019) < <https://www.theguardian.com/australia-news/2019/may/22/clive-palmer-says-he-decided-to-polarise-electorate-with-anti-labor-ads-to-ensure-coalition-win>>.

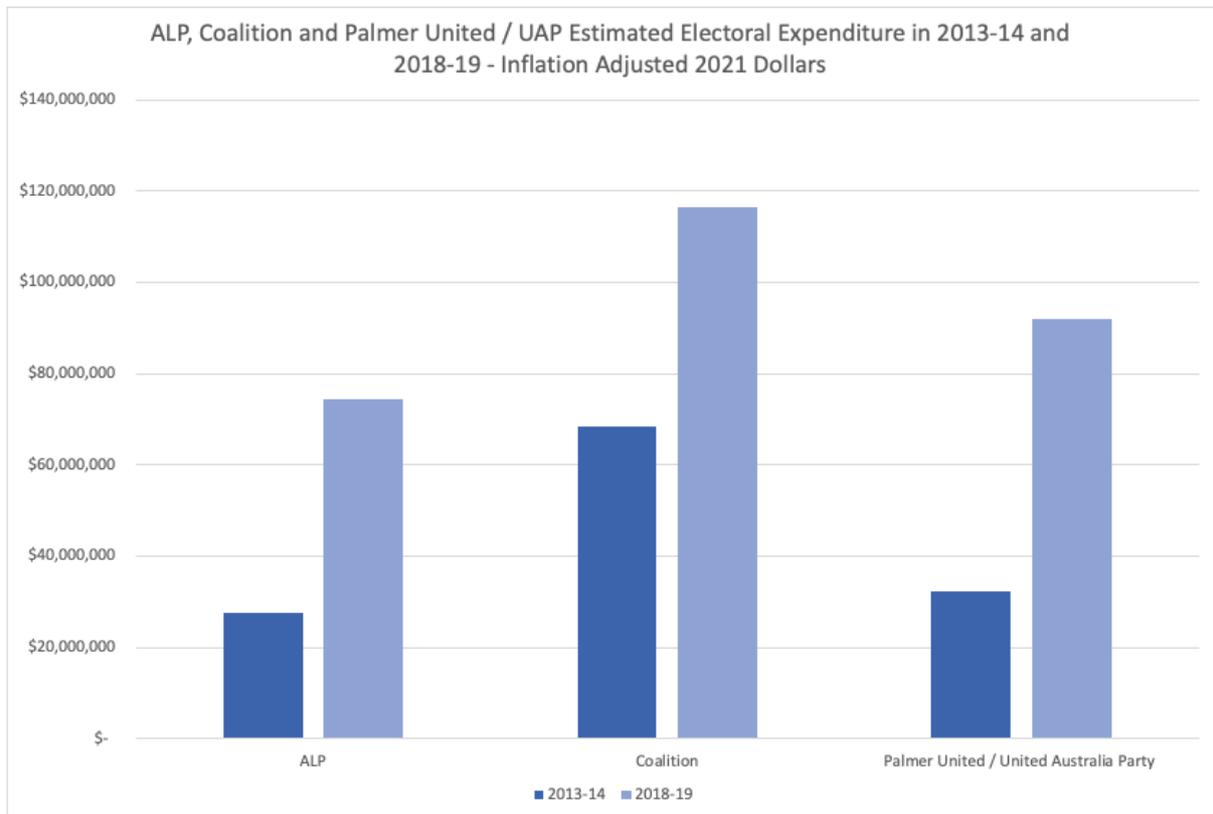


Figure 4: ALP, Coalition and Palmer United / UAP Payments in 2013-14 and 2018-19 – Inflation Adjusted 2021 Dollars⁷

The United Australia Party's exact spend for the 2022 election will not be known until next year. However, it is almost certain to be of similar magnitude to the 2019 spend – with commentators suggesting a \$100 million spend on advertising alone.⁸

⁷ Data Source: 'Transparency Register', *Australian Electoral Commission* (Web Page) < https://www.aec.gov.au/parties_and_representatives/financial_disclosure/transparency-register/>.

⁸ Sarah Martin, 'Clive Palmer's massive advertising spend fails to translate into election success for United Australia Party', *The Guardian* (online, 22 May 2022) < <https://www.theguardian.com/australia-news/2022/may/22/clive-palmers-massive-advertising-spend-fails-to-translate-into-electoral-success>>.

b. Third parties

Third parties are required to submit electoral expenditure returns as either a 'third party' or as a 'significant third party' (which as of 13 December 2021 replaced 'political campaigner') depending on their level of electoral expenditure.⁹ Reported real third-party expenditure and political-campaigner expenditure has varied erratically since 2006-07 and decreased in recent years – though this is largely due to the narrowing of the definition of 'electoral matter' in 2018.¹⁰

Spending by third parties, however, is less a case of *how much* in aggregate, and more of a case of *who, when* and *how much* on an individual expenditure basis.¹¹

For example, in 2009-10 the Minerals Council of Australia spent over \$21 million inflation adjusted dollars on electoral broadcasts and distribution of printed materials. This was almost certainly done in an effort to persuade the public to vote against the Gillard Government at the 2010 election in response to their proposed Minerals Resource Rent Tax. During this same disclosure period, BHP independently incurred an additional \$5 million on electoral expenditure.

In 2007-08 the Australian Council of Trade Unions spent almost \$21 million to oppose the Howard Government's 'WorkChoices' legislation and in support of Kevin Rudd's election effort.

In 2010-11, the 'Alliance of Australian Retailers', bankrolled entirely by British American Tobacco, Phillip Morris and Imperial Tobacco, spent almost \$11 million inflation adjusted dollars to fight the proposed plain packaging legislation which eventually became law in late 2011. Imperial Tobacco spent over \$5 million inflation adjusted dollars independently over this same period.

It should also be noted that there is no cap on third party donations to political parties at the Commonwealth level. Electoral expenditure is therefore only *one* of the avenues by which an interested third party can seek to influence election outcomes, though it is much more direct and less surreptitious than political donations.

⁹ See *Electoral Act 1918* (Cth) ss 287F, 314AEB.

¹⁰ See *Electoral Act 1918* (Cth) s 4AA (definition of 'electoral matter'); cf *Electoral Act 1918* (Cth) s 4 (definition of 'electoral matter'), as at 30 June 2018.

¹¹ For an excellent account of Australian third-party issue advertising see Graeme Orr & Anika Gauja, 'Third-Party Campaigning and Issue-Advertising in Australia' (2014) 60(1) *Australian Journal of Politics & History* 73.

c. Associated entities

Associated entities are entities whose operations are closely related to a registered political party.¹² Associated entities are not required to disclose their electoral expenditure but are required to submit returns with their total receipts and payments.

Real payments by associated entities have also been trending downwards since 2007. The broad definition of associated entity in the *Electoral Act 1918* (Cth) renders it difficult to determine the strength of the association between the entity and the political party – and therefore the direction of the reported payments.¹³ Associated entities are typically unions, affiliated clubs and party-aligned investment funds.

2. The issue of excessive electoral expenditure

Australian elections are becoming more expensive and are at risk of being adversely affected by monied interests. This trend is largely consistent with the 'cost explosion' which has since been identified in other advanced democracies.¹⁴

The United States is most emblematic of this thesis. Between 1998 and 2020, the total cost of presidential and congressional elections increased by 459 per cent.¹⁵ While Australian election spending growth is by no means comparable to this figure, the current laissez-faire approach to the regulation of campaign spending risks the 'Americanisation' of Australian electoral politics. The logic behind this cost blowout by political parties is that of the electoral 'arms race', in which parties must raise and spend increasingly larger amounts to remain electorally competitive with one another.¹⁶

¹² See *Electoral Act 1918* (Cth) s 287H.

¹³ See *Electoral Act 1918* (Cth) ss 287(1) (definition of 'associated entity'), 287L.

¹⁴ Karl-Heinz Nassmacher, *The funding of party competition: political finance in 25 democracies* (Nomos, 2009).

¹⁵ Data Source: 'Cost of Election', *Open Secrets* (Web Page) <<https://www.opensecrets.org/elections-overview/cost-of-election>>.

¹⁶ Malcolm Anderson and Joo-Cheong Tham, 'Dynamics of electoral expenditure and the "arms race" thesis: The case of New South Wales' (2014) 49(1) *Australian Journal of Political Science* 84.

It is generally accepted that elections in mature democracies are not 'for sale', and that election spending alone is not *determinative* of election outcomes.¹⁷ Clive Palmer's poor electoral showings in 2019 and 2022, despite intense spending, are consistent with this understanding. However, excessive electoral expenditure is not simply an issue of annoying advertisements. Unchecked electoral expenditure has many other deleterious effects on electoral democracy. These are its effects on political equality, fundraising and decision-making, resourcing and on the undue influence of third parties.

a. Political equality

Uncapped and vastly unequal electoral expenditure at the upper limit may have implications for *political equality*. Large volumes of spending by established players can dissuade potential candidates and parties from entering the race, as well as entrench incumbent officeholders with the most established fundraising networks.¹⁸ If an election is to be a true contest of ideas, there ought to be some level of political equality between government and opposition, and between more minor parties contesting an election with regards to electoral expenditure. Indeed, in *McCloy v New South Wales* ('*McCloy*'), the majority held that 'equality of opportunity to participate in the exercise of political sovereignty is ... guaranteed by our Constitution'.¹⁹ Such equality of opportunity is almost certainly impinged by the excessive and unequal electoral expenditure Australia currently experiences.

b. Fundraising and decision-making

The arms race may affect the way in which our elected representatives raise funds, and subsequently influence their decision-making in office. While there is likely an easily accessible supply of initial donations and campaign finance, the need for parties and candidates to raise increasingly large donations – often from corporate donors – in order to remain electorally competitive may leave them vulnerable to *quid pro quo* corruption and clientelism.²⁰ Indeed, the risk that these forms of corruption pose to Australian democracy was recognised by the majority in *McCloy* in deciding that a New South Wales law prohibiting political donations from property developers was consistent with the implied freedom of political communication.²¹

¹⁷ See Joo-Cheong Tham, *Money and Politics: The democracy we can't afford* (UNSW Press, 2010) 187-189.

¹⁸ Joshua Potter and Margit Tavits, 'The Impact of Campaign Finance Laws on Party Competition' (2013) 45(1) *British Journal of Political Science* 73.

¹⁹ *McCloy v New South Wales* (2015) 257 CLR 178, 207 [45] (French CJ, Kiefel, Bell and Keane JJ).

²⁰ Stephen Mayne, 'Quid Pro Quo: who paid who before the Election and what do they want', *Michael West Media* (online, 5 February 2020) < <https://michaelwest.com.au/quid-pro-quo-who-paid-who-before-the-election-and-what-do-they-want/> >.

²¹ *McCloy* (n 19) 204-205 [36]-[38] (French CJ, Kiefel, Bell and Keane JJ).

c. Resourcing

Incumbent officeholders may be inhibited from performing their assigned duties and functions by the need to raise funds for their upcoming re-election effort. The arms race dynamic may lead – and arguably has led – to the 'permanent campaign' in which members of the Government are increasingly focused on preparing for the next election, rather than on the duties of office.²² Ministers and MPs should focus their energy on their respective departments and constituents, rather than on raising increasingly large sums to contest the next election.²³

d. Undue influence by third parties

Third parties cannot vote, but they can influence the preferences of electors through large-scale organised advertising campaigns. The abovementioned \$21 million campaign by the Minerals Council in 2009-10 was considered by some a 'direct attack on the government'.²⁴ Similarly, the main message of the 2010-11 campaign by the tobacco lobby opposing plain packaging was simply that the regulation 'wouldn't work'; rather than any policy-based rationale.²⁵

Advocacy advertising is undoubtedly part of a healthy democratic culture, but often has an 'undemocratic imbalance' whereby citizens are vastly outspent by corporate interests in the absence of controls on expenditure.²⁶ Loud monied interests are able to protect their financial interests with large-scale advertising – often to the detriment of good public policy. This threat posed by money in politics has more generally been identified as 'war-chest corruption'.²⁷ Since 2010, threats of a 'mining-tax style campaign' continue to be levelled at Australian governments which seek to regulate industries such as property,²⁸ banking²⁹ and coal mining³⁰ in the public interest.

²² Peter Van Onselen and Wayne Errington, 'The Democratic State as a Marketing Tool: The Permanent Campaign in Australia' (2007) 45(1) *Commonwealth & Comparative Politics* 78.

²³ See for example Anny Hyland, "'It's an arms race': The \$500m spend on the federal election", *The Sydney Morning Herald* (online, 2 April 2022) < <https://www.smh.com.au/national/it-s-an-arms-race-the-500m-spend-on-the-federal-election-20220328-p5a8g0.html>>.

²⁴ David McKnight and Mitchell Hobbs, 'Public Contest through the Popular Media: The Mining Industry's Advertising War against the Australian Labor Government' (2013) 48(3) *Australian Journal of Political Science* 307.

²⁵ Becky Freeman, 'Tobacco plain packaging legislation: a content analysis of commentary posted on Australian online news' (2011) 20(5) *Tobacco Control* 361.

²⁶ Erika Falk, Erin Grizard and Gordon McDonald, 'Legislative Issue Advertising in the 108th Congress: Pluralism or Peril?' (2006) 11(4) *The International Journal of Press/Politics* 148.

²⁷ McCloy (n 19) 205 [38] (French CJ, Kiefel, Bell and Keane JJ).

²⁸ John Daley and Danielle Wood, 'The property industry's mining-tax-style negative gearing campaign is a test for democracy', *The Guardian* (online, 24 February 2016) < https://www.theguardian.com/commentisfree/2016/feb/24/the-property-industrys-mining-tax-style-negative-gearing-campaign-is-a-test-for-democracy?CMP=share_btn_tw>.

²⁹ James Massola, "'It would cost them seats': Banks refuse to rule out mining tax-style campaign against royal commission", *The Sydney Morning Herald* (online 12 April 2016) < <https://www.smh.com.au/politics/federal/it-would-cost-them-seats-banks-refuse-to-rule-out-mining-taxstyle-campaign-against-royal-commission-20160412-g04ay8.html>>.

³⁰ Joe Hinchliffe, "'Very different place": new campaign over mining tax "unlikely" to succeed in Queensland', *The Guardian* (online 18 June 2022) < <https://www.theguardian.com/australia-news/2022/jun/18/very-different-place-new-campaign-over-mining-taxes-unlikely-to-succeed-in-queensland>>.

3. Are expenditure caps a solution?

The aggregate level of expenditure of the major parties at Commonwealth elections has increased moderately since 1998, but the competitive dynamic of such elections leaves them liable to sudden 'explosions' in cost.

Indeed, when disaggregated, a unilateral cost explosion is observed. Coalition payments increased over 70.6 per cent in real terms between 1998 and 2019, whereas ALP payments increased only 24.3 per cent. Estimated real Coalition electoral expenditure similarly grew 80.7 per cent between the 1998 and 2019 elections, while estimated real ALP electoral expenditure grew only 24.3 per cent.

While political party payments for 2021-22 will not be known until early 2023, if Coalition spending continued to grow at trend – forcing the ALP to play catch up to remain competitive – then 2022 major party election spending will likely be drastically larger than 2019.

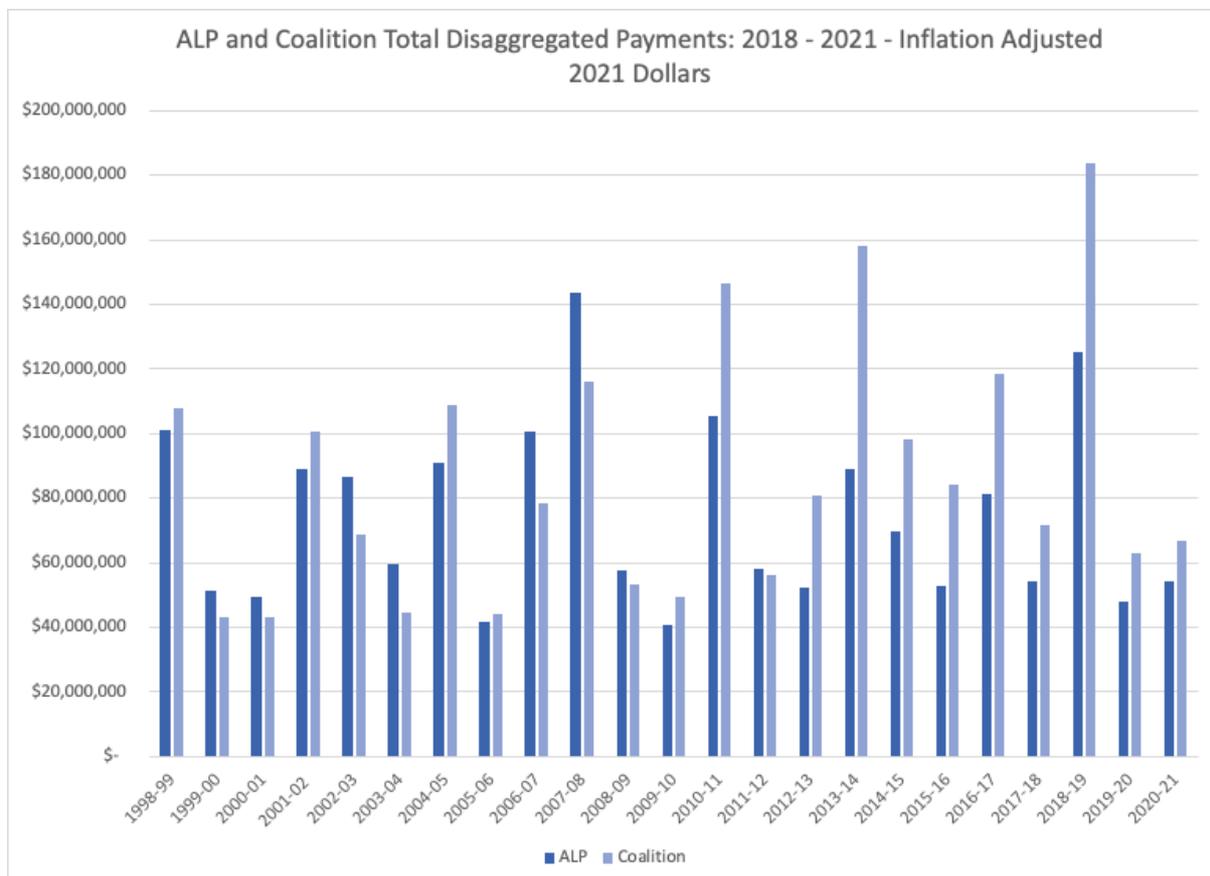


Figure 5: ALP and Coalition Total Disaggregated Payments 1998-2021 – Inflation Adjusted 2021 Dollars³¹

³¹ Data Source: 'Transparency Register', *Australian Electoral Commission* (Web Page) <https://www.aec.gov.au/parties_and_representatives/financial_disclosure/transparency-register/>.

Caps on electoral expenditure may serve to arrest this competitive dynamic. They can bring down levels of electoral expenditure if they are deemed too high (remedial function) or prevent an expected acute increase in the amount of electoral expenditure (preventative function). Arresting this dynamic, pre-emptively or otherwise, would serve to mitigate the democratic malaise of excessive expenditure as outlined above.

New South Wales, Queensland, and the Australian Capital Territory each introduced some form of electoral expenditure cap in 2010, 2011 and 2012 respectively. Each jurisdiction's regime shows the potential power of expenditure caps to contribute to the equality of the electoral contest, as well as to decrease overall spending to prevent potential corruption, to divert resources from fundraising, and to prevent undue influence by third parties. Western Australia provides an accessible counterfactual on levels of, and disparities in major party electoral expenditure in the absence of expenditure caps.

It should be noted that New South Wales' halving of its established aggregate third-party cap was deemed unconstitutional as a violation of the implied freedom of political communication in 2019, and any Commonwealth third-party cap would need to be carefully tailored to be compatible in accordance with this finding.³²

a. New South Wales

Between 1999 and 2007, real electoral expenditure by the ALP at New South Wales State elections increased by 87.5 per cent. In 2007, the ALP spent *over triple* what the Liberal Party spent. In response to the cost blowout, the Keneally Labor Government introduced the Election Funding and Disclosures Amendment Bill 2010 – which capped electoral expenditure by parties, candidates and third parties from the 2011 election onwards. In introducing the legislation, Premier Keneally stated that the reforms were about 'putting a limit on the political arms race' and ensuring voters could be 'fully and fairly informed of the policies of all political parties, candidates and interested third parties'.³³

³² *Unions NSW v New South Wales* (2019) 264 CLR 595.

³³ New South Wales, *Parliamentary Debates*, Legislative Assembly, 28 October 2010, 27168 (Kristina Keneally, Premier).

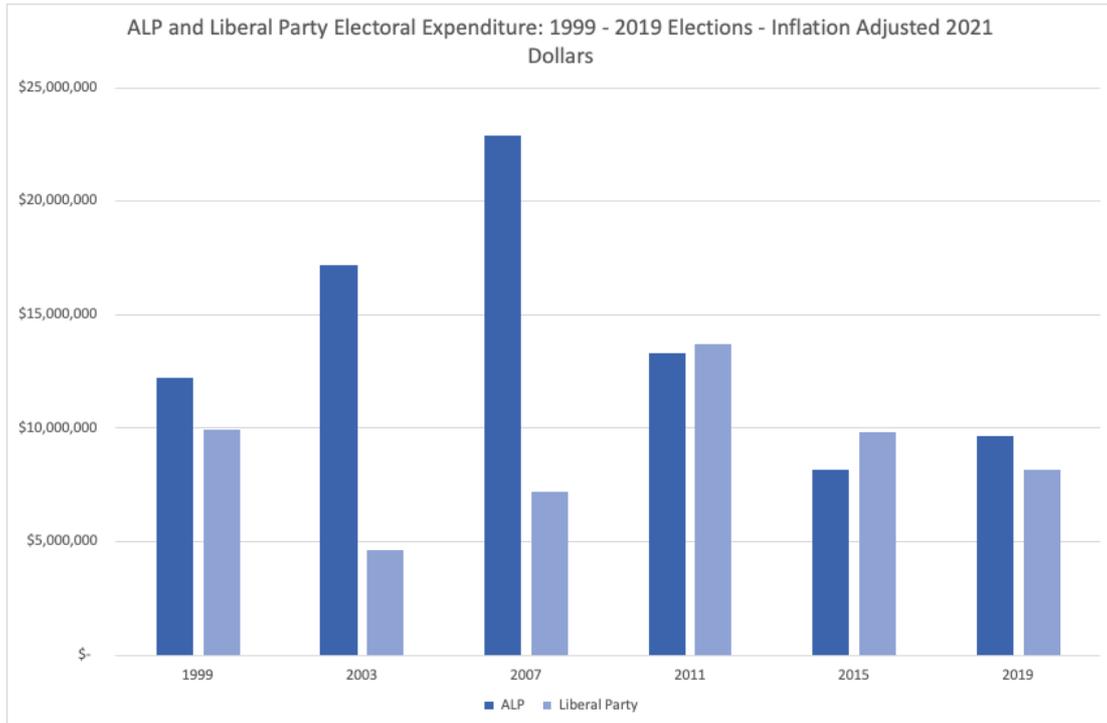


Figure 6: ALP and Liberal Party Electoral Expenditure: 1999 – 2019 Elections – Inflation Adjusted 2021 Dollars³⁴

The caps had an immediate and noticeable effect on electoral expenditure in New South Wales. The 2011 election saw a cut in ALP electoral expenditure by 42% compared to 2007, with the two major parties spending nearly identical amounts. Electoral expenditure in 2015 and 2019 remained below 2007 levels, with largely equal amounts being spent between the major parties. While the electoral funding and expenditure regime was overhauled in 2018, the system of caps remains largely unchanged for parties and candidates.³⁵

³⁴ Data Source: 'View disclosures', *NSW Electoral Commission* (Web Page, 30 August 2021) < <https://www.elections.nsw.gov.au/Funding-and-disclosure/Disclosures/View-disclosures>>.

³⁵ See *Electoral Funding Act 2018* (NSW)

The NSW Electoral Commission did not start collecting third-party electoral expenditure data until the 2011 election period.

	2011-12	2014-15	2018-19
Nominal total third party electoral expenditure	\$1,539,703	\$5,176,894	\$6,536,126
Number of entities	32	36	40
Median nominal expenditure	\$17,079	\$12,984	\$37,534
Mean nominal expenditure	\$48,116	\$143,802	\$163,403
Nominal registered third party cap	\$1,050,000	\$1,166,600	N/A

Figure 7: New South Wales third party expenditures 2011-12, 2014-15 and 2018-19³⁶

For the 2011 and 2015 State elections there were applicable caps of slightly over \$1 million. Between these elections the number of participants increased, and median expenditure fell – meaning there were more entities spending smaller amounts. However, since the halving of the established cap was found unconstitutional in January 2019, there has effectively been no third-party cap in New South Wales. Accordingly, expenditure blew out at the 2019 election. The median nominal expenditure tripled and bodies such as the Minerals Council were able to spend almost \$2 million on electoral expenditure.

³⁶ Data Source: 'View disclosures', *NSW Electoral Commission* (Web Page, 30 August 2021) <<https://www.elections.nsw.gov.au/Funding-and-disclosure/Disclosures/View-disclosures>>.

b. Queensland

Like New South Wales, Queensland saw large spikes in spending at its elections in 2006 and 2009. In response, the Bligh Government introduced expenditure caps for the 2012 election. In introducing the Bill, Paul Lucas, the Attorney-General, claimed that the caps sought to 'ensure equitable access to the political process for all participants'.³⁷

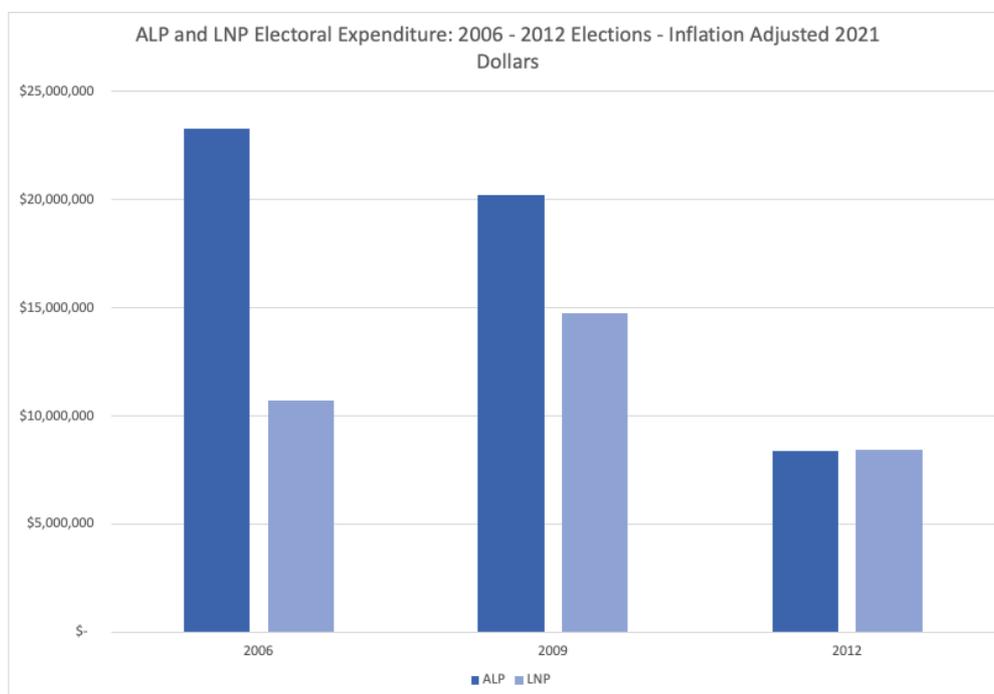


Figure 8: ALP and LNP Electoral Expenditure: 2006 – 2012 Elections – Inflation Adjusted 2021 Dollars³⁸

The pattern in the Queensland data is markedly similar to New South Wales. The 2006 and 2009 elections showed vastly uneven patterns of spending between the Queensland ALP and the Liberal National Party (LNP), with the ALP outspending the LNP by over \$12 million 2021 dollars at the 2006 election. The arms race dynamic is visible for the LNP between 2006 and 2009 elections. Between these elections the LNP increased their spending by \$4 million, or 37 per cent; attempting to keep up with the ALP's consistently higher spend

However, the 2012 election shows the clear effect of the caps. The major parties' expenditure was cut by 52 per cent from 2009 levels and brought down to near-identical levels – with the cap acting as a mutually achievable 'ceiling' on electoral expenditure.

Caps on spending were repealed by the Newman Government after the 2012 election and were not in place for the 2015 nor 2017 elections. However, they were subsequently reintroduced prior to the 2020 Queensland election and remain in place to this day.

³⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 7 April 2011, 1116 (Paul Lucas, Attorney-General).

³⁸ Data Source: Jennifer Rayner, 'More regulated, more level? Assessing the impact of spending and donation caps on Australian State elections' in Anika Gauka and Marian Sawyer (eds), *Dilemmas of political party regulation in Australia* (ANU Press, 2016) 147.

c. Australian Capital Territory

In response to the 2011 review into campaign financing laws, the Gallagher Government introduced expenditure caps effective from the 2012 election. Electoral expenditure between the 1995 and 2008 elections, particularly by the ALP, had been growing at an unsustainable rate. Between the 1995 and 2008 Assembly elections, the ALP's expenditure had grown over 640 per cent; from \$244,000 at the 1995 election to over \$1.8 million 2021 dollars at the 2008 election.

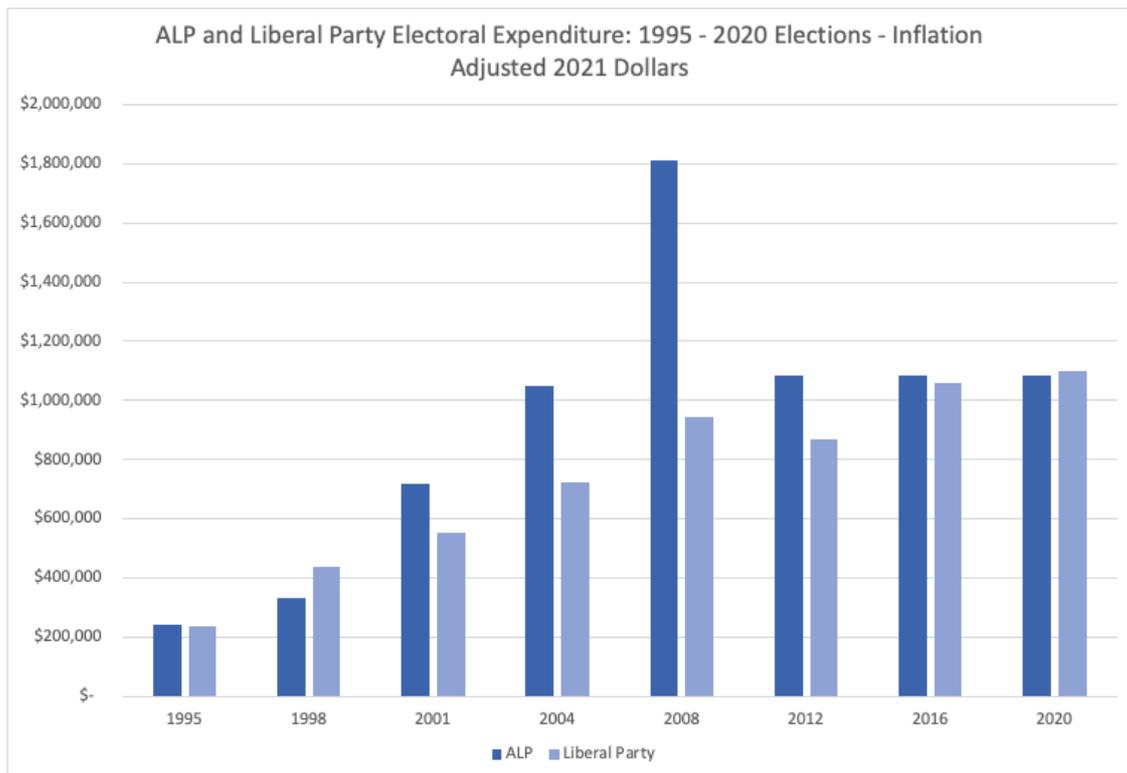


Figure 9: ALP and Liberal Party Electoral Expenditure: 1999 – 2019 Elections – Inflation Adjusted 2021 Dollars³⁹

The experience of the Australian Capital Territory (**ACT**) is broadly similar to that of New South Wales and Queensland, with ALP expenditure drastically dropping by 40 per cent after the implementation of caps – with aggregate major party expenditure dropping by 29.1 per cent. Since 2012, caps have acted as an effective mutually achievable ceiling on electoral expenditure.

³⁹ Data Source: 'Financial disclosure returns – election returns', *Elections ACT* (Web Page) <https://www.elections.act.gov.au/funding_and_disclosure/financial_disclosure_returns/financial-disclosure-returns-election-returns>.

The ACT also instituted third party caps on electoral expenditure in 2011. However, unlike NSW, third party expenditure has remained relatively subdued compared to party expenditure.

	2001	2004	2008	2012	2016	2020
Nominal total third party electoral expenditure	\$99,378	\$55,638	\$13,255	\$220,987	\$439,970	\$189,117
Number of entities	11	4	2	7	19	13
Mean nominal electoral expenditure	\$9,034	\$13,910	\$6,628	\$31,570	\$22,182	\$14,547

Figure 10: ACT third party expenditures 2001 – 2020 elections⁴⁰

d. Western Australia

While Western Australia does not have a system of expenditure caps, the Western Australian Electoral Commission does publish the electoral expenditure of the major parties. Patterns in Western Australian electoral expenditure provide a stark contrast to Australian jurisdictions with expenditure caps.

Real total electoral expenditure has grown considerably and consistently since the 2005 election, increasing by over 100 per cent between the 2005 and 2021 elections. Spending by the major parties also varies significantly between elections – with the Liberal Party spending approximately 87 per cent more than the ALP in 2013, and the ALP spending 68 per cent more than the Liberal Party in 2021. This is significantly different from the near-identical campaign expenditure by the major parties after the imposition of expenditure caps as observed in New South Wales, Queensland, and the ACT.

⁴⁰ Data Source: 'Financial disclosure returns – election returns', *Elections ACT* (Web Page) <https://www.elections.act.gov.au/funding_and_disclosure/financial_disclosure_returns/financial-disclosure-returns-election-returns>.

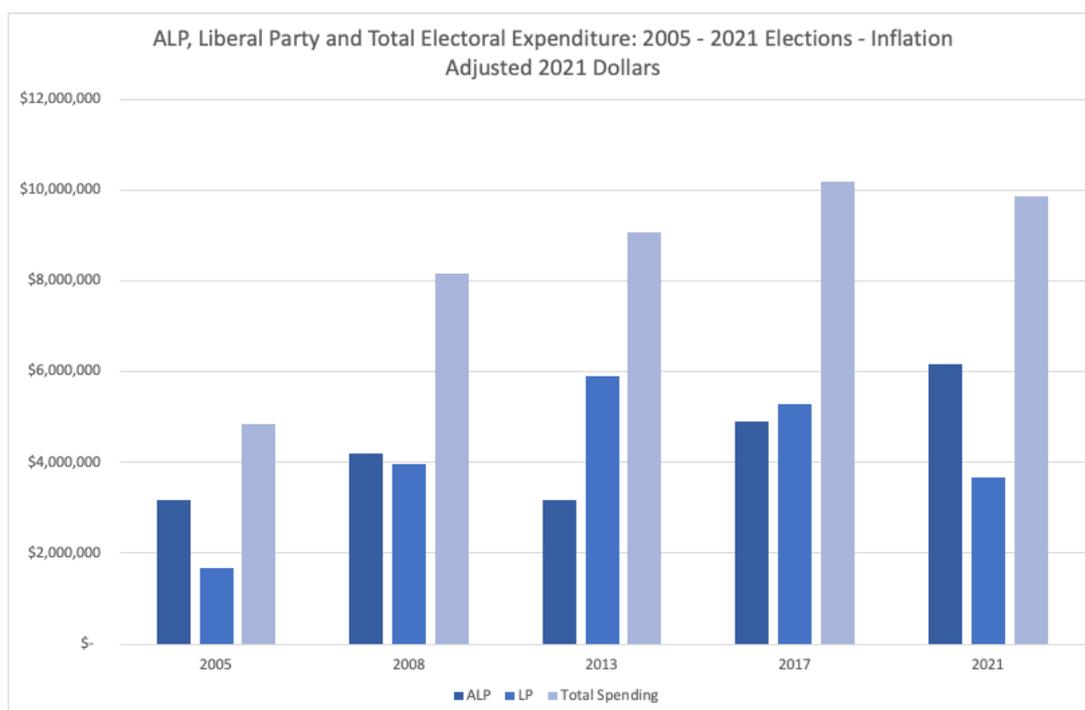


Figure 11: ALP, Liberal Party and Total Electoral Expenditure: 2005 – 2021 Elections – Inflation Adjusted 2021 Dollars⁴¹

Western Australia's lack of third-party expenditure caps is another cautionary tale about the potential influence of corporate third-party interests at election time.

	2013	2017	2021
Nominal total third party electoral expenditure	\$1,375,701	\$6,758,169	\$1,063,244
Number of entities	13	16	7
Mean nominal electoral expenditure	\$105,823	\$422,386	\$151,892

Figure 12: Western Australia third party expenditures 2013 – 2021 elections⁴²

Total third-party electoral expenditure and its mean spiked for the 2017 election. This was almost *wholly* due to the Chamber of Minerals and Energy's \$4.36 million spend which constituted close to 65 per cent of all third-party electoral expenditure. The expenditure was almost exclusively on advertisements plainly designed to quash support for a tax on iron ore, and arguably contributed to the ousting of the Barnett Coalition government in 2017.⁴³

⁴¹ Data Source: 'Elections Returns', *Western Australian Electoral Commission* (Web Page) <<https://www.elections.wa.gov.au/candidates-and-parties/funding-and-disclosure/elections-returns>>.

⁴² Data Source: 'Elections Returns', *Western Australian Electoral Commission* (Web Page) <<https://www.elections.wa.gov.au/candidates-and-parties/funding-and-disclosure/elections-returns>>.

⁴³ Phillip Coorey, 'Mining tax campaign mark II begins to bite in the west', *Australian Financial Review* (online, 18 December 2016) <<https://www.afr.com/politics/mining-tax-campaign-mark-ii-begins-to-bite-in-the-west-20161214-gtal6m>>.

e. Overseas research

Analysis of expenditure caps in other jurisdictions suggests they are effective at arresting the arms race. For example, in the United Kingdom, collective spending of the Labour, Conservative and Liberal Democratic Parties decreased by 44.5 per cent between the 1997 and 2001 elections after the imposition of additional expenditure cap legislation.⁴⁴

Empirical studies in countries such as France and Brazil have shown that expenditure caps increase the competitiveness of elections and diversify the pool of potential candidates.⁴⁵ In considering the level at which caps should be set, Alexander Fourinaies' extensive analysis of expenditure caps in the United Kingdom between 1885 and 2019 indicates that lower caps on electoral expenditure increase the pool of candidates, competitiveness of elections, and mitigate the benefits of incumbency.⁴⁶

4. Conclusion

Australian electoral systems, and the Commonwealth specifically, have historically been seen as innovative, progressive and egalitarian. However, the Commonwealth's 'laissez-faire and inertial'⁴⁷ regulation of electoral expenditure, and campaign finance more broadly, risks it falling behind the States – many of which are continuing to modernise their campaign finance regulations.⁴⁸ When a contest of ideas becomes a contest of dollars, the electorate suffers. Elections become less fair, and our elected representatives are forced to spend their time raising funds from wealthy donors to prepare for their next re-election effort. Further, when corporate interests can bombard the electorate with advertisements to protect their bottom line, our representatives are effectively hamstrung in the pursuit of good public policy.

As the experience of Australia's States shows, expenditure caps are an important, available and effective remedy in truncating the arms race between the major parties and mitigating undue influence. Applicable amounts for expenditure caps should be sufficiently low to ensure open access to new entrants, yet high enough for a fair rivalry between established players, and to ensure a meaningful campaign in which voters are reached. The Centre for Public Integrity recommends expenditure caps at the Commonwealth level according to the following principles:

- 1) A capped expenditure period commencing two years after previous polling day;
- 2) Caps on electoral expenditure for political parties proportional to the number of electoral divisions in which they endorse candidates;

⁴⁴ Joo-Cheong Tham and David Grove, 'Public Funding and Expenditure Regulation of Australian Political Parties: Some Reflections' (2004) 32(3) *Federal Law Review* 397.

⁴⁵ Eric Avis, Claudio Ferraz, Frederico Finan and Carlos Varjão, 'Money and Politics: The Effects of Campaign Spending Limits on Political Entry and Competition' (2022) *American Economic Journal: Applied Economics* (forthcoming); Nikolaj Broberg, Vincent Pons and Clemence Tricaud, 'The Impact of Campaign Finance Rules on Candidate Selection and Electoral Outcomes: Evidence from France' (NBER Working Paper 29805, February 2022) <<https://www.nber.org/papers/w29805>>.

⁴⁶ Alexander Fourinaies, 'How Do Campaign Spending Limits Affect Elections? Evidence from the United Kingdom 1885-2019' (2020) 115(2) *American Political Science Review* 395.

⁴⁷ Graeme Orr, 'Party Finance Law in Australia: Innovation and Elevation' (2016) 15(1) *Election Law Journal* 58.

⁴⁸ Tasmania and Western Australia are currently in the process of reforming their campaign finance regulations. Queensland's new election financing laws came into effect on 1 July 2022.

- 3) A bargaining system between endorsed candidates and political parties over the applicable expenditure cap;
- 4) Aggregation of associated entity electoral expenditure with party expenditure – with associated entity defined narrowly;
- 5) Caps on electoral expenditure for independent candidates which are proportionally higher than those for endorsed candidates and parties to account for the positive externalities of general party advertising;
- 6) Moderate third-party expenditure caps with a requirement to register with the Australian Electoral Commission (**AEC**) when intending to, or having reached, a threshold level of electoral expenditure;
- 7) Capped in-electorate spending by third parties
- 8) A broader definition of electoral matter such that most third-party issues-based advertising campaigns are captured
- 9) An anti-circumvention offence to prevent candidates, parties, associated entities or third parties from acting in concert to circumvent their applicable cap;
- 10) A double-repayment penalty for negligently exceeding the cap, a punitive financial penalty and possible imprisonment for intentionally exceeding the cap;
- 11) Real time disclosure by parties, candidates, associated entities and third parties;
- 12) A mandatory statutory review of the expenditure cap regime after its first election cycle;
- 13) Increased resourcing and funding to the AEC to manage additional educative, enforcement and compliance duties.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Stephen Charles AO KC, the Hon Anthony Whealy KC, Professor George Williams AO, Professor Joo Cheong Tham, Geoffrey Watson SC and Professor Gabrielle Appleby. More information at www.publicintegrity.org.au.