

How effective are the New South Wales election spending limits in preventing election ‘arms races’? A preliminary inquiry⁺

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Introduction

The passage of the *Election Funding and Disclosures Amendment Act 2010* (NSW) has resulted in New South Wales having the most tightly regulated political funding scheme in Australia. Taking effect on 1 January 2011,¹ this scheme which is found in the *Election Funding, Expenditure and Disclosures Act 1981* (NSW)² provides for a range of measures including caps on political donations;³ bans on political donations from tobacco industry, liquor industry and gambling industry business entities;⁴ an increase and reconfiguration of public funding of political parties and candidates;⁵ and additional compliance powers for the NSW Election Funding Authority.⁶

A key plank of this scheme concerns limits on election spending (or more accurately, limits on ‘electoral communication expenditure’).⁷ These form the focus of this paper and the question it takes up is: *how effective are these limits in preventing election ‘arms races’?*

In doing so, it initiates a study that has yet been undertaken in Australia. While limits on candidate spending were in place federally for more than eight decades⁸ and remain in existence in relation to the Tasmanian Upper House

⁺ This paper arises from the Australian Research Council project, ‘Dollars and Democracy: The Dynamics of Australian Political Finance and its Regulation’.

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¹ *Election Funding and Disclosures Amendment Act 2010* (NSW) s 2.

² As a result of the amendments, the *Election Funding and Disclosures Act 1981* (NSW) (‘*EFDA Act*’) was renamed the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (‘*EFED Act*’): *Election Funding and Disclosures Amendment Act 2010* (NSW) sch 1 para 1.

³ *EFDA Act*, inserting *EFED Act* div 2A.

⁴ *EFDA Act*, inserting *EFED Act* s 96GAA; *EFDA Act*, amending *EFED Act* ss 96GA-GB, 96GE.

⁵ *EFDA Act*, inserting *EFED Act* pt 5.

⁶ *EFDA Act*, amending *EFED Act* s 110A; *EFDA Act*, inserting *EFED Act* ss 110B, 111A.

⁷ *EFDA Act*, inserting *EFED Act* div 2B.

⁸ See Deborah Cass and Sonia Burrows, ‘Commonwealth Regulation of Campaign Finance - Public Funding, Disclosure and Expenditure Limits’ (2000) 22 *Sydney Law Review* 477.

elections,⁹ no examination has been made of their effectiveness. This is in contrast with the scholarly literature regarding the Canadian¹⁰ and New Zealand¹¹ spending limits.

The question of the effectiveness of the New South Wales spending limits is also significant from a policy perspective. The Queensland Parliament has adopted election spending limits;¹² moreover, the Commonwealth Joint Standing Committee on Electoral Matters is currently conducting an inquiry into the funding of political parties and election campaigns,¹³ an inquiry that may very well recommend the adoption of election spending limits at the federal level.

The paper begins by explaining the design of the New South Wales spending limits. It then identifies one of its key regulatory goals is to prevent an 'arms race' in New South Wales elections. This goal provides the evaluative benchmark for this paper and in the discussion that follows, a preliminary assessment of the effectiveness of the New South Wales spending limits against this goal is provided. This assessment is preliminary because it is based on data relating to the 1999, 2003 and 2007 New South Wales State elections, the three State elections that preceded the introduction of the spending limits. A full assessment will have to await the release of funding data in relation to the recent 2011 New South Wales State elections.

Election spending limits under the Election Funding, Expenditure and Disclosures Act 1981 (NSW)

Key dimensions underpin the design of election spending limits:

- the type of political spending they cover;
- the period to which the limits apply;

⁹ *Electoral Act 2004* (Tas) s 160.

¹⁰ Kevin Milligan & Marie Rekkas (2008) Campaign Spending Limits, Incumbent Spending, and Election Outcomes, *Canadian Journal of Economics*, 41(4): 1351–74.

¹¹ Ron Johnston & Charles Pattie (2008) Money and Votes: A New Zealand Example, *Political Geography*, 27: 113.

¹² *Electoral Reform and Accountability Amendment Act 2011* (Qld) inserting Division 9, Part 9A into the *Electoral Act 1992* (Qld).

¹³ See <http://www.aph.gov.au/house/committee/em/political%20funding/index.htm> (accessed on 1 June 2011).

- the political participants they cover (e.g. political parties, candidates, third parties);
- the various levels/amounts at which they are set.¹⁴

With the first dimension, spending limits do not tend to apply to all types of political spending (e.g. all spending made by a political party). The spending limits in Canada, New Zealand and the United Kingdom, for instance, only restrict expenditure that has some connection with influencing election outcomes (although they capture this connection in different ways).¹⁵

The same applies to the NSW spending limits, and here there are two central concepts that delimit the scope of the NSW spending limits: ‘electoral expenditure’ and ‘electoral communication expenditure’. Both concepts have complicated meanings with the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (*EFED Act*) providing general definitions together with various exclusions.

‘Electoral expenditure’ is the broader concept and is defined under the *EFED Act* as ‘expenditure for or in connection with promoting or opposing, directly or indirectly, a party or the election of a candidate or candidates *or* for the purpose of influencing, directly or indirectly, the voting at an election’.¹⁶ Section 87(3) of the *EFED Act*, however, excludes the following from ‘electoral expenditure’:

- (a) expenditure incurred substantially in respect of an election of members to a Parliament other than the NSW Parliament, or
- (b) expenditure on factual advertising of:
 - (i) meetings to be held for the purpose of selecting persons for nomination as candidates for election, or
 - (ii) meetings for organisational purposes of parties, branches of parties or conferences, committees or other bodies of parties or branches of parties, or

¹⁴ For discussion, see Joo-Cheong Tham, *Money and Politics: The Democracy We Can't Afford* (2010) 208-213.

¹⁵ See Joo-Cheong Tham, *Money and Politics: The Democracy We Can't Afford* (2010) 210-211.

¹⁶ *EFED Act* s 87(1) (emphasis added).

(iii) any other matter involving predominantly the administration of parties or conferences, committees or other bodies of parties or branches of parties.

‘Electoral communication expenditure’ is a sub-category of ‘electoral expenditure’. Section 87(2) of the *EFED Act* defines ‘electoral communication expenditure’ as ‘electoral expenditure’ of the following kinds:

- (a) expenditure on advertisements in radio, television, the Internet, cinemas, newspapers, billboards, posters, brochures, how-to-vote cards and other election material,
- (b) expenditure on the production and distribution of election material,¹⁷
- (c) expenditure on the Internet, telecommunications, stationery and postage,
- (d) expenditure incurred in employing staff engaged in election campaigns,
- (e) expenditure incurred for office accommodation for any such staff and candidates (other than for the campaign headquarters of a party or for the electorate office of an elected member),
- (f) such other expenditure as may be prescribed by the regulations as electoral communication expenditure,

The same sub-section excludes the following from the notion of ‘electoral communication expenditure’:

- (g) expenditure on travel and travel accommodation,
- (h) expenditure on research associated with election campaigns,
- (i) expenditure incurred in raising funds for an election or in auditing campaign accounts,
- (j) such other expenditure as may be prescribed by the regulations as not being electoral communication expenditure.

¹⁷ ‘Election material’ is not defined by the *EFED Act*. The *Parliamentary Electorates and Elections Act 1912* (NSW) does, however, use the term ‘electoral material’ in sections 151F-151G.

The New South Wales spending limits apply only to ‘electoral communication expenditure’. The complex definitional scheme under the *EFED Act* means that four questions need to be asked in order to determine whether a particular kind of political spending is covered by the spending limits. Table 1 captures the sequence of reasoning through these questions.

Table 1: Ascertaining whether political spending covered by New South Wales spending limits

Question	Yes	No
1) Does the spending come within the general definition of ‘electoral expenditure’?	Proceed to Question 2).	Spending is not covered by the limits.
2) Does the spending fall within the exclusions to ‘electoral expenditure’?	Spending is not covered by the limits.	Proceed to Question 3).
3) Does spending come within the general definition of ‘electoral communication expenditure’?	Proceed to Question 4)	Spending is not covered by the limits.
4) Does the spending fall within the exclusions to ‘electoral communication expenditure’?	Spending is not covered by the limits.	<i>Spending is covered by the limits¹⁸</i>

Turning to the second key dimension of spending limits, the period to which the limits apply, ‘capped expenditure period’ is the key statutory concept. The New South Wales spending limits apply in the context of four-year fixed-term State

¹⁸ Additional requirements apply to the additional caps for individual Assembly seats and caps on spending by candidates: see discussion below accompanying nn 27-28.

elections.¹⁹ Unless dissolved, the term of the NSW Parliament is four years²⁰ with State elections taking place in the fourth Saturday of March of the year in which the term expired.²¹ In such circumstances, the ‘capped expenditure period’ runs from 1 October of the preceding year to the polling day, a period of close to six months.²²

If the New South Wales Parliament, however, is dissolved (prior to its expiry date), the ‘capped expenditure period’ runs from the day on which the writs for the election were issued to the end of polling day.²³ Under the *Constitution Act 1902* (NSW), this is a period that can be no shorter than 40 days.²⁴

The remaining two dimensions of the NSW spending limits, the political participants they cover and the various levels/amounts at which they are set, can be discussed together. Table 2 summarises these aspects.

Table 2: Spending Limits under *Election Funding, Expenditure and Disclosures Act 1981* (NSW)

Political actor	Applicable cap
Political parties with Legislative Assembly candidates	<ul style="list-style-type: none"> • \$100,000 x number of electoral districts in which a candidate is endorsed; • Additional cap of \$50,000 for each electorate.
Political parties that have 10 or fewer Legislative Assembly candidates	\$1, 050, 000
Group of Legislative Council candidates not endorsed by any party	\$1,050,000

¹⁹ The absence of fixed-term elections (as in Canada, New Zealand and the United Kingdom) is, however, not fatal to the workability of election spending limits: see Joo-Cheong Tham, *Money and Politics: The Democracy We Can't Afford* (2010) 208-209.

²⁰ *Constitution Act 1902* (NSW) s 24(1).

²¹ *Constitution Act 1902* (NSW) ss 22A(3), 24A(1).

²² *EFED Act* s 95H(b). As a transitional measure, a shorter period applied to the recent 2011 NSW elections with the limits applying from 1 January 2011 to the end of polling day, 26 March 2011: *ibid* s 95H(a).

²³ *EFED Act* s 95H(c).

²⁴ *Constitution Act 1902* (NSW) s 24A(b).

Party-endorsed Legislative Assembly candidates	\$100,000
Legislative Assembly candidates not endorsed by any party	\$150,000
Third-party campaigners	<ul style="list-style-type: none"> • \$1,050,000 if registered prior to commencement of capped expenditure period; • \$525,000 in any other case; • Additional cap of \$20,000 for each electorate.

Source: *EFED Act s 95F*

These limits apply to those who ‘incur electoral communication expenditure’.²⁵ They operate however, in different ways, with the scope of spending covered varying. The overall caps on political parties and third parties are the most straightforward: they apply to any ‘electoral communication expenditure’ incurred for a State election campaign during the ‘capped expenditure period’.²⁶ The additional caps for individual Assembly seats (which sits within the overall caps), however, apply only when ‘electoral communication expenditure’ is:

for advertising or other material that:

- (a) explicitly mentions the name of a candidate in that election in that electorate or the name of the electorate, and
- (b) is communicated to the electors in that electorate, and
- (c) is not mainly communicated to electors outside that electorate.²⁷

The caps on spending by candidates or groups of candidates also have a further requirement beyond the spending being ‘electoral communication expenditure’: such expenditure must be ‘directed at the election of the candidate or group’.²⁸

Finally, the provisions aggregating expenditure for the purposes of the NSW spending limits should be noted.²⁹ Notably, there are provisions relating to

²⁵ *EFED Act s 95I(1)*.

²⁶ *EFED Act s 95I(1)*.

²⁷ *EFED Act s 95F(13)*.

²⁸ *EFED Act s 95I(3)*.

'associated parties'. Section 95G(1) of the *EFED Act* provides that registered parties are "associated" if:

- (a) they endorse the same candidate for a State election, or
- (b) they endorse candidates included in the same group in a periodic Council election, or
- (c) they form a recognised coalition and endorse different candidates for a State election or endorse candidates in different groups in a periodic Council election.

Section 95G(2) further provides that:

- (2) Aggregation of expenditure of associated parties If 2 or more registered parties are associated:
 - (a) the amount of \$100,000 of electoral communication expenditure in respect of any electoral district in which there are candidates endorsed by the associated parties is, for the purpose of calculating the applicable cap on electoral communication expenditure by those parties under section 95F (2), to be shared by those parties (and is not a separate amount for each of those parties), and
 - (b) the amount of \$1,050,000 of electoral communication expenditure in respect of any group of candidates endorsed by those parties is, for the purpose of calculating the applicable cap on electoral communication expenditure by those parties under section 95F (4), to be shared by those parties (and is not a separate amount for each of those parties).

A key regulatory goal of NSW election spending limits: Preventing election 'arms races'

The introduction of legislation can be prompted by diverse motivations. The governing party might be seeking to improve its standing amongst electors, for example, by seeking to counter a negative perception. Hence, it may be said that the Keneally government in introducing the Election Funding and Disclosures Amendment Bill 2010 (NSW) was aiming to deal with public perception that it was a corrupt government.

²⁹ See *EFED Act* s 95G.

This paper is not concerned with such purposes or motivations. Its focus is on the regulatory goals of the NSW election spending limits: the aims which the spending limits as a form of regulation are directed to. The NSW spending limits are intended to have a practical impact on the behaviour - in particular, spending - of candidates, political parties and third parties, and the NSW political system more broadly. It is this intended impact that forms the essence of its regulatory goals.

Restricting attention to the regulatory goals of the NSW spending limits does not imply that these goals are straightforward or uncontroversial. The regulatory goals of legislation can be – and often are – strongly contested. The process of making legislation in Parliament is not infrequently attended by fierce disagreement as to the purposes of the legislation. And even after the legislation is enacted, there can be a divergence of views as to its goals amongst those who participated in the making of the legislation, the regulators who are to implement it (e.g. New South Wales Election Funding Authority), those who are regulated (e.g. candidates, political parties and third parties) and the public at large.

Appreciation of such complexity is necessary for a rounded picture of the regulatory goals of the New South Wales spending limits. That said, a clear and uncontroversial starting point are the goals proclaimed by the Australian Labor Party government, the party sponsoring the Election Funding and Disclosures Amendment Bill 2010 (NSW).

In her 2nd Reading Speech to the Election Funding and Disclosures Amendment Bill 2010 (NSW), then New South Wales Premier, Kristina Keneally, said this:

This Government is pleased to introduce a bill that implements groundbreaking reforms to political donations including bans, caps and other restrictions on political donations, and increased public funding of election campaigns.

...

Importantly, these reforms are also directed at reducing the advantages of money in dominating political debate. They provide for a more level playing field for candidates seeking election, as well as for third parties who wish to participate in political debate.

These reforms are about putting a limit on the political arms race, under which those with the most money have the loudest voice and can simply drown out the voices of all others. The reforms will help to give voters a better opportunity to be fully and fairly informed of the policies of all political parties, candidates and interested third parties.³⁰

On the same day on which the Election Funding and Disclosures Amendment Bill 2010 (NSW) was introduced, Premier Keneally referred more specifically to the Bill's election spending limits:

The expenditure caps that we are proposing are meant to provide a cap on political expenditure so that we do not see, as we have seen in other jurisdictions overseas, what is effectively an arms race, where more and more money continues to pile into . . . the political system. But at the same time, we also recognise that those third parties have a legitimate right to political communication.³¹

These statements indicate that a clear regulatory goal of the Election Funding and Disclosures Amendment Bill 2010 (NSW) and the election spending in particular is to prevent an 'arms race'. Another regulatory goal is to 'provide for a more level playing field'. Similar goals for spending limits were also identified by the New South Wales Legislative Council Select Committee on Electoral and Political Party Funding. In its influential report,³² *Electoral and Political Party*

³⁰ Kristina Keneally, Premier, 2nd Reading Speech to Election Funding and Disclosures Amendment Bill 2010, New South Wales Parliament, *Hansard*, Legislative Assembly, 28 October 2010, 27168.

³¹ New South Wales Parliament, *Hansard*, Legislative Assembly, 28 October 2010, 27149.

³² In crucial ways, this report provided the architecture of the NSW reforms. It heavily influenced the report of the Joint Standing Committee on Electoral Matters, *Public Funding of Election Campaigns* (Report No 2/54, March 2010) which, in turn, provided the basis of the Election Funding and Disclosure Amendment Bill 2010 (NSW): see Kristina Keneally, Premier, 2nd Reading Speech to Election Funding and Disclosures Amendment

Funding in New South Wales, the Committee proposed spending limits to 'halt the escalation of campaign costs'³³ and to 'level the playing field'.³⁴

These goals should be distinguished from what may be described as constraining principles. One obvious constraining principle for the NSW ALP government was the 'legitimate right to political communication'. This right was important to the government not only as a matter of principle but also because of the freedom of political communication implied under the Commonwealth Constitution.³⁵

How effective are NSW spending limits in preventing an 'arms race'?

The 'arms race' in New South Wales elections

The notion of an 'arms race' in election spending conveys two distinct ideas. There is, firstly, the implication that the level of election spending is increasing at a rapid pace (or perhaps, 'leap-frogging') and, secondly, a thesis that such increase is due to the competitive dynamic of elections.

The focus of the 'arms race' is thus, on the overall level of election spending. As then Premier Keneally emphasised, '(t)he expenditure caps . . . are meant to provide a cap on political expenditure so that we do not see, as we have seen in other jurisdictions overseas, what is effectively an arms race, where more and more money continues to pile into . . . *the political system*.³⁶

At first blush, ex-Premier Keneally's contention of money piling into the election process is amply demonstrated. Table 3 presents, in nominal figures,

Bill 2010, New South Wales Parliament, *Hansard*, Legislative Assembly, 28 October 2010, 27168.

³³ New South Wales Legislative Council Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding in New South Wales* (June 2008) para 8.9.

³⁴ New South Wales Legislative Council Select Committee on Electoral and Political Party Funding, *Electoral and Political Party Funding in New South Wales* (June 2008) para 8.43.

³⁵ Premier Keneally noted that '(i)n drafting this bill the Government has been acutely aware that any New South Wales law that interferes with Commonwealth elections or burdens the implied freedom of communication about Commonwealth political matters may be subject to constitutional challenge': Kristina Keneally, Premier, 2nd Reading Speech to Election Funding and Disclosures Amendment Bill 2010, New South Wales Parliament, *Hansard*, Legislative Assembly, 28 October 2010, 27168.

³⁶ New South Wales Parliament, *Hansard*, Legislative Assembly, 28 October 2010, 27149 (emphasis added).

expenditure for all major players in each of the three elections (1999, 2003 and 2007 New South Wales State elections), and the increases are nothing short of stratospheric: some fourteen and a half million dollars expended by the big six political contestants in 1999 escalates to nearly twenty-five and a half million dollars eight years later. The increase for the ALP alone over that period is 140 percent. But a consideration of growth in consumer prices and population increase reveals a more nuanced picture.

Table 4 indicated the Consumer Price Index for both Australia and Sydney: altogether prices have risen in Sydney nearly 27 percent over the eight years (calculated from March quarters in the respective years) to 2007, and over 43 percent in the 12 years between the 1999 and 2011 election. Furthermore, the NSW electoral roll has increased by over a half of million between the last three elections and over quarter of a million, alone in the eight years between the 1999 and 2007 elections. As Table 5 indicates, this is a 6.2 percent increase in new voters between the 1999 and 2007 elections, or an average growth of 0.766 per annum between those two elections. It would be expected that to maintain an effective level of political communication to such a huge increase in net new voters, pre-supposes, not unreasonably, significant added expenditure.

Table 3: Total expenditure by major parties and other contestants, New South Wales state elections, 1999 to 2007 (nominal dollar amounts)

	1999	2003	2007
ALP	6,972,749	11,387,667	16,819,116
Liberal Party	5,690,699	3,081,051	5,283,867
National Party	1,190,242	1,276,798	1,719,898
Coalition	6,880,941	4,357,849	7,003,765
Greens	165,743	547,974	467,162
Christian Democrats	336,595	458,275	436,194
Shooters Party	201,846	401,971	682,960
Sum: ALP-Coalition	13,853,690	15,745,516	23,822,881
Sum: Big Six	14,557,874	17,153,736	25,409,197
All Less Big Six	1,830,660	1,145,833	326,941
All Contestants	16,388,534	18,299,569	25,736,138

Table 4: Year on year inflation rates (cpi) for both the Australian and Sydney Capital City indices, together with calculated yearly deflators (indexed from March 2011 as the base year)

Year	Deflator for Australian CPI (Base Year 2011)	Deflator for Sydney CPI (Base Year 2011)	Australian CPI rate (Year on Year)	Sydney CPI rate (Year on Year)
2011	100.0	100.0	3.333	3.167
2010	96.8	96.9	2.888	2.959
2009	94.1	94.1	2.466	2.412
2008	91.8	91.9	4.242	3.920
2007	88.1	88.5	2.436	2.234
2006	86.0	86.5	2.983	2.699
2005	83.5	84.3	2.359	2.207
2004	81.6	82.4	1.982	2.041
2003	80.0	80.8	3.441	3.046
2002	77.3	78.4	2.939	2.910
2001	75.1	76.2	5.990	6.518
2000	70.9	71.5	2.791	2.610
1999	68.9	69.7	1.247	1.574

Notes: Since NSW elections are conducted in the month of March, both the respective deflators and CPI rates are taken from the March quarter measurements. Thus the base index (100) for both the national and Sydney Capital City figures is set at March 2011; and both the deflators and CPI rates reflect the growth from the March Quarter of the previous year to the March quarter of the year indicated in Column 1.

Source: Election Funding Authority of New South Wales

**Table 5: New South Wales enrolled electors for past four elections (1999 to 2011)
(together with rates of change calculated)**

Year	Electoral Roll (number)	4 Year Change %	8 Year Change %	12 Year Change %	Average Change Per Annum (Over 4 Years) %	Average Change Per Annum (Over 8 Years) %	Average Change Per Annum (Over 12 Years) %
1999	4,115,059						
2003	4,272,104	3.816			0.941		
2007	4,374,029	2.386	6.293		0.591	0.766	
2011	4,635,810	5.985		12.655	1.464		0.998

Source: Australian Bureau of Statistics (Column 2); Other columns calculated from ABS figures

One way to present comparable figures is to convert all nominal amounts to 2011 dollars using the CPI deflators and then dividing by the number on the electoral roll to give an average expenditure per total electoral enrolment, as Table 6 does.

Table 6: Expenditure amounts per enrolled voter: Major parties and other contestants, New South Wales state elections, 1999 to 2007 (expressed as 2011 dollar amounts)

	1999	2003	2007
ALP	\$2.43	\$3.30	\$4.34
Liberal Party	\$1.98	\$0.89	\$1.36
National Party	\$0.41	\$0.37	\$0.44
Coalition	\$2.40	\$1.26	\$1.81
Greens	\$0.06	\$0.16	\$0.12
Christian Democrats	\$0.12	\$0.13	\$0.11
Shooters Party	\$0.07	\$0.12	\$0.18
Sum: ALP-Coalition	\$4.83	\$4.56	\$6.15
Sum: Big Six	\$5.08	\$4.97	\$6.56
All Less Big Six	\$0.64	\$0.33	\$0.08
All Contestants	\$5.71	\$5.30	\$6.65

Notes: In all cases, total expenditure amounts (in 2011 constant dollars) by the parties or aggregates in Column 1 are divided by total enrolment as at respective elections.

Source: Calculated from data sourced from the Election Funding Authority of New South Wales and the Australian Bureau of Statistics

But another way is to deflate the nominal amounts in Table 3 (thus presenting all figures in constant 2011 dollars) and *reflate* these constant dollar figures according to the size of the electoral rolls as if each of 1999, 2003 and 2007 elections had the same number of prospective voters as the 2011 election: these figures are calculated in Table 7.

Table 7: Total electoral expenditure, major parties and other contestants: constant 2011 dollars, reflated according to 'constant' enrolment numbers based on 2011 New South Wales state election enrolment

	1999	2003	2007
ALP	11,269,920	15,293,511	20,142,059
Liberal Party	9,197,767	4,137,818	6,327,798
National Party	1,923,765	1,714,726	2,059,697
Coalition	11,121,532	5,852,543	8,387,495
Greens	267,887	735,923	559,459
Christian Democrats	544,032	615,458	522,373
Shooters Party	326,240	539,843	817,892
Sum: ALP-Coalition	22,391,452	21,146,055	28,529,554
Sum: Big Six	23,529,611	23,037,278	30,429,277
All Less Big Six	2,958,860	1,538,841	391,535
All Contestants	26,488,471	24,576,120	30,820,812

Source: Calculated from data sourced from the Election Funding Authority of New South Wales and the Australian Bureau of Statistics

Not surprisingly, given the huge increase in even nominal expenditure over the period, the figures in Table 7 still indicate an appreciable increase in real, population adjusted (or per capita) spending by political contestants: among the big six players, we see an increase of nearly seven million dollars (using the value of the dollar as at March 2011). This overall increase for the big six works out at an average of 3.27 percent (per annum) for the big six (Table 9): that is over three percent per annum over the eight years between the 1999 and 2007 elections *over and above* inflation and *over and above* voter enrolment growth.

The changes between players are, however, widely distributed. This increase works out at over 29 percent (Table 8) for the big six players, but is distributed from 78.7 percent for the ALP – and even more for the Shooters Party - versus a sizeable decrease (24.6 percent) for the Coalition.

What about the ALP's share of the overall increase? The total increase by the big six is 6.9 million dollars, while the ALP increase is just over 8.8 million. In other words, the total (less ALP) actually decreases. That means the ALP's share of the 'increase' is a bewildering 128.58 percent (which makes the figures look strange). For advertising expenditure, the ALP accounts for 155.95 percent of the increase. The figures look even more bizarre when we look at ALP's share of increase of 'All Contestants': namely: 204.79 percent and 465.04 percent respectively.

Looking more closely at the individual players in the elections over that time, we can see appreciable 'over and above' growth for the ALP (7.53 percent per annum), Greens (9.64 percent), and the Shooters Party (12.17 percent). The Nationals and the Christian Democrats have remained approximately steady, indicating that they have only increased spending to keep pace with both inflation and state population growth, while the Liberal Party have actually declined in their expenditure some 4.57 percent per annum.

Another critical conclusion from these figures is that while overall per annum increases by all contestants have averaged just under 2 percent, the larger players – in this case the big six – have increased over three percent, meaning that minor players in the election process have decreased their (per capita) spending by more than 22 percent. In fact, total spending by minor players has sunk from just under three million dollars (in 2011 'constant dollar' at 2011 voter enrolment levels) to just under \$400,000 eight years later (Table 7). The

contests, in summary, have been more 'concentrated', the smaller players not keeping pace with inflation and the growth in electoral size.

Table 8: Changes in total expenditure between New South Wales elections: Major parties and other contestants (Based on constant dollars and reflatd according to 'constant' enrolment)

	1999 to 2003	2003 to 2007	1999 to 2007
	% change	% change	% change
ALP	35.70	31.70	78.72
Liberal Party	-55.01	52.93	-31.20
National Party	-10.87	20.12	7.07
Coalition	-47.38	43.31	-24.58
Greens	174.71	-23.98	108.84
Christian Democrats	13.13	-15.12	-3.98
Shooters Party	65.47	51.51	150.70
Sum: ALP-Coalition	-5.56	34.92	27.41
Sum: Big Six	-2.09	32.09	29.32
All Less Big Six	-47.99	-74.56	-86.77
All Contestants	-7.22	25.41	16.36

Table 9: Average annual changes in total expenditure between New South Wales elections: Major parties and other contestants (Based on constant dollars and reflatd according to 'constant' enrolment)

	1999 to 2003	2003 to 2007	1999 to 2007
	% change	% change	% change
ALP	7.93	7.13	7.53
Liberal Party	-18.10	11.20	-4.57
National Party	-2.83	4.69	0.86
Coalition	-14.83	9.41	-3.47
Greens	28.74	-6.62	9.64
Christian Democrats	3.13	-4.02	-0.51
Shooters Party	13.42	10.94	12.17
Sum: ALP-Coalition	-1.42	7.77	3.07
Sum: Big Six	-0.53	7.21	3.27
All Less Big Six	-15.08	-28.98	-22.34
All Contestants	-1.86	5.82	1.91

Table 10, is similar to Table 7 (that is, expressed as constant 2011 dollars, reflatd according to the 2011 enrolment numbers), but presents just the total advertising expenditures. Again, the figures tell a similar story: enormous increases in expenditure over and above inflation and state population growth,

but striking differences between the two major contestants, the ALP, with a 47 percent increase in expenditure between the 1999 and 2007 elections (Table 11), while the Coalition experienced a 38 percent decrease, while the minor players – outside the big six – spent nearly 94 percent less in 2007 than they did in 1999. The average growth in advertising expenditure is displayed in Table 12: for the big six an average of just over two percent per annum increase, nearly five percent for the ALP, ‘offset’, so to speak, by an almost six percent decline by the Coalition.

Table 10: Total Advertising Expenditures: Constant 2011 dollars, reflatd according to ‘constant’ enrolment numbers for 2011: New South Wales elections: Major parties and other contestants

	1999	2003	2007
ALP	11,064,611	12,451,152	16,299,610
Liberal Party	5,656,585	2,548,459	2,742,058
National Party	1,335,793	1,273,464	1,589,809
Coalition	6,992,378	3,821,922	4,331,867
Greens	218,233	620,165	344,850
Christian Democrats	363,031	377,658	522,373
Shooters Party	300,749	525,301	797,120
Sum: ALP-Coalition	18,056,989	16,273,074	20,631,477
Sum: Big Six	18,939,003	17,796,198	22,295,819
All Less Big Six	2,376,624	746,370	145,524
All Contestants	21,315,628	18,542,568	22,441,343

Table 11: Total advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major parties and other contestants

PARTY	1999 Advertising Expenditure (% of Tot Exp)	2003 Advertising Expenditure (% of Tot Exp)	2007 Advertising Expenditure (% of Tot Exp)
ALP	98.18	81.41	80.92
Liberal Party	61.50	61.59	43.33
National Party	69.44	74.27	77.19
Coalition	62.87	65.30	51.65
Greens	81.46	84.27	61.64
Christian Democrats	66.73	61.36	100.00
Shooters Party	92.19	97.31	97.46
Sum: ALP-Coalition	80.64	76.96	72.32
Sum: Big Six	80.49	77.25	73.27
All Less Big Six	80.32	48.50	37.17

All Contestants 80.47 75.45 72.81

Table 12: Changes in total advertising expenditure between New South Wales elections: Major parties and other contestants (Based on constant dollars and reflatd according to 'constant' enrolment)

	1999 to 2003	2003 to 2007	1999 to 2007
	% change	% change	% change
ALP	12.53	30.91	47.31
Liberal Party	-54.95	7.60	-51.52
National Party	-4.67	24.84	19.02
Coalition	-45.34	13.34	-38.05
Greens	184.18	-44.39	58.02
Christian Democrats	4.03	38.32	43.89
Shooters Party	74.66	51.75	165.04
Sum: ALP-Coalition	-9.88	26.78	14.26
Sum: Big Six	-6.03	25.28	17.72
All Less Big Six	-68.60	-80.50	-93.88
All Contestants	-13.01	21.03	5.28

Table 13: Average annual changes in total advertising expenditure between New South Wales elections: Major parties and other contestants (Based on constant dollars and reflatd according to 'constant' enrolment)

	1999 to 2003	2003 to 2007	1999 to 2007
	% change	% change	% change
ALP	3.00	6.97	4.96
Liberal Party	-18.07	1.85	-8.65
National Party	-1.19	5.70	2.20
Coalition	-14.02	3.18	-5.81
Greens	29.84	-13.65	5.89
Christian Democrats	0.99	8.45	4.65
Shooters Party	14.96	10.99	12.96
Sum: ALP-Coalition	-2.57	6.11	1.68
Sum: Big Six	-1.54	5.80	2.06
All Less Big Six	-25.14	-33.55	-29.47
All Contestants	-3.42	4.89	0.65

We now look more closely at the expenditure breakdowns between forms of expenditure. Unfortunately, the figures collected by the New South Wales Election Funding Authority are not strictly comparable for some categories for the 2007 election³⁷, though they are more consistent between 1999 and 2003.

Table 14 shows the proportion of total expenditure devoted to radio for the 1999 and 2003 elections. While radio is a relatively less emphasized medium of electoral communication, the decrease between these two elections is fairly dramatic. This is perhaps even more dramatic when we look at print media (Table 16): while 6.24 percent of the budget of the big six was allocated to newspapers in 1999, this had fallen to over half by 2007. The proportion allocated to television advertisements (Table 15), however, remained fairly constant over the two elections between 1999 and 2003.

Table 17 shows the overall total for radio, television and newspaper expenditure for the three elections, and the critical finding here is that the minor political players have retreated overall from the proportion of their total expenditure allocated to these three media.

Table 14: Radio advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major aggregated groups

	1999	2003
	(% of Tot Exp)	(% of Tot Exp)
Sum: ALP-Coalition	9.72	6.22
Sum: Big Six	9.55	6.36
All Less Big Six	4.56	0.91
All Contestants	8.99	6.02

Notes: 2007 figures are disaggregated differently, therefore not included in this table. In 2007, radio, TV and cinema are given as one aggregated amount.

Table 15: Television advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major aggregated groups

³⁷ In 2007, the New South Wales Election Funding Authority combined radio, television and cinema expenditure as a combined category: breakdowns for each cannot be determined precisely. But it is a reasonable assumption that most of the huge increase in this category in 2007 was television advertising.

	1999	2003
	(% of Tot Exp)	(% of Tot Exp)
Sum: ALP-Coalition	51.41	55.44
Sum: Big Six	49.55	51.55
All Less Big Six	32.78	4.86
All Contestants	47.67	48.63

Table 16: Newspaper advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major aggregated groups

	1999	2003	2007
	(% of Tot Exp)	(% of Tot Exp)	(% of Tot Exp)
Sum: ALP-Coalition	5.81	2.21	1.45
Sum: Big Six	6.24	3.45	3.17
All Less Big Six	17.86	10.95	5.34
All Contestants	7.54	3.92	3.20

Table 17: Radio, television and newspaper advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major aggregated groups

	1999	2003	2007
	(% of Tot Exp)	(% of Tot Exp)	(% of Tot Exp)
Sum: ALP-Coalition	61.14	61.66	61.21
Sum: Big Six	59.09	57.92	61.17
All Less Big Six	37.34	5.77	15.04
All Contestants	56.66	54.65	60.59

Turning now to the individual parties, it is clear that only the ALP and the Greens utilize radio to any important degree (Table 18), while the Greens and Christian Democrats favour the use of print media (Table 20). The National Party's use of print media, for example, dropped from over eleven percent of its total expenditure to an almost negligible use in 2007. All parties – with the exception of the ALP – devoted greater proportions of their election budget to television between 1999 and 2003 (Table 19). The totals of these three media combined are shown in Table 21.

Table 18: Radio advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major parties

	1999	2003
	(% of Tot Exp)	(% of Tot Exp)
ALP	17.86	8.53
Liberal Party	1.79	0.21
National Party	0.00	0.10
Coalition	1.48	0.18
Greens	12.06	15.39
Christian Democrats	5.29	5.88
Shooters Party	2.59	0.08

Table 19: Television advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major parties

	1999	2003
	(% of Tot Exp)	(% of Tot Exp)
ALP	64.68	56.11
Liberal Party	36.92	52.77
National Party	42.98	55.89
Coalition	37.96	53.69
Greens	0.45	17.69
Christian Democrats	0.00	3.66
Shooters Party	44.35	0.00

Table 20: Newspaper advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major parties

	1999	2003	2007
	(% of Tot Exp)	(% of Tot Exp)	(% of Tot Exp)
ALP	4.62	2.08	1.35
Liberal Party	6.14	3.28	2.06
National Party	11.17	0.77	0.61
Coalition	7.01	2.54	1.71
Greens	21.97	26.67	12.12
Christian Democrats	19.72	13.67	49.85
Shooters Party	0.53	8.93	27.30

Table 21: Radio, television and newspaper advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major parties

	1999	2003	2007
	(% of Tot Exp)	(% of Tot Exp)	(% of Tot Exp)
ALP	82.54	64.65	70.79
Liberal Party	38.71	52.99	31.46
National Party	42.98	55.99	58.96
Coalition	39.45	53.87	38.21
Greens	12.51	33.09	35.70
Christian Democrats	5.29	9.54	59.72
Shooters Party	46.94	0.08	78.11

The main story with forms of electoral advertising other than radio, television and newspapers (Table 22 and 23) concern the increased proportions allocated in the 2003 election vis-à-vis the elections before and after. Interestingly, the Liberal Party also spent less in this 'other advertising' media in 2003 while the ALP spent more.

Table 22: Other advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major aggregated groups

	1999	2003	2007
	(% of Tot Exp)	(% of Tot Exp)	(% of Tot Exp)
Sum: ALP-Coalition	13.70	13.08	11.10
Sum: Big Six	15.16	15.88	12.10
All Less Big Six	25.12	31.78	22.13
All Contestants	16.27	16.88	12.23

Table 23: Other advertising expenditure as percentage of total electoral expenditure in New South Wales elections: Major parties

	1999	2003	2007
	(% of Tot Exp)	(% of Tot Exp)	(% of Tot Exp)
ALP	11.02	14.69	10.13
Liberal Party	16.65	5.32	11.87
National Party	15.29	17.51	18.23

Coalition	16.42	8.89	13.43
Greens	46.98	24.51	25.94
Christian Democrats	41.71	38.15	40.28
Shooters Party	44.72	88.29	19.35

The figures collected by the regulator, however, allow us to speculate on ways in which true expenditure may be ‘hidden’ within other categories. It would be expected, for example, that the proportion of total expenditure devoted to ‘administration and other’ would be approximately constant for all election years and possibly for all parties. But Tables 24 and 25 indicate this is not at all the case.

The proportion of expenditure categorized as ‘administration and other’ has been steadily rising since 1999: under 20 percent in that year, nearly 23 percent in 2003, and nearly 27 percent in 2007 for the big six players. It has also risen dramatically for the minor players (the all contestants less the ‘big six’): from less than 20 percent in 1999 to nearly 63 percent in 2007 (Table 24).

The proportion spent on administration by the Greens has more than doubled over the 8 years. The ALP returned extremely low figures – less than two percent for ‘administration and other’ in 1999, rising to 19 percent in 2007 (Table 25). Historically, the proportion which the Liberal Party allocated has been extremely high – 38 percent in 1999, rising to almost 57 percent in 2007. By contrast, the Christian Democrats have also had almost one third of its expenditure declared in this category in 1999, dropping to zero in 2007. We can only speculate what these possible discrepancies may signal – sloppy reporting principles, or other forms of advertising concealed as ‘administration and other’, or wild fluctuations in what party agents define as advertising or as administration.

Table 24: Administration and 'other' expenditure as percentage of total electoral expenditure in New South Wales elections: Major aggregated groups

	1999	2003	2007
	(% of Tot Exp)	(% of Tot Exp)	(% of Tot Exp)
Sum: ALP-Coalition	19.36	23.04	27.68
Sum: Big Six	19.51	22.75	26.73
All Less Big Six	19.68	51.50	62.83
All Contestants	19.53	24.55	27.19

Table 25: Administration and 'other' expenditure as percentage of total electoral expenditure in New South Wales elections: Major parties

	1999	2003	2007
	(% of Tot Exp)	(% of Tot Exp)	(% of Tot Exp)
ALP	1.82	18.59	19.08
Liberal Party	38.50	38.41	56.67
National Party	30.56	25.73	22.81
Coalition	37.13	34.70	48.35
Greens	18.54	15.73	38.36
Christian Democrats	33.27	38.64	0.00
Shooters Party	7.81	2.69	2.54

Analysis of the question of the 'arms race'

We now turn to reflect more leisurely on the 'arms race' issue in the context, firstly, of Kristina Keneally's claim that ever increasing amounts money 'pile into' elections; and secondly, in view of the evidence presented in the tables and discussions above. From the start it needs to be stated that the question of an arms race is a research program in itself, and that the data in question comprise a limited number of 'comparable' elections – given that all elections are unique events with their own set of distinctive and specific (and perhaps also idiosyncratic) determinants. To put it another way, the degree of uncertainty in identifying precisely which behavioural decisions may have determined a past electoral outcome (not to mention a future one) is quite high: in a statistical

sense, explanation is highly *variable*. And given that the similarity or consistency between elections is low (for example, the electorate thought and acted vastly differently in the first half of the twentieth century than the second half), this implies that the number of elections at our disposal for inclusion in any analysis – namely the sample size – is quite low. Thus high variance with low sample size implies (again on the statistical analogy) that the power to precisely explain (and not to mention predict) is extremely low (or rarely, if ever, ‘statistically significant’). The fact that we may have exhaustible information on the last ten elections, for example, does not mean we have any accurate purchase on the eleventh. But while the available data on the three NSW elections in our analysis may not mean we can generalize to all elections everywhere (or even to New South Wales elections), there may still be some useful contribution to the general ‘arms race’ problem.

The prospect (and fear) of an on-going escalation in campaign finance is linked to the proposition that *money, in some sense, ‘buys elections’*. And this proposition, in turn, is linked to the issue of *what actually animates and influences voters to vote the way they do* given particular circumstances. And this question, in turn, is linked to another: the possibility and extent (subject, again, to particular circumstances) to which an *expenditure advantage* (usually relative to the opposing major party) can be used by campaign strategists to influence an electoral outcome.

With respect to the last postulate, it is clear that there is some significant qualification to any thought that *any* election can be won by bucket loads of excess cash. Massive asymmetric advertising by one party (relative to its competitor) will certainly impact the flow of information available to voters, but in genuine democracies with the free reign of a free press and other avenues of information, electoral success cannot be assured.

In *Money and Politics*, Tham³⁸ briefly summarises the academic literature on whether money ‘buys’ elections. A useful background here concerns a common research strategy in the American literature which has been to combine public choice theory with econometric analysis of large data bases (usually many US state election events). In regard to evidence from Australia and Commonwealth countries, however, it is clear that electoral victories go to the largest spenders as often as not; that even the impact of larger *relative spending* (relative to competitors) hardly ensures electoral success; and that the question of whether larger relative spending favours incumbents or challengers is not altogether clear-cut.

More nuanced research by James Forrest on the ‘electoral geography’ of NSW state elections showed that while relative spending advantage does garner more votes, its efficacy is tempered by the more dominant role of industry, demographic, employment, and partisanship factors. Furthermore, the pattern of possible influence varied widely in the choice of various media upon different target groups.

A good departure point for our discussion is a series of scattergrams in one of Forrest’s earlier (1992) articles³⁹ showing the relationship of the 1984 election funding in particular seats according to the proportion of the primary vote garnered in the previous (1981) election. These charts show, firstly, that electoral funding was low in seats where the ALP did not hold incumbency, with a slight hint of higher funding in seats where the margin was tight (also, in non-incumbency seats). On the other hand, overall funding was higher in the incumbent seats, but approached far-higher levels in seats that were both *incumbent and marginal*, and obviously considered vulnerable to Coalition challenges. As expected, Coalition funding in their respective incumbencies were also, overall, higher, than that in the non-incumbent seats – with the exception of the non-incumbent marginals. So by way of contrast, spending was highest in

³⁸ Joo-Cheong Tham, *Money and Politics: The Democracy We Can’t Afford* (2010) 187-189

³⁹ “The Geography of Campaign Funding, Campaign Spending and Voting at the New South Wales Legislative Assembly Elections of 1984”, *Australian Geographer*, 23 (1), May 1992, pp. 68 and 69 (Figures 1 and 2)

these very seats: the *winnable non-incumbent marginals*. Now such a pattern is hardly unexpected. Nevertheless it provides some empirical support, if any is needed, for other more interesting hypotheses, and these are in respect to overall expenditure for state general elections over the course of electoral cycles.

In one sense, party resources are finite, though it is true that with increasing electoral success, financial boons to party coffers inevitably flow more generously. This has been seen in the pattern, federally, of corporate giving to the major parties: giving overwhelmingly favours the Coalition in the eras in which they have been in power, but splits more evenly between the two major parties in the years that the ALP has been more successful. But the general proposition remains true: party resources are finite, and their disbursement between election periods and inter-election periods (electorate credibility building, or 'seed-sowing' exercises), between periods of government and opposition, and between contesting winnable elections and enduring hopeless electoral ventures, probably requires an optimization algorithm of some complexity. In short – and as the helpful scatter plots of James Forrest remind us – more resources will inevitably be directed to winnable elections, constrained somewhat, by the necessity to perform well in unwinnable contests in order to maintain support and legitimacy (and probably mutual encouragement within the party), to conserve funds for future elections (or inter-election 'seed-sowing') and to avoid any possibility of losing status as the primary party of opposition (and thus the prospect of electoral and historical oblivion if a third party were to rise and steal that mantle).

In the light of this general theory, relatively more resources will be allocated to winnable campaigns (subject to the supply of monetary resources available, and willingness to incur debt against the possibility of non-success) than unwinnable. Even if the proposition that 'money buys votes' were, all things being equal, untrue, it is certainly the case that in tight or very tightly balanced elections, large amounts of extra 'windfall' cash (relative to a competitor) will undoubtedly enable the 'purchase' of small proportions of votes needed to tip the balance. Thus if Campaign Director of Leading Party A knew that only a

hundred, otherwise undecided, votes were needed for success at a general election, it follows that several million extra dollars (if miraculously made available) would be found to support the venture. It follows that if the strategy were to become known to the competition, that Campaign Director of Leading Party B would seek to both match and counter the competition by injecting several million dollars over and above the increase – and so forth, until financial exhaustion beset one or the other competitors. Likewise, if *succeeding elections* were similarly finely balanced, windfalls to ensure the votes of the handful undecided would balloon exponentially from election to election to ensure success by one party or the other.

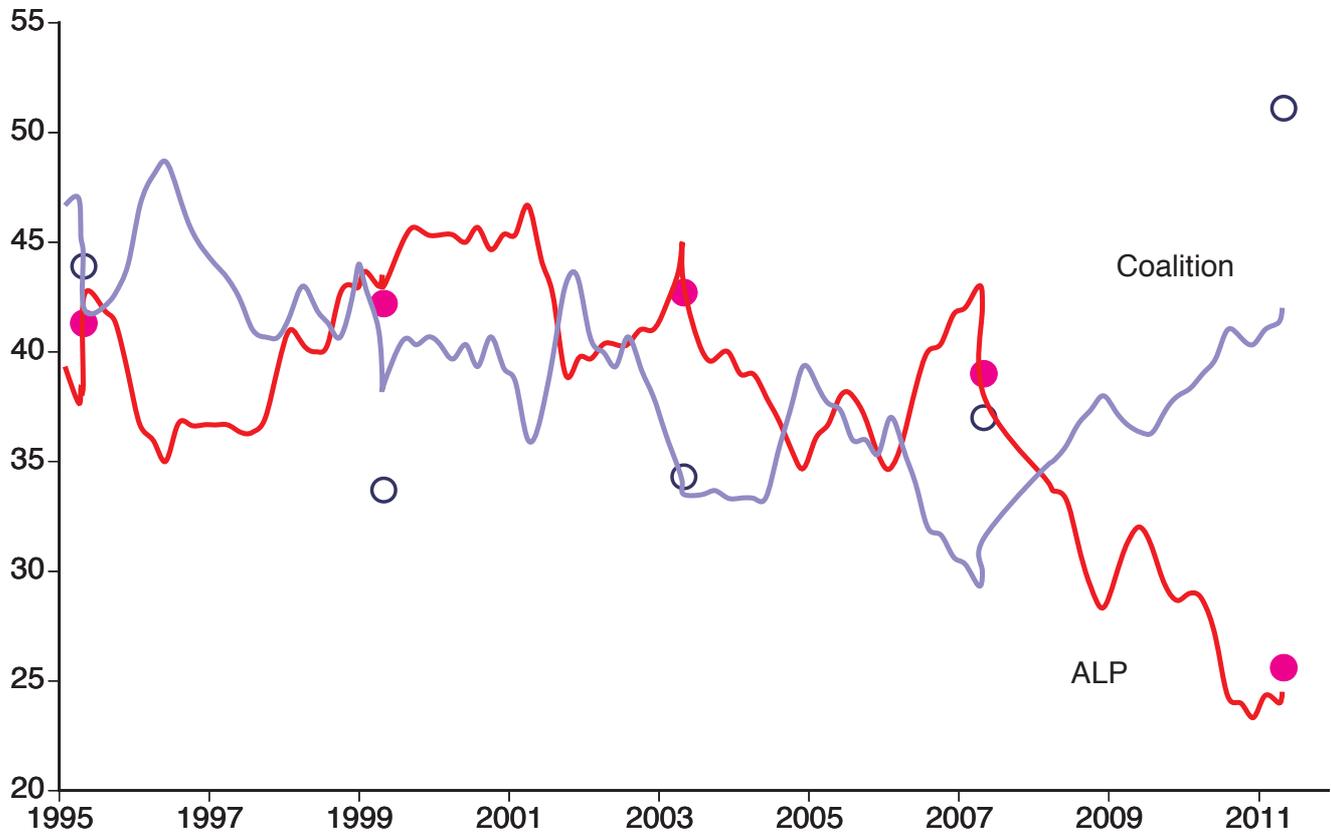
With this general hypothesis in mind, we can return to the details of the three NSW elections, (1999, 2003 and 2007) and see if their characteristics assist in throwing any light on the election arms race question.

Table 26 outlines some of the outcomes of recent NSW general elections. Since the decision to allocate expenditure (especially substantial expenditure, as opposed to “holding pattern” expenditure) is related to the likelihood of winning, we need to consider polling information: Chart A presents Newspoll polling of voting intentions over the period 1995 to 2011, but our immediate concern is with the three elections 1999 to 2007 inclusive.

Table 26: Election Results, New South Wales, 1995 to 2011

Election	1995	1999	2003	2007	2011
Date	March 25	March 27	March 22	March 24	March 26
Seats	99	93	93	93	93
ALP Party Leader	Bob Carr	Bob Carr	Bob Carr	Morris Iemma	Kristina Keneally
Seats Won	50	56	55	52	20
Change	+ 4	+ 5	0	- 3	- 32
Share of Vote	41.3%	42.2%	42.7%	39.0%	25.6%
Swing	+ 2.21%	+ 0.94%	+ 0.21%	- 3.70	- 13.4%
Coalition Party Leader	John Fahey	Kerry Chikarovski	John Brogden	Peter Debnam	Barry O'Farrell
Seats Won	46	33	32	35	69
Change	- 3	- 13	- 1	+ 4	+ 34
Share of Vote	43.9%	33.7%	34.3%	37.0%	51.2%
Swing	- 0.73%	- 10.25%	+ 0.66%	+ 2.63%	+ 14.1%

Chart A Voting Intentions for New South Wales, January 1995 to March 2011 (Newspoll) (3-observation moving average); together with election results



Notes: Percentage reported from respondents to the question: "IF A STATE ELECTION FOR THE LOWER HOUSE WAS HELD TODAY, WHICH ONE OF THE FOLLOWING WOULD YOU VOTE FOR? IF ""UNCOMMITTED"", TO WHICH OF THESE DO YOU HAVE A LEANING?" (Just ALP and Coalition figures shown). Exact election results are also plotted. (Courtesy Newspoll and *The Australian*)

The question at hand is: to what extent could it be said that the outcomes of these three elections were foregone conclusions, and thus how might these surmises effect overall 'investment' of funds by the two leading parties?

While the polling information suggests that the Coalition's chances were rosy a year out from the 1999 election, the Carr government, seeking a second term, soon pulled back any Opposition optimism, such that on the eve of the election,

the *Australian* had opined that the Chikarovski team was ‘simply unelectable’⁴⁰. Political trends surveyor Malcolm Mackerras was unduly ‘cautious’ (his sentiments) about the results several months out, but again, by election eve predicted a comfortable ALP victory – he anticipated they would win 52 seats in the newly diminished parliament⁴¹ (where the 99 seat Legislative Assembly was reduced to 93): in the event they won 56. In spite of the *actual* poor showing by the Coalition on election day, however (they suffered a landslide), we are probably justified in seeing the 1999 election as winnable by either party in the three to six months before the poll, and thus a worthwhile electoral punt in terms of financial investment.

The 2003 election, by contrast, was a different ballgame. Labor consistently outperformed the Coalition in the polls from just after mid 2002, and in the event, the election was also a rerun of the 1999 contest. Finally the election of 2007 provided no joy for Opposition hopefuls as polling consistently indicated healthy ALP margins from almost a year out from the actual election. In summary, neither of these two elections could be pronounced winnable by the Coalition.

Turning now to the patterns of expenditure in the tables previously presented, how do they match up with a realistic assessment of the expectation of victory by either party?

Table 7 indicates that the possible lineball result for the 1999 election is amply demonstrated in the total expenditure figures reported by the ALP and Coalition – at 11.2 million dollars and 11.1 million dollars respectively (in 2011 constant dollar amounts). The actual advertising amounts (Table 10) may provide another perspective and point to rational expectations among Coalition pundits that denying Bob Carr a second term was always going to be a hard ask.

⁴⁰ “Poor choice ahead for NSW voters” *The Australian*, 26 March, 1999, p. 14

⁴¹ Malcolm Mackerras, “Labor to win by a landslide”, *The Australian*, 27 March, 1999, p. 13

But the relative 2003 expenditure figures for the Coalition (vis-à-vis Labor) and also for 2007 more clearly emphasize that their electoral financial outlays more closely matched expectations. Certainly a large amount needed to be expended by the Coalition – especially in 2007 since it would herald their fourth term out of office – to maintain credibility with the electorate.

But the surprise is the spiralling proliferation of outlays by the ALP in the 2003 and 2007 elections. Even in disclosed advertising outlays, the ALP were a tad short of quadrupling Coalition expenditure (Table 10). Did they spend more simply because they had more? Did they spend more because they wanted to finally ‘nail’ New South Wales (in the minds of the electorate) as the ‘natural choice’ party of that state? Did they plan to spend more because they were worried about a possibly Coalition spending spike surprise? Or is there another explanation?⁴²

For New South Wales, over the 8 years between 1999 and 2007, therefore, there has been a clear increase in the overall level of election spending, but the difference appears to be that the Coalition were tempering their outlays by rational expectations, while the ALP (if not beset by fears and fantasies), were willing to continue upping the stakes to ensure success. It is more likely that the ALP were also motivated by rational expectations, though in the light of the principle of diminishing returns (in terms of votes to be won to election financial investment), the colossal rise in expenditure over the years 1999 to 2007 could, not unfairly, be viewed as close to financial squander. Assuming rationality on the part of the Labor machine men, the increase is, we suggest, not unrelated to the competitive dynamic of elections,⁴³ and a component of that dynamic could be put down to ‘game theory’, or a strategy to ensure an outwitting of Coalition

⁴² One possible clue is probably the very fact that then Premier Keneally was willing to introduce legislated expenditure caps in 2010. Facing mounting unpopularity (charted at least by Newspoll from just after April 2008), and likely annihilation (a prospect that Chart A envisaged with ever approaching doom), it would certainly favour Labor to change the rules of the game while it had opportunity, especially if its own financial (and electoral) exhaustion was imminent, together with an (hypothesised) prospect of the Coalition mounting its own arms race for subsequent elections after 2007.

⁴³ There are, of course, other factors, for example, the (increasing) premiums charged by media outlets, see Stephen Mills (1986) *The New Machine Men: Polls and Persuasion in Australian Politics*, Penguin, Melbourne, 189–90.

tactics. Expensive, but effective, at least in the short term – or until the rules of the game were changed from 2011 onwards.

Preliminary assessment of effectiveness of NSW spending limits in preventing ‘arms races’ in elections

In order to effectively deal with the increase in election spending, the NSW spending limits ought to do the following things – they should:

- cover most of the items of electoral expenditure;
- apply during the period which most of such spending occurs;
- cover all key political participants; and
- be set at appropriate levels.

Whether the NSW spending limits cover most items of electoral expenditure depends on the extent to which such spending comes within ‘electoral communication expenditure’, the concept which defines the spending that is covered by these limits.⁴⁴ This can be evaluated by examining the ‘electoral expenditure’ returns lodged in relation to the 1999, 2003 and 2007 NSW elections. These returns not only identify the total amount of ‘electoral expenditure’ incurred by a political party but also classifies such spending in two broad categories: ‘Advertising’ and ‘Administration and Other’. There are four sub-categories to ‘Advertising’: Radio, TV, Newspaper and Other.

The overwhelming bulk of spending in ‘Advertising’ will most likely be covered by the NSW spending limits.⁴⁵ The main exception to this is when advertising involved factual advertising of party meetings.⁴⁶ This item, however, is likely to constitute a very small proportion of the total spending in ‘advertising’.

The position is much more complicated with spending that comes under the broad category of ‘Administration and Other’. A threshold issue is, of course, what does this category exactly encompass. In particular, what comes within the description of ‘Other’? That said, some of the spending that would be included in

⁴⁴ See text above accompanying nn 16-19.

⁴⁵ *EFED Act* s 87(2)(a).

⁴⁶ *EFED Act* s 87(3)(b).

the category of 'Administration and Other' would be covered by the NSW spending limits, including spending on production and distribution of election material; the Internet, telecommunications, stationery and postage; employing staff engaged in election campaigns; and the provision of office accommodation for such staff and candidates.⁴⁷

Other items of spending in the 'Administration and Other' category would not be covered, including spending on travel and travel accommodation for staff and candidates;⁴⁸ employment of staff not engaged in election campaigns and research associated with election campaigns.⁴⁹ The last item, which would include the conduct of focus groups and polling, potentially involves a significant proportion of spending on 'Administration and Other'.

Importantly, expenditure incurred substantially in relation to a federal election, whether on advertising or other activities, is not covered by the NSW spending limits.⁵⁰ This exclusion, while constitutionally necessary, might be the 'soft money' avenue of the NSW regime.

In order to gain an estimate of how much electoral expenditure is covered by the New South Wales spending limits, the following assumptions can be made: all electoral expenditure disclosed by the parties related solely or predominantly to New South Wales elections (therefore is not caught by the federal election exclusion); all 'advertising' expenditure is covered by the spending limits (hence, discounting the small proportion spent on factual advertising of party activities that would not be covered); all spending on 'administration and other' is *not* covered by the spending limits (hence, discounting the spending in this category that would be covered).

In the 1999, 2003 and 2007 New South Wales State elections, the proportion of electoral expenditure spent on 'advertising' ranges is approximately 70-80%

⁴⁷ *EFED Act* s 87(2)(b)-(e).

⁴⁸ *EFED Act* s 87(2)(g).

⁴⁹ *EFED Act* s 87(2)(h).

⁵⁰ *EFED Act* s 87(3)(a).

(see Table 11) (the corresponding proportion spent on 'administration and other' ranged from 20-30% (see Tables 24 and 25). Based on these figures and the working assumptions above, we can estimate that the New South Wales election spending limits will cover roughly 70-80% of total electoral expenditure.

Turning now to the second dimension of the New South Wales spending limits, the period to which they apply. As noted earlier, the limits apply during the 'capped expenditure period'. In the normal event of New South Wales Parliament expiring by virtue of its four-year fixed term, the 'capped expenditure period' is roughly a six-month period leading to the polling day.⁵¹ Whether this period will capture most of the spending made in relation to New South Wales elections cannot be presently ascertained: the 'electoral expenditure' returns for the 1999, 2003 and 2007 State elections do not identify the period during which such spending was made.

As with the third dimension, the spending limits do apply to all key political participants: not only are political parties and candidates subject to the limits but so are third parties.⁵² There is, however, a deficiency in terms of how the limits regulate the campaigns of third parties. While there are 'associated parties' provisions⁵³ that deal with political parties that coordinate their campaigns, there are no equivalent provisions in relation to third parties. Hence, third parties that coordinate their campaigns will get the benefit of separate caps.

What about the levels at which the limits are set? Are they appropriately set in order to prevent the 'arms race' in New South Wales elections? The first thing to note is that the limited availability of data does not allow assessment of various caps that are part of the NSW spending limits regime. The adequacy of the levels set for third party spending whether it be for overall spending in a NSW general election or additional caps for spending in individual Assembly seats cannot be presently assessed because there is no public information detailing the current

⁵¹ See text above accompanying nn 19-24.

⁵² See text above accompanying Table 2.

⁵³ *EFED Act* ss 95G(1)-(2).

levels of third party spending. There will, however, be more information once the disclosure returns for the 2011 NSW elections are made available as third parties (or, more accurately, 'third-party campaigners') are required to disclose details of 'electoral communication expenditure' incurred during the 'capped expenditure period'.⁵⁴

This obligation, however, does not require that 'third-party campaigners' separately itemize spending made in specific Assembly seats. This means that even after the 2011 NSW elections returns are made available, there will be no public data on such spending. The same applies in relation to party spending in specific Assembly seats.⁵⁵ The result is in an inability to assess the adequacy of the levels at which additional caps for party spending in individual Assembly seats have been set.

What can, however, be assessed based on available data are the overall party spending limits and the candidate spending limits. At the time of completing this paper, analysis of the latter is still proceeding. As with the former, Table 27 details the level of the 2007 advertising expenditure (in 2011 dollar figures) as a percentage of the caps on 'electoral communication expenditure' that apply to the various parties. Most striking is how these caps will see the ALP's advertising expenditure reduced by at least around 40%. This feature of the caps point to their effectiveness as it will witness a significant reduction of spending by biggest spending party (by far).

Parties other than the ALP, however, will have ample room to increase their advertising spend before they near the limits set by the caps. The Coalition can more than double their 2007 advertising expenditure while the Christian Democrats and the Greens respectively increase such expenditure by fifteen and thirty-fold and still be within the limits set by their caps.

⁵⁴ *EFED Act* s 88(1A)(a).

⁵⁵ See *EFED Act* s 88(1).

Table 27: 2007 advertising expenditure (in 2011 dollar figures) as a percentage of the caps on 'electoral communication expenditure'

	Caps on spending: 2011 NSW State election	No. of LA candidates	Electoral expenditure: 2007 NSW State election	Advertising expenditure: 2007 NSW State election	Level of 2007 Advertising expenditure as % of 2011 caps
	(\$)	(no.)	(\$)	(\$)	(%)
ALP (including Country Labor Party)	9,300,000	93	20,142,059	16,299,610	175.26
Coalition	9,300,000	93	8,387,495	4,331,867	46.58
Greens	9,300,000	93	559,459	344,850	3.71
Christian Democrats	8,600,000	86	522,373	522,373	6.07
John Tingle-Shooters Party (now Shooters and Fishers Party)	1,050,000	5	817,892	797,120	75.92
Sum: Big Six	37,550,000		30,429,277	22,295,819	59.38
Sum: ALP-Coalition	18,600,000		28,529,554	20,631,477	110.92

Conclusion

The 1999, 2003 and 2007 New South Wales State elections has witnessed an asymmetrical 'arms race' in the sense of increasing levels of election spending driven by the competitive dynamic of the elections. Whether the New South Wales spending limits will be effective in preventing this 'arms race' in continuing remains to be seen. Our analysis draws a mixed picture. Being based on 'electoral communication expenditure', the limits do cover most of the items of election spending. But it is unclear whether they apply during the period in which such spending is made. A factor indicating effectiveness is the fact that the limits cover all key political participants; this design feature, however, sits alongside a loophole relating to coordinated third party campaigns. In terms of the levels at which the limits have been set, the key driver of the 'arms race' - rapid increases in spending by the ALP - will be significantly neutralised by the limits. At the same time, however, the limits allow for ample increases in spending by other parties. Moreover, the limited availability of data means it is

unknown whether the limits set in relation third party spending, additional caps for Legislative Assembly seats and candidate spending are appropriate.

This assessment is clearly preliminary as it provides an analysis based on the past data. There is, of course, no guarantee that past spending patterns will continue in the future. Indeed, we can expect that parties, third parties and candidates will change their spending in response to the spending limits themselves.