



## Eliminating the undue influence of money in politics Discussion paper of The Centre for Public Integrity

### Summary

Public trust in our democracy is low. A perceived lack of integrity in Australia's political and bureaucratic processes, weak laws regulating the flow of money and undue influence in government, and gaps in the jurisdiction of accountability institutions have led to public concern that government, politicians and public servants do not always act in the public interest. Reform is needed to help strengthen confidence and trust in liberal democracy and the rule of law.

The High Court's decision in *McCloy v New South Wales* stated that '*equality of opportunity to participate in the exercise of political sovereignty is an aspect of the representative democracy guaranteed by our Constitution*'.<sup>1</sup> This equality of opportunity is hindered by the current state of our national integrity system.

The Commonwealth has the weakest integrity laws in the country. There is no independent oversight of Commonwealth parliamentarians, ministers, political staff and public servants. Moreover, political influence can effectively be bought as a result of inadequate regulation of political donations and lobbying. Political donations under the threshold of \$14,000 need not be disclosed, donations are only disclosed annually, and there is no limit to how much parties can spend on campaigns. Lobbyists working in house directly for a company or association need not adhere to the Lobbyist Register or Lobbying Code of Conduct. A Commonwealth Parliamentary Code of Conduct does not exist, nor does a National Integrity Commission. The Australian Electoral Commission lacks the investigative powers and resource to enforce compliance with disclosure requirements and breaches of the Ministerial and Lobbying Codes of Conduct have no real consequence.

This platform set out 15 reforms needed to eliminate the undue influence of money in politics:

1. Caps on electoral expenditure
2. Caps on political donations
3. Transparency of political donations and electoral expenditure
4. Increased public funding of political parties and candidates
5. Regular reporting of gifts and interests
6. Cap on government advertising
7. Restrictions on Parliamentary entitlements
8. Alignment of state and federal political finance laws
9. Transparency of lobbying activities
10. Codes of conduct strengthen and enforced
11. Close the revolving door

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<sup>1</sup> *McCloy v New South Wales* (2015) 257 CLR 178, 207 [45]

12. Ban cash for access
13. Fair consultation process
14. Statement of reasons
15. Effective compliance and enforcement

## Political finance

1. Caps on electoral expenditure
  - a. Caps on all electoral expenditure covering political parties, associated entities and third parties similar to *Electoral Funding Act 2018* (NSW)
  - b. Level set through review and tied to donations caps and public funding
  - c. Finance or Attorney Generals' Department to purchase and distribute advertising space from commercial broadcasters and major newspapers during each election year, with limits also applied to the amount of advertising space available for each party, candidate and third-party campaigners

Caps on electoral expenditure are required to stop the fundraising "arms race" and limitless advertising spends. With no expenditure regulations in place at a federal level, parties that fundraise the most and spend the most can gain an electoral advantage. It also allows greater undue influence from corporate interests, as those with large amounts to spend can literally buy the front page of the major newspapers every day in the lead up to the election. Clive Palmer spent \$67 million on advertising in the year leading up to the election, and \$15 million in the last three week alone, according to media analytics.<sup>2</sup> Of the 683 advertising slots bought in the final week of the election campaign, 272 were negative about then Opposition Leader Bill Shorten and Labor.<sup>3</sup> Caps on expenditure would curtail the electoral impact of spending more than opponents.

Advertising is the largest component of electoral expenditure.<sup>4</sup> It is used in attempts to buy undue influence. Restricting electoral advertising is therefore an effective way of democratising election campaigns. Central purchasing of advertising space via the AEC will calm the competitive pricing that leads to parties and candidates paying exorbitant prices for advertising in the lead up to the election. Limiting the available space per party and candidate would level the electoral playing field, and stop the tactical flooding of prime time television and front page newspaper advertising spots by parties hoping to outspend and force out opponents. Limiting available space would also inhibit the profiteering of commercial media outlets, whose editorial independence may be impacted by large advertising spends by political parties, candidates or third parties.

2. Caps on political donations
  - a. Phase in to set donation cap at \$2000 per annum per candidate and \$5000 per party, from a single person or entity (aggregated), and capping private funding of around 50% of total party funding

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<sup>2</sup> Murphy, 2019, *Clive Palmer outspends McDonald's, Toyota and Coles to advertise his political party*, The Guardian, 16<sup>th</sup> August 2019, <https://www.theguardian.com/australia-news/2019/aug/16/clive-palmer-outspends-mcdonalds-toyota-and-coles-to-advertise-his-political-party>

<sup>3</sup> Murphy, 2019, *Clive Palmer outspends McDonald's, Toyota and Coles to advertise his political party*, The Guardian, 16<sup>th</sup> August 2019, <https://www.theguardian.com/australia-news/2019/aug/16/clive-palmer-outspends-mcdonalds-toyota-and-coles-to-advertise-his-political-party>

<sup>4</sup> Young and Tham, 2006, *Political finance in Australia*, Report 7 of the Democratic Audit of Australia, Australian National University, Table 5.2 pp 105.

- b. Covers broad definition of donations going to political parties, candidates, associated entities and third parties
- c. Third party donation caps only to apply to funds used for the dominant purpose of influencing electoral outcomes (see section 287AB of the *Electoral Act 1918* (Commonwealth))
- d. Exemption for party and organisation membership up to \$600 per year

Caps on donations are necessary to eliminate the ability of those with large amounts of money being able to buy undue influence and access. Our current system of unlimited donations means that those with the capacity to donate more are given more attention by politicians and political parties than an average constituent. Setting the caps at \$2000 and \$5000 levels the playing field, as most individuals on an average wage would be able to afford to donate this amount. Exemptions for membership encourages political parties and organisations to raise basic organisational revenue through broad participation of individuals. Setting a limit to this at \$600 avoids corporations' undue influence through \$10,000 'membership' to a party's business networks or advocacy peak bodies, and would put the national scheme in line with Section 96D of the *Election Funding, Expenditure and Disclosure Act 1981* (NSW).

- 3. Transparency of political donations and electoral expenditure
  - a. Low threshold to report all individual donations over \$1000, or aggregated donations of \$3000 over 3 years, to political parties, candidates, associated entities and third parties
  - b. Broad definition of 'donation' to include income from party fundraisers, corporate sponsorship of business forums, and membership fees over \$600 per year
  - c. Real time disclosure of donations and expenditure, plus quarterly reports providing categorisation and aggregates of donations and expenditure
  - d. Donations and expenditure returns to be itemised, and audited
  - e. A single dedicated campaign account to facilitate auditing

Current disclosure regulations allow the majority of political donations to be hidden. With the threshold for reporting set at \$14,000 and without a cap, donors could potentially donate \$13,900 multiple times through federal and state parties and not be disclosed to the public. Donations disclosed above \$14,000 are only made publicly available in early February of the following year, meaning that a donation made in July may be hidden for 18 months. Following the May 2019 federal election, voters will only know of donations made during the campaign over 9 months after the election, at the end of January 2020.

Donations made through attendance at party fundraisers, priced at \$10,000-20,000 per person, are currently not categorised as gifts. Corporate sponsorship or membership of cash-for-access business forums, with reports citing corporate contributions of \$27,500 and \$110,000, are at risk of being hidden from public view.<sup>5</sup> The Millennium Forum, a former business network of the Liberal Party, has been exposed in funnelling illegal property developer donations, and facilitating the undue influence of property developers seeking

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<sup>5</sup> Knaus, 2018, *Liberals and Labour urged to come clean on business paying for political access*, The Guardian, <https://www.theguardian.com/australia-news/2018/oct/28/liberals-and-labor-urged-to-come-clean-on-business-paying-for-political-access>

assistance with a debt-ridden company.<sup>6</sup> Other membership fees that contribute to advocacy and electoral expenditure are also not disclosed to the AEC, including corporate membership of peak advocacy bodies. The Minerals Council of Australia, which “represents the minerals industry with a common purpose in advocating responsible policies...” raised over \$200 million in revenue from 2007-2016 with a peak in 2011-12 that coincided with the campaign against the Minerals Resource Rent Tax.<sup>7</sup>

There is even less transparency of electoral expenditure. The Commonwealth Electoral Act was amended in 1995 to require only total expenditure to be reported, and not itemised or categorised electoral expenditure, giving the public no details of what parties are spending their income on. It was amended again in 1998 to not require any electoral expenditure to be disclosed at all.

4. Increased public funding of political parties and candidates
  - a. Level set through review and tied to levels of donation and expenditure caps, with total set at 50% of party funding
  - b. Public funding given to candidates receiving above 4% of primary vote in the House of Representatives and 2% in the Senate
  - c. Public funding tied to compliance with donation and expenditure disclosure regime, and criteria based on party membership and primary votes

Public funding supports political parties and independent candidates to participate in elections and perform their representative and policy-making functions. The current mix of public to private funding in major parties is approximately 30:70, so aim is to amend this towards 50:50. Current federal public funding per vote is lower than all but one state. Increasing the rate of public funding will limit the reliance on private fundraising that may be tied to certain conditions or private interests. Distributing public funding only to parties and candidates that have completed their disclosure requirements helps to ensure compliance and transparency.

5. Regular reporting of gifts and interests
  - a. Quarterly reporting of Members interests and Ministerial gifts
  - b. Ministers' and Members' disclosures subject to auditing

Members of Parliament are required to report on any financial interests and Ministers report gifts over a \$300 threshold. Company shares, board positions, and gifts of hospitality all have potential to influence political decision-making. A recent example includes allegations that Minister Angus Taylor's financial interest in a company being investigated for poisoning grassland impacted his decision to meet with the Environment Minister to discuss the investigations.<sup>8</sup> Current reporting and disclosure of interests and gifts occurs after each election, meaning voters are not aware of any potential conflict of interest before election

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<sup>6</sup> Marksonn, 2016, *Defunct Millennium Forum set Baird up with property developers*, The Australian, <https://www.theaustralian.com.au/nation/politics/defunct-millennium-forum-set-baird-up-with-property-developers/news-story/1ed4e389bff695c57753d3dde5da26d4>

<sup>7</sup> Aulby, 2017, *Foreign corporate influence through the Australian mining lobby*, The Australia Institute, <https://www.tai.org.au/content/undermining-our-democracy-foreign-corporate-influence-through-australian-mining-lobby>

<sup>8</sup> Roddon, 2019, *Energy Minister Angus Taylor under pressure over family company*, The Australian, 24<sup>th</sup> July 2019, <https://www.theaustralian.com.au/nation/politics/energy-minister-angus-taylor-under-pressure-over-family-company/news-story/730dfc1d207c8f3119a7756fb8728ee4>

day. Regulation in Queensland requires Ministers to report any gifts and hospitality received every 3 months. The register of Members' interests in Queensland is also updated regularly. A similar system federally would allow voters to be better informed of potential conflicts of interests. Auditing disclosures would ensure accuracy.

6. Cap on government advertising
  - a. Ban on government advertising 2 years after the previous election, except in cases of national emergencies

Incumbent governments have an electoral advantage with access to government advertising budgets and departmental media units. The limited data available seems to suggest correlation with increased advertising in election years. As reported in the Reports on Campaign Advertising provided by the Department of Finance, government advertising peaked at \$174 million in the 2015-16 financial year preceding the 2 July 2016 election. Government advertising spending in the two years previous was \$106.5 million in 2013-14 and \$107 million in 2014-15, and \$100 million post-election in 2016-2017.<sup>9</sup> A \$2.4 million advertising campaign on energy prices in December 2018 was criticised by Opposition and crossbench MPs, including for use of party messaging 'we've turned the corner on electricity prices'.<sup>10</sup> The Australian National Audit Office found that the campaign did not meet the standards expected in the government advertising guidelines.<sup>11</sup>

Banning government advertising 2 years after the previous election would stop the spike in soft advertising in election years. Exemptions in cases of national emergencies would be determined by an independent body.

7. Restrictions on Parliamentary entitlements
  - a. Ban use of printing and communication allowance 2 years after previous election
  - b. Annual report with details of entitlements and expenditure, to be audited and made public

Incumbent Parliamentarians standing for re-election currently have an unfair advantage over opponents in their ability to use parliamentary entitlements, such as printing and travel allowances, for electioneering. A 2006 estimate put the total value of Parliamentary entitlements at \$887-899,000 per year.<sup>12</sup> A ban on using printing and communications allowance in an election period would create a more equal contest for all candidates. An audited annual report would improve transparency in the expenditure of public funds for Parliamentary entitlements.

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<sup>9</sup> Department of Finance, 2013-2017, *Campaign Advertising by Australian Government Departments and Agencies*, <https://www.finance.gov.au/advertising/campaign-advertising-reports.html>

<sup>10</sup> Knaus, 2019, *Angus Taylor's department ignored advice not to run \$2.4m energy ad blitz before Christmas*, <https://www.theguardian.com/australia-news/2019/aug/13/angus-taylors-department-ignored-advice-not-to-run-24m-energy-ad-blitz-before-christmas>

<sup>11</sup> Auditor General Report No. 7 of 2019-20, *Government Advertising: June 2015 – April 2019*, <https://www.anao.gov.au/work/performance-audit/government-advertising-june-2015-to-april-2019>

<sup>12</sup> Young and Tham, 2006, *Political finance in Australia*, Report 7 of the Democratic Audit of Australia, Australian National University, Table 3.7 pp 58.

8. Alignment of state and federal political finance laws
  - a. An anti-circumvention offence, similar to section 96HB of *Election Funding, Expenditure and Disclosures Act 1981* (NSW)
  - b. A national review to recommend reforms to synchronise state and national regulations

Current disparities in political finance laws in each state and nationally create the possibility of parties and donors avoiding disclosure by funnelling donations through state party branches. For example, Tasmania currently does not have any state regulations for political finance so a NSW donor could donate to a political party's Tasmanian branch and then get the money transferred to the NSW branch to avoid the scrutiny of the NSW regulations. Equally, weak national laws mean a donor could donate to a federal political party and get it transferred to a state branch and avoid disclosure.

## Lobbying

9. Transparency of lobbying activities
  - a. Include in-house lobbyists, senior staff of peak bodies, and any repeat players in the lobbyist register
  - b. Expand lobbyist register to include disclosure of identity of lobbyists, clients, topics of lobbying
  - c. Quarterly publication of diaries of Ministers, Shadow Ministers and their Chiefs of Staff

The current lobby register does not give public transparency of who is influencing government decision making. It only covers a portion of lobbyists and does not give detail of lobbying activities. Publication of Ministerial diaries in NSW and Queensland allow the public to see who their government is meeting with. A similar mechanism at a national level, along with an expansion of the lobbyist register, would give greater public accountability to senior members of government and opposition.

10. Codes of conduct strengthen and enforced
  - a. Ministers
  - b. Parliamentarians
  - c. Lobbyists

Codes of conduct hold those engaged in public policy-making accountable to act with integrity in the public interest. There is currently no code of conduct for parliamentarians, and those for Ministers and lobbyists are not independently enforced. The Ministerial code of conduct should be strengthened to effectively restrict post-separation employment (see section 11 below). A Parliamentary code of conduct should include bans on cash-for-access fundraising (see section 12 below). The lobbyist code of conduct should be strengthened to include requirements to act honestly and provide only truthful advice, and avoid conflicts of interests and undue influence. All codes of conduct require explicit penalties for breaches, with independent enforcement through an independent and well-resourced Parliamentary Integrity Commissioner.

11. Closing the revolving door
  - a. Post-separation employment restrictions extended to include lobbying-related activities
  - b. Post-separation employment restrictions to apply for 5 years for Ministers, Deputy Ministers and Parliamentary Secretaries.
  - c. Enforcement through a Parliamentary Integrity Commissioner

Ministers are currently taking up employment soon after leaving Parliament within industries that they previously regulated. Former Defence Minister Christopher Pyne accepted a job with major defence contractor Ernst and Young 9 days after leaving Cabinet,<sup>13</sup> and former Small Business Minister Bruce Billson started working with the Franchise Council of Australia 2 months before leaving Parliament.<sup>14</sup>

Martin Ferguson was the Minister for Resources from 2007 to March 2013.<sup>15</sup> In October 2013 he was appointed to a newly created role at the oil and gas industry lobby group, APPEA, as Chairman of the APPEA Advisory Board.<sup>16</sup>

Ian MacFarlane was the Minister for Resources from 2011 to 2007 and Minister for Industry from 2013 to September 2015.<sup>17</sup> His last speech in the House of Representatives was on the 5<sup>th</sup> May 2016,<sup>18</sup> and on the 26<sup>th</sup> September 2016 he was announced as the new Chief Executive of the Queensland mining lobby group QRC.<sup>19</sup>

Research from the ANU finds that over 50% of lobbyists formerly held government positions.<sup>20</sup> This conflict of interest is not effectively regulated by current post-separation employment restrictions, which are limited in scope and are internally regulated through the Department of Prime Minister and Cabinet.

Expanding the restriction to include banning engagement in lobbying-related activities would not allow former parliamentarians or Ministers to use their political contacts or insider knowledge of contracting processes to give unfair advantage to their employers. Extending the ban from the current 18 months to 5 years, to cover 1-2 election cycles, would dilute the potential influence of former Ministers operating in commercial roles. All Parliamentarians that did not serve as Cabinet Ministers would retain the 18 month ban. Current enforcement is inconsistent and largely ineffective, with the Prime Minister tasked with regulating former

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<sup>13</sup> Knaus, 2019, *Christopher Pyne had discussions with EY while still a minister*, The Guardian, 13<sup>th</sup> August 2019, <https://www.theguardian.com/australia-news/2019/aug/13/christopher-pyne-had-discussions-with-ey-while-still-a-minister>

<sup>14</sup> Karp, 2018, *Former Liberal Minister Bruce Billson faces censure for failure to declare lobbying job*, The Guardian, 26<sup>th</sup> March 2018, <https://www.theguardian.com/australia-news/2018/mar/26/former-liberal-minister-bruce-billson-faces-censure-for-failing-to-declare-lobbying-job>

<sup>15</sup> Australian Parliament House, *Parliamentarians: Martin Ferguson*, [http://www.aph.gov.au/Senators\\_and\\_Members/Parliamentarian?MPID=LS4](http://www.aph.gov.au/Senators_and_Members/Parliamentarian?MPID=LS4)

<sup>16</sup> APPEA (2013), *Martin Ferguson appointed chair of APPEA advisory board*, 1<sup>st</sup> October 2013, [http://www.appea.com.au/media\\_release/martin-ferguson-appointed-chair-appea-advisory-board/](http://www.appea.com.au/media_release/martin-ferguson-appointed-chair-appea-advisory-board/)

<sup>17</sup> Australian Parliament House, *Parliamentarians: Ian MacFarlane*, [http://www.aph.gov.au/Senators\\_and\\_Members/Parliamentarian?MPID=WN6](http://www.aph.gov.au/Senators_and_Members/Parliamentarian?MPID=WN6)

<sup>18</sup> Hansard, 5<sup>th</sup> May 2016, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F5ad31cc6-5b90-4856-adc8-83b8e5eb87ac%2F0028%22>

<sup>19</sup> ABC (2016), *Ian MacFarlane appointed to run Queensland mining lobby*, 26<sup>th</sup> September 2016, <http://www.abc.net.au/news/2016-09-26/ian-macfarlane-appointed-to-run-queensland-mining-lobby/7876942>

<sup>20</sup> Knaus, 2019, *More than half of lobbyists have worked within Australian government, study finds*, The Guardian, 24<sup>th</sup> July 2019, <https://www.theguardian.com/australia-news/2019/jul/24/more-than-half-of-lobbyists-have-worked-within-australian-government-study-finds>

Cabinet colleagues. An independent and well-resourced Parliamentary Integrity Commissioner is needed to monitor compliance and enforcement of the post-separation employment restrictions.

12. Ban cash for access

- a. Ban on parliamentarians attending party fundraisers with business or lobbyists
- b. Ban on parliamentarians attending business forum events
- c. Declaration of all income from party fundraising events and business membership fees

Parliamentarians are elected as representatives of their electorate and party, but preferential access is often given to donors rather than constituents or portfolio stakeholders. Individuals and companies able to pay \$10-100,000 for a ticket to a party fundraiser or membership of a business forum are given special access to Ministers or Shadow Ministers. This party income is not categorised as a political donation and therefore is not disclosed to the public. Bans on participating in cash-for-access events should be enacted through a Parliamentary code of conduct, and all income from party fundraisers and corporate memberships declared as donations.

13. Fair consultation process

- a. Commitment from government to develop and follow fair consultation guidelines based on inclusion, deliberation and meaningful participation

Lobbyists representing commercial interests can have a greater influence over policy decisions than any consultation with the public. Current consultation processes are often restricted to a singular one-way interaction of a written submission listed on a website. Improving the depth of consultation and engagement with the public will mean policy makers are better informed and less reliant on privately funded lobbyists for information.

14. Statement of reasons

- a. Requirement of government to provide a statement of reasons for major executive decisions: to include details of lobbyist meetings held on the topic, a summary of departmental advice on the subject, and reasons for actions taken

Public trust in the integrity of government is affected when there is a perception that policy decisions have been made to benefit private interests. A statement of reasons would allow the public to see the information made available to politicians on the subject, and understand the logic behind how decisions are made.

15. Effective compliance and enforcement

- a. Governance requirements for registered political parties
- b. Party and candidate compliance policies tied to public funding
- c. An adequately skilled and resourced enforcement division within the Australian Electoral Commission to enforce political finance and lobbying regulations
- d. An independent Parliamentary Integrity Commissioner with sufficient powers and resources needed to enforce compliance with codes of conduct, register of gifts and interest, and proper use of parliamentary entitlements

- e. An independent National Integrity Commission with broad jurisdiction and strong investigative powers needed to investigate and expose serious or systemic breaches of political finance laws

The strength of political finance regulations are undermined by weak enforcement. The Australian Electoral Commission (AEC) has raised concerns of non-compliance with existing low level disclosure requirements, including that full disclosure can be legally avoided, and that some seek to circumvent the intent of the regulations by applying the narrowest possible interpretation of the legislation.<sup>21</sup> The Federal Labor Party failed to properly disclose a \$100,000 donation in 2016/17 from the car salary packaging peak association, made in the same year then Opposition Leader Bill Shorten promised generous tax arrangements for the industry.<sup>22</sup> The NSW Labor party used the names of restaurant staff at a fundraising dinner to hide an illegal \$100,000 donation from Chinese billionaire Huang Xiangmo.<sup>23</sup>

Current lobbying regulations are not effectively enforced. An audit by the National Audit Office conducted last year found that the Department of Prime Minister and Cabinet provided only a 'low level of compliance' with the register, and that 'it was not clear from the department's records how many alleged instances of non-compliance had been reported'.<sup>24</sup>

Enforcement requires strong institutions independent from government. The AEC currently does not have the resources or expertise to effectively enforce regulations. A specialised enforcement division within the AEC is needed to monitor and enforce political finance and lobbying regulations. An independent Parliamentary Integrity Commissioner is needed to enforce compliance with codes of conduct, parliamentary entitlements and the register of gifts and interests. A National Integrity Commission with strong investigative powers and a broad jurisdiction is needed to investigate and expose breaches. Other preventative measures include requiring good governance and compliance policies as a condition of party registration and public funding.

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<sup>21</sup> Young and Tham, 2006, *Political finance in Australia*, Report 7 of the Democratic Audit of Australia, Australian National University, Table 5.2 pp 17-18.

<sup>22</sup> Knaus, 2018, *Major parties failed to declare corporate donations, electoral commission finds*, The Guardian, 26<sup>th</sup> November 2018, <https://www.theguardian.com/australia-news/2018/nov/26/major-parties-failed-to-declare-corporate-donations-electoral-commission-finds>

<sup>23</sup> Knaus, 2019, *Former NSW Labor boss seen with \$100,000 cash in Aldi bag after meeting banned donor, Icac inquiry told*, <https://www.theguardian.com/australia-news/2019/aug/26/nsw-labor-got-100000-in-cash-from-chinese-billionaire-icac-inquiry-told>

<sup>24</sup> ANAO, 2018, *Management of the Australian Government's Register of Lobbyists*, Auditor General Report No 27 2017-2018 Performance Audit, pp 8-9, <https://www.anao.gov.au/work/performance-audit/management-australian-government-register-lobbyists>